

REGISTERING A CIVIL SOCIETY ORGANISATION

Volume 2

A handbook of key laws from 7 countries



大成 DENTONS



ICNL
INTERNATIONAL CENTER
FOR NOT-FOR-PROFIT LAW



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Disclaimer: The purpose of the Handbook is not to give legal advice, but to provide interested persons with access to informative materials. Recognising that CSO laws change and interpretations of local law vary, ECNL is not liable for any differences or inaccuracies.

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INTRODUCTION

This second volume of the *Handbook on Registering a Civil Society Organisation* has been prepared as a continuation of the Handbook's first edition from 2018 to inform the civil society organisations ("CSOs") about conditions for setting up an organisation in various countries. Since the first edition of the Handbook has received an increasing attention from the CSOs worldwide, ECNL and their partnering law firms DLA Piper and Dentons have agreed to review more countries and expand the geographical scope of the Handbook. The first edition of the Handbook covered 10 countries from Europe and MENA region, namely Belgium, Czechia, Estonia, Georgia, Germany, Ireland, Lebanon, Sweden, Tunisia and Turkey. This time, the Handbook focuses on 5 countries from Europe: Finland, Italy, Romania, Spain and the Netherlands, and 2 countries from beyond Europe: Australia and Costa Rica.

The Handbook is been prepared for those that wish to set up an organisation at home or in another country, or to compare conditions for incorporation and operation between countries. To make the Handbook user friendly, the country notes are broken down into following 9 thematic subsections:

1. Existing forms of CSOs and their characteristics;
2. Requirements on the founders of CSOs;
3. Registration procedure;
4. Sources of funding;
5. Tax treatment of CSOs;
6. Obligations of registered CSOs;
7. Internal governance of a CSO;
8. Staff and members of a CSO;
9. Voluntary dissolution and liquidation.



Each subsection contains specific, detailed requirements for the selected legal forms in each country. We would like to note that since Australia is composed of several states and territories, we have divided the answers in the note to cover all of them.

The updated addition of the Handbook was developed in collaboration with our partnering law firms, DLA Piper and Dentons as well as the International Center for Not-for Profit Law (ICNL). More country notes commonly developed could be found at ECNL's website: www.ecnl.org, DLA Piper's website: www.dlapiper.com and Dentons' website: www.dentons.com. For more information about the project and other countries that may be reviewed, please contact info@ecnl.org.

TEAMS OF ECNL, DLA PIPER AND DENTONS

AUSTRALIA



Existing forms of civil society organisations & their characteristics

1. WHAT FORMS OF CSOS EXIST? WHAT ARE THEIR MAIN CHARACTERISTICS?

i. Incorporated association

An incorporated association is a not-for-profit organisation incorporated under a specific state or territory associations' incorporation law. All states and territories have their own slightly different laws to set up such associations. Accordingly, incorporated associations that wish to operate in other Australian states or territories cannot do so without taking further legal steps. This is the most common legal structure for not-for-profit organisations in Australia.

ii. Company limited by guarantee (CLG)

A company limited by guarantee is incorporated under the *Corporations Act 2001* (Cth¹). This is a special type of company structure for not-for-profit organisations. A company limited by guarantee has “directors” and “members” and can carry out its activities anywhere in Australia. The liability of the company’s members is limited, usually by the amount members contribute to the property of the company if it is wound up (usually a nominal amount of AUD 10-100, approx. EUR 6 -60).

iii. Foundations/charitable trusts

Foundations are legal entities that are set up to hold funds and distribute those funds in accordance with the rules of the foundation. Foundations are typically set up in the form of charitable trusts or funds (public ancillary funds, private ancillary funds and necessitous circumstances funds). In Australia, most foundations are established as charitable trusts.

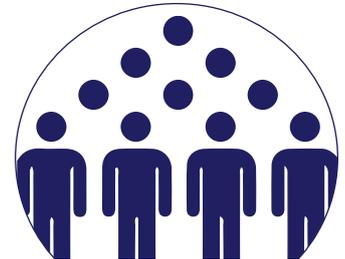
¹ Refers to “Commonwealth”, i.e. to the laws that apply in all of Australia.

GENERAL INFORMATION



Capital city:

Canberra



Population:

25,114,250

GNI Per Capita*

\$47,160

Australia

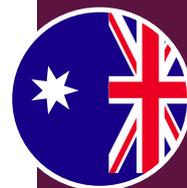
\$39,358

European Union average

\$16,176

World average

*In USD. Source: World Bank (2016)



A charitable trust will distribute its funds to organisations that have charitable purposes which are similar to those of the trust. For example, a charitable trust fund set up to benefit elderly people may give money to organisations that provide subsidised meal services to elderly people. In Australia, trust law is largely state based and charitable trusts are subject to the requirements of the relevant state trustee legislation (which is broadly consistent across all states).

An organisation is a “registered charity” if it is registered with the Australian Charities and Not-for-Profits Commission (ACNC). The ACNC is responsible for many regulatory functions relating to charities, which were formerly administered by the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC).

Registering as a charity is often required to access charitable tax concessions. There are other benefits to registering as a charity, such as being listed on the public register of charities (and using the “Registered Charity Tick”), which can improve public trust in your organisation.

Definition of “charity”

On 1 January 2014, a statutory definition of charity came into effect at a federal level. Previously, the definition of charity was contained in case law and was hard to identify and apply. The definition requires a group to have charitable purposes (defined in the statute) and operate for the public benefit. There are some exclusions as well.

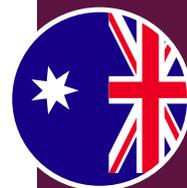
The definition applies when the question of whether an organisation is “charitable” needs to be assessed at a federal level (ie, when a charity registers with the ACNC).

Section 5 of the *Charities Act 2013* (Cth) defines a “charity” as an entity:

- a. that is a not-for-profit entity; and
- b. all of the purposes of which are:
 - i. charitable purposes... that are for the public benefit...; or
 - ii. purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i); and
- c. none of the purposes of which are disqualifying purposes...; and
- d. that is not an individual, a political party or a government entity.

A “charitable purpose” is defined in section 12 of the *Charities Act* to mean any of the following purposes:

- a. advancing health;
- b. advancing education;
- c. advancing social or public welfare;
- d. advancing religion;
- e. advancing culture;
- f. promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- g. promoting or protecting human rights;
- h. advancing the security or safety of Australia or the Australian public;



- i. preventing or relieving the suffering of animals;
- j. advancing the natural environment;
- k. any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);
- l. promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:
 - i. in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
 - ii. in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

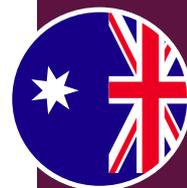
2. ARE THERE ANY RESTRICTIONS ON THE PERMISSIBLE GOALS AND ACTIVITIES OF CSOS?

Incorporated association: Provided there is no inconsistency with the incorporated association's purposes, it may trade or be involved in trading activities so long as the funds raised are directed back to furthering its mission. The incorporated association's activities and operations are limited to the state the association is incorporated in. It is permissible to carry on irregular activities in other states (such as fundraising), but it cannot operate out of another state or territory without taking further legal steps (such as registering as a Registrable Australian Body with ASIC). The incorporated association's constitution is binding on the association, the management committee and its members.

CLG: A company limited by guarantee can operate anywhere in Australia. Unlike an incorporated association, which can only trade with the public if that trade is ancillary to the association's purpose, a company may conduct trade as a primary purpose. If the company is a special purpose company, then any income must be for promoting charitable purposes and there can be no distribution to its members or fees paid to directors.

Charitable trust: A charitable trust can directly provide services or distribute funds. The activities of a trust fund should fall in the following three categories:

- Administration - management of the trust to ensure its compliance obligations are met;
- Investment - investing trust assets to protect the real value and generate an increasing flow of income over time; and
- Distribution - distributing the trust income to eligible beneficiaries for charitable purposes.



3. WHAT ARE THE KEY CIVIL SOCIETY LAWS?

Federal (Commonwealth acts)

- A New Tax System (Goods and Services Tax) Act 1999
- Corporations Act 2001
- Income Tax Assessment Act 1936 (ITAA 1936)
- Income Tax Assessment Act 1997 (ITAA 1997)
- Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act)
- Charities Act 2013

Please note that each state has its own set of laws regulating CSOs.



Requirements on the founders of a civil society group

1. WHAT IS THE MINIMUM NUMBER OF FOUNDERS REQUIRED BY LAW?

Incorporated association:

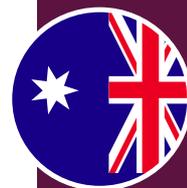
- Queensland - at least 7 members
- New South Wales - 5 or more individuals
- Victoria - not fewer than 5 members
- Western Australia - at least 6 members who have under its rules full voting rights
- South Australia - no minimum number specified
- Northern Territory - no minimum number specified
- Australian Capital Territory - at least 5 members
- Tasmania - no minimum number specified

CLG:

- Australia-wide - at least 3 directors, 1 secretary and 1 member

Charitable trust:

- Australia-wide - minimum 1 trustee



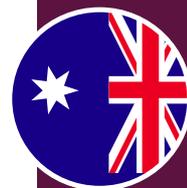
2. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FOUNDERS?

Incorporated association:

- Queensland - the secretary must be a resident in Queensland (or in another state but not more than 65 km from the Queensland border).
- New South Wales:
 - › an association must establish a committee to manage its affairs, and the committee must include 3 or more members, each of whom is aged 18 years or more and at least 3 of whom are ordinarily resident in Australia;
 - › an association must appoint a public officer who must be over 18 years of age and is ordinarily a resident in New South Wales; and
 - › an association's committee may from time to time appoint additional authorised signatories from among such of its members as are ordinarily resident in Australia.
- Victoria:
 - › the person applying to the Registrar for the incorporation of an association (authorised by the majority of members) must be at least 18 years of age and a resident in Australia; and
 - › the first secretary of the proposed incorporated association must be at least 18 years of age and a resident in Australia.
- Western Australia - no specified requirements in legislation
- South Australia:
 - › an incorporated association must have a public officer and that officer must be above the age of 18 and resident in South Australia.
- Northern Territory:
 - › the public officer of an incorporated association must be a person resident in the Northern Territory.
- Australian Capital Territory:
 - › an incorporated association must have a public officer and the public officer must be at least 18 years of age and reside in the Australian Capital Territory.
- Tasmania:
 - › the public officer of an incorporated association must be at least 18 years of age and a resident in Tasmania.

CLG:

- Australia-wide:
 - › all directors must be over 18 years old;
 - › at least 2 directors must ordinarily reside in Australia (note that a director cannot have been convicted of certain offences (such as



fraud) with the date of conviction (or date of release if a director was imprisoned) within the last 5 years;

- › a director cannot be an “undischarged bankrupt” or have executed a personal insolvency agreement;
- › a director cannot be the subject of a court disqualification order; and
- › a secretary of a CLG must be at least 18 years old;
- › if there is only 1 secretary, s/he must ordinarily reside in Australia, if a CLG has more than 1 secretary, at least 1 of them must ordinarily reside in Australia; and
- › a person who is disqualified from managing corporations cannot be a company secretary.

Charitable trust: The trustee does not need to reside in Australia.

3. ARE FOREIGN CITIZENS ALLOWED TO SERVE AS FOUNDERS? WHAT KIND OF LEGAL STATUS (PERMANENT, TEMPORARY OR OTHER) DO FOREIGN CITIZENS NEED TO HAVE IN ORDER TO BE ELIGIBLE TO SERVE AS FOUNDERS?

See above under the question “*What are the eligibility requirements for founders?*”

4. ARE THERE ANY PROPERTY OR CASH CONTRIBUTION REQUIREMENTS FOR THE FOUNDERS?

Incorporated association: Australia-wide: no.

CLG: The members agree in writing (known as a “guarantee” to pay a nominal amount (for example, between AUD 10 - 100, approx. EUR 6 - 60).

Charitable trust: No.

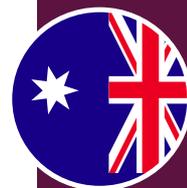


Registration procedures

1. WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION?

Incorporated association:

- Queensland - Office of Fair Trading.
- New South Wales - NSW Fair Trading.
- Victoria - Consumer Affairs Victoria.
- Western Australia - Department of Commerce.



- South Australia - Consumer and Business Services.
- Northern Territory - Department of Business.
- Australian Capital Territory - Office of Regulatory Services.
- Tasmania - Office of Consumer Affairs and Fair Trading.

CLG: Australian Securities and Investments Commission (**ASIC**) and Australian Charities and Not-for-profits Commission (**ACNC**).

(Note: CLGs registered as charities will generally report to the ACNC as opposed to ASIC).

Charitable trust: ACNC.

2. WHAT IS THE REGISTRATION FEE?

Incorporated association:

- Queensland – AUD 158.55 (approx. EUR 97).
- New South Wales – AUD 133, approx. EUR 81.5 (if the association name has been reserved) or AUD 170, approx. EUR 104 (if the association name has not been reserved).
- Victoria - AUD 36.10, approx. EUR 22 (if the association adopts the “model rules”) or AUD 209.50, approx. EUR 128 (if the association adopts its own rules).
- Western Australia – AUD 152.25, approx. EUR 93 (if the association adopts the “model rules”) or AUD 189, approx. EUR 116 (if the association adopts its own rules).
- South Australia – AUD 196, approx. EUR 120.
- Northern Territory – AUD 76, approx. EUR 46.5.
- Australian Capital Territory – AUD 193, approx. EUR 118.
- Tasmania – AUD 158, approx. EUR 97.

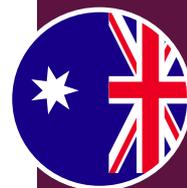
CLG: AUD 403, approx. EUR 247.

Charitable trust: No registration fee applicable.

3. ARE THERE ANY OTHER DIRECT FINANCIAL COSTS OF THE ESTABLISHMENT OF A CSO?

Incorporated association:

- Queensland:
 - › AUD 39.35 (approx. EUR 24) - application for exemption from using the word “incorporated” in the association’s name;
 - › AUD 39.35 (approx. EUR 24) - application for approval to use unsuitable association name (that is, a name that does not comply with the usual requirements);



- New South Wales:
 - › AUD 51 (approx. EUR 31) - fee to reserve the association's name;
 - › AUD 87 (approx. EUR 53) - transfer registration declaration;
- Western Australia:
 - › AUD 157.50 (approx. EUR 96.5) - application for approval to register or incorporate under another law.
- South Australia:
 - › AUD 138.00 (approx. EUR 84.5) - fee to reserve the association's name;
 - › AUD 66.50 (approx. EUR 41) - fee for ministerial consent, which may be required if the association's name contains a restricted word.
- Australian Capital Territory:
 - › AUD 43 (approx. EUR 26) - application to reserve the association's name;
 - › AUD 43 (approx. EUR 26) - application for section 82 transfer of incorporation;
 - › AUD 43 (approx. EUR 26) - for miscellaneous application or lodgement.

CLG:

- AUD 49 (approx. EUR 30) - reserving a company name (there is an additional AUD 49 payable to extend a reservation of a company name);
- AUD 1,217 (approx. EUR 746) - application to the Minister for consent to use a company name;
- AUD 403 (approx. EUR 247) - application to change a company name to omit the word "limited".

Charitable trust: No.

4. HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

Incorporated association:

- Queensland - approximately 4 weeks from the date of submission for the application to be processed.
- New South Wales - applications are generally processed within 5 business days.
- Victoria - if an application is submitted through the myCAV online system, a response is generally received within 24 hours. If myCAV is not used it may take several weeks for a response.
- Western Australia - no specified timeframe.
- South Australia - approximately 14 days.
- Northern Territory - approximately 7 - 14 days.

- Australian Capital Territory - no specified timeframe.
- Tasmania - no specified timeframe.

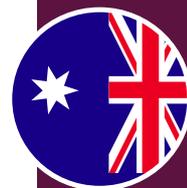
CLG: No specified timeframe.

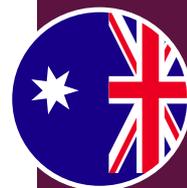
Charitable trust: No specified timeframe.

5. WHICH DOCUMENTS ARE REQUIRED FOR REGISTRATION?

Incorporated association:

- In Queensland, the application form must include:
 - › the name, address and contact details of the association's president, treasurer and, if applicable, secretary;
 - › a copy of the association's rules (if the model rules are not being adopted);
 - › a copy of the association's purposes (if the model rules are being adopted);
 - › any information about land that is owned or leased by the association; and
 - › a letter of agreement from the parent association if the association is a branch of another association.
- In New South Wales, the application for registration (form A2) form must include:
 - › the proposed name;
 - › a statement of the association's purposes;
 - › a copy of the association's proposed constitution, or a statement that the association's proposed constitution adopts the model constitution without change; and
 - › the association's first public officer.
- In Victoria, the application form must include:
 - › the proposed name;
 - › a copy of the proposed rules of the association.
- In Western Australia, the application form must include:
 - › the proposed name;
 - › a copy of the proposed rules of the association.
- In South Australia, the application form (forms 1 and 2) must include:
 - › the name of the association;
 - › a copy of the rules (endorsed by a justice of the peace);
 - › the completed checklist for the proposed rules; and
 - › any trust documents connected to the rules, including documents to establish a trust.





- In Northern Territory, the application form must include:
 - › the constitution, including the witnessed annexure clause; and
 - › meeting minutes (from the constitutive meeting).
- In Australian Capital Territory, the application form must include:
 - › a full copy of the rules (when not adopting the model rules);
 - › constitution/rules checklist (when not adopting the model rules); and
 - › certified copies of legal, financial or property deeds or trusts which affect the association (if applicable)
- In Tasmania, the application form must include:
 - › the proposed name;
 - › a statement of the association's purposes;
 - › the constitution/rules.

CLG:

The registration form (Form 201) must:

- be signed by the applicant, or a person who has consented to become a director or secretary or member of the company, or the agent for the applicant, being a person who has authority to sign the form on behalf of the applicant;
- specify whether the company will rely entirely on replaceable rules, or whether the company has a constitution. Note that if a public adopts a "constitution", then a copy of the constitution must be lodged with the application. Further note that a public company that is for a charitable purpose only must have a written constitution.

Charitable trust: A charitable trust is created through a trust deed that contains a charitable purpose. The trust deed must clearly identify the beneficiary and the money or property to be held on trust.

6. IS ELECTRONIC SUBMISSION POSSIBLE?

Incorporated association:

- Queensland - yes.
- New South Wales - yes.
- Victoria - yes.
- Western Australia - yes.
- South Australia - no.
- Northern Territory - yes.
- Australian Capital Territory - yes.
- Tasmania - yes.

CLG: Yes.

Charitable trust: Registration for Australian Business Number (ABN) etc. can be done electronically.



7. IS THERE A REQUIREMENT TO HAVE AN OFFICE IN THE COUNTRY? ARE THERE ANY SPECIFIC REQUIREMENTS RELATED TO IT?

There is no requirement to have an office, but entities must have an address in Australia. In case of incorporated associations, the address must be in the state where the association has been incorporated.

8. ARE THERE ADDITIONAL REQUIREMENTS RELATED TO REGISTRATION?

No.

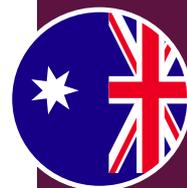
9. ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

No.

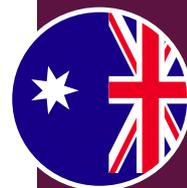
10. WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Incorporated association:

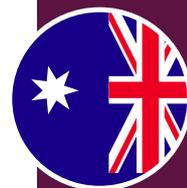
- Queensland:
 - › the application must comply with the requirements discussed above and the requirements set out in the *Association Incorporation Act 1981* (Qld);
 - › a person may object to the association's application for incorporation by giving the chief executive an objection notice within 14 days after an application notice is published;
 - › after considering the application, the chief executive must either grant or refuse the application;
 - › the chief executive may refuse an application if the chief executive is satisfied that the proposed rules of the association do not comply with the Act;
 - › if an application is rejected, the chief executive must give reasons for that decision;
 - › if a person's interests are affected by a decision of the chief executive, they may apply to the chief executive for an internal review of the decision (such a review must be made within 28 days after notice of the decision is given to the person);
 - › the internal review decision may then be reviewed externally by applying to the Queensland Civil and Administrative Tribunal (QCAT).



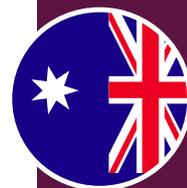
- New South Wales:
 - › the application must comply with the requirements discussed above and the requirements set out in the *Associations Incorporation Act 2009* (NSW);
 - › the Secretary (being the Commissioner for Fair Trading, Department of Finance, Services and Innovation or, if there is no such position in the Department, the Secretary of the Department) may refuse an application:
 - if the application does not comply with the requirements discussed above (and set out in section 6 of the Act);
 - if the name of the association is unacceptable;
 - some provision of the association’s constitution is contrary to law;
 - because of the association’s objects or the Secretary’s assessment of the likely nature or extent of the association’s proposed activities;
 - because of the likely nature or extent of the association’s dealings with the public; or
 - for any other reason that appears sufficient to the Secretary.
 - › an association may apply to the Civil and Administration Tribunal for an administrative review of a decision by the Secretary regarding incorporation of the association.
- Victoria:
 - › the application must comply with the requirements discussed above and the requirements set out in the *Associations Incorporation Reform Act 2012* (Vic);
 - › the Registrar of Incorporated Associations must refuse to register an association if:
 - the association is carried on for the purpose of securing pecuniary profit for its members;
 - the registration of the name is prohibited by the Act;
 - the rules do not comply with the requirements of the Act;
 - › the Registrar may refuse to register an association if the Registrar is satisfied that the incorporation of the association would be inappropriate:
 - by reason of the Registrar’s assessment of, the likely scale or nature of the activities of the association; or the likely value or nature of the property of the association; or the extent or nature of the dealings which the association has, or is likely to have, with the public; or
 - for any other prescribed reason.



- › if the Registrar refuses to register the association, the applicant may within 28 days after the notification apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision.
- Western Australia:
 - › the application must comply with the requirements discussed above and the requirements set out in the *Associations Incorporation Act 2015* (WA);
 - › the Commissioner must not incorporate the association if in the opinion of the Commissioner:
 - it is more appropriate for the activities of the association to be carried on by a body incorporated under some other law; or
 - the incorporation of the association is against public interest;
 - › the grounds on which the Commissioner may form the opinion in either of the above reasons for refusal include:
 - the likely scale or nature of the activities of the association;
 - the likely value or nature of the property of the association;
 - the extent or nature of the dealings the association is likely to have with the public;
 - any other matter the Commissioner considers relevant.
 - › the Commissioner must also not incorporate an association if there is an issue with the name of the association under the requirements of the Act;
 - › an affected person may apply to the State Administrative Tribunal for a review of a decision of the Commissioner to refuse registration.
- South Australia:
 - › the application must comply with the requirements discussed above and the requirements set out in the *Associations Incorporation Act 1985* (SA);
 - › the Commission (the Corporate Affairs Commission) may:
 - decline to incorporate an association if, in its opinion, it would be more appropriate for its activities to be carried on by a body incorporated under some other Act; or
 - with the consent of the Minister, decline to incorporate an association under this Act if, in its opinion, the incorporation of the association under this Act would not be in the public interest.
 - › a person aggrieved by an act or decision of the Commission may apply to the South Australian Civil and Administrative Tribunal for a review of the decision.



- Northern Territory:
 - › the application must comply with the requirements discussed above and the requirements set out in the *Associations Act 2004* (NT);
 - › the Commissioner of Consumer Affairs must refuse to issue a certificate of incorporation:
 - to an association if its name is a prescribed unauthorised name, unless the Minister consents to its incorporation under that name; and
 - in the case of a trading association if: (i) the ethnic community specified in the application is not a prescribed ethnic community; or (ii) satisfied the constitution of the association is unreasonable or unfair.
 - › the Commissioner may refuse to issue a certificate of incorporation on another ground the Commissioner considers appropriate;
 - › in refusing the application, the Commissioner may invite the committee of the application to make changes to the application or constitution of the association in order to address the issues identified by the Commissioner;
 - › a person aggrieved by a decision of the Commissioner under the Act may appeal to the Local Court against the decision.
- Australian Capital Territory:
 - › the application must comply with the requirements discussed above and the requirements set out in the *Associations Incorporation Act 1991* (ACT);
 - › an association is ineligible for incorporation if it:
 - is formed or carried on with the object of trading or obtaining pecuniary gain for its members; or
 - is trading or obtaining pecuniary gain for its members; or
 - has capital divided into shares or stock held by its members; or
 - holds property in which its members have an alienable interest, whether directly or in the form of shares or stock in its capital or otherwise; or
 - is capable of applying for registration as an organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth), chapter 2, part 2;
 - note - in relation to the first two issues above, the Minister may declare an association to be eligible for incorporation under the Act even though the association is formed or carried on with



the object of obtaining pecuniary gain, or trading or obtaining pecuniary gain, for the members of the association;

- if the registrar-general is satisfied that the association is, or would be when formed, eligible for incorporation under the Act, then the registrar-general must incorporate the association.
- an applicant for incorporation may apply to the ACT Civil and Administrative Tribunal (ACAT) if the registrar-general makes a decision refusing an application for incorporation of an association.
- Tasmania:
 - › the application must comply with the requirements discussed above and the requirements set out in the *Associations Incorporation Act 1964* (Tas);
 - › the Commissioner of Corporate Affairs may, if satisfied that it is proper to do so, grant to the association to which the application relates a certificate of incorporation;
 - › the Commissioner shall not grant a certificate of incorporation to an association unless the Commissioner has received the relevant fee.

CLG:

- the application must comply with the requirements discussed above and the requirements set out in the *Corporations Act 2001* (Cth);
- if an application is lodged pursuant to the Act, ASIC may give the company an Australian Company Number (ACN), register the company and issue a certificate;
- applications may be made to the Administrative Appeals Tribunal for a review of a decisions made by ASIC under the Act.

Charitable trust: The application has to comply with legal requirements.



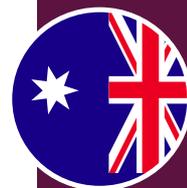
Sources of funding



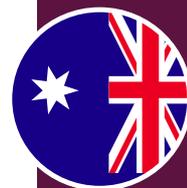
1. WHAT ARE THE PERMITTED POSSIBLE SOURCES OF FUNDING?

Incorporated association:

- Queensland:
 - › fundraising in Queensland is governed by the Office of Fair Trading;
 - › “fundraising” (also referred to as an “appeal for support”) is defined as any fundraising for a charitable or community purpose;
 - › an organisation cannot seek to fundraise unless:
 - the appeal is made for the purpose of a charity that is registered under Queensland fundraising law; or
 - the appeal is for a purpose sanctioned under Queensland fundraising law.
 - › some organisations are exempt from the above requirements, including religious denominations, hospital foundations, parent and citizens associations, raffles and gaming.
- New South Wales:
 - › fundraising is governed by the Fair Trading NSW;
 - › “fundraising” is defined as raising money, property or some other benefit with the representation that it will go in whole or part to a charitable purpose;
 - › an organisation that conducts fundraising must apply for an authority to fundraise licence;
 - › some organisations are exempt from the above requirements, including religious organisations authorised to marry people, religious organisations listed in the *Charitable Fundraising Regulation 2015* (NSW), organisations that are officially affiliated with religious organisations that are exempt under NSW Fundraising Law, small fundraisers (where an organisation or person receives less than \$15,000 in a financial year from fundraising), local councils, trusts where the local council is a trustee and universities.



- Victoria:
 - › fundraising is governed by Consumer Affairs Victoria;
 - › “fundraising” is defined as soliciting or receiving money or some other benefit with the representation that it is not solely for the profit or commercial benefit of that person or any other person;
 - › a person who wishes to apply to register as a fundraiser must submit an application to Consumer Affairs Victoria at least 28 days before the date they intend to start conducting any fundraising appeal.
- Western Australia:
 - › fundraising is governed by the Department of Commerce, Consumer Protection Division;
 - › “fundraising” is defined as a collection of money or goods from the public for a charitable purpose;
 - › any person or organisation that conducts a collection for a charitable purpose must obtain a licence unless:
 - the activity is not regulated, or the activities do not constitute fundraising for which a licence is required;
 - the fundraising is being undertaken by a commercial fundraiser;
 - or
 - the fundraiser has been given an authority to fundraise on behalf of a holder of an existing licence or authority.
- South Australia:
 - › fundraising is governed by the South Australian Government Consumer and Business Services;
 - › “fundraising” is defined as collecting money or goods, or conducting entertainment for a charitable purpose;
 - › Any person or organisation that conducts fundraising must apply for a licence;
 - › some organisations are exempt from requiring a licence, namely, an organisation registered with the ACNC, organisations that are not fundraising for a charitable purpose (e.g., some religious organisations, most environmental groups, sporting groups and some education institutions).
- Northern Territory:
 - › there is no fundraising regulation in the Northern Territory.

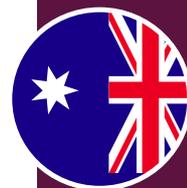


- Australian Capital Territory:
 - › fundraising is governed by the Office of Regulatory Services, ACT Department of Justice and Community Safety;
 - › “fundraising” is defined as a collection of money or goods for charitable purposes;
 - › an organisation collecting for charitable purposes must apply to the Office of Regulatory Services for a licence;
 - › a licence is not required if you are:
 - an organisation and the amount raised is less than \$15,000 in a financial year;
 - a church raising funds on the premises (collection plates);
 - a school collecting voluntary contributions from parents etc. for educational activities;
 - a club or association collecting membership fees;
 - workmates, a club or meeting raising funds for the benefit of others within the group;
 - a CSO accredited with the Australian Government Department of Foreign Affairs and Trade;
 - soliciting or receiving sponsorship from a corporation; or
 - an organisation registered with ACNC.
- Tasmania:
 - › fundraising is governed by Consumer Affairs and Fair Trading;
 - › “fundraising” is defined as any appeal for goods, services or donations for a charitable purpose;
 - › any person or organisation based outside Tasmania that fundraises in Tasmania, or an unincorporated Tasmanian body, must apply for approval from the Commissioner for Consumer Affairs.

In addition to the general conditions of fundraising above, each state also has specific rules in relation to particular methods of fundraising (for example, door-to-door appeals, street collections, telephone appeals etc.)

Also note that where an organisation fundraises on the internet and receives funds from different states and territories, the organisation will need to comply with the fundraising laws in those jurisdictions.

CLG + charitable trust: Fundraising is governed on a state by state basis. The responses above for each state also apply to CLGs and charitable trusts



2. WHAT ARE THE RESTRICTIONS ON THE POSSIBLE SOURCES OF FUNDING?

Incorporated association: See above.

CLG: See above.

Charitable trust: See above.



Tax treatment of civil society groups

1. HOW ARE CSOS TREATED FOR INCOME TAX PURPOSES?

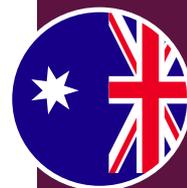
Some not-for-profit organisations (such as incorporated associations and CLGs) may be entitled to certain tax concessions. The organisation must be registered with the ACNC in order to apply for charitable tax concessions from the Australian Taxation Office (ATO).

- Income tax:
 - › unless exempt from income tax, an organisation may be required to pay income tax on money received as part of its fundraising activities;
 - › an organisation exempt from paying income tax will still have income tax obligations with respect to any employees.
- Fringe benefits tax (FBT):
 - › Certain not-for-profit organisations (such as registered public benevolent institutions, registered health promotion charities, public or non-profit hospitals and public ambulance services) may be exempt from FBT up to a certain capped threshold.
 - › The caps apply on a per employee basis, and different caps apply depending on the type of not-for-profit organization.

2. WHAT IS THE VAT TREATMENT OF CSOS?

Goods and services tax (GST):

- a not-for-profit organisation is required to register for GST if its annual turnover is AUD 150,000 or more. An organisation can voluntarily register for GST even if its turnover is less;
- an organisation registered for GST can choose to treat all supplies made in connection with fundraising events as “input taxed” - this means that its sales will not be subject to GST.



3. ARE THERE ANY TAX BENEFITS FOR DONORS IN PLACE?

- Tax deductible donations:
 - › if an organisation is endorsed by the ATO as a deductible gift recipient (DGR), the organisation can offer tax deductible donations.
 - › Generally, gifts and donations to a DGR valued at AUD 2 or more (whether cash or property) are deductible.
 - › A receipt evidencing the gift or donation is generally required in order for it to be deductible, however a receipt is not required if the gift does not exceed AUD 10 (and the total of all deductible amounts not exceeding AUD 10 does not exceed AUD 200 for the income year).



Obligations of a registered civil society group

1. WHAT ARE THE REPORTING REQUIREMENTS OF A REGISTERED CSO?

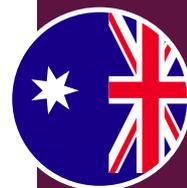
Incorporated association:

Associations are required to lodge annual financial statements. Associations must keep financial records that record and explain their transactions, financial position and performance and allow the preparation of ‘true and fair’ financial statements. No matter what tier the association falls under, it must present its financial statement to members at the annual general meeting. Larger associations with larger revenue have additional obligations such as requiring financial statements to be independently audited and lodged with the state regulator.

CLG:

Every year ASIC issues a company with an annual company statement on the company’s annual review date. The company is required to confirm this information with ASIC and pay the annual review fee in order to remain registered. The annual fee is lower for special purpose companies. In addition to annual review fees, companies limited by guarantee have financial reporting obligations under a 3 tier reporting framework:

1. **Small companies that are not deductible gift recipients at any time during financial year and which have revenue less than AUD 250,000 (approx. EUR 153,245) for the financial year**
 - Unless directed by a member or ASIC, the company does not have to:
 - › prepare a financial report or have it audited
 - › prepare a directors’ report or notify members of annual reports



2. **Revenue of less than AUD 1 million (approx. EUR 612,981)**
 - must prepare a financial report
 - can elect to have its financial report reviewed, rather than audited
 - must prepare a directors' report, although with less detail than that required of other companies
3. **Revenue of AUD 1 million or more (approx. EUR 612,981)**
 - must prepare a financial report
 - must have the financial report audited
 - must prepare a directors' report, although with less detail than that required of other companies.

Charitable trust: Generally, all charities must annually report to the ACNC by submitting an Annual Information Statement. The reporting requirements will depend on whether the charity is a small, medium or large charity based on the total annual revenue. Small charities have an annual revenue under AUD 250,000, medium charities have an annual revenue between AUD 250,000 to AUD 1 million and large charities have annual revenue of AUD 1 million or more.

The Annual Information Statement must be submitted within 6 months from the end of the charity's reporting period.

2. ARE THERE ADDITIONAL OBLIGATIONS OF A REGISTERED CSO?

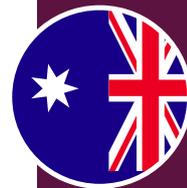
Charities registered with the ACNC must:

- continue to be not-for-profit and pursue their charitable purpose/s;
- notify the ACNC of any change in legal name, address for service, responsible persons (ie, members of the charity's governing body, such as directors, committee members or trustees) or governing documents (such as the constitution, rules or trust deed);
- keep financial records that record and explain transactions and the charity's financial position and performance; and
- comply with ACNC Governance Standards.

Note the above obligations are in addition to any other obligations an organisation may have under any state or Commonwealth laws.



Internal governance of a civil society group



1. WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURE AS PROVIDED BY LAW?

Incorporated association:

An association typically appoints:

- A management committee;
- A public officer.

The specifics of both bodies depend on the state of establishment. For further information, please consult the section on “*Requirements on the founders of a civil society group*”.

CLG:

A CLG is composed of:

- A board of directors;
- Secretary(ies).

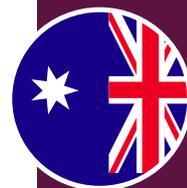
Charitable trust: The charity trustee, which can be an individual or group of individuals, a public or private trustee company, a licensed or public trustee or a combination thereof. Where a company is a trustee, the directors of that company will be the trustees. Trustees of charitable trusts are generally appointed under the trust deed. Charity trustees are often volunteers and will receive reimbursement of reasonable expenses. However, if the trust instrument or the court allows, trustees can be paid for their services (within a reasonable limit). A trustee will have the ultimate responsibility for managing a charitable trust. A trustee will be responsible for ensuring the charitable trust is properly run, compliant with the trust deed and furthering the trust’s charitable purpose.

2. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF THE GOVERNING BODIES?

Incorporated association: As the requirements differ in each state, please see eligibility requirements under question: “*Requirements on the founders of a civil society group*”.

CLG: A director must be at least 18 years old, cannot have been convicted of certain offences (such as fraud) with the date of conviction (or date of release if a director was imprisoned) within the last 5 years; a director cannot be an “undischarged bankrupt” or have executed a personal insolvency agreement; and cannot be the subject of a court disqualification order.

Charitable trust: No.



3. ARE FOREIGN CITIZENS OR RESIDENTS ALLOWED TO SERVE ON THE BOARD?

Incorporated association: Restrictions on foreign citizens apply. For further information, please consult the information under section: “*Requirements on the founders of a civil society group*”.

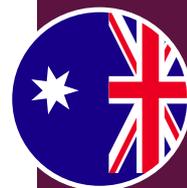
CLG: At least one secretary and two directors must ordinarily reside in Australia.

Charitable trust: Yes. There are no residency requirements for charity trustees.

4. ARE FOUNDERS AND MEMBERS FINANCIALLY LIABLE BY LAW?

Incorporated association:

- Queensland - a secretary, member of a management committee or member of an incorporated association is not personally liable, except as provided in the rules of the incorporated association, to contribute towards the payment of the debts and liabilities of the incorporated association or the costs, charges, expenses of a winding up of the incorporated association, beyond the property of the incorporated association in the person’s hands.
- New South Wales - a matter or thing done or omitted by a committee member does not subject the committee member to any action, liability, claim or demand if the matter or thing was done or omitted to be done in good faith and for the purpose of exercising the committee member’s functions.
- Victoria - an incorporated association must indemnify each of its office holders against any liability incurred in good faith by the office holder in the course of performing his/her duties as an office holder.
- Western Australia - a member of the management committee, trustee or a member of an incorporated association is not by reason only of being such a member of the management committee, trustee or a member liable in respect of the liabilities of the association.
- South Australia - except as may be provided in the rules of the association, a member of an association is not liable to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of a winding up of the association.
- Northern Territory - a member is not liable, except as provided in the constitution of the association, to contribute towards the payment of the debts or liabilities of the association;
- Australian Capital Territory - an officer or a member is not, except as otherwise provided by the ACT Act or the rules of the association, taken to be liable to contribute to the payment of any debts or other liabilities incurred by the association, or to the costs, charges or expenses incurred in the course of winding up the association.



- Tasmania - a member is not liable, except as provided in the rules of the association, to contribute towards the payment of the debts and liabilities of the association or the costs, charges, and expenses of a winding up of the association.

CLG: When becoming a member of a company limited by guarantee, members must give a guarantee to the company promising to contribute a specified amount to cover the company's debts and liabilities if it is wound up and has insufficient funds (usually a nominal amount of AUD 10-100). The liability is limited to the contributed amount.

If a member gives up their membership at least 1 year before the company began winding up, they will not need to contribute anything.

Charitable trust: Charity trustees are held to a high standard in relation to managing the trust. Trustees are personally liable for any loss which occurs through the misuse of trust property (i.e. using trust money for improper purposes), or for destroying or improperly alienating trust property. Trustees can be personally liable if they negligently allow third parties to misappropriate trust property. Like with all trusts, charitable trustees are prohibited from making unauthorised profits from their position and from acting in a position where their own interests conflict with their duty as trustee.



Staff and members of the organisation

1. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE STAFF AND MEMBERS OF A CSO?

No.

2. IS THERE A REQUIREMENT TO HAVE A FULL-TIME EMPLOYEE?

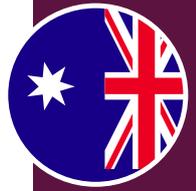
No.

3. IS THERE A REQUIREMENT TO HAVE AN ACCOUNTANT?

No, but there is an obligation to keep books.



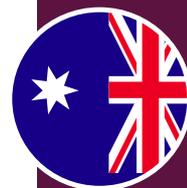
Voluntary dissolution and liquidation



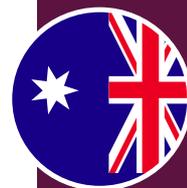
1. WHAT IS THE LIQUIDATION PROCEDURE IN CASE OF VOLUNTARY DISSOLUTION OF A CSO?

Incorporated association:

- Queensland - an incorporated association may be:
 - › wound up by special resolution of the members passed at a general meeting called for that purpose. A copy of the special resolution shall be lodged with the chief executive (at the Office of Fair Trading) within one month from the passing of that special resolution;
 - › wound up by the Supreme Court under certain circumstances;
 - › cancelled by the chief executive in certain circumstances.
- New South Wales:
 - › an association may apply to the Secretary (being the Commissioner for Fair Trading, Department of Finance, Services and Innovation or, if there is no such position in the Department, the Secretary of the Department) for cancellation of its registration. The application must be in the approved form;
 - › the Secretary may also cancel an association's registration in certain circumstances.
- Victoria:
 - › an incorporated association may be wound up voluntarily if the association by special resolution resolves that it be wound up voluntarily;
 - › the Supreme Court may also order the winding up of an incorporated association in certain circumstances;
 - › an incorporated association may be wound up on the certificate of the Registrar Incorporated Associations if the Registrar certifies that the necessary grounds for taking that action exist.



- Western Australia - an incorporated association:
 - › can enter voluntary administration pursuant to the provisions of the *Corporations Act 2001* (Cth);
 - › may be wound up voluntarily if the association so resolves by special resolution;
 - › may be wound up by the Supreme Court under certain circumstances;
 - › may be cancelled, if the management committee is of the opinion that the incorporated association is able to pay its debts and liabilities and a special resolution has been passed regarding the cancellation;
 - › if there are no debts or surplus property, may be cancelled upon application with the Commissioner (an executive official of the Department of Public Service is designated as the Commissioner) in the approved form;
 - › may be cancelled by the Commissioner on certain grounds.
- South Australia - an incorporated association may be wound up:
 - › by the Supreme Court;
 - › voluntarily; or
 - › on the certificate of the Corporate Affairs Commission issued with the consent of the Minister.
- Northern Territory:
 - › the public officer of an incorporated association may apply (in the approved form) to the Commissioner of Consumer Affairs for dissolution of the association;
 - › the Commissioner may dissolve the association under certain circumstances;
 - › the association may be wound up by the Supreme Court on the certificate of the Commissioner.
- Australian Capital Territory - an incorporated association may be:
 - › wound up if the association has, by special resolution, resolved that it be wound up;
 - › wound up by the Supreme Court in certain circumstances;
 - › cancelled by the registrar-general in certain circumstances.
- Tasmania - an incorporated association can be:
 - › wound up or placed into voluntary administration pursuant to the provisions of the *Corporations Act*;
 - › cancelled by the Commissioner of Corporate Affairs under certain circumstances;
 - › cancelled by the association, by way of special resolution.



CLG:

1. Voluntary deregistration:

The *Corporations Act* allows for certain companies to end their operations by deregistering without having to go through the formal steps of winding up. It is the quickest and cheapest method to end a company, but is only an option if:

- all members agree to the deregistration;
- the company is no longer carrying out its activities;
- company assets are worth less than AUD 1,000;
- the company has paid all its fees and penalties payable under the *Corporations Act 2001*; and
- the company has no outstanding liabilities and is not party to any legal proceedings.

A form must be lodged and a fee paid to ASIC. Surplus assets must be distributed in accordance with the constitution.

2. Voluntary winding up:

- When voluntary winding up is proposed, the directors must examine the company's financial position. If it decides that:
- The company is expected to be able to pay its debts in the next 12 months, then the board makes a "declaration of solvency". In that case, the members get to choose who to appoint as liquidator.

The company is not expected to be able to pay its debts in the next 12 months, then there is no declaration of solvency. In this case, the creditors can overrule the members' choice of liquidator.

The company must pass a special resolution that the company be wound up voluntarily. The company must then lodge the special resolution with ASIC and publish notice of the resolution on the ASIC insolvency notices website.

Charitable trust: The trust instrument may limit the life of a charitable trust by reference to an indefinite or definite period – e.g., the trust will terminate by the date of 2050. The trust deed may provide that the trust terminates if a specified event occurs or if the purpose for its creation and existence has been fulfilled.

A charitable trust which comes to an end must follow any procedures that are set down in the trust deed. The charitable trust will also need to notify the ACNC that the trust has terminated. The trust instrument may direct how remaining charitable funds are to be dealt with if the trust comes to an end. If the trust instrument does not prescribe how the excess funds are to be applied, the court will distribute the funds in line with the charitable purpose of the charitable trust.



Additional information



1. CONTACTS OF KEY LOCAL LAWYERS SUPPORTING THE CIVIL SOCIETY ORGANISATIONS

Not-for-profit Law - a specialist legal service for community organisations (a programme of Justice Connect): <https://www.nfplaw.org.au/>

2. IS IT POSSIBLE FOR FOREIGN NATIONALS TO DO ANY OF THE ABOVE THROUGH POWER OF ATTORNEY, WITHOUT BEING PHYSICALLY PRESENT IN THE COUNTRY?

No, since the residency requirements for the founders apply.

COSTA RICA



Existing forms of civil society organisations & their characteristics

1. WHAT ARE THE FORMS OF CSOS? WHAT ARE THEIR MAIN CHARACTERISTICS?

There are two types of entities considered to be civil society organizations: associations and foundations.

Associations are a group of people who come together to achieve a common goal. They can be created for scientific, artistic, athletic, charitable, recreational or any other lawful purposes as long as they do not have profit or gain as their sole and exclusive purpose. Associations can also be declared “public benefit (public utility)” organizations, which allows them to access public funds and enjoy tax benefits. To attain public benefit status, an association must be registered for at least three years, provide services to the community, and obtain approval of its request for public benefit status from the Ministry of Justice and Peace.

Foundations are private entities of public benefit (public utility) with dedicated assets established for not-for-profit purposes to carry out educational, charitable, artistic, literary, scientific, or social welfare activities.

Public utility status: Associations and foundations may apply for public utility status, if their development or activities are particularly useful for the interests of the State and fulfil a social need.

Procedure to request Declaration of Public Utility:

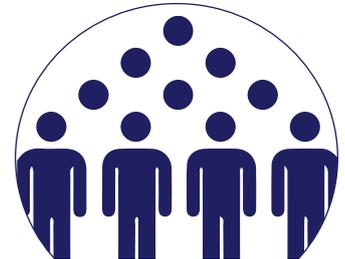
A CSO’s legal representative must submit a request to the head of the Ministry of Justice and Peace, who will forward it to the Legal Department of that Ministry for the respective procedure.

GENERAL INFORMATION



Capital city:

San Jose



Population:

4,910,000

GNI Per Capita*

\$10,860

Costa Rica

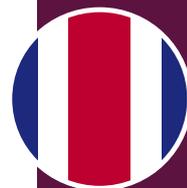
\$39,358

European Union average

\$16,176

World average

*In USD. Source: World Bank (2016)



The request must have:

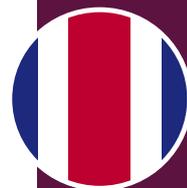
- a. Detail of the reasons that the CSO's activity or development is particularly useful for the interests of the State and fulfils a social need. The same must be certified by a lawyer.
- b. Certification of current legal status, of the registration appointments and the date which the applicant CSO was registered in the Public Registry.
- c. Summary of the programs and projects for which the benefits of the declaration will be used.
- d. Certified copy of the statutes.
- e. Certification of an authorized public accountant, stating that the accounting records are updated and in order.
- f. Recommendation from a ministry or institution of the state related to the objectives of the CSO, accompanied by a copy of the technical study carried out by a dependency of that institution.
- g. Recommendations of individuals or legal entities that benefit from the activity carried out by the CSO, duly authenticated by a lawyer.
- h. Affidavit of commitment to submit to a review of their finances as specified by the Ministry of Justice and Peace.
- i. Proposed changes to by-laws to indicate the form and manner in which the organization's annual budget will be prepared according to its by-laws.
- j. Have at least three years of being registered in the applicable Register.
- k. Address for notifications.

It typically takes between 1 and 5 months for the Ministry to make a decision on issuing the declaration. Once granted, it is valid for indefinite period but can be waived or revoked. There is no application fee.

2. ARE THERE ANY RESTRICTIONS ON THE PERMISSIBLE GOALS AND ACTIVITIES OF CSOS?

Associations and foundations are prohibited from carrying out profit-generating activities. The law forbids associations from using terms such as "society," "enterprise," or "company". Associations can engage in income-generating activities only if they are carried out to achieve the organization's main objectives.

The law prohibits both associations and foundations from supporting "partisan-political" activities, including offering the use of their facilities for political reasons. While the law does not define what activities are considered "partisan-political," according to local partners, it is commonly understood that the law refers to activities related to political parties, such as participating in election processes, electoral advertising, propaganda and the participation in or organization of rallies.



3. WHAT ARE THE KEY CIVIL SOCIETY LAWS?

- Law N° 228, Law on Associations, updated in November 2010, and its Regulations (enacted in November 1988); and
- Law N° 5338, Foundations Act, enacted in August 1973, and its Regulations (enacted in April 2007).



Requirements on the founders of a civil society group

1. WHAT IS THE MINIMUM NUMBER OF FOUNDERS REQUIRED BY LAW AND HOW MANY OF THEM MUST BE NATIONAL CITIZENS OR RESIDENTS?

Associations: 10; none required to be a resident or a citizen.

Foundations: 1; none required to be a resident or a citizen.

2. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FOUNDERS?

For both associations and foundations, any natural person who is older than 18 years, or a legal entity, can be a founder.

Associations must consider gender parity in selecting founders (e.g., 5 men, 5 women); in the case of an unequal number of men and women, the gender difference cannot be more than one founder.

3. ARE FOREIGN CITIZENS ALLOWED TO SERVE AS FOUNDERS? WHAT KIND OF LEGAL STATUS (PERMANENT, TEMPORARY OR OTHER) DO FOREIGN CITIZENS NEED IN ORDER TO BE ELIGIBLE TO SERVE AS FOUNDERS?

There are no residency or nationality requirements for founders of associations and foundations.

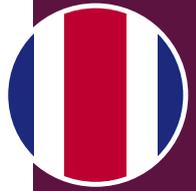
4. ARE THERE ANY PROPERTY OR CASH CONTRIBUTION REQUIREMENTS FOR THE FOUNDERS?

Associations: No.

Foundations: Initial capital must be detailed in its bylaws; no minimum is required by law.



Registration procedures



1. WHICH AUTHORITY IS RESPONSIBLE FOR REGISTRATION?

The National Registry, which is part of the Register of Legal Persons in the Ministry of Justice and Peace, is responsible for the registration of associations and foundations.

2. WHAT IS THE REGISTRATION FEE?

The estimated costs for the registration of both associations and foundations are:

- Registration duties: CRC 2,000 (approx. USD 3.33);
- Tax Stamp: CRC 125 (approx. USD 0.21);
- Stamp Bar Association: CRC 250 (approx. USD 0.41);
- Fee for National Archive: CRC 20 (approx. USD 0.03).

3. ARE THERE ANY OTHER DIRECT FINANCIAL COSTS FOR THE ESTABLISHMENT OF A CSO?

Other financial obligations for the registration of both associations and foundations are:

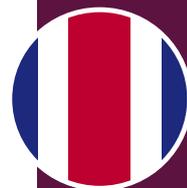
- Fees for notarial services and legal advice by a specialist lawyer: CRC 296,000 (approx. USD 500);
- Minute records and accountant books: CRC 3,790 for each book (approx. USD 38 for 6 books);
- Attestation of books in the National Registry: CRC 15 per book (for a total of CRC 90; approx. USD 0.15);
- Banking fee: CRC 2,000 (approx. USD 3.33); and
- Fees for publication in *La Gaceta* (costs will vary depending on the length of documents to be published).

The total estimated costs for the establishment of a CSO in Costa Rica is CRC 475,000 (approx. USD 800 dollars).

Foreign associations should also expect to pay for the cost of notarial authentications of signatures for the documents and other notarial deeds.

4. HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

The law does not provide any specific timeframe for the registration. However, based on local partners' experiences, the procedure generally takes 5 to 8 months.



5. WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?

Association:

- Articles of association and bylaws.

Foundation:

- Certificate of articles of incorporation; and
- Donor's Will (if the foundation is created by testamentary act).

Foreign association recognized under local laws:

- Articles of association in a certified document that includes the aims of the association, full name and qualifications of its representatives, and other requirements;
- Notarized document to certify that the association is constituted in accordance with the laws of the association's domicile;
- Acceptance of the power of legal representation by the association's representative;
- Copy of bylaws and amendments;
- Copy of the power of representation; and
- Official translation (in case the incorporation documents are in a language other than Spanish). The Ministry of Foreign Affairs publishes a list of authorized translators according to the Law of Official Translations and Interpretations, and only translators on the list may be used for official translations.

6. IS ELECTRONIC SUBMISSION POSSIBLE?

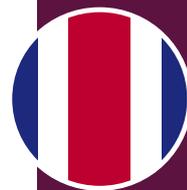
No, all registration documents must be presented to the National Registry in person.

7. IS THERE A REQUIREMENT TO HAVE AN OFFICE IN THE COUNTRY? ARE THERE ANY SPECIFIC REQUIREMENTS RELATED TO IT?

The law does not specifically require an office in Costa Rica, but a registered address is needed to receive notifications. Associations and foundations must state in the articles of incorporation the city where it has established its domicile. A foreign association must establish a subsidiary domiciled in Costa Rica to successfully complete its registration.

8. ARE THERE ADDITIONAL REQUIREMENTS RELATED TO REGISTRATION?

Publication of articles of association and bylaws in *La Gaceta*. The publication takes place after registration and it is the responsibility of the National Registry. The CSO is responsible for paying the registration fee to the Registry.



9. ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

No.

10. WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Association:

- Registration may be denied if the registration edict has been published in *La Gaceta* and it is challenged (by any interested party) because of the name of the association or its objectives. According to the Law, an association cannot adopt a name used by another association or one that may be confused with the name of another registered association. The objectives of an association cannot have a “partisan-political” nature. Additionally, the Law on Associations states that registration can be denied “for any other reason” without specifying the possible reasons for denial.

Foundation:

- The laws do not specifically regulate the grounds for denial of registration for foundations.

Foreign association:

- Registration can be denied if authorities determine that the foreign association’s purposes and nature are in some way contrary to the legal system of Costa Rica.

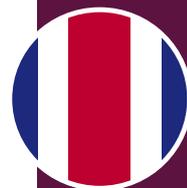


Organizational banking

1. WHAT IS REQUIRED TO OPEN AN ORGANIZATIONAL BANK ACCOUNT?

In order to open a bank account, an association or foundation generally will be asked by the bank to submit the following documents:

- a. Original certification of legal status issued within the last month by the National Registry or by a notary public;
- b. Original and photocopy of the corresponding initial deposit voucher according to the type of bank account (corporate savings or checking account) to be opened;



- c. Proof of the organization's registered address (for example, a receipt of water, electricity, telephone or other service that is in the client's name and that indicates an address);
- d. Account opening request form; and
- e. Original and photocopy of the identification documents of the legal representative and of the authorized signatories on the account.

All documents must be authenticated by a notary.

In addition, some banks may require:

- a. A list of principal donors;
- b. A list of founders;
- c. A list of members;
- d. The bylaws of the association;
- e. The certification of the board; and
- f. Financial information, which can be one of the following:
 - › financial statements for the last year; or
 - › last income tax statement presented.

2. DO ORGANIZATION LEADERS HAVE TO BE PHYSICALLY PRESENT TO OPEN AN ACCOUNT, AND WHO IS AUTHORIZED TO OPEN AN ORGANIZATIONAL ACCOUNT?

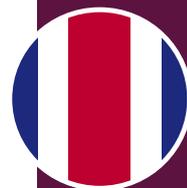
The statutory representative of the organization, or the organization's attorney, can open a bank account. It is important to note that in order to carry out transactions or bank transfers, the persons designated as authorized signatories must be physically present in Costa Rica legally, e.g. have resident status or tourist visas. For foreign associations, an authorized legal representative can open a bank account on behalf of the organization.

3. HOW LONG DOES IT TAKE TO OPEN AN ORGANIZATIONAL BANK ACCOUNT?

A bank account can be opened on the same day it is requested, provided that the CSO has submitted all required documents and they are correctly filled out.

4. IS THE COUNTRY IN WHICH THE ORGANIZATION IS REGISTERING SUBJECT TO OECD'S COMMON REPORTING STANDARDS?

Yes, Costa Rica is in the accession process with the OECD. Costa Rica has committed to adhere to OECD instruments, participate in its committees, and conduct selected policy reviews as a condition of becoming a member.



5. SUGGESTIONS OF BANKS THAT ARE FAVOURABLE/MORE CONVENIENT FOR CIVIL SOCIETY GROUPS.

- *Banco de America Central (BAC) Credomatic*
- *Banpro Grupo Promerica*
- Grupo Lafise Bancentro
- *Banco de Costa Rica (BCR)*

Other banks with regional branches will request a letter of recommendation from the local bank in the country of origin, which must be physically sent by the local bank directly to the branch in Costa Rica where the organization wishes to open an account.

6. INFORMATION ON INTERNATIONAL TRANSFERS.

In order for an account holder to receive an international wire transfer, a bank requires proof of the origin of the funds being transferred, for example, a copy of the donation agreement or proof of donation. The bank fee imposed on transfers is approximately USD 50 per transaction depending on the bank.

7. IS SETTING UP PERSONAL BANK ACCOUNTS RELATIVELY EASY FOR NON-RESIDENTS?

In order to open a bank account, a non-resident must show his or her passport to demonstrate that he or she has a valid permit to stay in the country. The maximum stay allowed for foreigners with a tourist visa is 90 days.

The requirements for a foreigner to open a personal bank account in Costa Rica vary from one bank to another; however, banks most commonly require:

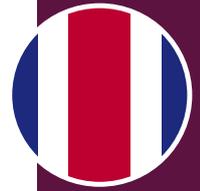
- Valid passport;
- Document that demonstrates his or her income;
- Proof that the account holder has a physical presence in Costa Rica at the time the account is opened;
- Income tax return from his or her home country or country of residence; and
- Documentation of the person's links to Costa Rica, such as demonstrating a work, family, patrimonial or commercial relationship.

Depending on a person's legal status and compliance with the requirements, some banking entities will agree to open a personal bank account for a foreigner with restrictions, for example:

- For an amount not greater than USD 1,000; or
- Without the ability to send or receive international transfers.



Sources of funding



1. WHAT ARE THE PERMITTED POSSIBLE SOURCES OF FUNDING?

An association or foundation is permitted to receive funding from the following sources:

- Monetary and in-kind donations from domestic and foreign individuals and legal entities;
- Membership fees;
- Income from economic activities; and
- International cooperation.

In order to receive monetary and in-kind donations, associations and foundations need authorization from the Ministry of Finance. To that end, the association or foundation must fill out the form “application for renewal or authorization to receive donations D-408.” In addition, associations and foundations declared to be of public utility (public benefit) can receive state funding and implement public projects.

2. WHAT ARE THE RESTRICTIONS ON POSSIBLE SOURCES OF FUNDING?

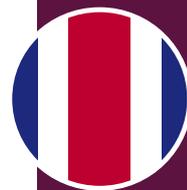
Associations and foundations are prohibited from receiving funds from illicit sources linked to drug trafficking, terrorism, money laundering and related actions established in Law No. 8204 “Law on Narcotics, Psychotropic Substances, Drugs of Unauthorized Use and Related Activities.”



Tax treatment of civil society groups

1. HOW ARE CSOS TREATED FOR INCOME TAX PURPOSES?

Associations and foundations declared to be of public utility (public benefit) are exempt from tax on income from grants or donations if they are used entirely for the organization’s purposes and are not distributed among their members. These organizations must also obtain a Unique Tax Registration number through the Virtual Tax



Administration Portal by submitting the original and a certified photocopy of the Declaration of Public Utility by the Ministry of Justice and Peace.

For associations and foundations that have not been declared of public utility, the tax rate is differentiated and depends on the income received from for-profit activities during the fiscal year (from January 1 to December 31). The law states that legal entities that do not generate more than CRC 109,000,000 (approx. USD 188,000) from for-profit activities will pay:

- 5% on the first CRC 5,000,000 (approx. USD 8,600) of annual net income.
- 10% on the excess of CRC 5,000,000 (approx. USD 8,600) and up to CRC 7,500,000 (approx. USD 12,900) of annual net income.
- 15% on the excess of CRC 7,500,000 (approx. USD 12,900) and up to CRC 10,000,000 (approx. USD 17,200) of annual net income.
- 20% on the excess of CRC 10,000,000 (approx. USD 17,200) of annual net income.

2. WHAT IS THE VAT TREATMENT OF CSOS?

Associations and foundations must pay VAT on income from for-profit economic activities and when purchasing goods and services. However, associations or foundations that carry out activities for works of social good, or scientific or cultural purposes are zero rated.¹ The law does not specify how to determine if an association or foundation carries out activities that are of social good or for scientific or cultural purposes.

3. ARE THERE ANY TAX BENEFITS FOR DONORS IN PLACE?

Yes. A donor (individuals and legal entity) may deduct from their income tax base donations given to associations or foundations authorized to receive tax deductible donations. The Ministry of Finance publishes a database with a list of associations declared to be of public utility that are authorized to receive tax deductible donations. These authorizations may be granted for up to two years.

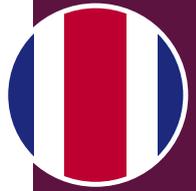
The tax-deductible amount cannot be greater than 10% of a donor's taxable income. In order to qualify for the deduction, an individual or legal entity must submit to the Ministry of Finance the following information:

- Donor's name;
- Donor's ID number and address;
- Name and ID number of the person receiving the donation; and
- Date donation was received.

¹ The law includes the list foundations and associations that are VAT zero rated. See: Law No. 9635, Article 8, (18).



Obligations of a registered civil society group



1. WHAT ARE THE REPORTING REQUIREMENTS OF A REGISTERED CSO?

Both associations and foundations are required to submit to the General Comptroller's Office:

- A narrative report on activities conducted for each calendar year; and
- Notification of elections for the board of directors, according to the procedure stated in their bylaws.

Foundations must submit a financial report drawn up by an accountant on the foundation's activities, which is due every year on the first of January.

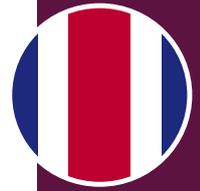
In addition, CSOs declared to be of public utility (public benefit) must submit an annual management report before the Legal Department of the Ministry of Justice and Peace demonstrating that the funds were used to benefit the community for which the funds were granted.

2. ARE THERE ADDITIONAL OBLIGATIONS OF A REGISTERED CSO?

In addition to the Tax Law, associations and foundations must comply with Law No. 8204 (on Narcotics and Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering and the Financing of Terrorism). Law No. 8204 requires any organization in Costa Rica to demonstrate that funds received do not come from drug trafficking or terrorist financing. All organizations are required to report the receipt of funds in the amount of \$10,000 or more at the time of deposit. Registered associations and foundations must also comply with relevant labour laws.



Internal governance of a civil society group



1. WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURE AS PROVIDED BY LAW?

Associations: According to the law, it is mandatory that associations have the following bodies:

- A **governing body**, with a name established in the organization's bylaws that is composed of a minimum of five members, including a president, a secretary and a treasurer. The governing body is responsible for enforcing the association's policies in accordance with the provisions of the law and the organization's bylaws.
- A **supervisory body** that plays the role of an ombudsman for the association, and that is responsible for ensuring compliance with the provisions of the law, its regulations, and the association's bylaws. The supervisory body may call ordinary or extraordinary sessions of the general assembly when the governing body fails to do so.
- The **assembly or general board**, which must hold an ordinary general meeting. The administrative and fiscal tenure of the association lasts for one year. Therefore, an annual meeting must be held in which the reports of the president, the supervisory body and the treasurer are presented regarding actions during the previous fiscal year.

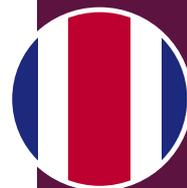
Foundations: A foundation is required to have an administrative board composed of no more than five members, which is responsible for its administration and direction. The law does not provide any minimum number of members. The president of the administrative board is elected by the director or directors, who remain in office for a year, and may be re-elected. The president is required to legally represent the foundation.

2. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE GOVERNING BODIES?

Members of the governing bodies must be active members of the organization and be of legal age (at least 18 years old).

3. ARE FOREIGN CITIZENS OR RESIDENTS ALLOWED TO SERVE ON THE BOARD?

Yes.



4. ARE FOUNDERS AND MEMBERS FINANCIALLY LIABLE BY LAW?

The law does not regulate financial liability of founders or members of associations and foundations.



Staff and members of the organisation

1. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR STAFF AND MEMBERS OF A CSO?

Natural persons at least 16 years of age can become members of an association.

2. IS THERE A REQUIREMENT TO HAVE A FULL-TIME EMPLOYEE?

No.

3. IS THERE A REQUIREMENT TO HAVE AN ACCOUNTANT?

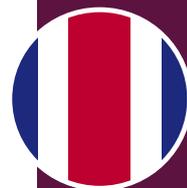
There is no obligation to have an accountant, but there is a requirement to maintain financial records.



Voluntary dissolution and liquidation

1. WHAT IS THE LIQUIDATION PROCEDURE IN CASE OF VOLUNTARY DISSOLUTION OF A CSO?

Associations: Upon termination of an association, its assets are distributed according to the terms of its bylaws. If an association has not established procedures in its bylaws regarding the distribution of its assets, the assets will be distributed among the founders in proportion to their contributions. Likewise, if the bylaws are silent regarding who will liquidate the association's assets, a civil judge will be asked to appoint one to three liquidators, who may jointly collect a fee that does not exceed 5% of the net income from the liquidated goods.



Foundations: Only a civil judge, at the request of the administrative board or the Comptroller General of the Republic, may order the dissolution of a foundation. Grounds for dissolution include that the foundation has fulfilled the purposes for which it was created or that the execution of its purposes has become impossible.

If the dissolution is voluntary, the judge will order that the foundation's assets pass to another foundation, or in an absence of a foundation, to a similar public institution, if the foundation's bylaws have not provided for another recipient.



Additional information

1. CONTACTS OF KEY LOCAL LAWYERS SUPPORTING CIVIL SOCIETY ORGANIZATIONS

Law firms specialized in associations and foundations can be found at:
www.seedcr.com

2. IS IT POSSIBLE FOR FOREIGN NATIONALS TO DO ANY THE ABOVE THROUGH POWER OF ATTORNEY, WITHOUT BEING PHYSICALLY PRESENT IN THE COUNTRY?

Yes, foreign nationals can go through the registration process by granting a power of attorney.

FINLAND



Existing forms of civil society organisations & their characteristics

1. WHAT FORMS OF CSOS EXIST? WHAT ARE THEIR MAIN CHARACTERISTICS?

Following are the most common CSO legal forms:

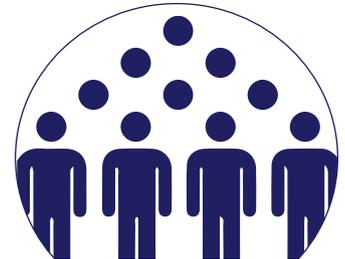
- i. **Non-profit associations** (*fi: aatteellinen yhdistys*).
According to the Finnish Associations Act, an association shall have a common non-profit purpose. Non-profit associations within the meaning of the Associations Act differ from economic organisations in that they do not aim at gaining profit or economic benefit for the stakeholders, and that their activities are not primarily economic. The focus of the association’s activities must be non-profit work. In Finland, a non-profit association may be registered or unregistered. In order to have a legal capacity, a non-profit association must be registered with the Register of Associations. For the purposes of this country note, we will describe registered associations.
- ii. **Foundations** (*fi: säätiö*). A foundation is an organisation founded to promote a particular purpose (e.g. culture, recreation, research and education) and to manage property donated for a particular purpose determined upon the creation of the foundation. The Finnish Foundations Act stipulates that the purpose of a foundation must be “useful”. The Finnish Patents and Registrations Office’s (hereinafter referred to as the “PRH”) permits the establishment of a foundation and confirms its by-laws. A foundation’s purpose cannot be to bring direct financial gain to the founder or a functionary of the foundation.

GENERAL INFORMATION



Capital city:

Helsinki



Population:

5,511,300

GNI Per Capita*

\$45,400

Finland

\$39,358

European Union average

\$16,176

World average

*In USD. Source: World Bank (2016)



Non-profit status for tax purposes requires that (i) the association/foundation acts solely and directly for the common good, (ii) its operation is not limited to certain individuals' benefits and (iii) it does not distribute financial benefit to the participating persons/entities. Recognition of exempt status requires ongoing maintenance of non-profit activities and is conferred by the taxation authorities after submission of each annual income tax return.

2. ARE THERE ANY RESTRICTIONS ON THE PERMISSIBLE GOALS AND ACTIVITIES OF CSOS?

Non-profit association: A non-profit association may only carry on an economic activity that has been provided for in its bylaws or that otherwise relates to the realisation of its purpose or that is deemed economically insignificant, i.e. the activities cannot be the primary activities of the association.

Foundation: A foundation shall operate in accordance with its statutory purpose and engage in or promote activities relating to this purpose. A foundation may only carry on an economic activity that directly relates to its purpose and is provided in its by-laws as a means to finance its operations.

3. WHAT ARE THE KEY CIVIL SOCIETY LAWS?

- The Associations Act
- The Foundations Act



Requirements on the founders of a civil society group

1. WHAT IS THE MINIMUM NUMBER OF FOUNDERS REQUIRED BY LAW, AND HOW MANY OF THEM SHOULD BE NATIONAL CITIZENS OR RESIDENTS?

Non-profit association: 3, at least 2 must have a permanent residence in Finland.

Foundation: 1, there are no nationality or residency requirements for the founders.

2. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FOUNDERS?

Non-profit association: Can be founded both by natural persons or legal entities. In case of natural persons, all of them must be at least 15 years old. Legal entities must have legal capacity.



Foundation: Can be founded both by natural persons or legal entities. Natural persons and legal entities must have legal capacity to perform legal acts in order to be eligible to establish a foundation. In general, for a will to be effective, the testator must be at least 18 years old.

3. ARE FOREIGN CITIZENS ALLOWED TO SERVE AS FOUNDERS? WHAT KIND OF LEGAL STATUS (PERMANENT, TEMPORARY OR OTHER) DO FOREIGN CITIZENS NEED TO HAVE IN ORDER TO BE ELIGIBLE TO SERVE AS FOUNDERS?

Non-profit association: The chairperson and vice chairperson of the board must have permanent residence in Finland unless PRH issues a permit to the contrary.

If the primary purpose of the association is to exercise influence over State affairs, its founders and members can be only Finnish citizens, foreigners residing in Finland and associations whose members are Finnish citizens or foreigners residing in Finland.

Foundation: There are no prerequisites concerning nationality for establishing a foundation.

4. ARE THERE ANY PROPERTY OR CASH CONTRIBUTION REQUIREMENTS FOR THE FOUNDERS?

Non-profit association: No.

Foundation: EUR 50,000.



Registration procedures

1. WHICH AUTHORITY IS RESPONSIBLE FOR REGISTRATION?

Non-profit association and foundation: The Finnish Patents and Registrations Office.

More information about the Finnish Patents and Registrations Office can be found here: <https://www.prh.fi/en/index.html>.

2. WHAT IS THE REGISTRATION FEE?

Non-profit association: Handling fees for the establishment and registration of an association (via the Register of Associations) can total up to EUR 150 at the PRH. If a preliminary check is made, the handling fees are EUR 50.



Foundation: Handling fees for the establishment and registration of a foundation can total up to EUR 800 at the PRH. If the by-laws of the foundation have been given a preliminary check, the notification is EUR 200.

3. ARE THERE ANY OTHER DIRECT FINANCIAL COSTS OF THE ESTABLISHMENT OF A CSO?

Non-profit association and foundation:

- Translation costs, costs of legal services
- Registration in the Trade Register (EUR 380).

4. HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

Non-profit association and foundation: Approximately 1 to 2 weeks (subject to the PRH's handling and processing times, which may vary).

5. WHICH DOCUMENTS ARE REQUIRED FOR REGISTRATION?

Non-profit association:

- The association's incorporation form;
- the original charter or an officially certified copy;
- by-laws of the association;
- proof of registration payment.

Foundation:

- PRH form Y1, Appendix form 11a and Personal Data Form;
- the original charter or an officially certified copy;
- by-laws of the foundation;
- if the foundation is established with a testamentary disposition, a report on how the will has become final (either through acceptance of the will by all heirs or through a certificate issued by the court of first instance in the place of residence of the testator);
- a report of the foundation's auditor stating that the payment of the foundation's basic capital has been made in compliance with the charter and by-laws and that the foundation has a budgetary, operational and financial plan according to Chapter 2, Section 4 of the new Foundations Act;
- proof of registration payment.

6. IS ELECTRONIC SUBMISSION POSSIBLE?

Non-profit association: Yes.

Foundation: No.



7. IS THERE A REQUIREMENT TO HAVE AN OFFICE IN THE COUNTRY? ARE THERE ANY SPECIFIC REQUIREMENTS RELATED TO IT?

The municipality in Finland where the **association** is based must be mentioned in the by-laws of the association. If it does not submit an address, the address of its chairperson shall be listed to the register as an office for the association.

A **foundation** must have a postal or a street address. The municipality in Finland where the association is based must be mentioned in the registration form as well.

A separate office space is not needed for either of the legal entities. Both entities must have a true postal address. But the address may be, for example, the chairperson's home.

8. ARE THERE ADDITIONAL REQUIREMENTS RELATED TO REGISTRATION?

Non-profit association + foundation: Entities established on or after 1 July 2019 must register an "ultimate beneficial owner" (the UBO) with the relevant registers. Existing entities must register this information by 1 July 2020.

10. ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

Non-profit association + foundation:

The entity must also be registered in the Trade Register if it has a permanent place of business or employs at least one person for the purpose of carrying on trade. An association must be registered in the Register of Associations and a foundation in the Register of Foundations before it can be recorded in the Trade Register.

11. WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Registration of an association or a foundation shall be approved unless:

- The registration form and appendixes are incomplete,
- It does not have a distinctive name,
- Its purpose is contrary to law and good manners,

Military activity, a profit making purpose for the members/founders and the use of weapons for non-hunting purposes (permit needed) are forbidden purposes for an association.

Before denying registration, the person filing the registration notice shall be given an opportunity to supplement or correct the notice or submit his or her comments.



Sources of funding



1. WHAT ARE THE PERMITTED POSSIBLE SOURCES OF FUNDING?

Non-profit association: Most non-profit associations raise funds mainly through membership fees and donations. An association may also raise funds by organising sales or events as well as through lotteries. If the selling price of lottery tickets exceed EUR 2,000 in total, the activity is subject to a permit granted by the Police Department of Helsinki or the National Police Board.

An association may also apply for grants that are usually provided by different foundations, the government or non-profit organisations. It may also conduct economic activities.

Foundation: Foundations raise money primarily through donations and grants. They are also allowed to engage in economic activities, provided they are auxiliary.

2. WHAT ARE THE RESTRICTIONS ON THE POSSIBLE SOURCES OF FUNDING?

Non-profit association: Unless stated in the by-laws, a non-profit association may not raise funds through additional membership fees. Several restrictions concerning lotteries are included in the Lotteries Act. Special requirements apply also to the public fundraising (including an obligation to obtain a fundraising permit).

Foundation: A foundation may not raise any funds in a manner that is not compliant with its by-laws or the Foundations Act. For example, a foundation may not apply for a loan if its by-laws prohibit this. Nor may it take a loan in order to execute activities that are forbidden in the by-laws, for example investment activities.



Tax treatment of civil society groups

1. HOW ARE CSOS TREATED FOR INCOME TAX PURPOSES?

Non-profit associations and foundations are liable to pay corporate income tax (currently 20%) on profit from commercial activity. A non-profit association is liable to



pay 6.07% tax on real estate income. Other types of income (including donations and grants) of non-profit associations and foundations are tax exempt.

The Income Tax Act excludes some categories of normally taxable business income for the benefit of non-profit organisations, including such income-producing activities as lotteries and bingo games, the sale of leaflets and address lists, and the sale of products made in hospitals and similar institutions.

2. WHAT IS THE VAT TREATMENT OF CSOS?

There are no VAT exemptions available for CSOs; the general rules apply.

3. ARE THERE ANY TAX BENEFITS FOR DONORS IN PLACE?

There are no tax benefits for individual donors.

For corporate donors, monetary donations of at least EUR 850 are eligible for a tax deduction. Maximum amounts depend on the recipient: for donations given to a publicly-financed university or to a fund within the university, the maximum is EUR 250,000. For donations given to a public-benefit foundation, it is EUR 50,000.



Obligations of a registered civil society group

1. WHAT ARE THE REPORTING REQUIREMENTS OF A REGISTERED CSO?

Non-profit association: A non-profit association must file its financial statements with the Finnish Trade Register, if at least two of the following requirements are met: the non-profit association has an annual turnover of EUR 12 million, it has a balance sheet of EUR 6 million in the aggregate or the average number of employees is 50. The financial statements filed with the Trade Register are publicly available. Financial statements for smaller associations that do not meet before mentioned requirements do not need to be filed with PRH.

If the non-profit association conducts taxable activities, it shall further be registered with the Finnish Tax Administration and file periodical tax returns.

An association shall have an operations inspector if it does not have an auditor. Operations inspection is an alternative to auditing. However, an auditor must be appointed if one of the following conditions is met:

- The balance sheet is EUR 100,000 or more
- turnover is EUR 200,000 or more
- the number of employees is 3 or more



The operations inspector's report does not need to be filed with PRH.

Foundation: A foundation must file its financial statements with the Finnish Trade Register, if at least two of the following requirements are met: the foundation has an annual turnover of EUR 12 million, it has a balance sheet of EUR 6 million in the aggregate, or the average number of employees is 50. The financial statements filed with the Trade Register are publicly available. The foundation must also always file its financial statements and an annual report to the Register of Foundations. Both registers are maintained by PRH.

If the foundation carries on taxable activities, it shall further be registered with the Finnish Tax Administration and file periodic tax returns.

2. ARE THERE ADDITIONAL OBLIGATIONS OF A REGISTERED CSO?

Non-profit association + foundation: The PRH must be notified of any amendments to the CSO's registered information (where applicable).



Internal governance of a civil society group

1. WHAT ARE THE BASIC REQUIREMENTS RELATED TO THE GOVERNANCE AND INTERNAL STRUCTURE AS PROVIDED BY LAW?

Non-profit association: The members of the association exercise their decision-making powers at the members' meetings of the association.

The association shall also have an executive committee, consisting of no less than three members. The executive committee is required to carefully manage the affairs of the association in compliance with the law, the rules and resolutions adopted by the association. The executive committee also oversees the association's bookkeeping, ensuring that it conforms with the law and that its financial management has been organised in a reliable manner. Finally, the executive committee acts as the association's formal representative.

Foundation: Foundations do not have owners, shareholders or members. Management is exercised by the foundation's board of trustees, composed of three to seven ordinary members (unless otherwise stipulated in the by-laws of the foundation). The board of trustees must ensure that the foundation operates appropriately, and is responsible for ensuring that the investments by the foundation are secure and profitable.



The by-laws may also introduce other bodies (e.g. a supervisory board/advisory board and/or a managing director).

2. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF THE GOVERNING BODIES?

Non-profit association: The executive committee must have a chairperson with full legal capacity. Other members of the committee should be at least 15 years old. A person who is bankrupt may not function as a member of the executive committee.

Foundation: Members of the board of directors must be at least 18 years of age and have full legal capacity. A person who is bankrupt cannot be a board member. A legal entity cannot be a board member, however a governmental authority/body can be a board member.

3. ARE FOREIGN CITIZENS OR RESIDENTS ALLOWED TO SERVE ON THE BOARD?

Non-profit association: The chairperson and vice chairperson of the executive committee must be resident in Finland, unless the PRH grants an exemption from this requirement.

If the chairperson of the executive committee of the association indicated in the notice that s/he does not reside in Finland, the association must apply for an exemption from the PRH before the association's basic notice or notice concerning amendments to the by-laws or changes in the signing rights can be entered in the Register of Associations.

The exemption may be applied for in advance by a separate application, or the application may accompany a simultaneously made basic notice or notice concerning amendments to the by-laws or changes in the signing rights.

The exemption may be individual, i.e. relating to a specific chairperson of the executive committee. It may also be granted to an association itself, i.e. so that the chairperson of its executive committee does not have to reside in Finland, regardless of who that chairperson is.

The exemption procedure also applies to the vice-chairperson of the executive committee.

Foundation: The managing director and at least one member of the board of directors must be resident in Finland. In some cases, the PRH grants, on application, permits to persons coming from outside the EEA to hold managerial positions or other positions of responsibility in businesses. The person's citizenship is irrelevant in determining whether a permit is needed; the only decisive factor is the permanent place of residence (or in the case of a legal entity, the location of its registered office).



4. ARE FOUNDERS AND MEMBERS FINANCIALLY LIABLE BY LAW?

Non-profit association: The members of an association are not liable for decisions they have made in a meeting of the association because the executive committee may not execute decisions that are against the law or the by-laws of the association. However, members must refrain from actions that may cause damage to the association.

The executive committee is bound by a loyalty obligation, by which a member of the executive committee is required to act to benefit the association and all of its members and to respect decisions made by members in the meetings of the association. In addition, the duty of care applies to all members of the executive committee, meaning members of the executive committee must familiarise themselves with the matter and by-laws of the association as well as applicable legislation. A member of the executive committee is liable for damages that s/he has caused to the association intentionally or negligently. In addition, s/he is liable for damages if they breach the Associations Act or by-laws and cause harm to a member of the association or a third person.

Foundation: A member and a representative of a foundation (i.e. the board of trustees) shall be liable for damages that s/he has caused to the foundation in his/her assignment intentionally or by negligence. S/he is also liable for damages to a third party - caused intentionally or by negligence – if the damage was caused by breaching the Foundations Act or the by-laws of the foundation.



Staff and members of the organisation

1. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR STAFF AND MEMBERS OF A CSO?

Non-profit associations: Requirements concerning the nationality of members are discussed above under “Are foreign citizens allowed to serve as founders?”

Other requirements relate to the minimum age of the members. Firstly, unless otherwise provided in the by-laws, only members who are 15 years or older have the right to vote. The Associations Act does not, however, set a minimum age for ordinary members without voting rights, who are not in a position of trust (e.g. chairperson). In order for a legal entity to be a member of an association it is required to have a legal capacity.

There are no requirements regarding staff.

Foundations: A foundation does not have members. There are no requirements regarding staff.



2. IS THERE A REQUIREMENT TO HAVE A FULL-TIME EMPLOYEE?

Non-profit association + foundation: Neither are required to hire full-time employees.

3. IS THERE A REQUIREMENT TO HAVE AN ACCOUNTANT?

Non-profit association: An association is required to have an accountant in certain situations, as explained above under “What are the reporting requirements of a registered CSO?”

Foundation: A foundation is required to have an accountant to sign the financial statements.



Voluntary dissolution and liquidation

1. WHAT IS THE LIQUIDATION PROCEDURE IN CASE OF VOLUNTARY DISSOLUTION OF A CSO?

Non-profit association: A notice of dissolution must be made when an association has been dissolved, after the dissolution proceedings have been concluded. A notice form (in Finnish or Swedish) must be used to announce who the association has appointed as liquidators. If the executive committee has been chosen to carry out the dissolution proceedings, the last executive committee must be notified on the form. Further, the rules of the association must specify a non-profit purpose for which the assets are to be surrendered after the dissolution.

Foundation: The most common way to dissolve a foundation is the liquidation process. A foundation can be placed into liquidation if one of the following prerequisites are fulfilled: (1) the foundation was established for a fixed period and the period has lapsed; or (2) the foundation was established based on certain conditions and these conditions do not exist anymore or the assets of the foundations cannot be used for the purpose intended and the purpose of the foundation may not be amended. Foundations may also be dissolved for reasons specified in their in its by-laws.



Additional information



1. CONTACTS OF KEY LOCAL LAWYERS SUPPORTING THE CIVIL SOCIETY ORGANISATIONS

Ozgur Kahale: Ozgur.Kahale@DLAPiper.com (Pro Bono Director for Europe, DLA Piper)

2. IS IT POSSIBLE FOR FOREIGN NATIONALS TO DO ANY THE ABOVE THROUGH POWER OF ATTORNEY, WITHOUT BEING PHYSICALLY PRESENT IN THE COUNTRY?

Yes, the registration procedure does not require a physical presence in Finland. A person may authorize a representative to handle the registration procedure on his/her behalf as long as the registration documents are correctly filled.

ITALY



Existing forms of civil society organisations & their characteristics

1. WHAT FORMS OF CSOS EXIST? WHAT ARE THEIR MAIN CHARACTERISTICS?

The following are the most common CSO legal forms:

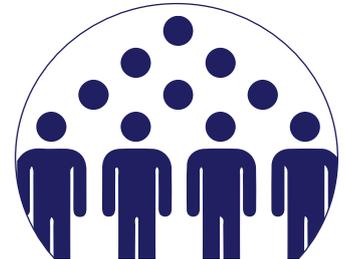
- i. **Associations** (*Associazioni non a scopo di lucro*). There are two types of associations: recognized and unrecognized. The recognized ones are set up by an agreement through which the members pursue non-profit purposes; this type of organisation is managed by the general assembly and the board of directors (which must have at least three members). The board enforces the decisions taken by the general assembly and is responsible for financial administration. Unrecognized organisations have no legal personality and have a different administrative structure: none of the members shall claim the division of the common assets (patrimony) as long as the organisation is in existence, though they have decision-making power over the patrimony; the organisation's structure is internally decided. For the purposes of this country note, we will describe only recognized associations.
- ii. **Foundations** (*Fondazioni*). A foundation has legal personality if it is registered in the National Register (like an association). It is a fund created to achieve a general non-profit goal. The purpose of the fund shall not change once it has acquired legal personality. The government authority exercises control over its administration; such authority may end the association or partially change its purpose when the original purpose is either accomplished, impossible to achieve or useless to carry on.

GENERAL INFORMATION



Capital city:

Rome



Population:

60,551,4220

GNI Per Capita*

\$39,640

Italy

\$39,358

European Union average

\$16,176

World average

*In USD. Source: World Bank (2016)



Public benefit status - “ONLUS” (i.e. Organizzazione Non Lucrativa di Utilità Sociale / non-profit organisation). According to Article 10 of Decree no. 460/1997, associations, committees, foundations and cooperatives which carry out activities in one or more of the following sectors are considered to be ONLUS:

- Social and health assistance
- Health care
- Charity
- Education
- Training
- Amateur sport
- Protection and promotion of historical buildings or handicrafts
- Protection and improvement of the environment
- Culture and art promotion
- Civil rights’ protection
- Scientific research of public interest, carried out by foundations or universities

ONLUS which pursue health care, education, training, amateur sport, protection and promotion of historical buildings or handicrafts and civil rights’ protection have to aim their activities at people physically or mentally disadvantaged.

2. ARE THERE ANY RESTRICTIONS ON THE PERMISSIBLE GOALS AND ACTIVITIES OF CSOS?

Association: An association may pursue any socially useful goal or other purpose as long as it is covered in the bylaws. However, the purpose cannot entail the provision of any direct economic benefit to its members.

Foundation: A foundation may serve any socially useful goal or any other (commercial) purpose as long as it is covered in the bylaws. However, the purpose of a foundation cannot be the distribution of profit to its founders.

3. WHAT ARE THE KEY CIVIL SOCIETY LAWS?

- Civil Code (Book I, Title II, Chapter I and II). Articles 12 to 38 cover associations and foundations.
- Presidential Decree No. 361 of 10 February 2000, which regulates procedures concerning recognition by the state of private legal entities.
- Presidential Decree No. 917 of 22 December 1986 (Tax Code), for income tax treatment.
- Article 6 of Decree No. 601 of 29 September 1973, which provides a specific corporate tax regime for non-profit entities with legal personality.

- Presidential Decree No. 633 of 26 October 1972, for VAT purposes (VAT Decree).
- Legislative Decree No. 460 of 4 December 1997, introducing a specific tax regime applicable to ONLUS (ONLUS Decree).
- Law No. 106 of 6 June 2016 (Third Sector Reform Law).
- Legislative Decree No. 117 of 3 July 2017 (Code of the Third sector).



Requirements on the founders of a civil society group

1. WHAT IS THE MINIMUM NUMBER OF FOUNDERS REQUIRED BY LAW, AND HOW MANY OF THEM SHOULD BE NATIONAL CITIZENS OR RESIDENTS?

Association: The law does set any minimum number of founders, at least 2 are required in practice; there are no residency or citizenship requirements.

Foundation: 2; there are no residency or citizenship requirements.

2. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FOUNDERS?

Association + foundation: The founders must have full legal capacity.

3. ARE FOREIGN CITIZENS ALLOWED TO SERVE AS FOUNDERS? WHAT KIND OF LEGAL STATUS (PERMANENT, TEMPORARY OR OTHER) DO FOREIGN CITIZENS NEED TO HAVE IN ORDER TO BE ELIGIBLE TO SERVE AS FOUNDERS?

Association + foundation: There are no restrictions regarding citizenship or residency of founders.

4. ARE THERE ANY PROPERTY OR CASH CONTRIBUTION REQUIREMENTS FOR THE FOUNDERS?

Association: No minimum capital is required.

Foundation: An endowment proportionate to the foundation's purposes is required. The amount of EUR 100,000 is regarded as a reasonable amount for a foundation operating nationwide. In Italian jurisprudence, the simple expectation of a future gift to the foundation or future income is not adequate.



Registration procedures



1. WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION?

Association + foundation: Registration is handled either by the representative of the national government (“prefettura”) or the regional government, depending on the geographical scope of the activities. The CSOs are then registered in the National Register of the Third Sector.

More information on the National Register of the Third Sector can be found at: <https://italianonprofit.it/riforma/>.

2. WHAT IS THE REGISTRATION FEE?

Association + foundation: There is no registration fee, but registration tax and stamp duty apply (approximately EUR 250).

3. ARE THERE ANY OTHER DIRECT FINANCIAL COSTS OF THE ESTABLISHMENT OF A CSO?

The other costs mainly consist of the notarial fees and related expenses.

4. HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

Association: The notary shall deposit the registration request within 20 days. The prefect has 120 days from the submission date to register the association, unless issues occur. The issue shall be communicated, and the applicant must respond within 30 days.

Foundation: The notary shall deposit the request within 20 days. The national office will consider the request and then decide. The prefect has 120 days from the submission date to register the foundation, unless issues occur. The issue shall be communicated, and the applicant must respond within 30 days.



5. WHICH DOCUMENTS ARE REQUIRED FOR REGISTRATION?

Association: Generally, following documents must be submitted when setting up an association:

- Public incorporation deed, signed in the presence of a notary or a public official.
- The association's by-laws, also prepared as a public deed, containing rules to regulate the association (this document must also be registered with the Tax Authority).

The notarial deed of incorporation must contain the following information:

- Name of the entity and its address.
- Purpose of the entity.
- The entity's assets.
- Internal rules of organisation.
- Rights and obligations of the members and conditions for admittance (and minimum requirements to be a member of the association, even if provisions that prohibit new members are not allowed).

A request for recognition of the legal personality of the association, together with the required documentation, must be submitted to the competent public authority.

Foundation: Generally, establishing a foundation requires the following documents:

- The foundation deed, that is, a unilateral deed containing the will of the founder.
- The endowment act, which disposes assets for allocation to the foundation. This is also a unilateral deed.
- The foundation's by-laws, which must be prepared as a public deed. It contains the rules that will regulate the foundation, and must be registered with the Tax Authority.

The notarial deed of foundation must include the same information as that for an association, except that it must include rules for payment of returns on the assets instead of minimum requirements to be a member. A request for recognition of the legal personality of the foundation is also required.

6. IS ELECTRONIC SUBMISSION POSSIBLE?

Association + foundation: No.

7. IS THERE A REQUIREMENT TO HAVE AN OFFICE IN THE COUNTRY? ARE THERE ANY SPECIFIC REQUIREMENTS RELATED TO IT?

There is an obligation to have an "address" to locate the CSO, but there is no requirement to have an office space.



8. ARE THERE ADDITIONAL REQUIREMENTS RELATED TO REGISTRATION?

Association + foundation:

- Obtain Italian tax registration number for the founders/managers and for the domiciliation service.
- ONLUS organisations must also be enrolled in the relevant register kept by the Ministry of Finance. However, this registration is necessary only for obtaining fiscal relief provided to these bodies.
- An obligation to register an “ultimate beneficial owner” (the UBO) for trusts that generate tax consequences and private entities within the companies register. The Ministry Decree will set out exemptions for entities that engage in a financial activity on an occasional or very limited basis where there is little risk of money laundering or terrorist financing.

9. ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

Association + foundation: CSOs must also register with the Revenue Agency.

10. WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Association + foundation: There are no specific grounds for denial besides non-compliance with legal requirements.



Sources of funding

1. WHAT ARE THE PERMITTED POSSIBLE SOURCES OF FUNDING?

Association + foundation:

The traditional financial sources of CSOs are:

- Membership fees: annually conferred by the members to the association, which everyone must pay to take part in the association and to have the right to vote in the assembly;
- Donations made by members or by third parties (individuals, companies, institutions), to support the aim of the association/foundation;



- Legacies and charitable bequests;
- Contributions from institutions (municipalities, provinces, regions, public bodies, etc.);
- Fundraising (organised only to raise money to finance the activities of the association or foundation).

2. WHAT ARE THE RESTRICTIONS ON THE POSSIBLE SOURCES OF FUNDING?

Association + foundation: There are no restrictions on the way CSOs raise funds, however, in order to be eligible for tax benefits, fundraising must be: occasional, done concurrently with celebrations (of any kind) and public. There are no restrictions on the amount of funds CSOs can raise or the number of donors, with only one exception: amateur sport clubs.



Tax treatment of civil society groups

1. HOW ARE CSOS TREATED FOR INCOME TAX PURPOSES?

Proceeds from core activities carried out in accordance with the official purpose of the entity (for example, membership fees, donations received, fundraising from occasional public collections and public contributions) are not subject to corporate income tax (Article 148, Tax Code).

Under Article 6 of Presidential Decree No. 601/1973, entities involved in specific activities (for example, social assistance, charity, instruction and promotion of culture) benefit from a reduction by half of corporate income tax due.

A special tax regime is granted to ONLUS. An ONLUS's revenue from economic activities is not taxed. An ONLUS is only taxed on property income, capital income and miscellaneous income. To benefit from the above exemption:

- The institutional activities of the ONLUS must prevail over its economic activities; and
- Income from economic activities must be less than two-thirds of the total amount of the costs incurred in the relevant period.

2. WHAT IS THE VAT TREATMENT OF CSOS?

In principle, institutional activities by non-commercial entities (including charities and non-profit organisations) are outside the scope of VAT, provided that the entities



do not carry on economic activity as their main or exclusive activity. However, any economic activity exercised as a secondary activity of a CSO is subject to VAT.

The VAT Decree provides for special relief for an ONLUS.

3. ARE THERE ANY TAX BENEFITS FOR DONORS IN PLACE?

Individual donors: Donations to ONLUS are deductible up to 10% of income with a maximum of EUR 70,000. Alternatively, individuals can take a tax credit of 26% for donations to ONLUS and other kinds of charities, up to the value of EUR 30,000.

Corporate donors: Monetary donations to ONLUS are deductible up to 2% of income up to EUR 30,000. There are no limits on donations to universities or university foundations.



Obligations of a registered civil society group

1. WHAT ARE THE REPORTING REQUIREMENTS OF A REGISTERED CSO?

CSOs are obliged to draft a simple annual statement which includes:

- assets status,
- the management accounts and
- a description of how the CSO pursued its statutory goals.

For those organisations with revenue lower than EUR 200,000, the statement can be made as a financial balance sheet presented to the National Register. For those with revenue higher than EUR 200,000 they shall keep their website up to date and annually publish their financial statement. For those with a revenue higher than EUR 1,000,000, they shall submit to the National Register and on their website the social balance of the organisation.

Regardless of the annual economic and financial statement, anyone who organises a fundraising activity shall draw up a separate and specific statement regarding all revenues and costs, within four months from the end of the financial year.

ONLUS:

- A balance sheet with assets, liabilities and equity.
- A statement on income and expenses for the period, divided by function (Rendiconto di gestione).
- Explanatory notes with clarification of specific items.
- Mission report, describing objectives and projects necessary for the pursuit of institutional objectives, and the degree of achievement.

2. ARE THERE ADDITIONAL OBLIGATIONS OF A REGISTERED CSO?

Other obligations may arise in specific cases only.



Internal governance of a civil society group

1. WHAT ARE THE BASIC REQUIREMENTS RELATED TO THE GOVERNANCE AND INTERNAL STRUCTURE AS PROVIDED BY LAW?

Association: The organisational structure of an association can vary depending on the scope, size and kind of activity, but there must be at least the following two corporate bodies:

- **General assembly.** All members are entitled to attend the assembly and vote. The members' assembly is the deliberative body and fundamental to the life of a recognised association. Under the Civil Code, resolutions are adopted by a majority of the members (each member has one vote, irrespective of membership fees paid). Qualified majorities are required when adopting resolutions on specific subjects (for example, amendment of the incorporation deed or dissolution of the association).
- **Board of directors.** The board of directors is the executive body of the association (managing the association is exclusively the task of the directors). Only individuals can be appointed as directors. Non-member individuals can also be appointed as directors. The directors are responsible to the association for their actions.

The incorporation deed can set up additional bodies, for example a board of auditors, an executive committee or a board of arbitrators.

Foundation: The administrative body of a foundation can be a sole director or a group of directors (board), and it can be appointed in various ways. The appointment of the administrative body can be decided directly by the founder in the foundation deed, or delegated to third parties. The directors can be appointed for life or a fixed period. Directors are responsible for managing the foundation's assets and pursuing its purposes.

A supervisory board is not generally required, however, many "special" kinds of foundations (for instance, ONLUS, foundations of banking origin, music foundations) are obliged to have a supervisory board.





2. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF THE GOVERNING BODIES?

Members of the governing bodies must have full legal capacity and ethical eligibility suitable for a non-profit organisation.

3. ARE FOREIGN CITIZENS OR RESIDENTS ALLOWED TO SERVE ON THE BOARD?

Yes, there are no citizenship or residency requirements.

4. ARE FOUNDERS AND MEMBERS FINANCIALLY LIABLE BY LAW?

Association: The members of an association are not responsible for the debts of the association, unless such debts are directly attributable to their misconduct and the CSO's assets are not sufficient to cover the damages.

Foundation: Board members can be held civilly liable by third parties according to Article 18 of the Italian Civil Code, while foundations are also liable for the actions of their bodies.



Staff and members of the organisation

1. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR STAFF AND MEMBERS OF A CSO?

No. Eligibility requirements only apply to members of the governing bodies.

2. IS THERE A REQUIREMENT TO HAVE A FULL-TIME EMPLOYEE?

No.

3. IS THERE A REQUIREMENT TO HAVE AN ACCOUNTANT?

An accountant must be appointed if two of the following conditions are met:

- i. the total amount of assets is EUR 1,100,000 or greater;
- ii. the total amount of revenue is EUR 2,200,000 or greater;
- iii. the CSO has 12 employees on average.



Voluntary dissolution and liquidation



1. WHAT IS THE LIQUIDATION PROCEDURE IN CASE OF VOLUNTARY DISSOLUTION OF A CSO?

When a CSO is dissolved, the competent court appoints a trustee, unless the incorporation deed provides rules on how to appoint the liquidator. The trustees shall have the register of the assets. If the net assets are not sufficient to cover the debts of a CSO, they shall start the winding up of the general assets (movable and immovable) to satisfy the debts. The remaining assets are devolved to other bodies of the third sector (or an ONLUS if the dissolved organisation is ONLUS) according the disposition of the bylaws or the competent body, or are given to Fondazione Italia Sociale. Once the liquidation is complete, the association is taken off of the national register.



Additional information

1. CONTACTS OF KEY LOCAL LAWYERS SUPPORTING THE CIVIL SOCIETY ORGANISATIONS

Ozgur Kahale: Ozgur.Kahale@DLAPiper.com (Pro Bono Director for Europe, DLA Piper)

Lamin Khadar: Lamin.Khadar@dentons.com (Pro Bono Manager, Dentons)

2. IS IT POSSIBLE FOR FOREIGN NATIONALS TO DO ANY THE ABOVE THROUGH POWER OF ATTORNEY, WITHOUT BEING PHYSICALLY PRESENT IN THE COUNTRY?

Yes.

ROMANIA



Existing forms of civil society organisations & their characteristics

1. WHAT FORMS OF CSOS EXIST? WHAT ARE THEIR MAIN CHARACTERISTICS?

- i. **Associations** are set up in order to carry out activities for the general interest, for specific groups or the interests of its members. The goals and objectives must be expressly reflected in the articles of association and statute – they are a mandatory element and enforceable by a local court of law.
- ii. **Foundations** are set up for the achievement of a purpose for the general interest or the interest of a specific group. In other words, foundations are set up for humanitarian/social reasons, performing activities to the benefit of third parties, while associations can be set up for supporting interests of its members, not only of third parties.

Foreign CSOs may be recognized in Romania, under the condition of reciprocity between the country of registration and Romania, with prior written approval of the Government, and registered with a special Register of Associations and Foundations kept by the Bucharest Tribunal.

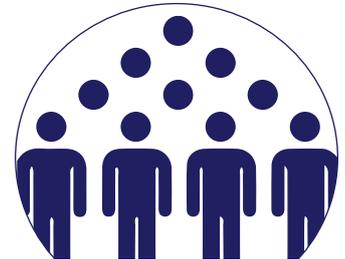
CSOs that serve objectives in the “**general interest**” or “**collective interest**” are eligible to attain **Public Utility Status**. Foundations are automatically eligible to apply for Public Utility Status because they are required to have objectives which serve the general or collective interest (Government Ordinance 26/2000 Article 15). In contrast, an association or federation must state in its governing statute whether it pursues “general interest,” “collective interest,” or “mutual benefit” objectives.

GENERAL INFORMATION



Capital city:

Bucharest



Population:

19,586,539

GNI Per Capita*

\$10,000

Romania

\$39,358

European Union average

\$16,176

World average

*In USD. Source: World Bank (2016)



To qualify for Public Utility Status, an CSO must meet the following conditions:

- It has carried out activities for the general or collective interest;
- It has operated for at least three years and achieved part of its proposed goals (with proof of continuous activity through significant actions);
- It has presented a report showing the development of significant prior activities through programs or projects specific to its purpose, together with balance sheets and budgets for the last three years;
- It has its own patrimony (initial capital), membership, and employees necessary to achieve its proposed aims;
- It has cooperation and partnership contracts with public institutions or associations and foundations from Romania or abroad; and
- It has obtained significant results in line with its proposed aims, or presented letters of recommendations from competent authorities at the national or interreponational level in order to demonstrate continuity of its activity (Governmental Ordinance 26/2000 Article 38, as amended by Law 246/2005 and Law 145/2012).

2. ARE THERE ANY RESTRICTIONS ON THE PERMISSIBLE GOALS AND ACTIVITIES OF CSOS?

The goals and activities of a CSO cannot be contrary to the Constitution, laws and public order.

3. WHAT ARE THE KEY CIVIL SOCIETY LAWS?

- Government Ordinance 26/2000 (“GO 26/2000”) on associations and foundations
- Fiscal Code, Law 227/2015
- Law on Sponsorship 32/1994



Requirements on the founders of a civil society group

1. WHAT IS THE MINIMUM NUMBER OF FOUNDERS REQUIRED BY LAW, AND HOW MANY OF THEM MUST BE NATIONAL CITIZENS OR RESIDENTS?

Association: 3; there are no nationality or residency requirements for the founders.

Foundation: 1; there are no nationality or residency requirements for the founders.



2. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FOUNDERS?

Both individuals and legal entities are eligible as founders. Individuals must have full legal capacity.

3. ARE FOREIGN CITIZENS ALLOWED TO SERVE AS FOUNDERS? WHAT KIND OF LEGAL STATUS (PERMANENT, TEMPORARY OR OTHER) DO FOREIGN CITIZENS NEED TO HAVE IN ORDER TO BE ELIGIBLE TO SERVE AS FOUNDERS?

There are no specific requirements regarding the citizenship/residency of the founders.

3. ARE THERE ANY PROPERTY OR CASH CONTRIBUTION REQUIREMENTS FOR THE FOUNDERS?

Association: The minimum initial capital is RON 200 (approximately EUR 42) to be paid in a bank account prior to formal registration with the local court of law. The contribution may be in-kind and/or in cash. It cannot be redistributed to its members when the association ceases its existence.

Foundation: Initial capital must be, as a rule, at least 100 times the annual gross minimum wage in Romania. For foundations whose exclusive purposes is fundraising for other CSOs, the minimum capital is at least 20 times the minimum gross salary. As of 1 February 2017, the minimum gross salary in the national economy is of RON 1,450 (approximately EUR 307).



Registration procedures

1. WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION?

Local courts are responsible for registering entities in the Registry of Associations and Foundations.

The contact information of the local courts can be found at: <http://portal.just.ro/SitePages/acasa.aspx>.

2. WHAT IS THE REGISTRATION FEE?

Association: RON 100 (approximately EUR 21).

Foundation: RON 100 (approximately EUR 21).



3. ARE THERE ANY OTHER DIRECT FINANCIAL COSTS OF THE ESTABLISHMENT OF A CSO?

Association: Since associations must be registered with the tax authorities as well, the use of accountancy and legal services might be required for VAT registrations, tax filings, etc.

Foundation: Since foundations must be registered with the tax authorities as well, the use of accountancy and legal services might be required for VAT registrations, tax filings, etc.

4. HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

Association + foundation: 1 month.

5. WHICH DOCUMENTS ARE REQUIRED FOR REGISTRATION?

Association + foundation:

- Articles of association,
- Statute,
- Other documents related to the corporate name, headquarters (including proof of address), founding members and legal representatives.

The articles of association and the statute must reflect certain mandatory elements provided by GO 26/2000 under the sanction of absolute nullity (*e.g.* identification data of the founding members, corporate name and duration.). Such documents become publicly available, a copy thereof being issued by the Ministry of the Justice upon specific request.

6. IS ELECTRONIC SUBMISSION POSSIBLE?

Association + foundation: No.

7. IS THERE A REQUIREMENT TO HAVE AN OFFICE IN THE COUNTRY? ARE THERE ANY SPECIFIC REQUIREMENTS RELATED TO IT?

Association + foundation: CSOs must have valid (owned/leased etc.) physical headquarters in Romania. A copy of the document proving the fulfilment of this requirement must be filed with the local court of law/Trade Registry upon incorporation/change of headquarters.

8. ARE THERE ADDITIONAL REQUIREMENTS RELATED TO REGISTRATION?

Association + foundation:

- Registration with the tax authorities (mandatory);
- Application for a Public Utility Status (non-mandatory).



9. ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

Association + foundation: Depending on the association's/foundation's purpose and objectives, the founding members/person(s) may have to obtain certain administrative operating permits (for example, health permits if the entity offers food provision services). The failure to obtain such permits can result in dissolution by a court.

The draft law transposing EU directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the Fourth Anti-Money Laundering Directive) requires entities to register an "ultimate beneficial owner" (the UBO) in the central register of UBOs, the so-called "transparency register."

10. WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Association + foundation: Registration may be denied if:

- the name of the entity is similar or identical to other non-profit;
- the name of the entity contains words which can create confusion with a public institution; or
- the entity has purposes contrary to the Constitution.



Sources of funding

1. WHAT ARE THE PERMITTED POSSIBLE SOURCES OF FUNDING?

Association: The revenues of associations are regulated by the GO 26/2000 and may come from (i) membership fees, (ii) interests and dividends resulting from investments permitted under the law, (iii) dividends from trade companies established by the association, (iv) revenues from direct economic activities, (v) donations, sponsorships and legacies, (vi) funds obtained from local or state budgets, or (vii) other revenues stipulated by law.

Foundation: The revenues of foundations are also regulated by the GO 26/2000 and such shall come from (i) interests and dividends resulting from investments permitted under the law, (ii) dividends from trade companies established by the association, (iii) revenues from direct economic activities, (iv) donations, sponsorships and legacies, (v) funds obtained from local or state budgets, or (vi) other revenues stipulated by law.



2. WHAT ARE THE RESTRICTIONS ON THE POSSIBLE SOURCES OF FUNDING?

No restrictions specifically prescribed by law.



Tax treatment of civil society groups

1. HOW ARE CSOS TREATED FOR INCOME TAX PURPOSES?

Association + foundation: All types of non-profit organisations (i.e. both associations and foundations) are subject to the same tax treatment, as follows:

- The revenues derived by the CSO that are directly connected with the declared main purpose are tax exempt (e.g. subscriptions from members, donations and sponsorships received from other entities/ persons, prizes, registration taxes established as per legal provisions, revenues derived from public institutions, revenues from advertising, etc.).
- Revenues derived from other sources (e.g. carrying out of economic activities, as per the applicable legal provisions) are tax exempt if they are lower than: (i) EUR 15,000 or (ii) 10% of the total non-taxable revenues. The amounts that exceed the applicable threshold are subject to the general tax rate of 16% applied to the taxable profit (computed as the difference between the revenues registered from any source and expenses incurred in relation with such revenues, from which non-taxable income is deducted and non-deductible expenses are added).

As mentioned above, the revenues derived by a CSO directly in relation with its main purpose are tax exempt. A case-by-case analysis is advisable in all situations, by considering the declared main purpose of the entity.

2. WHAT IS THE VAT TREATMENT OF CSOS?

Association + foundation: If a CSO's income from economic activity exceeds 88,500 Euros, the CSO must register as a VAT taxpayer and the same rules apply as to other legal entities.



3. ARE THERE ANY TAX BENEFITS FOR DONORS IN PLACE?

Association + foundation: The deductibility of contributions (for both individuals and legal entities) to CSOs is regulated by the Law on Sponsorship, which lists the types of “sponsorship” that qualify as deductible (Law 32/1994), as well as the Fiscal Code, which imposes limits on the amount that a donor can deduct.

Under Romanian law, “sponsorship” occurs where two parties agree on the transfer of ownership of goods or financial means to support the not-for-profit activities of the beneficiary. The following entities are eligible to be beneficiaries of sponsorship:

- any not-for-profit organization that undertakes activities in Romania intended to promote sports; religion; culture; art; the environment; scientific research; charity; human rights protection; economic, health, and social services or assistance; social and community development; professional interest representation; and maintenance, renovation, preservation, and valorising of historical monuments;
- any public authorities or institutions that engage in the activities listed above;
- radio or TV broadcasts or books or other publications relating to the activities listed above; and
- any individual living in Romania who develops activities in the areas listed above, provided that this activity is recognized by a not-for-profit organization or by a public institution engaged in the domain for which sponsorship is sought (See Law 32/1994 Article 4, as modified by Governmental Ordinance 36/1998 and by Law 204/2001).

A sponsor can be an individual or a legal entity under the Sponsorship Law.

The Fiscal Code establishes the rates for the deductions. A company that grants sponsorships under the Sponsorship Law can deduct up to 0.5% of its turnover or 20% of the tax due, whichever is lower. Only companies with turnover of more than 1 million EUR are eligible to pay profit tax and deduct sponsorships. Government Ordinance 25/2018 provides that companies with turnover under this threshold can also deduct sponsorships of CSOs, but only for CSOs that provide social services.

Individuals can designate 2% of their annual income tax to provide sponsorship to CSOs legally operating under Governmental Ordinance 26/2000, as modified by Governmental Ordinance 138/2004. Individuals can designate up to 3.5% of their annual income tax for sponsorship to CSOs that provide social services.

Individual contractors (e.g., a worker not affiliated with a particular company), or those who earn their income from intellectual property rights, qualify for a sponsorship deduction of up to 5% of the taxable base, in addition to the 2% of annual income tax that can be designated for sponsorship of a particular CSO.



Obligations of a registered civil society group

1. WHAT ARE THE REPORTING REQUIREMENTS OF A REGISTERED CSO?

Association + foundation: Associations and foundations are subject to accounting rules – e.g. they must keep accounting books and submit annual accounts to the authorities as required by relevant legislation. In addition, the association/foundation must pay the applicable profit tax if it carries out economic activities. Even if the association/foundation does not carry out economic activities and is not subject to the profit tax, it still must file an annual tax return. If the association/foundation carries out economic activities which exceed the yearly turnover threshold of EUR 88,500, it must also register as a VAT payer and periodically submit VAT reports.

Public Utility CSOs must report regularly to the competent administrative authority on its activities, finances, and any modifications to its constitutive act or statute. In addition, they must publish excerpts of their activity reports and annual balance sheets in the Official Gazette of Romania, Part IV, as well as in the national registry of legal persons without patrimonial aim.

2. ARE THERE ADDITIONAL OBLIGATIONS OF A REGISTERED CSO?

Association + foundation: No, except for general obligations to observe applicable legislation.



Internal governance of a civil society group

1. WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURE AS PROVIDED BY LAW?

Association: The corporate bodies are:

- i. the general assembly comprising all founding members;
- ii. the board of directors (having individual/joint representation powers) appointed and revoked by the general assembly; and



- iii. the censor (mandatory when there are more than 15 members)/the committee of censors (mandatory when there are more than 100 members); these are appointed by/revoked by/under the control of the general assembly. At least one censor must be an authorized accountant or expert accountant.

Members of the board of directors cannot be appointed censor(s) and a maximum of 1/4 of its members can be drawn from outside the association's members. The board of directors may appoint executive director(s) to exercise specific functions.

The general assembly must meet at least once a year.

Foundation: The corporate bodies are:

- i. the board of directors - the first members (at least 3 with individual/joint representation powers) are appointed by the founder(s) and subsequent members according to the statute/by the court of law; and
- ii. the censor(s), these are appointed by/revoked by/under the control of the board of directors. At least one censor must be an authorized accountant or expert accountant.

Members of the board of directors cannot be appointed censor(s). The board of directors may appoint executive director(s) to exercise specific functions.

2. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE GOVERNING BODIES?

Association + foundation: Board members must have full legal capacity.

3. ARE FOREIGN CITIZENS OR RESIDENTS ALLOWED TO SERVE ON THE BOARD?

Association + foundation: Yes. There are no specific requirements regarding the citizenship/residency of the members of board of directors.

4. ARE FOUNDERS AND MEMBERS FINANCIALLY LIABLE BY LAW?

Association: In principle, members are not responsible for liabilities incurred by the association. Founding members must pay their contribution to the capital/initial patrimony and annual membership fee, and abide by additional rights and obligations provided by the statute.

The liability of the members of the board of directors is subject to the legal provisions dependent on their remuneration status and the specific provisions of the statute, i.e. if the mandate is remunerated, the board member must execute his/her mandate with the care expected of a good owner, but if the mandate is not remunerated, the board member must execute his/her mandate with the care she/he manifests towards his/her own business.



Board members must act in the legal entity’s best interests, with the prudence and diligence expected of a good owner, complying with applicable legislation and internal rules/regulations of the legal entity. The standard assessment of such prudence and diligence is “the business judgment rule”, i.e. board members shall not be held personally liable for business decisions as long as they were duly prepared in the best interests of the legal entity, made in good faith and in compliance with the standard of a prudent businessman. If a board member breaches these obligations, he/she may be held liable towards the legal entity, and also, in exceptional cases, towards third parties, if certain other criteria are met.

If the board of directors appoints a president among its members, he/she being the individual to represent the legal entity towards third parties. The rules above apply to him/her as well.

Foundation: In principle, founders are not liable for liabilities incurred by the foundation. Founder(s) must pay their contribution to the capital/initial patrimony, and abide by additional rights and obligations provided by the statute.

The same liability principles outlined above for associations are applicable to board members of foundations.



Staff and members of the organisation

1. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR STAFF AND MEMBERS OF A CSO?

Association + foundation: No, except for immigration and employment regulations in the case of foreign employees/staff.

2. IS THERE A REQUIREMENT TO HAVE A FULL-TIME EMPLOYEE?

Association + foundation: No.

3. IS THERE A REQUIREMENT TO HAVE AN ACCOUNTANT?

Association + foundation: At least one censor must be an authorized accountant or expert accountant (censors are mandatory for associations with more than 15 members and for all foundations).



Voluntary dissolution and liquidation



1. WHAT IS THE LIQUIDATION PROCEDURE IN CASE OF VOLUNTARY DISSOLUTION OF A CSO?

Association: An association can be liquidated (i) by law, (ii) by decision of a court of law or (iii) by the decision of the general assembly. Liquidation formalities are carried out by an expert liquidator appointed by a court of law (under the supervision of the censor(s)), while the remaining assets are transferred to other CSO(s) having the same or a similar purpose. The receiving CSO(s) can be designated either by the general assembly or by the court. No distributions can be made to members when the association ceases its existence.

Foundation: A foundation can be liquidated (i) by law or (ii) by decision of a court of law. Liquidation formalities are carried out by an expert liquidator appointed a court of law (under the supervision of the censor(s)), while the remaining assets are transferred to other CSO having the same or a similar purpose. The receiving CSO(s) can be designated either by the board of directors or by the court. No distributions can be made to the founder(s) when the foundation ceases its existence.



Additional information

1. CONTACTS OF KEY LOCAL LAWYERS SUPPORTING THE CIVIL SOCIETY ORGANISATIONS

Ozgur Kahale: Ozgur.Kahale@DLAPiper.com (Pro Bono Director for Europe, DLA Piper)

Lamin Khadar: Lamin.Khadar@dentons.com (Pro Bono Manager, Dentons)

2. IS IT POSSIBLE FOR FOREIGN NATIONALS TO DO ANY THE ABOVE THROUGH POWER OF ATTORNEY, WITHOUT BEING PHYSICALLY PRESENT IN THE COUNTRY?

Yes.

SPAIN



Existing forms of civil society organisations & their characteristics

1. WHAT FORMS OF CSOS EXIST? WHAT ARE THEIR MAIN CHARACTERISTICS?

A CSO wishing to set up in Spain may consider the following legal forms:

- i. **Association** (*Asociación*): An association is a group of people united for the pursuance of common purposes and share of knowledge, means and activities. Members of the association jointly agree on daily issues as well as on the objectives of the association.
- ii. **Foundation** (*Fundación*): A foundation is an organisation which dedicates its assets in the long term to the achievement of a purpose for which it was incorporated. The will of the founder(s) determine and condition the life of the entity.

There are also less common legal structures used by foreign CSOs and social enterprises in Spain. For example, non-profit cooperatives (*Cooperativa sin Ánimo de Lucro*) and mutual companies (*Mutualidades*).

2. ARE THERE ANY RESTRICTIONS ON THE PERMISSIBLE GOALS AND ACTIVITIES OF CSOS?

Association: There are generally no restrictions on the type of activities that an association may pursue as long as they are needed to achieve the goals of the association, comply with any applicable regulations, and are not illegal. Specific regulations may apply to lobbying activities.

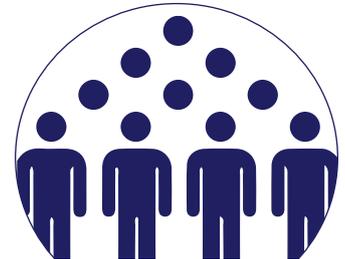
Foundation: There are generally no restrictions on the type of activities that the foundation can undertake. However, the activities must be aimed at achieving the foundation's

GENERAL INFORMATION



Capital city:

Madrid



Population:

46,572,030

GNI Per Capita*

\$37,990

Spain

\$39,358

European Union average

\$16,176

World average

*In USD. Source: World Bank (2016)



objective and cannot pursue individual benefit. A foundation cannot be created for the benefit of the patronage, the board members or their spouses, relatives up to the fourth degree or any other person related to the foundation. There are no barriers to the networks of foundations, unless stipulated in the bylaws.

3. WHAT ARE THE KEY CIVIL SOCIETY LAWS?

- Law 1/2002, March 22nd, for the Right of Association (Spanish official gazette no. 73, March 26th).
- Law 50/2002 of December 26th, for Spanish Foundations (Spanish official gazette no. 310, December 27th).
- Law 43/2015 October 9th for the Third Sector Entities (Spanish official gazette no. 243, October 10th).



Requirements on the founders of a civil society group

1. WHAT IS THE MINIMUM NUMBER OF FOUNDERS REQUIRED BY LAW, AND HOW MANY OF THEM MUST BE NATIONAL CITIZENS OR RESIDENTS?

Association: Three or more natural persons or legal entities; there are no specific requirements related to their citizenship or nationality.

Foundation: There is no minimum number of founders required by law and no specific requirements related to their citizenship or nationality.

2. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FOUNDERS?

Natural persons shall have the legal capacity to freely handle the property and rights constituting the endowment.

Private legal entities shall have the express agreement of the competent body to dispose of their property free of charge, in accordance with their statutes or the legislation applicable to them. Those of an institutional nature must have the agreement of their governing body.



3. ARE FOREIGN CITIZENS ALLOWED TO SERVE AS FOUNDERS? WHAT KIND OF LEGAL STATUS (PERMANENT, TEMPORARY OR OTHER) FOREIGN CITIZENS NEED TO HAVE IN ORDER TO BE ELIGIBLE TO SERVE AS FOUNDERS?

Association: There are no restrictions regarding citizenship or residency requirements for the founders of an association.

Foundation: There are no restrictions regarding citizenship or residency requirements for the founders of a foundation.

4. ARE THERE ANY PROPERTY OR CASH CONTRIBUTION REQUIREMENTS FOR THE FOUNDERS?

Association: No minimum capital required.

Foundation: Foundations need an initial capital of a minimum worth EUR 30,000.



Registration procedures

1. WHICH AUTHORITY IS RESPONSIBLE FOR REGISTRATION?

Association: Associations Registry (either Regional or National - see the explanation for foundations), within the Ministry of Interior.

More information about the National Associations Registry:

<http://www.interior.gob.es/web/servicios-al-ciudadano/asociaciones/inscripciones-registrales-de-las-asociaciones>

Foundation: The competent Registry, based on the Spanish region of operation. If the foundation is intended to operate in more than one region, the registration shall be done with the National Foundations Registry. Foundations Register fall within the Ministry of Justice.

More information about the National Foundations Registry can be found at:

<https://www.mjusticia.gob.es/cs/Satellite/Portal/es/ciudadanos/registros/registro-fundaciones>

2. WHAT IS THE REGISTRATION FEE?

Association: The registration in the Associations Register will cost EUR 35 approx.

Foundation: The regional registration cost is approx. EUR 90.



3. ARE THERE ANY OTHER DIRECT FINANCIAL COSTS OF THE ESTABLISHMENT OF A CSO?

Notarial fees.

4. HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

Association: 3 months.

Foundation: 3-8 months.

5. WHICH DOCUMENTS ARE REQUIRED FOR REGISTRATION?

Association:

- i. Articles of Association containing:
 - a. The name and surnames of the founders of the association if they are natural persons, the company's/organisation's name if they are legal entities, and, in both cases, the nationality/domicile.
 - b. The will of the founders to establish an association, the agreements, to the extent these exist and the denomination of the association.
 - c. The bylaws that will govern the functioning of the association.
 - d. Place and date of granting of the articles of association, and signature of the founders, or of their representatives in the case of legal entities.
 - e. The appointment of the members of the provisional governing bodies.

Additionally, in the case of legal entities, the articles of association must be accompanied by a certificate of the resolution validly adopted by the competent body, in which it is resolved to constitute the association and the designation of the natural person that will represent it; and, in the case of natural persons, their identity details.

Foundation: A foundation is established by means of a public deed containing:

- a. The name, surname, age and marital status of the founder or founders, if they are natural persons, and their name or company name, if they are legal persons, and, in both cases, their nationality/domicile and tax identification number.
- b. The will to constitute a foundation.
- c. The endowment, its monetary value and the form and reality of its contribution.
- d. The bylaws of the foundation.
- e. The identification of the members of the trustees and their acceptance letters (if this takes place on the date of the establishment of the foundation).



6. IS ELECTRONIC SUBMISSION POSSIBLE?

No.

7. IS THERE A REQUIREMENT TO HAVE AN OFFICE IN THE COUNTRY? ARE THERE ANY SPECIFIC REQUIREMENTS RELATED TO IT?

A CSO shall have an actual office space in which it carries out its activities and thus it is not sufficient to have only a mailbox.

8. ARE THERE ADDITIONAL REQUIREMENTS RELATED TO REGISTRATION?

Association + foundation: Yes, to:

- Obtain a corporate taxpayer number (CIF);
- Register an “ultimate beneficial owner” (the UBO) in the Database of UBOs run by the General Counsel of Notaries.

9. ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

Association: Associations may be declared to be in the public interest (*asociación de utilidad pública*) – which entails the applicability of the special tax and legal regime of nonprofit entities – when:

- i. the bylaws promote a general interest;
- ii. the activity does not exclusively benefit the affiliates, but the community as well;
- iii. when the members of the governing council are remunerated and such remuneration is not paid with public funds or subsidies;
- iv. they have the necessary means and organisational structure to guarantee the fulfilment of the association’s general interest goal; and
- v. they have had ongoing activity for at least two consecutive years.

To this end, associations must obtain a favourable report from the Finance Ministry and file an application with the Home Affairs Ministry.

Foundation: A party interested in setting up a foundation must go to the Protectorate to solicit a report about the suitability of the purpose and activities and about the adequacy and sufficiency of the endowment of the foundation. The request must be resolved within a maximum period of three months. If the Protectorate delivers a favourable notice, the interested party will be able to go the notary to set up the foundation and then register with the Foundations Register, as described above.



10. WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

The grounds for denial of registration are not addressed specifically but rather comprise non-compliance with the formal and substantive requirements imposed by applicable laws.



Sources of funding

1. WHAT ARE THE PERMITTED POSSIBLE SOURCES OF FUNDING?

Association: Contributions by the founders, income generated by the activity of the association, or external sources of funding such as loans, credits, etc.

Foundation: Contributions by the founders, income generated by the activity of the foundation, or external sources of funding such as loans, credits, etc.

2. WHAT ARE THE RESTRICTIONS ON THE POSSIBLE SOURCES OF FUNDING?

Association: There are no limitations on the kinds of funds/donations that the association can receive. There are no regulations on solicitation and marketing for fundraising, but these activities are subject to a code of conduct set up by the association itself. There is no regulation regarding limits on administrative expenses or salaries. The association may accept and transfer money abroad.

Foundation: There are no limitations on the kinds of funds/donations that foundation can receive, and there are no regulations for solicitation and marketing for fundraising. The foundation may accept and transfer money abroad.

Association + foundation: There is an obligation for foundations and associations to identify and verify the persons that donate funds or resources equal or greater than EUR 100, regardless whether they are domestic or foreign entities.



Tax treatment of civil society groups



1. HOW ARE CSOS TREATED FOR INCOME TAX PURPOSES?

Associations and foundations of public interest under Law 49/2002:

Corporate income tax: Foundations, associations of public interest and branches of foreign NGOs registered in the Spanish Foundations Register are entitled to apply the special tax regime set out in Law 49/2002 provided that the following requirements are met:

- i. pursue public interest goals;
- ii. 70% of income from economic activities and transfer of assets/rights is applied to their main objectives;
- iii. non-exempt activities do not exceed 40% of net turnover;
- iv. trustees or founders are not the main beneficiaries of the NGO's activities, and they do not receive remuneration for their position;
- v. in case of dissolution, all assets must be destined to serve public interest objectives;
- vi. must be registered before the Registry and fulfil its specific supervision rules;
- vii. must comply with specific/general accounting rules; and
- viii. must draft an annual memo with a breakdown of activities carried out.

This special tax regime provides for an exemption on:

- i. income derived from donations, contributions and subsidies;
- ii. income derived from movable and immovable property (e.g. dividends);
- iii. income derived from capital gains; and
- iv. income derived from the developing of certain exempt economic activities listed in law 49/2002. Any other non-exempt income will be subject to a reduced tax rate of 10%.



General associations and foundations:

Corporate income tax: If requirements set out in Law 49/2002 are not met, the CSO will be governed by Chapter XIV of Title VII of the CIT Law. Income derived from the developing of an economic activity is subject to the standard 25% CIT rate. However, The CIT law provides for an exemption on:

- i. income derived from the developing of its social purpose provided that it does not qualify as an economic activity;
- ii. income derived from membership fees if they are not connected with the reception of services/delivery of goods; and
- iii. capital gains with certain requirements.

2. WHAT IS THE VAT TREATMENT OF CSOS?

Generally, CSOs shall charge output VAT in the developing of an economic activity and may deduct input VAT incurred in such activities. VAT returns must be filed on a quarterly or monthly basis. The Spanish VAT rates are 21% (standard rate), 10% and 4% (reduced rates).

3. ARE THERE ANY TAX BENEFITS FOR DONORS IN PLACE?

The following tax benefits are available for donations to foundations and associations of public interest:

Individual donors: 75% deduction for the first EUR 150 donated by individuals. For amounts above EUR 150, 30% is deductible, or 35% if donations are made periodically for at least 3 years to the same entity. The ceiling for deduction is 10% of total taxable income.

Corporate donors: Corporations can deduct from the amount of tax payable 40% of the value of the donation up to a limit of 10% of the taxable base for donations made to the same entity of the same or higher amount for at least 3 years.



Obligations of a registered civil society group



1. WHAT ARE THE REPORTING REQUIREMENTS OF A REGISTERED CSO?

Association: There is a requirement to report changes to articles of association to the National Register of Associations. The association must also make financial information available, including details of the financial situation, activities and assets of the association. If it is an association of public interest, the association must also audit the balance sheets.

Foundation: The only reporting obligations that the foundation must respect are those set out in the deed of incorporation/bylaws. The foundation must also deliver a financial report annually to the Foundation Register after its approval by the patronage board.

Association + foundation: Both associations and foundations are obliged to retain documents and records that prove the use of funds in the projects, including the identity of the donors of funds exceeding EUR 100, as described above.

2. ARE THERE ADDITIONAL OBLIGATIONS OF A REGISTERED CSO?

No.



Internal governance of a civil society group

1. WHAT ARE THE BASIC REQUIREMENTS RELATED TO THE GOVERNANCE AND INTERNAL STRUCTURE AS PROVIDED BY LAW?

Association: An association's main bodies include a general assembly and a governing council. The general assembly is the body where the sovereignty of the association resides and it is composed of all members of the association. The general assembly approves resolutions with a simple majority vote and must meet at least once a year.



The governing council is responsible for managing and representing the association externally according to the resolutions of the general assembly and the articles of association. The number of members of the governing council is decided by the general assembly or the articles of the association.

Foundation: The board of trustees is the representative and governing body responsible for achieving the foundation's purpose, and must have at least three members. The board of trustees manages with diligence the assets and rights related to the property of the foundation, maintaining the performance and utility thereof. It is required to elect a president within the board of trustees.

The board of trustees is accountable to the Protectorate which is a public body under the Education, Culture and Sports Ministry. It is responsible for ensuring that assets are effectively allocated to the fulfilment of the foundation's general interest purposes, and supervises the application of the law.

2. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF THE GOVERNING BODIES?

Association: The members of the governing council must be of legal age, with full legal capacity and ability to exercise their rights.

Foundation: Trustees are natural persons who have full legal capacity to act and are eligible for holding public office.

3. ARE FOREIGN CITIZENS OR RESIDENTS ALLOWED TO SERVE ON THE BOARD?

Association: There are no restrictions regarding citizenship or residency of the association's board members.

Foundation: There are no restrictions regarding citizenship or residency of the foundation's board members.

4. ARE FOUNDERS AND MEMBERS FINANCIALLY LIABLE BY LAW?

Association: Members of an association are not personally liable for the association's debts. Managers, directors and any other person acting on behalf of the association shall be responsible (towards the association, its partners, and any third party) for damages and debts caused by intentional, guilty and negligent acts.

Foundation: Members of the board of trustees must act with the diligence of a loyal representative. The board of trustees will be jointly and severally liable for damages they cause to the foundation by acts contrary to the law or statutes. Members of the board of trustees who have voted against the problematic agreement will be exempt from liability and also those having not taken part in the adoption and execution.



Staff and members of the organisation



1. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR STAFF AND MEMBERS OF A CSO?

No.

2. IS THERE A REQUIREMENT TO HAVE A FULL-TIME EMPLOYEE?

No.

3. IS THERE A REQUIREMENT TO HAVE AN ACCOUNTANT?

No. However, financial statements must be filed on an annual basis. In addition, when certain thresholds are surpassed, the CSO is obliged to have external auditors auditing its financial statements.



Voluntary dissolution and liquidation

1. WHAT IS THE LIQUIDATION PROCEDURE IN CASE OF VOLUNTARY DISSOLUTION OF A CSO?

Association: An association can be wound up voluntarily through an agreement of all the parties. An association may also be wound up involuntarily when its legal term comes to an end, its purpose is fulfilled, it is unable to reach its goals, or by court order. It is important to follow the association's rules and legal requirements during the winding up process.

Foundation: A foundation can be wound up voluntarily at the end of the term for which it was incorporated, at the achievement of the foundation's goal or the unfeasibility of reaching such goal, for a merger, for reasons set out in the foundation's deed of incorporation bylaws, or for any other reason legally set out for other types of entities (e.g. bankruptcy). The Foundations Protectorate may also dissolve a foundation if it finds serious financial mishandling or deviation between the activities and the aim of the foundation.



Additional information



1. CONTACTS OF KEY LOCAL LAWYERS SUPPORTING THE CIVIL SOCIETY ORGANISATIONS

Ozgur Kahale: Ozgur.Kahale@DLAPiper.com (Pro Bono Director for Europe, DLA Piper)

Lamin Khadar: Lamin.Khadar@dentons.com (Pro Bono Manager, Dentons)

2. IS IT POSSIBLE FOR FOREIGN NATIONALS TO DO ANY THE ABOVE THROUGH POWER OF ATTORNEY, WITHOUT BEING PHYSICALLY PRESENT IN THE COUNTRY?

Yes, a special power of attorney can be granted to an attorney who can sign all establishment documents on behalf of the founder (including foreign nationals).

THE NETHERLANDS



Existing forms of civil society organisations & their characteristics

1. WHAT FORMS OF CSOS EXIST? WHAT ARE THEIR MAIN CHARACTERISTICS?

- i. **Foundation** (*stichting*): A foundation is a legal entity, incorporated for a specific purpose, having no members and no share capital.
- ii. **Association**: Membership-based organisational form, established to carry out activities for the general interest, for specific groups or for the interests of its members.

Public benefit status: If at least 90% of the CSO's activities are focused on the public benefit, it can qualify as an "institution for public benefit" ("*algemeen nut beogende instelling*" or "ANBI") and as such benefit from several tax advantages. If the foundation meets the ANBI requirements, it can apply for ANBI status by submitting an application with the Dutch tax authorities. Activities are considered to serve the public benefit if they fall within the scope of the following:

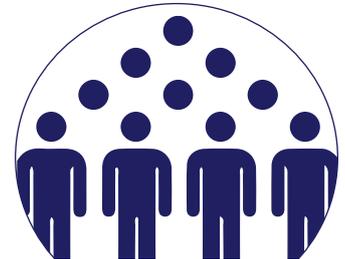
- a. Welfare;
- b. Culture;
- c. Education, science and research;
- d. Protection of nature, the environment, including the encouragement of sustainability;
- e. Healthcare;
- f. Youth and elderly care;
- g. Development cooperation;
- h. Animal welfare;
- i. Religion, ideology and spiritualism;
- j. Promotion of the democratic legal order;
- k. Public housing;
- l. A combination of the above;
- m. Financially supporting of another ANBI foundation.

GENERAL INFORMATION



Capital city:

Amsterdam



Population:

17,133,000

GNI Per Capita*

\$52,200

Australia

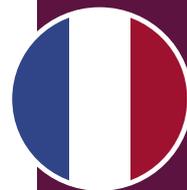
\$39,358

European Union average

\$16,176

World average

*In USD. Source: World Bank (2016)



CSOs with public benefit status are permitted to conduct commercial activities, as long as the foundation does not hoard the proceeds, but uses the profits in accordance with its purpose and within a reasonable term.

To qualify for ANBI status, an association or a foundation must be resident in either the Netherlands, an EU Member State or a country that exchanges tax information with the Netherlands. Whether a CSO is considered resident of a country is in principle determined in accordance with that country's local legislation. From a Dutch tax perspective, a CSO is in principle considered to be resident of the Netherlands if it is effectively managed in the Netherlands. Relevant indicators for the determination of the place of management - inter alia - are:

- The country where the board meetings take place;
- The country where the board members live;
- The country where the administration is prepared;
- The country under which laws the foundation is incorporated.

For Dutch corporate income tax ("CIT") purposes, a Dutch CSO is deemed to be resident of the Netherlands, regardless of its place of effective management.

For a CSO to acquire public benefit status, an application to the ANBI-team of the Dutch tax authorities must be submitted. Together with this application, the organization needs to specify which public benefit it pursues as its object/purpose (stated in the articles of association) and how they will serve this purpose. It can take up to 8 weeks after submitting the request to be granted ANBI status.

2. ARE THERE ANY RESTRICTIONS ON THE PERMISSIBLE GOALS AND ACTIVITIES OF CSOS?

Certain activities may require a license (e.g. activities with regard to building, renovation and environment). Furthermore, with respect to political campaigning or lobbying efforts, certain rules and regulations could apply (for example, municipal regulations relating to public expression if distributing leaflets or hanging up posters).

The purpose of a CSO cannot be the distribution of profits to its incorporators and/or the members of its corporate bodies. Furthermore, the actual activities to be conducted by a CSO must be covered by the objectives listed in the foundation's articles of association.

A CSO can also engage in political activities as long such activities remain within the "public benefit" and the goals of a CSO are almost exclusively dedicated to the public benefit.

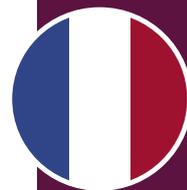
CSOs with public benefit status: A public benefit CSO is an ideological, charitable, cultural or academic CSO that focuses on a qualified public benefit for at least 90% of its activities.

3. WHAT ARE THE KEY CIVIL SOCIETY LAWS?

- Civil Code
- Corporation Tax Act 1969



Requirements on the founders of a civil society group



1. WHAT IS THE MINIMUM NUMBER OF FOUNDERS REQUIRED BY LAW, AND HOW MANY OF THEM MUST BE NATIONAL CITIZENS OR RESIDENTS?

Association: 2; there are no nationality or residency requirements for the founders.

Foundation: 1 person, or even by a last will. There are no nationality or residency requirements for the founders.

2. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FOUNDERS?

There are no specific requirements for the founders except that they must be of legal age (18) or have permission from a parent/guardian.

3. ARE FOREIGN CITIZENS ALLOWED TO SERVE AS FOUNDERS? WHAT KIND OF LEGAL STATUS (PERMANENT, TEMPORARY OR OTHER) DO FOREIGN CITIZENS NEED TO HAVE IN ORDER TO BE ELIGIBLE TO SERVE AS FOUNDERS?

Association: There are no restrictions regarding citizenship or residence.

Foundation: Dutch law imposes no restrictions regarding citizenship or residence requirements of the foundation or its board members. If the foundation conducts activities abroad, it may have to comply with local (tax) legislation in that jurisdiction.

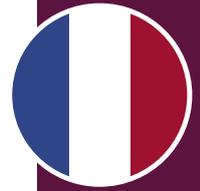
4. ARE THERE ANY PROPERTY OR CASH CONTRIBUTION REQUIREMENTS FOR THE FOUNDERS?

Association: There are no minimum requirements.

Foundation: No minimum amount set by law, however, the absence of assets may lead to the dissolution of the foundation if (1) the assets are insufficient for the realisation of its objective, and (2) it is highly unlikely that sufficient assets will be obtained in the near future from contributions or otherwise.



Registration procedures



1. WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION?

Association + foundation: The national Chamber of Commerce. The official website of the Chamber of Commerce is available at: <https://www.kvk.nl/english/>.

2. WHAT IS THE REGISTRATION FEE?

Association: The fees for the association's registration with the Dutch Trade Register amount to EUR 50.

Foundation: The fees for the foundation's registration with the Dutch Trade Register amount to EUR 50.

When a notary office facilitates the incorporation and also registers the entity (which is almost always the case), registration will be included in the notarial fees.

3. ARE THERE ANY OTHER DIRECT FINANCIAL COSTS OF THE ESTABLISHMENT OF A CSO?

Association + foundation: There can be start-up costs related to the notarial deed of incorporation. As the articles of association (included in the notarial deed of incorporation) need to be drafted in Dutch, additional costs may arise from the translation of the notarial deed.

4. HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

Association + foundation: Several days.

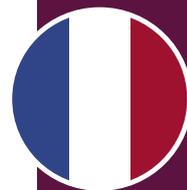
5. WHICH DOCUMENTS ARE REQUIRED FOR REGISTRATION?

Association:

- A notarial deed that includes: (1) statutes, (2) the names and addresses of members of board of directors, with the information confirming their representative power and (3) the names of other persons who are authorized to represent the association.
- Proof of address for board members.

Foundation:

- A notarial deed of incorporation that includes statutes



6. IS ELECTRONIC SUBMISSION POSSIBLE?

Association + foundation: Online registration with the Chamber of Commerce can only be done through a notary. It cannot be done without the assistance of a notary.

7. IS THERE A REQUIREMENT TO HAVE AN OFFICE IN THE COUNTRY? ARE THERE ANY SPECIFIC REQUIREMENTS RELATED TO IT?

Association + foundation: There are no requirements related to maintaining an office, but the CSO must have an address (a post office box is sufficient).

8. ARE THERE ADDITIONAL REQUIREMENTS RELATED TO REGISTRATION?

Association + foundation: If there are founders who are non-Dutch residents, they must provide official proof of their registered address. Such proof of address cannot be older than three months at the time of filing. Proof of address for all board members is also required.

9. ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

Association + foundation: There are several additional requirements related to obtaining public benefit status, as described above, e.g. submitting an application with the Dutch tax authorities.

The draft Law transposing directive EU 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the Fourth Anti-Money Laundering Directive) requires entities to register an “ultimate beneficial owner” (the UBO) with the Trade Register of the Dutch Chamber of Commerce.

10. WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Association + foundation: The Dutch Trade Registry will not register a CSO when (1) the registration is not coming from a person authorized to register that entity, (2) when the registration is against the law or contrary to public policy or accepted principles of morality or (3) when the registration is incomplete or not in line with other data in the Dutch Trade Registry. In practice, the notary handling the incorporation of the entity will ensure that the registration meets the above criteria.



Sources of funding

1. WHAT ARE THE PERMITTED POSSIBLE SOURCES OF FUNDING?

Association + foundation: There is no list of possible sources of funding.

CSOs with public benefit status: They can be funded through donations, inheritances, grants, economic activities and loans. However, proceeds from economic activities must be used for the public benefit within a reasonable term.

2. WHAT ARE THE RESTRICTIONS ON THE POSSIBLE SOURCES OF FUNDING?

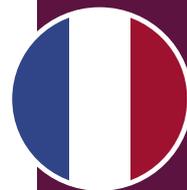
Association + foundation: There are no restrictions on the way CSOs raise funds (e.g. through membership fees, donations, inheritances, grants, economic activities, loans etc.). Nor are there restrictions on the amount of funds they can raise or the number of donors can they have. Donations can be made by both residents and non-residents. The notary handling the incorporation is obligated to ensure compliance with anti-money laundering laws.



Tax treatment of civil society groups

1. HOW ARE CSOS TREATED FOR INCOME TAX PURPOSES?

Association + foundation: CSOs are subject to Dutch corporate income tax ("CIT") to the extent that they carry out economic activities. If a CSO carries out economic activities, it is required to file an annual CIT return. The Dutch CIT rate is 20% for the first EUR 200,000 and 25% over the excess. Losses can be carried back one year and carried forward for nine years. However, CSOs are exempt from CIT if its fiscal profit over the tax year does not exceed EUR 15,000 or if its fiscal profit over that year and the four preceding years together does not exceed EUR 75,000 (losses are taken into account as zero profit).



Gift and inheritance tax

A foundation is liable to pay gift and inheritance tax on gifts/donations and inheritances received from Dutch resident individuals or entities. The gift and inheritance tax is levied on the aggregate amount of donations received from a donor per year at 30% for EUR 2,130 - EUR 122,268 and 40% over the excess. The first EUR 2,129 is exempt from tax. Gifts/donations received from an ANBI foundation are exempt from the gift and inheritance tax.

CSOs with public benefit status: Public benefit CSOs are exempt from gift and inheritance tax on donations, gifts and/or inheritances received.

A public benefit CSO is furthermore entitled to a refund of 50% of the energy tax paid to its energy supplier.

2. WHAT IS THE VAT TREATMENT OF CSOS?

Association + foundation: If a CSO carries out economic activities, it may, depending on its activities, have to charge and remit VAT on its turnover and reclaim the VAT on expenses. VAT returns must be filed on a quarterly or monthly basis. The Dutch VAT rates are 21% (standard rate) 6% and 0% (lower rates).

3. ARE THERE ANY TAX BENEFITS FOR DONORS IN PLACE?

Association + foundation: Donations to public benefit organisations from natural persons are tax deductible if they amount to more than 1% but less than 10% of their gross personal income per year. Donations from legal persons are also tax deductible if the legal persons donates a certain amount annually over at least five years. The threshold is up to 50% of the profits with a maximum of EUR 100,000

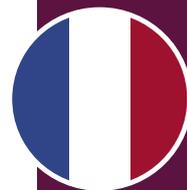


Obligations of a registered civil society group

1. WHAT ARE THE REPORTING REQUIREMENTS OF A REGISTERED CSO?

Association: Associations are required to prepare a balance sheet and a statement of income and expenditures, which must be approved by the association's general meeting. They are not obliged to file the annual accounts with the Trade Register and publish them unless they meet the conditions of a sizeable commercial enterprise (annual turnover of at least EUR 6 million in two consecutive years).

If the association carries out taxable activities or has employees, it must also register with the Dutch tax authorities and file periodic tax returns.



Foundation: If the foundation has an annual turnover of at least EUR 6 million in two consecutive years, it must file annual accounts with the Dutch Trade Register. The accounts filed with the Trade Register are also publicly available.

If the foundation carries out taxable activities or has employees, it must also register with the Dutch tax authorities and file periodic tax returns.

A CSO with **public benefit status** is required to disclose the following information on its website:

- Name of the foundation;
- Tax number (RSIN);
- Contact details;
- Object/purpose of the foundation;
- The policy plan;
- The names and positions of the directors;
- The payment policy with respect to directors, employees and volunteers;
- A report of the activities that have been carried out;
- Financial statements (to be published within six months after the end of the financial year).

When a foundation with public benefit status does not have a website, the Dutch tax authority offers an online portal where foundations are able to file the necessary information.

2. ARE THERE ADDITIONAL OBLIGATIONS OF A REGISTERED CSO?

No.

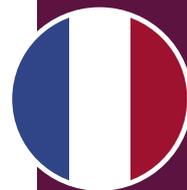


Internal governance of a civil society group

1. WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURE AS PROVIDED BY LAW?

Association:

- General meetings
- Board of directors composed of at least one member (either a natural or legal person), appointed in the deed of incorporation.



Foundation: Management is exercised by the board of directors, composed of at least one member (either a natural or legal person), appointed in the deed of incorporation. The articles of association may create other corporate bodies (e.g. to supervise the board or an advisory board).

When a CSO has public benefit status, at least three board members are required. Board members are not allowed to be remunerated for their management duties.

2. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE GOVERNING BODIES?

Association + foundation: Board members must comply with the integrity requirements (i.e. clean criminal record for the past four years and no record of inciting hate or violence) and may not be remunerated for their board work. Legal entities can also be appointed as members of the board.

3. ARE FOREIGN CITIZENS OR RESIDENTS ALLOWED TO SERVE ON THE BOARD?

Association: Yes. There are no residency or citizenship requirements.

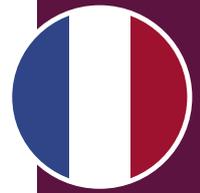
Foundation: Yes. Dutch law imposes no restrictions regarding citizenship or residence requirements of the foundation or its board members.

4. ARE FOUNDERS AND MEMBERS FINANCIALLY LIABLE BY LAW?

Association + foundation: Each board member is responsible for the proper execution of his/her own duties. According to the jurisprudence of the Supreme Court, members of the board of directors can only be held liable for damage caused in case of serious (culpable) negligence.

The general rule under Dutch law is that a managing director acting on behalf of a company, such as a foundation or a private limited liability company, is not liable for the obligations arising from its acts. The Dutch Civil Code however contains several mandatory provisions pursuant to which a managing director of a company can be held personally liable. In Dutch case law it has been decided that the managing director will be liable if he can be substantially blamed due to a shortcoming in his/her performance.

Furthermore, a managing director may be held personally liable towards third parties for wrongful acts which are imputable to him/her personally. Tort liability exists for the damage caused by a wrongful act, i.e. the company's unfulfilled obligations. Wrongful acts can include the rash acceptance of obligations on behalf of the company, wrongfully creating the appearance of creditworthiness to third parties or impeding the company in fulfilling its obligations towards the creditors.



Staff and members of the organisation

1. ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR STAFF AND MEMBERS OF A CSO?

Key members must meet the integrity criteria as described above (please see question “*Are there any eligibility requirements for members of the governing bodies?*”) in order for the entity to qualify as a CSO for public benefit.

2. IS THERE A REQUIREMENT TO HAVE A FULL-TIME EMPLOYEE?

No.

3. IS THERE A REQUIREMENT TO HAVE AN ACCOUNTANT?

Unless the entity meets the criteria for a sizable commercial enterprise, there is no need for an accountant to check financial documents.

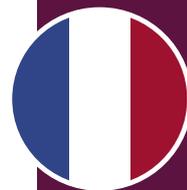


Voluntary dissolution and liquidation

1. WHAT IS THE LIQUIDATION PROCEDURE IN CASE OF VOLUNTARY DISSOLUTION OF A CSO?

Association + foundation: The board of directors for foundations or general meeting for associations must resolve to liquidate the CSO through the adoption of a board/general meeting resolution. It is also possible to determine in the articles of association that a CSO is dissolved upon the occurrence of a specific event (e.g. a CSO having achieved its purpose). In the event of a CSO’s dissolution, the directors automatically become liquidators. If the CSO has no directors present, the court may appoint one or more (external) liquidators. This resolution must be filed with the Dutch Trade Register and the liquidation must be announced in a Dutch national newspaper.

After a two month waiting period, the CSO’s assets and liabilities can be settled. The surplus must be distributed in accordance with the purpose or destination that is laid down in the articles of association. Upon settlement, the CSO will be resolved and



removed from the Trade Register. The CSO's books and records must be maintained for a period of seven years.

An ANBI CSO is required by law to distribute the liquidation proceeds to another ANBI foundation or a non-resident public benefit institution with a similar purpose.

The Dutch tax authorities must be notified of the CSO's liquidation in order to deactivate the applicable tax filings (CIT, wage tax, VAT).



Additional information

1. CONTACTS OF KEY LOCAL LAWYERS SUPPORTING THE CIVIL SOCIETY ORGANISATIONS

Ozgur Kahale: Ozgur.Kahale@DLAPiper.com (Pro Bono Director for Europe, DLA Piper)

Lamin Khadar: Lamin.Khadar@dentons.com (Pro Bono Manager, Dentons)

2. IS IT POSSIBLE FOR FOREIGN NATIONALS TO DO ANY THE ABOVE THROUGH POWER OF ATTORNEY, WITHOUT BEING PHYSICALLY PRESENT IN THE COUNTRY?

This is possible, although the power of attorney must be notarized by a Dutch notary or be apostilled. Also, the notary that facilitates the incorporation shall ensure that the incorporation meets the requirements of the anti-money laundering laws and will do more research in this regard.

