

Law No. 122-05 on regulation and promotion of Non-Profit Organization

I. INTRODUCTION

This Executive Summary recounts the Law No. 122-05 on the Regulation and Promotion of Nonprofit Organizations (hereinafter, the "Law 122-05) which revokes and replaces the Executive Order No. 520 dated as of July 26, 1920, as well as any other provision contrary to what is contained in such law.

This summary is aimed at being an informative tool for the business community and the general public and as such, it addresses the most relevant aspects of Law 122-05. Non-profit institutions are very important for the strengthening and development of a pluralistic civil society, democratic and participatory, to facilitate the realization of the objectives concerning the public interest or the benefit to society as a whole.

II. BACKGROUND

One of the main obligations of the Government is the care of people with minimum economic resources in order to meet their basic needs, and in the fight against poverty. Understanding that to fulfill these tasks, the Government needs in addition to financial resources, the support from civil society organizations that may help maximize its initiatives they might have.

As detailed before the importance of the nonprofit organizations playing a major role in our society, with this Law 122-05, provision of mechanisms to enable said institutions in order to coordinate their activities with the Government and to develop an support them, are established .

Before the proclamation of the Law 122-05, incentives and benefits that the Government had established for non-profit associations or to those who supported them, through donations, was not sufficient. In addition, the tax treat-

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ment of such organizations was very fragile and it not had a sufficient legal support, since in how it was scattered in different local laws.

Over the years, the growth of nonprofit organizations increased considerably in the Dominican Republic (hereinafter, the "DR") and the available national budget resources were considerable. With a demanding of a more efficient regulation and monitoring of the activities that these entities performed, to rule that appeared the Executive Order No. 520, dated as July 26, 1920.

In that sense, it is of great interest to the Dominican State to encourage the creation, organization, operation and integration of nonprofit institutions, arising from the exercise of constitutional rights to free association, through a comprehensive legal framework to enable them to become legally incorporated and establish their self-regulatory mechanisms. Based on these principles and needs, the Government ratified Law 122-05 on the Regulation and Promotion of Nonprofit Associations in 2005.

III. CHARACTERISTICS

A nonprofit institution must have the following characteristics, namely:

- a)** An agreement between five or more persons or entities;
- b)** The purpose of developing or undertaking activities of social wellbeing or public interest;
- c)** Its activities must have lawful purposes, and,
- d)** They must not have the purpose or objective to obtain monetary or tangible benefits in cash to distribute among its members.

IV. CLASSIFICATION

The nonprofit association is classified as follows:

- a)** Associations of public benefit or service to third parties, whose activities are designed to provide basic services for the benefit of society or this set of segments;
- b)** Mutual benefit associations, whose activities are the primary mission promotion of development activities and rights of membership;
- c)** Private partnerships, which carry out their activities to the nature of both sectors, public benefit and mutual benefit; and
- d)** Interassociative Body of nonprofit associations, within this classification we have: consortia, networks and / or any other name of organization or multi-sectorial, comprising non-profit associations.

Nevertheless, within the Public Benefit Institutions or Third Party Services Institutions and without limitation and without precluding the provision of any other service, there are:

- a)** Social Welfare Organizations;
- b)** Community Development Organizations;
- c)** Economic Development Organizations;
- d)** Technical Assistance Organizations;
- e)** Citizens Education Organizations;
- f)** Organizations that Support Vulnerable Groups;
- g)** Research and Broadcasting Organizations, and,
- h)** Civic Participation Organizations and Defense of Human Rights Organizations.

On the other hand, as Mutual Benefit Associations, which promote activities for development and defense of their members, they are:

- a) Professional Associations;
- b) Business Organizations;
- c) Recreational Clubs;
- d) Religious organizations; and,
- e) Mutual Foundations and Associations.

Mixed Partnerships – They undertake activities of public and mutual benefit.

Interrelating Bodies of Nonprofit Organizations - These require the involvement of three or more non-profit associations legally incorporated. They are joint partnerships formed to improve the performance of the social purposes, and promote the public policies that assist in the development of their members.

V. INCORPORATION REGISTRY

In order to obtain a registration of incorporation for a nonprofit organization, the President of the association, through a formal request, must submit to the Attorney General's Office of the judicial department of Santo Domingo, or the States Attorney's Office of the Court of Appeals of the appropriate area (if the association will be located outside the Santo Domingo area), the following documents:

- a) Minutes of the Incorporating Meeting;
- b) Bylaws;
- c) List of members with their corresponding general information (name, nationality, profession, marital status, number of identity card or passport, and address);
- d) Mission and purpose of the organization;

e) Geographical area where its work shall be performed;

f) Registered address of the Organization, and,

g) A certification of the Ministry of Industry and Commerce, Department of Trade Names and Trade Marks, authorizing the use of its name.

The Attorney General's Office or the State Attorney's Office of the Court of Appeals must decide on such request within sixty (60) days of its submission. If no reply is received within that time, the interested parties may request the Attorney General's Office or the State Attorney's Office of the Court of Appeals to issue the incorporation registration within another fifteen (15) days. If this is not done, the nonprofit organization is deemed automatically registered.

The Attorney General's Office must keep a national registry of all nonprofit organizations in the country.

However, all associations established by virtue of the laws of any foreign nation not concerning a pecuniary benefit, before settling in the Dominican Republic shall meet in front of the Attorney General's Office to the Department of Santo Domingo or Judicial the Attorney General of the Court of Appeals for other certain requirements.

Nonetheless, religious institutions that are part of the Catholic Church, whether national or foreign, in addition to complying with all requirements of this Act, shall be authorized formally by the ecclesiastical authorities of that State.

In the event that a foreign organization wants to stop working in the Dominican Republic

shall address a request to that effect, signed jointly by its president and secretary, to the Attorney General's Office or the Attorney General of the Court of Appeal. It will be accompanied by a copy of the national newspaper published, so that the Attorney General's Office or the Attorney General of the Court of Appeal will allow the cessation of the organization thirty (30) days after from the date of the said publication and until any pending legal action against such organization has been completed. The authorization shall cease to be subject to the same measures of advertising established in this law for the registration of incorporation.

VI. BYLAWS

The Bylaws of non-profit associations must contain the following:

- a) Name;
- b) Address;
- c) Mission and Purpose;
- d) Governing Bodies;
- e) Membership requirements and provisions on loss of membership;
- f) Rights and Duties of the members;
- g) Conditions and procedures for calling meetings of its members and its corresponding regulations;
- h) A statement giving the director, manager or president the capacity to request its incorporation;
- i) The statutory quorum for meetings, for both general meetings of members and board meetings, as well as the number of members that, in each case, have majority to decide;

j) Designation of the officer authorized to represent the organization in court and to sign on its behalf all types of contracts;

k) The term of the organization or an indication that it is indefinite;

l) The rules governing equal rights among the members, without distinction of sex or age;

m) Term of office of elected officers, renewal, re-appointment or reelection of directors; and,

n) Rules that promote participatory democracy, and the adequate and transparent use of resources by the officers of the organization.

VII. PUBLICITY REQUIREMENTS

The publicity formalities established pursuant to Executive Order No. 520, were not repealed, and are still followed pursuant to this Law 122-05. Within one month of obtaining the registration of incorporation, in order for such registration to take effect, and the organization be considered a legal person, the applicant must:

1) File with the Secretariat of the Civil and Commercial Chamber of the First Instance Court and of the Peace Court, the following: (i) Certified copies of the incorporation registration; (ii) Original of the incorporation registration; (iii) A copy of the Bylaws, and, (iv) Other incorporation documents.

2) Publish, in a newspaper of national circulation, a summary of the incorporating documents, which must contain: (i) Name and address of the organization; (ii) Indication of the purpose to which it is dedicated; (iii) Names of founding members; (iv) Officers who, pursuant to the Bylaws, represent it before third parties; (v) Duration of the organization, and, (vi) Number of officers in the Board.

The publication of this summary shall be proven by a copy of the newspaper, authenticated by the chairman of the Board of such institution and registered within three (3) months from its date of publication.

VIII. FOREIGN NONPROFIT ORGANIZATIONS

This chapter of Law 122-05 describes one of the most important differences and innovations this Law achieved, with regard to Executive No. 520, as it regulates the registration and operation of foreign nonprofit organizations.

In this sense, before operating in the Dominican Republic, a foreign nonprofit organization must comply with the following requirements before the Attorney General's Office or the State Attorney's Office of the Court of Appeals:

- 1) File a true copy in Spanish of the document whereby incorporation was granted to the entity by a foreign government and all amendments of the organization that may have been completed up to the date of filling of the corresponding request;
- 2) Submit a report signed by its president and secretary and approved by the Board that shows:
 - a) The name or title by which this organization shall be known by law;
 - b) The location in the Dominican Republic where the main offices are going to be;
 - c) An inventory of all the assets justly valued;
 - d) Its accounts of assets and liabilities and, if payment of any of the latter is guaranteed, how and what property has been placed as security;

e) The names of its officers and members of the board and the term of their respective offices;

f) Summary of the activities and programs undertaken abroad during the three (3) years preceding this request;

3) An authentic document signed by the president and the secretary, indicating that the organization has consented to be sued in the courts of the Dominican Republic. This document must indicate a representative who can be notified in case of any judicial claim. The address of the representative will be the same place where the registered offices of the organization are located.

4) The written and authentic consent of the person acting as representative of the organization, and,

5) Description of links or relationships with governments, foreign public institutions, international organizations, foreign private or nonprofit institutions.

When such requirements have been completed and the required documents have been submitted to the Attorney General's Office or the State Attorney's Office of the Court of Appeals, it will issue a resolution authorizing the foreign association to operate in the Dominican Republic. In this case, the same publicity requirements applicable to local organizations shall also apply to foreign institutions.

IX. QUALIFICATION

Qualification is mandatory for all nonprofit organizations that:

- a) Receive or wish to receive State funds or from any governmental institution;

b) Develop programs for public benefit or service to others (interrelating and mixed associations or bodies) and,

c) Work in areas in which qualification is a requisite to obtain a permit to operate.

The appropriate State Ministry or state agency shall have the power to determine the internal structure that will be in charge of awarding the qualification and to prepare the applicable regulations for this specific function. At the same time, such agency must ensure that the services rendered by duly qualified organizations continue to meet the minimum conditions established for such purposes.

Non-profit associations providing services to various sectors must obtain qualification from each and every State Ministry or corresponding state agency.

When a nonprofit organization has failed to meet the minimum conditions provided by the state agency in charge, the representative of the organization will be given forty five (45) days to rectify the situation. Failure to comply with this requirement shall entail revocation of the qualification.

The end result of the qualification process must be sent to the National Center for Development and Promotion of Nonprofit Organizations where it shall be recorded and taken as the essential criteria for the allocation of public funds and for granting a state guarantee in the case of international cooperation funds.

X. NATIONAL CENTER FOR DEVELOPMENT AND PROMOTION OF NONPROFIT ORGANIZATIONS

The National Center for Development and Promotion of Nonprofit Organizations (here-

after "the Center") is intended to encourage the participation of nonprofit institutions in managing development programs.

The Center is affiliated to the Technical Secretary of the Presidency, and coordinated through the National Planning Office (ONAPLAN).

INTEGRATING MEMBERS

- President:
- Technical Secretary of the Presidency;
- Executive Secretariat: - National Planning Office;
- First Vice Presidency:
- National Budget Bureau;
- Second Vice Presidency:
- Private Sector Representatives;
- Secretary:
- Private Sector Representatives;
- Six (6) Members: Three (3) from the Public and Three (3) from the Private Sectors;
- One (1) Representative of the Attorney General's Office;
- One (1) Representative of the Office of Administration and Personnel (ONAP);
- One (1) representative of the General Comptroller's Office (ad-hoc member);
- Five (5) Members from the Civil Society, and, Representatives of nonprofit associations, will be elected every two years through a process of nomination from all registered organizations called by the Center through its National Registry. Those having the support of the most non-profit organizations and meet the requirements will be selected.

The Center shall have the following responsibilities:

- 1) Validate the classification of each non-profit organization, established in their respective incorporations;
- 2) Record the information of the nonprofit associations in the National Registry of Qualification of the Center, based on the registration of incorporation and the registration for qualification of the State Secretaries or other governmental institution under the terms of this Law;
- 3) Contribute to the dissemination of information on the activities and contributions of these associations and the channeling of resources;
- 4) Recommend to the Executive Power, their inclusion in the Annual Budget based on the Public Expenditure Law of the Nation, in accordance with the procedure of application for funding through service contracts, management agreements, support for programs and projects of the nonprofit associations that meet the following requirements:
 - a) Be registered in the Registry for Qualification of Nonprofit Organizations created by this Law, obtaining an identification code number;
 - b) Develop activities in areas declared as priorities by the government such as health, education, environment, housing, sanitation, food, gender, strengthening democratic participation in society, employment and income generation and other areas of priority;
 - c) Present reports on their activities (history), general programs of the institution, business plans and budget for the year requested, identifying sources of funding (Dominican government and other sources). These associations

must submit audited financial statements in the cases where the funding requested exceeds certain thresholds to be determined by the Center;

- d) The contributions of the Dominican government through contracts for services, management agreements, support for programs and projects of the nonprofit organization, may only exceptionally cover administrative costs, and in such case, only up to twenty percent (20%) of the total amount awarded.
- 5) Promote information services, studies, among others, about the contributions of these associations to public policy.

XI. CONTROL MECHANISMS

Any non-profit organization incorporated in accordance with this Law shall:

- a) Keep records, by manual or electronic means, in which the names, last names, occupation and address of individual members shall be recorded;
- b) Keep an inventory, by manual or electronic means, in which all movable assets and real estate properties owned by the organization shall be recorded;
- c) Keep organized accounting records in which all revenues and expenditures of the entity shall be recorded, with accurate indication of the origin of the revenues and the investment of the expenditures, as well as the follow up of such investments;
- d) Keep a record, by manual or electronic means, of the description of its activities and programs, including its international relations;
- e) The Presidency or management of every incorporated organization or its board, shall sub-

mit annually to the ordinary general assembly of members, a detailed report of their work, accompanied by the financial statements detailing the revenues and expenditures occurring during the year;

f) Any association which owns or acquires real or personal property shall furnish to the Internal Revenue Department, through the annual forms prescribed by the regulations, the information required in them, and,

g) Additionally, no income tax deduction is allowed for donations that are made to an association in any calendar year, unless the association is up to date in submitting its annual report by sworn statement before the Internal Revenue Department.

This Law establishes the coercive mechanisms applicable to those associations that do not comply with the purposes for which they were created and do not fulfill the obligations set forth therein. In that sense, the violation of these requirements will result in the loss of the benefits provided, until the association conforms but it may retain its legal personality in the meantime. If said requirements are not fulfilled for three (3) consecutive years, the association will automatically lose its legal status.

XIII. PUBLIC POLICIES

The Dominican State must promote nonprofit associations, within their respective powers, by:

a) The promotion of citizen participation in the formulation, monitoring, implementation and evaluation of social development policies and policies on gender and equality;

b) Supporting the activities of the associations reported by this law;

c) The establishment of instruments and support measures and incentives in favor of these associations;

d) Strengthening coordination mechanisms, coordination, participation, democracy and consultation of the associations identified;

e) The definition of a state agency responsible for relations with these institutions, within each government agency;

f) Establishing qualification rules for obtaining financing from the State, according to sectors and specific actions to which these associations render their services. For this purpose, the competent government bodies shall set up joint committees of qualification in a decentralized manner, within the State Ministry, comprising representatives of relevant government agencies and representatives of recognized institutions in this sector.

Correspondingly, the Dominican State shall promote the development of nonprofit associations through policies which ensure:

Autonomy: The State shall guarantee through complementary regulations to this law the free development and autonomy of the nonprofit associations.

Equal Rights: The State shall ensure by regulation that nonprofit associations are granted all powers and privileges granted to other legal entities and that no restrictions will be introduced that may be discriminatory or establish additional requirements applicable to these entities in public biddings.

Applicable Law: Nonprofit organizations are governed by the provisions of this Law 122-05 and in a supplementary manner, by the rules applicable to its nature.

Transparency: The State shall promote and encourage dialogue processes, design, updat-

ing and adopting self-regulatory rules, code of ethics or conduct, for nonprofit associations, from the facts and circumstances thereof, to ensure credibility, transparency and rational use of public resources.

XIII. FISCAL REGIME

Nonprofit associations legally incorporated and authorized to operate in the country, shall enjoy a general exemption from all taxes, duties, fees, special contributions, whether national or municipal, existing or future. Similarly, they shall be exempt from any tax levied on donations and bequests, when they qualify to receive such donations from individual persons of legal entities, local or foreign, multilateral organizations of governments.

However, nonprofit organizations may not be eligible for such exemptions if they are not following up with the following formal duties:

a) Be registered and recorded in the registries prepared to register nonprofit organizations. The identification number of the registration given by the Internal Revenue Department must be printed on documents and checks from the nonprofit associations;

b) Have submitted the annual sworn declaration before the Internal Revenue Department, in the manner dictated by the regulations provided for such purposes, containing the information they are required to submit, such as:

- 1) Gross earnings for the year;
- 2) Expenses incurred in the year;
- 3) Disbursements made during the year;
- 4) A balance sheet evidencing the assets, liabilities and income at the beginning and end of each financial year;

5) The total amount of contributions received during the year, with names and addresses of the donors, in addition to data on bank deposits in the event that donations are in cash and inventory in case they are asset donations;

6) Reports concerning movements of the bank accounts of any kind;

7) The names and addresses of those in leadership, management and key positions;

8) The compensation and any other payments made to personnel, management and senior management;

9) Any other information necessary for the purpose of giving effect to this Law 122-05 and the tax laws and other laws related to nonprofit organizations;

10) An international report on donations received by the association, which must contain the information of the donor, the donation amount and programs or projects they finance these funds.

XIV. DISSOLUTION

An incorporated association may be dissolved by the decision of three-fourths (3 / 4) of its members or by having reached it's the end of its term. In this case, one or more of its members shall be appointed to proceed with liquidating the entity, and by majority decisions the members must decide to which other nonprofit organization all remaining assets shall be donated, after liquidating all debts and liabilities.

Failing an agreement with respect to which nonprofit shall receive the assets, the Dominican Government shall become owner of the dissolved entity's estate and shall have a pub-

lic contest to decide among the nonprofit organizations of the same nature, to which such assets will be assigned.

Documents relating to the dissolution shall be deposited before the Attorney General's Office or the State Attorney's Office of the Court of Appeals for verification and authorization, for purposes of proceeding with the same publicity requirements established at the moment of incorporation.

If it is found that an association is dedicated to illicit purposes, the Attorney General's Office, after investigation, may request the executive power to dissolve such entity and the cancellation of its registration of incorporation or establishment of domicile in the Dominican Republic (in case it is foreign).

XV. TRANSITIONAL PROVISIONS

The nonprofit associations that are offering services prior to the enactment of this Law, shall have a period of two (2) years from the enactment of the specific rules of the corresponding State Ministry or another state agency in the sector concerned, to apply for qualification and meet the minimum requirements established.

The nonprofit associations that are duly qualified by the National Monitoring Council of Nonprofit Associations (CONASAFIL), prior to the enactment of this Law, and its related regulations, prove that they meet the conditions imposed by these regulations, to complete their registration in the national registry of nonprofit associations.

The nonprofit associations to complete the process in accordance with the provisions of this Law shall be eligible to receive public funds from the Annual Budget from the Public Expenditure Law through service contracts, management agreements, support for programs and projects. For organizations receiving grants at the time of entry into force of specific regulations on this subject, and which prolonging the qualification process for more than the two (2) years set out in this article, for each additional year that comes to pass, an additional forty percent (40 %) shall be reduced from the grant.

Is important to add that by Decree No. 40-08 from the Executive Branch, is established the Regulation which implements Law 122-05. The provisions of this regulation are intended to make requirements for the implementation of the Law 122-05 on Regulation and Promotion of Non-Profit Associations Profit in the Dominican Republic, in order to realize the principles and standards of legal, organizational and procedural that facilitates their implementation by the agencies and institutions public and compliance by individuals and legal concerned. The field of application of this regulation, It is governed by Law 122-05 and the provisions of this Regulation all associations formed voluntarily by people or entities, with a view to achieving a goal of interest common or general nonprofit. Not applying to political parties, institutions regulated by special laws nor the Catholic Church. Also, it excludes property communities and owners and cooperatives, unions or companies.

