



# Registering a Non-Profit Organisation in the Democratic Republic of Congo: The Law and the process

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**NGO, NPO, Foundations and others are required to be registered in the DRC to exercise their duties. What is the process?**

## 1. Definition of ASBL

Congolese law defines a non-profit association as one which does not engage in industrial or commercial operations, except on an ancillary basis, and which does not seek to provide its members with material gain.

By its nature, the non-profit association is apolitical (article 1 of the Law n° 004 of July 20, 2001 laying down provisions applicable to non-profit associations and public utility establishments).

Thus, what characterizes the non-profit association is the fact that its activity does not aim at the realization of a material profit for its members, even when it would aim at the defense of economic interests (example: the case of chambers of commerce). Moreover, it is outside the political sphere; what distinguishes it from political parties.

## 2. Categories of Non-Profit Organisations under Congolese law

### 2.1. *Depending on its nature and purpose, the non-profit association can be either:*

1. A cultural, social, educational or economic association;
2. a non-governmental organization NGO, in acronym;
3. a denominational association.

### 2.2. *Depending on where its head office is located, an NGO can be either :*

- under Congolese law, if its head office is located in the DRC;
- under foreign law when its registered office is established abroad. (*Article 29 of Law No. 004 of July 20, 2001 on provisions applicable to non-profit associations and public utility establishments*).

### 2.3. *Finally, depending on the aim pursued and the field of activity in which they operate, non-profit organizations can be classified into:*

1. **Socio-professional unions:** Organization of employers or workers, or of people in corporations to defend their profession;
2. **Mutual associations:** Managed by their members and aiming to protect against illness, death and old age.
3. **"Cultural" clubs and associations:** Which bring people together according to the centers of interest they have in common (ethnic origins, youth, sport, leisure, etc.);
4. **Cooperatives:** These are cooperatives created in rural areas and on the initiative of NGOs (not to be confused with cooperative societies which are governed by the legislation on commercial companies). These cooperatives must work according to the statutes of the NGOs which created them and of which they are only one activity.
5. **NGOs (Non-Governmental Organizations):** These are a response of private initiatives to make up for the shortcomings of official structures in the vital areas of the population, the aim being to contribute to the development of local communities;
6. **Confessional associations (Churches):** Allow the exercise of worship in respect of public order and good morals

### 3. General rules for the constitution of NGOs

The constitution of an NGO requires several steps which can be summarized in two points: ***the drafting of statutes*** and ***the obtaining of legal personality***.

#### 3.1. *Drafting of statutes*

The first step in setting up an NGO is to draft the articles of association. Also called "constitutive act", the articles of association contain clauses on which the founders agree and which determine their rights and obligations. It should be noted, however, that the statutes of the ASBL may not contain any provision contrary to law, morality or public order. However, they must mention:

- *the name followed or preceded by the words "non-profit association", in the abbreviation "ASBL";*
- *the seat of the association; it must be established on the territory of the DRC;*
- *the purpose of the association;*
- *the province or provinces where the association will operate;*
- *the various categories of members;*
- *the conditions of membership, exit or exclusion of members;*
- *the organization of the administration or the direction of the association, the mode of appointment and dismissal of the persons in charge of this administration, the duration of their mandate and the extent of their power, the way in which the association is represented towards third parties;*
- *the method of drawing up the annual accounts;*

- *the rules to be followed for the modification of the statutes;*
- *the allocation of assets in the event of dissolution of the association.*

The statutes are signed by the founding members who are full members of the association by right. The number of effective members cannot be less than seven (article 6 of law n° 004/2001 of July 20, 2001 on general provisions applicable to non-profit associations and public utility establishments).

According to the law, the statutes must be drawn up in writing and notarized (paragraph 3 of article 4 of the law). They are opposable to third parties only from their publication in the official journal of the DRC. This publication is made by the Ministry of Justice within forty-five days (article 9).

### **3.2. Obtaining legal personality.**

#### **To operate legally in the DRC, an NGO must have legal personality.**

The granting of legal personality to NGOs is subject to a procedure provided for by Law No. 004/2001 of 20 July 2001 referred to above. Under the terms of this law, legal personality is **granted by the Minister of Justice after a favourable opinion from the minister responsible for the sector of activity** in question (Article 3). Pending the obtaining of legal personality, the favourable opinion of the minister having in his attributions the concerned sector of activities is worth provisional authorization of operation.

#### **As regards non-profit associations registered in the provinces, provisional authorization is granted by the provincial governor.**

The provisional authorization is valid for six months. After this period, legal personality is supposed to be granted. In this case, the Minister of Justice is required to issue the order granting legal personality within one month (Article 5). In practice, the file to be presented by the applicants for obtaining legal personality must include the following elements:

- *Two copies of the request to obtain legal personality addressed to His Excellency the Minister of Justice to be submitted to the Department of Cults and Associations of the Ministry of Justice and Human Rights;*
- *Statutes in accordance with Law No. 004 of July 20, 2001 on provisions applicable to non-profit associations and public utility establishments, duly signed by all the members responsible for the administration or management of the ASBL;*
- *Annex I: the declarative list of effective members of the ASBL/NGO composed of two headings: Name, post name and addresses. This list is signed by the members responsible for administration or management only;*
- *Appendix II: the declaration of appointment of the effective members in charge of administration or management composed of four headings: Names, profession, address, functions within the ASBL/NGO. This declaration is signed by the majority of effective members;*

- *Annex III: the declaration relating to the resources of the ASBL NGO listing all the sources of income, signed by all the full members responsible for the administration or management of the ASBL/NGO;*
- *The Certificates of Good Conduct, Life and Morals of all effective members responsible for the administration or management of the ASBL/NGO or Public Utility Establishment. These certificates cannot be older than six months;*
- *Payment of fees for the benefit of the Public Treasury;*
- *The favorable opinion of the ministry of the sector of activity of the non-denominational ASBL*
- *The survey of the viability of the headquarters;*
- *Produce two (2) copies of the complete file (originals and copy or photocopy) consisting of all the elements mentioned above;*

#### **4. Regime of foreign non-profit associations**

Within the meaning of Law No. 004/2001 of July 20, 2001, ***a non-profit organization that has its headquarters abroad is considered foreign. No foreign association may carry out its activities in the DRC without authorization from the President of the Republic given by ordinance on the proposal of the Minister of Justice.***

Depending on whether it is of an economic, cultural, educational or social nature, the foreign association requires prior approval and registration with the ministry responsible for the sector of activity. In the event of a favorable opinion, the request for authorization is sent to the Minister of Justice. To be admissible, the request for authorization must comply with the provisions of article 4 of the law on non-profit organizations. It should be recalled that this article 4 indicates the conditions required for obtaining legal personality.