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## SOME RELEVANT ASPECTS OF THE NEW NGO LAW

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The new *Law on the Inspection, Regularization, Performance, and Financing of Non-Governmental Organizations and Non-Profit Social Organizations* (NGO Law) was published in the Official Gazette No. 6,855 extraordinary on November 15, 2024.

These are some of its most relevant aspects:

### 1. PURPOSE AND SCOPE OF APPLICATION

The purpose of this Law is to establish the system for the establishment, registration, operation and financing of non-governmental organizations and non-profit social organizations, as associative forms aimed at the co-responsible participation of society.

The Law will be applied to private NGOs that have been constituted or exercise their activities in Venezuela. NGOs whose constitution and operation are governed by special laws, due to the nature of their purpose, are excluded from its application, for example: trade unions, political parties, professional associations, among others.

The provisions of this Law are of public order, they will apply regardless of any provision established contractually or privately. If there are doubts as to its interpretation, the one that most favors the exercise of the right to association will be adopted.

### 2. DEFINITIONS OF NON-GOVERNMENTAL ORGANIZATIONS AND NON-PROFIT SOCIAL ORGANIZATIONS (NGOS)

Article 5 of the Law defines NGOs as any group of people, regardless of their name, of a private nature, constituted for a charitable, social, altruistic, humanitarian, artistic, community, cultural, educational, sports, environmental or similar purpose, whose purpose is not aimed at obtaining economic advantage or for partisan political purposes.

From this definition, several important characteristics can be highlighted that can help to understand the provisions of the Law that are most relevant: it is a group of persons and when they obtain legal personality, they are understood as persons under private law.

The purpose of these associations must not be intended to have an economic advantage or to have a partisan political purpose. This is a key point to determine some effects of the Law.

However, the Law is broad as to the purposes that these associations can pursue, and it is not clear which ones this Law does apply to and which it does not.

### **3. CONSTITUTION OF NGOS**

NGOs may be constituted under any legal modality or denomination. However, in order to obtain legal personality, they may only be constituted as associations, corporations, civil societies or lawful foundations of a private nature, as provided for in the Civil Code.

The competent body for granting legal personality and for registering acts related to its operation is the Autonomous Service of Registries and Notaries (SAREN).

At the time of incorporation, NGOs must indicate in their articles of incorporation, among other things: territorial scope of the organization, the regime of membership and exclusion of the members and/or, their rights and obligations, the organization, internal structure and attributions, the assets and regime of administration of resources, inventory of assets and the disciplinary regime.

One of the most relevant obligations in the constitution is that it must be reflected if the financing is made through foreign natural or legal persons.

### **4. RECORDS ESTABLISHED BY LAW**

The Act establishes two registers for NGOs, the Register of National NGOs and the Register of Foreign NGOs, which have not yet been incorporated.

With regard to the Register of National NGOs, the Ministry of People's Power with competence in matters of Justice must establish it and issue the administrative acts for its regulation.

This Registry shall contain a systematized and updated entry of information relating to the constitution, operation, financing, and modification of these organizations.

The Law establishes that foreign NGOs that carry out activities in Venezuela must register with the Registry of Non-Domiciled Organizations of the Ministry of Power with competence in matters of Foreign Affairs. This Ministry will issue the rules that regulate the organization and operation of the aforementioned Registry.

The same provisions as national NGOs will apply to them, as regards their rights, duties and prohibitions. They will also be subject to the supervision and control mechanisms implemented by the National Executive, according to the law. As for the foreigners who are members of these NGOs domiciled abroad, they will be subject, in addition to the provisions of this Law, to the duties and prohibitions established in the immigration laws.

As both registers have not been established, associations cannot register or comply with this obligation. Therefore, there is no risk that there will be a sanction for non-compliance.

In addition, the Law states that all NGOs, regardless of their local or foreign nature, must have their Tax Information Registry (RIF). In addition, if you are an employer, in compliance

with labor legislation, you must register in the corresponding labor registries and entities, such as the IVSS, INCES and others.

## **5. NGO DUTIES AND PROHIBITIONS**

The Law establishes several duties. Here are some of the most important ones:

- Notify SAREN of the financing or donations that will be received in order to ensure the legality of the funds, and compliance with the provisions of this law
- Be accountable to its members at least once a year. The obligation of managers to render accounts shall be fulfilled with respect to the period of their functions even when they have ended.

With regard to some of the prohibitions, NGOs may not receive financial contributions to organizations with political purposes or make financial contributions to such organizations, as well as receive contributions for the financing of terrorist acts or commit terrorist acts.

Likewise, they may not promote fascism, intolerance or hatred on racial, ethnic, religious, political, social, ideological, gender, sexual orientation, gender identity, gender expression or any other nature that constitutes incitement to discrimination and violence.

## **6. DISSOLUTION OF NGOS AND PREVENTIVE MEASURES**

There are 4 grounds for dissolution:

- Those established in the organization's bylaws.
- The end of the period established in its statutes.
- Incurring in the prohibitions established in the Law, declared by judicial decision.
- Failure to pay any fine imposed in accordance with this Law, after exhausting available judicial remedies.

The judicial dissolution shall be decided by the Courts of First Instance with jurisdiction in civil matters and shall be substantiated by the brief procedure of the Code of Civil Procedure.

In the event that there are sufficient grounds to consider that any of the prohibitions established in the Law have been incurred, the Ministry of People's Power with competence in matters of Justice may preventively agree, by means of a reasoned act, to suspend the operation of the non-governmental organization and non-profit social organization.

The Ministry must notify the competent courts within fifteen days so that they can rule on the admissibility of the measure and its continuity. If the measure is appropriate, the NGO will be subject to the corresponding judicial process of dissolution. If the notification is not made within the period established in this article, the agreed preventive measure will lapse.

## **7. OBLIGATION TO DECLARE**

All NGOs, once constituted and obtained their legal personality, must declare for registration purposes, before the Public Registry office corresponding to their domicile, the following acts:

- Annual update of the inventory of the organization's assets, with express determination of their sources.
- Balance sheets, financial statements and books that must be maintained in accordance with the legislation.
- List of donations received with full identification of the donors, indicating whether they are national or foreign, accidental or permanent.
- Amendments to the Articles of Association.
- Appointments and/or dismissals of members, associates, administrators, liquidators, auditors and secretaries.
- General powers of attorney and delegation of powers.
- Opening and closing of headquarters.
- Modification, expansion or reduction of the corporate purpose.
- Modification, extension or termination of the period of validity of the social organization.

This declaration will be made by means of Minutes of Ordinary or Extraordinary Meetings.

## **8. UNLAWFUL ACTS AND PENALTIES**

Formal offences are established in this Law, which are, mainly, the following:

- Failure to register in a timely manner the acts and facts provided for in the Law.
- Failure to notify SAREN of the funding or donations that will be received, in order to ensure the legality of the funds and the provisions of this law
- Not to keep the books that, in accordance with the form adopted by the social organization, that it is responsible for maintaining and preserving.
- Not to assist the State in its control and oversight activities.
- Failure to comply with the obligations provided for in the transitional provisions.

The sanction provided for is a fine in an amount in Bolivars equivalent to between one hundred (100) and one thousand (1000) times the official exchange rate of the currency of the highest value published by the Central Bank of Venezuela. Currently, the currency with the highest value is the Euro. In the case of a repeat offense, the fine shall be five hundred (500) and ten thousand (10,000) times the official exchange rate of the currency with the highest value published by the Central Bank of Venezuela.

As for the duty to notify donations received, the penalty will be a fine equivalent to twice the amount received, without prejudice to the civil and criminal liabilities that may have occurred, according to the legislation on money laundering and financing of terrorism, if applicable. In this case, there is a risk of criminal liability for money laundering and terrorist financing, even if the origin of the funds is legal.

Foreign NGOs that fail to comply with the provisions of the Law will be punished with the cancellation of the registration granted by the Ministry with competence in foreign affairs.



Likewise, its foreign members may submit to the expulsion measure established in the immigration laws.

## **9. TRANSITIONAL PROVISIONS**

Existing NGOs have 90 days from the entry into force of the Law to submit to the public registry office corresponding to their domicile the updated information on the information they must declare, as provided for in Article 26 of the Law on NGOs. The 90-day period would expire on February 13, 2025 if it is interpreted as continuous days and not as business days; in this case, the period would be longer.

From the entry into force of the Law, NGOs have 180 days to amend their Articles of Association, to adapt them to the requirements and provisions of this Law. If necessary. Failure to comply with this obligation will result in the nullity of the organization's registration. In addition, if the sanction for formal unlawfulness is implemented. NGOs have until May 12, 2025 to notify the Public Registry Office of the changes made, if they are appropriate, considering the same criterion as in the First Transitory Provision.

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