

Circular LBR 23/02

Concerns: The law of 7 August 2023 on non-profit associations and foundations

The new law of 7 August 2023 on non-profit associations and foundations (hereinafter the law of 7 August 2023), published in the Journal Official on 19 September 2023, came into force on 23 September 2023. It represents an in-depth reform of the law governing associations and foundations, which was previously governed by the amended law of 21 April 1928 on non-profit associations and foundations.

The main objective of the new law is to create a modern framework that meets the needs of the non-profit and charitable sector as it exists today, while strengthening accounting transparency to ensure more rigorous control.

The purpose of this circular is to describe the impact of this new law on the procedures to be carried out at Luxembourg Business Registers (LBR):

- New data to be registered in the Trade and Company Register (RCS) (1),
- new filings and publications in the Electronic Compendium of Companies and Associations (RESA) (2)
- Application of new accounting rules (3),
- The creation of an administrative dissolution procedure without liquidation (4),
- And the gradual implementation of the new legal provisions by associations and foundations established before the entry into force of the law of 7 August 2023 (5).

1. Registering new data with the RCS

1.1 The day-to-day management delegate

For both, ASBL and foundations, the law of 7 August 2023 allows them to delegate their day-to-day management to one or more natural or legal persons, who may or may not be a member of the management body.

As soon as a delegate for day-to-day management is appointed, the information concerning him must be communicated to LBR so that it can be registered with the RCS, using the requisition form.

(Art. 7 and 48 of the law of 7 August 2023)

(Art 9 (5) of the law of 19 December 2002 on the register of commerce and companies, accounting and annual accounts (law of 19 December 2002))

1.2 The permanent representative (natural person) of a corporate officer

Where a legal entity is appointed as a member of the management body, delegated day-to-day management or liquidator within an ASBL or foundation, a permanent representative of the latter must also be appointed.

The details of this representative must be registered with the RCS by providing it on the requisition form.

(Art. (5) 1 and 45(1) of the Act of 7 August 2023)

(Art. 9(5) of the Law of 19 December 2002)

1.3 The approved statutory auditor

Only ASBL belonging to the category of "*large associations* *", public interest ASBL and foundations are required to have their annual accounts audited by an approved auditor. Information about the auditor must be entered in the RCS using the requisition form.

For other ASBL ("*small*" and "*medium**"), the appointment of an approved statutory auditor is not required by the law of 7 August 2023.

(Art. 18(6) §5 and 52(4) of the Law of 7 August 2023)

(Art. 9(6) of the Law of 19 December 2002)

*see point 3.3.1 for definition

1.4 Restructuring

ASBL and foundations can now merge and change their legal form.

1.4.1 Merger by absorption or incorporation

National merger operations by absorption or constitution are now possible for ASBL and foundations. These operations must now be registered with the RCS.

So, in terms of the steps to be taken with LBR:

- the minutes of each entity participating in the merger and approving the merger, recorded by a notary, must be filed with the RCS and published in full in the RESA,
- the requisition form for registering the merger with the RCS must be completed with the details of each entity involved in the transaction,
- and for foundations only, a copy of the Grand Ducal approval order must also be filed with the RCS.

Please note that once the merger has been completed, the absorbed ASBL or foundation must be deregistered from the RCS based on a deregistration form.

(Art. 32 and 67 of the law of 7 August 2023)

1.4.2 Change in legal form

- Conversion of an ASBL into a foundation

By notarial deed and subject to approval by Grand Ducal decree, an ASBL can be transformed into a foundation.

The conversion deed drawn up by a notary and the articles of association must be filed with the RCS and published in full in the RESA.

At the time of filing, a copy of the Grand Ducal decree order must also be submitted.

(Art. 30. of the law of 7 August 2023)

- Conversion of a foundation into a non-profit organisation recognised as being in the public interest

By notarial deed and subject to approval by Grand Ducal decree, a foundation can be transformed into an ASBL recognised as being of public interest.

The deed of conversion and the articles of association must be filed with the RCS and published in full in RESA.

At the time of filing, a copy of the Grand Ducal decree order must be submitted.

(Art. 65 of the law of 7 August 2023)

- Conversion of an ASBL or foundation into a Societal Impact Company (SIS)

An ASBL or a foundation can adopt the legal form of a company covered by the amended law of 12 December 2016 on the creation of impact companies, whose capital is made up of one hundred percent of impact shares.

The deed of conversion and the articles of association must be filed with the RCS and published in full in RESA.

(Art.31 and 66 of the law of 7 August 2023)

1.5 Suspension of a directorship as part of the check of good repute

The law of 7 August 2023 provides for a check of good repute of directors of ASBL recognised as being of public interest or foundations, carried out by the Minister of Justice.

In the context of this control, if it appears that a member of the board of directors no longer meets the conditions of good repute required to exercise his functions, the Minister of Justice sends a formal notice by registered post to the ASBL recognised as being of public interest or to the foundation concerned, as well as to the member of the board of directors in question, requesting that the necessary measures be taken to guarantee that this director no longer participates in the activities of the association or foundation, within one month.

The Minister of Justice forwards a copy of the formal notice to LBR, for the purposes of registration by the latter of the suspension of the director targeted by the measure, in the file of the ASBL or foundation, kept at the RCS. This suspension measure is recorded in the file and appears on the extracts issued by LBR.

(Art. 34(4) to (7) and 41(3) to (6) of the Act of 7 August 2023)

2. Filing and publication in the Electronic Compendium of Companies and Associations (RESA)

The following documents are filed with the RCS and published in the RESA:

- the deed of incorporation and the deed amending the articles of association in their **entirety**,
- **extracts** from documents relating to the appointment and termination of functions:
 - directors of the association or foundation;
 - day-to-day management delegates;
 - of the liquidators, and, in the event that the liquidator is a legal entity, the designation or modification of the designation of the natural person who represents it for the exercise of the liquidation powers;
 - where applicable, an approved auditor (compulsory for foundations, ASBL of public interest and "large" ASBL).

**see point 3.3.1 for definition*

This extract will contain the surnames, first names and as well as the private or professional addresses of these persons, or, in the case of a legal entity, the company name, the precise address of the registered office, the designation of the natural person who represents it, as well as, where applicable, their individual signing authority.

It should be noted that this publication does not constitute an additional administrative burden for ASBL and foundations, as it is prepared by LBR based on the information communicated through the requisition form by the ASBL or foundation when these persons are registered with the RCS.

- an **extract from** the court decision, which has the force final or is provisionally enforceable, declaring the dissolution of the association or foundation, the nullity of the association or foundation or the nullity of the amendments to the articles of association,
- an **extract from** the deeds determining the method of liquidation and the powers of the liquidators if these powers are not exclusively and expressly defined by law or the Articles of Association,
- an **extract from the** decision concerning the closure of the liquidation (judicial or voluntary) and the destination of the assets.

This extract must contain the following information:

- an indication that the liquidation is closed;
- indication of the purpose of the assets (art 3(2) 8° and 43(2)9° of the law of 7 August 2023).
- the coordinated text of the articles of association, updated after each amendment to the articles of association of the association or foundation, which is published in the RESA by **reference**;
- the accounting documents defined by the law of 7 August 2023, which are published in the RESA by **reference**.

Note that publication by reference to the filing corresponds to publication of the purpose and date of the act or document filed.

(Art. 22 and 57 of the law of 7 August 2023)

3. New accounting rules

The law of 7 August 2023 requires all ASBL and foundations to maintain appropriate accounts according to the nature and extent of their activities.

3.1 ASBL

From now on, all ASBL whose articles of association comply with the law of 7 August 2023 must keep accounts, the "complexity" depends on the size of the ASBL, as defined within the law.

In this regard, each year and no later than six months after the end of the financial year, the accounting documents relating to the past financial year must be approved by the General Meeting and then filed with the RCS within one month of their approval. A notice of their filing will be published in the RESA.

3.1.1 Small associations

A "*small association*" is any ASBL which, for two consecutive financial years, does not exceed the numerical limits of at least two of the following three criteria at the end of its financial year:

- Number of full-time equivalent staff: less than three;
- Total income: €50,000,
- Total assets: €100,000.

For small associations, the accounting documents to be filed with the RCS are as follows:

- Statement of revenues and expenses,
- The appendix.

(Art. 18(4) of the Act of 7 August 2023)

3.1.2 Medium-sized associations

Any ASBL which, for two consecutive financial years, does not exceed the numerical limits of at least two of the following three criteria at the end of its financial year, belongs to the category of "*medium-sized associations*":

- Number of full-time equivalent staff: more than fifteen;
- Total income: €1,000,000,
- Total assets: €3,000,000.

For medium-sized associations, the accounting documents to be filed with the RCS are as follows:

- The profit and loss account,
- The balance sheet,
- The appendix.

(Art. 18(5) of the Act of 7 August 2023)

3.1.3 Large associations

Any NPO which, for two consecutive financial years, exceeds the numerical limits of at least two of the following three criteria at the end of its financial year, belongs to the category of "*large associations*":

- Number of full-time equivalent staff: more than fifteen,
- Total income: €1,000,000,
- Total assets: €3,000,000.

A large association is obliged to have its annual accounts audited by an approved auditor.

The accounting documents to be filed with the RCS are as follows:

- The balance sheet,
- The profit and loss account,
- The appendix,
- The report of the approved statutory auditor.

(Art. 18(6) of the Act of 7 August 2023)

3.1.4 ASBL recognised as being in the public interest

ASBL recognised as being of public interest are subject to the same accounting rules as "*large associations*" (see point 3.1.3).

The Board of Directors is required to submit a detailed activity report for the past financial year to the Minister of Justice within one month of the submission of the accounting documents.

(Art. 36 of the law of 7 August 2023)

3.2 The foundations

Any foundation whose articles of association comply with the law of 7 August 2023 must keep accounts using a system of books and records in accordance with the usual rules of double-entry bookkeeping.

Every year, it must file its accounting documents with the RCS within 7 months of the end of the company's financial year. Publication in the RESA is by reference.

The Foundation is required to have its annual accounts audited by an approved auditor appointed by the Board of Directors.

The accounting documents to be filed with the RCS are as follows:

- The balance sheet,
- The profit and loss account,
- The appendix,
- The report of the approved statutory auditor.

Please note that the budget no longer needs to be submitted.

(Art. 52 of the law of 7 August 2023)

4. The procedure for administrative dissolution without liquidation

The procedure for administrative dissolution without liquidation makes it possible to dissolve an ASBL or a foundation without going through the formal procedure of complete judicial liquidation.

4.1 Commencement of the procedure

As a first step, LBR will send a letter to the registered ASBL and foundations that have not filed with the RCS for more than 5 years, informing them that they have 6 months in which to submit their data and update their RCS file.

If the data or file is not updated within the deadline, LBR will initiate the procedure of the administrative dissolution without liquidation against the association or foundation concerned.

(Art. 69(1) of the Act of 7 August 2023)

When the procedure is initiated, LBR:

- notifies the ASBL or foundation concerned by registered letter of its decision to initiate the procedure for administrative dissolution without liquidation;
- publishes the decision on its RCS website for the information of third parties;
- registers the decision in the form of an extract, in the file of the ASBL or foundation concerned.

(Art. 69(2) of the Act of 7 August 2023)

The ASBL or foundation which is the subject of a decision to initiate the procedure for administrative dissolution without liquidation, as well as any interested third party who considers that the conditions have not been met, may lodge an appeal against this decision within one month following the notification or, failing that, publication of the decision on the RCS website.

The judge competent to rule on this appeal is the President of the district court within whose jurisdiction the registered office of the association or foundation is located, sitting in summary proceedings.

4.2 Closure of the procedure

The procedure for administrative dissolution without liquidation is closed six months after publication of the decision to open the procedure, if the ASBL or foundation has not updated its file.

The closure decision taken by LBR is notified by registered letter to the ASBL or foundation concerned and is published on the website of the Trade and Companies Register.

It leads to:

- the loss of the legal personality of the association or foundation, and
- the automatic removal of the RCS file, by the RCS administrator.

(Art. 69(4) of the Act of 7 August 2023)

If assets emerge after the administrative dissolution without liquidation procedure has been closed, the court sitting in civil matters at the last registered office of the association or foundation may, at the request of the

state prosecutor, revoke the decision to close the administrative dissolution without liquidation procedure of the association or foundation and order its liquidation.

The request is published by extract in two newspapers published in the Grand Duchy of Luxembourg.

The court closes the liquidation.

(Art. 69(5) of the Act of 7 August 2023)

5. Transitional provisions

Article 77(1) of the Law of 7 August 2023 provides for a transitional period of 24 months to allow ASBL and foundations established before the new law comes into force, i.e. 23 September 2023, to bring their articles of association into line with the new provisions.

During this period:

- As long as the articles of association have not been updated, the 1928 law on not-for-profit associations and foundations remains applicable to these entities;
- upon updating the articles of association, the law of 7 August 2023 applies.

It should be noted that during this period, the aforementioned 1928 law will therefore coexist with the new law of 7 August 2023.

For LUXEMBOURG BUSINESS REGISTERS

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Director



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