

Panama's Executive Decree No. 62, dated 30 March 2017 and effective as from 31 March 2017, regulates nonprofit organizations (NPOs) and private interest foundations. The decree adjusts the regulatory framework to obtain the legal status of such an entity and covers the treatment of funds received by such entities; their supervision, monitoring and evaluation; and certain other provisions, including a new reporting requirement for NPOs that receive tax-deductible donations.

The most relevant aspects of the decree include the following:

## **Recognition of legal status**

NPOs may include associations, as well as private foundations that are recognized as nonprofit private interest foundations. The decree defines NPOs as entities of a private, nonpartisan character that, according to their nature, do not derive benefits relating to personal equity and whose income cannot be distributed among their founders, members and/or directors. The decree does not limit the ability of NPOs to hire their founders, members, directors or other personnel for specific tasks or for the provision of services.

The decree reduces the requirements for recognition of the legal status of an NPO and stipulates that interested parties must submit an application through a legal representative to the Ministry of Government and provide two copies of the originals of the following:

- Deed of incorporation of the entity, formation of the board of directors and approval of the entity's statute, signed by the president and the secretary;
- The entity's statute, which must be signed by its president and secretary; and
- A list of the members of the board of directors, which must be composed of at least three individuals or legal entities. Copies of the personal identification document must be attached for each of the individuals; for legal entities, the minutes of the general meeting in which the entity's participation as a member of the nonprofit private interest organization was approved and a valid certification from the Public Registry must be attached.

The decree sets forth the information that the entity's statute must contain, which includes the following:

- Name of the entity, which cannot be identical or similar to that of another association already registered, nor can it be presented in a way that may lead to misidentification or confusion about its nature or objective;
- Domicile (the Ministry of Government must be notified of any subsequent changes);
- Detailed objectives and specific purposes, with an explanation of whether it is an organization that will provide public benefits, a membership organization or of another nature;
- Constitution of its equity and activities that will be carried out to derive income;
- Fees and membership affiliation methods (if applicable), as well as how membership will be revoked;

- Procedures for the revision of the statute, which must be approved by the Ministry of Government and subsequently registered in the Public Registry for purposes of legal validity;
- Method for keeping the accounting records and method for recording funds that are generated, received and transferred; and
- Procedure for the dissolution and liquidation of the entity, indicating the destination of the assets once the entity is dissolved.

If an entity's application for NPO status does not receive "observations" (i.e. areas in which the Ministry of Government notifies the entity's legal representative that corrections are necessary to obtain NPO status), it will be granted legal status through a resolution. Otherwise, the entity will have a period of 60 calendar days from the notification of the observations to its legal representative to make the corrections. If the corrections do not conform to the ministry's requests, 15 additional non-extendable days will be granted for additional corrections. After this period has lapsed, the ministry will have 30 days to issue the corresponding resolution accepting or denying the application.

Applications will be denied if the initial term of 60 days granted expires without the legal representative submitting the required corrections, if the extraordinary period of 15 days expires without the necessary corrections being submitted or if documentation in accordance with the requirements established in the decree is not submitted.

An appeal for reconsideration of decisions made by the Ministry of Government may be filed within five business days from the notification date.

However, applications for recognition of legal status denied for the reasons listed above may be resubmitted only once, incorporating all the documentation initially required, for which the proxy or legal representative may request a specific breakdown.

## **Funds of associations and nonprofit private interest foundations**

Funds received by NPOs from foreign governments, national and international organizations or other channels involving government entities will be considered as public funds and, therefore, will be subject to follow-up of the Ministry of Government and audit by the General Comptroller's Office. Public funds must be deposited in bank accounts of Panamanian institutions.

"Self-management" income and income derived from any other source that is not channeled through a public institution will not be considered as public funds; therefore, this income can be used in accordance with the provisions of the association or foundation's statute.

## **Supervision, monitoring and evaluation of NPOs**

The Department of Supervision, Monitoring and Evaluation of NPOs, which is part of the Department of Legal Affairs and Legal Procedures of the Ministry of Government, is in charge of the operational functioning of NPOs recognized by the ministry.

The department has the authority to temporarily suspend the legal status of an NPO for a period not exceeding 30 days for the following reasons:

- The NPO does not report changes in domicile, current board of directors or financial statements, in accordance with the provisions of the decree;
- The NPO engages in activities contrary to the nonprofit nature of NPOs; or
- The NPO commits acts or engages in activities contrary to the decree.

If no corrective measures are taken, the suspension will be maintained until the NPO corrects the issue.

The suspension of legal status also may occur through an order from a competent authority, and it will be maintained for however long the relevant investigation or process lasts.

NPOs that have not submitted the documentation certifying their registration in the Public Registry to the Department of Legal Affairs and Legal Procedures must provide a “simple copy” of the registration no later than 30 days from the date they are notified of their duty to present it.

In the event that an NPO is subject to a specific monitoring and supervision proceeding, this situation will be indicated in its file and no modifications will be allowed to its documentation until the process is closed.

## **Private interest foundations**

Private interest foundations established in accordance with Law 25 of 1995 may be recognized by the Ministry of Government as nonprofit private interest foundations when they submit the following original documents, along with two copies:

- Power of attorney and application:
- Copy of the public deed, to verify that the foundation charter stipulates that its purpose is strictly social; and
- Certificate that accredits the affiliation of the foundation with the City of Knowledge Foundation.

Private interest foundations must comply with the requirements in article 14 of the decree. Article 14 establishes that the Ministry of Government will maintain a registration by activity in the Department of Legal Affairs and Legal Procedures, in which all entities whose legal status has been recognized and duly registered by the Public Registry must register.

## **Additional provisions**

The Ministry of Government will publish on its website a list of all organizations or foundations that are recorded in the registry kept by the Department of Legal Affairs and Legal Procedures.

NPOs authorized by the Directorate General of Revenue (DGI) to receive tax-deductible donations or to receive public funds for projects or transfer funds abroad must submit a report to the Ministry of Government, corresponding to the previous year, on their domicile, current board of directors and balance sheet. This report must be presented during the first three months of the calendar year, starting in 2018. This requirement applies to NPOs recognized by the Ministry of Government under the decree, as well as entities previously granted NPO status. Failure to comply with this obligation for two consecutive years will result in the suspension of the entity's legal status until the relevant reports have been submitted.