FOREIGN NON-PROFIT ORGANISATIONS:
HOW TO BE PRESENT IN BELGIUM?

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I. Introduction

Over the past years, an expanding number of foreign non-profit organisations have decided to establish headquarters in Belgium, and, more specifically in Brussels. The reason is straightforward: these foreign non-profit organisations wish to get more visibility and boost their credibility towards the European Union’s institutions. Indeed, Brussels has become a cornerstone of many debates, exchanges and an important place of influences on a European level, as well as an international level.

Foreign non-profit organisations are often puzzled facing a foreign legal system and the various options to ensure their presence in Belgium. Being duly informed of these options and their respective advantages and disadvantages is nonetheless essential. Indeed, whilst deciding between the different options available under Belgian law a foreign non-profit organisation should take into account the specific project it wishes to carry out in Belgium. More specifically, several factors should direct the choice of a foreign non-profit organisation (e.g. property of assets, extent of the liability, need for membership, number of assets, etc.).

If such a choice is not carefully considered, the foreign non-profit organisation could end up with a Belgian non-profit vehicle which is not appropriate, useless or extremely burdensome to manage. In the end, it will be forced to change the way it ensures its presence in Belgium. Such change is in turn often costly, taxing and time-consuming while the foreign non-profit organisation could spend its time and money on the realisation of its non-profit purposes and activities.

In view of the above and learning from our long-standing experience in Belgian and European non-profit law, the purpose of this article is to point out what are the options for foreign non-profit organisations and the main advantages and disadvantages of each option.
II. Main options to ensure the presence of a foreign legal non-profit organisation in Belgium

A. First option: representative office

A representative office is not a “recognised” or an “official” entity. Indeed, there are no legal rules regulating the representation offices. Consequently, it has no legal personality. Moreover, no administrative and publication formalities must be carried out.

Most of the time, a foreign non-profit organisation uses a representative office in order to perform preparatory and/or auxiliary activities which are not the activities of a permanent establishment (e.g. limited information services, limited public relations, one lobbyist, etc.).

B. Second option: Belgian branch office
According to the law of June 27, 1921 on non-profit associations, foundations, European political parties and European political foundations (hereafter: “Law”), each non-profit foreign legal entity having a permanent activity in Belgium may decide to open a branch office (in French: “centre d’opération”/in Dutch: “centrum van werkzaamheden”) in Belgium.

A Belgian branch office does not have a separate legal personality (beside(s) to the foreign organisation) and does not have own assets and liabilities. A Belgian branch office is just an expansion in Belgium of the foreign non-profit organisation.

The registration process of a Belgian branch office is less burdensome than the incorporation process of a new Belgian non-profit organisation (see below item C).

The Belgian branch office is represented in Belgium via one or more person(s) (natural person and/or legal entity) who are appointed by the foreign non-profit organisation as legal representative(s). This/these legal representative(s) can be entrusted with the daily management of the Belgian branch office.

The appointment of (a) legal representative(s) is precisely the main advantage of a Belgian branch office as this/these legal representative(s) is/are able to sign on the foreign non-profit organisation’s behalf and represent it.

C. Third option: Belgian non-profit legal entity (subsidiary)

Under Belgian law (i.e. the Law), there are four possibilities of non-profit legal entities:

- Non-profit association\(^1\) (hereafter: “NPA”);
- International non-profit association\(^2\) (hereafter: “INPA”);
- Private foundation\(^3\) (hereafter: “PF”); and
- Foundation of public utility\(^4\).

\(^1\) In French: “association sans but lucratif”/In Dutch “vereniging zonder winstoogmerk”.
\(^2\) In French: “association internationale sans but lucratif”/In Dutch “internationale vereniging zonder winstoogmerk”.
\(^3\) In French: “fondation privée”/In Dutch “private stichting”.

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The main advantage of the four Belgian non-profit legal entities is that they each have their own legal personality and, consequently, their own assets and liabilities. On the other hand, in comparison to a Belgian branch office, the incorporation process of a Belgian non-profit legal entity is more burdensome, as well as the subsequent administrative and publication formalities to comply with.

The four types of Belgian non-profit legal entities have each their particularities (specific incorporation process, mandatory bodies, mandatory clauses in the articles of association, possibility to carry out commercial activities, etc.) which should be duly investigated and considered whilst deciding the right option to ensure its presence in Belgium.

Moreover, it should be determined to which extent the Belgian non-profit legal entity shall be controlled or not by the foreign non-profit organisation. If the Belgian non-profit legal entity is controlled by the foreign non-profit organization, it will be a subsidiary of the latter.

III. Conclusion

It results from the above that Belgian law offers a wide range of options to the foreign non-profit organisations, each option, having its own advantages, disadvantages and particularities. Consequently, we can only encourage and recommend any foreign non-profit organisation to seek the appropriate legal advice whilst considering a presence in Belgium. This should prevent any unsuitable and unfortunate choice and ensure foreign non-profit organisations a tailor-made solution fitting their needs and requirements.

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4 In French: “fondation d’utilité publique”/In Dutch “stichting van openbare nut”.