

ARGÜS AJANSI

Tel. 0212 252 96 76 * Fax. 0212 252 96 77

Taksim, Sıraselviler Caddesi No. 66
AYLA HAN Kat 3, Daire 7
İstanbul – Türkiye

Translations of Turkish Legislation
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FIRST BOOK
LAW OF PERSONS
FIRST CHAPTER
REAL PERSONS
FIRST SECTION
PERSONALITY

A. General

1. Capacity of using rights

ARTICLE 8- Every person is entitled to a vested right.

Accordingly, all the persons are equal in using rights and fulfilling obligations within the legal limits.

II. Capacity to act

1. Scope

ARTICLE 9- The person having capacity to act may possess any right by his/her own will and may undertake any obligation thereof.

2. Conditions

a. In general terms

ARTICLE 10- Every mature person possessing distinguishing power and not in the state of disability is deemed to possess full legal capacity.

b. Lawful age

ARTICLE 11- According to the Law, the age of majority is eighteen (full).

A person becomes sui juris by marriage.

c. Recognition of full age

ARTICLE 12- Infant completing the age of fifteen may become adult by his/her own will or under parent's consent subject to court decision.

d. Distinguishing power

ARTICLE 13- According to this Law, every person who is not minor, or mentally defective or suffering from mental illness, or intoxicated, or beyond self-control by similar reasons, is deemed to possess distinguishing power.

III. Physical incapacitiness

1. In general

ARTICLE 14- Infants and persons who are in a state of disability or lack of distinguishing power are regarded non sui juris.

2. Lack of distinguishing power

ARTICLE 15- Provided that the cases specifically indicated in the Law are being reserved, any act by a person lack of distinguishing power may not lead to legal consequences.

3. Infants and disabled persons with distinguishing power

ARTICLE 16- Infants and disabled persons with distinguishing power may not undertake any obligation by their own will unless they receive the consent of their legal representatives.

Such consent is not necessary for uncovered earnings and use of rights strictly bound to that person.

Infants and disabled persons with distinguishing power are deemed responsible from a tort arising out of a wrongful act.

IV. Kinship

1. Kinship by blood

ARTICLE 17- Degree of kinship by blood becomes evident with the number of the births that establish relationship between the members of the family.

Those descended from one another constitute antecedent-descendent relationship, whereas those descending from a common root constitute collateral line.

2. Affinity relationship

ARTICLE 18 -

Where a spouse establishes relation with the blood relatives of the other spouse, this is deemed affinity relationship as they are descending from the same species and have the same degree of relationship.

Affinity relationship may not be abandoned by dissolution of marriage.

V. Settlement place

1. Definition

ARTICLE 19- Settlement place is the place where a person intends to live permanently.

A person may not have more than one settlement place at the same time.

This principle may not be applicable for the commercial and industrial corporations.

2. Change of settlement place and residence

ARTICLE 20- Change of settlement place may only be realised unless a new one is provided.

Where a person has an unknown settlement place or not yet provided a settlement place in Turkey even though he/she leaves the previous settlement place abroad, then the current residence of that person is regarded as his/her settlement place.

3. Legal settlement place

ARTICLE 21- The settlement place of a child under guardianship is the place where his/her mother and father lives; in cases there is no common settlement place for the mother and father, then the settlement place of the child is accepted as the place where he/she is kept under legal custody by a mother or father. Otherwise, the residence of the child is regarded as his/her settlement place.

The settlement place of the persons under guardianship is the place of probation authority which they are being registered.

4. Attendance in institutions

ARTICLE 22- Where a person stays in a place for education purposes or moves to a health institution to receive medical treatment or care or any other place under a punishment, is not required to indicate a new settlement place.

B. Protection of personality

I. Against waiver and extreme restrictions

ARTICLE 23- No person may waive his/her rights and capacity to act freely even if it is in the least degree.

Neither a person may waive his/her freedom nor any one may impose restrictions on a person contrary to the laws and ethics.

The, extraction, vaccination and transfer of biological substances of human origin is subject to the written consent of the concerned body. However, no claim may be raised against a person who undertakes to give biological substance persuading him to fulfil his/her obligations; also, no claim may be raised for compensation of physical and moral damages.

II Against assault

1. Basic principle

ARTICLE 24-The person subject to assault on his/her personal rights may claim protection from the judge against the individuals who made the assault.

Each assault against personal rights is considered contrary to the laws unless the assent of the person whose personal right is damaged is based on any one of the reasons related to private or public interest and use of authorisation conferred upon by the laws.

2. Lawsuits

ARTICLE 25-The claimant may demand from the judge to take an action for prevention of assault, elimination of such threat and determination of unlawful consequences of the assault even though it is discontinued.

In addition to such action, the claimant may also request publication or notification of the recovery or the judgment to the third parties.

Right of the claimant to demand compensation for physical and moral damages and to request the transfer of gains incurred from unlawful assault in his favour under the provisions stipulating performance of business without requirement of proxy, is hereby reserved.

Claim for compensation of moral damages may not be transferred unless it is accepted by the counterparty; also, it may not be transferred to the heirs by way inheritance unless it is expressly declared by the testator.

The claimant may file an action in the probate court at his/her locality or at the settlement place of the defendant for the protection of his/her rights.

III. Rights pertaining possession of a name

1. Designation of a name

ARTICLE 26-The person who is subject to confusion in use of name may litigate in the competent court for establishment of his/her respective rights.

A person subject to unjust use of his/her name may claim discontinuation of such act; where the person is in default due to use of the name unjustifiably, then he/she may demand recovery his/her tangible losses as well as indemnification of moral damages which ever the case may require.

2. Change of name

ARTICLE 27-Change of name may only be claimed from the judge.
Any change made in the name is registered in the birth record and announced officially.
Change of name does not result with change in the status of a person.

The person suffering damage due to change of name may litigate within one year as of the date of notification of this fact claiming abrogation of the judgement given for change of name.

C. Beginning and ending of personality

I. Birth and death

ARTICLE 28- Personality begins at the very moment the child is full born and ends by death. The child possesses the right of capacity at the very moment he/she enters mother's womb (as foetus) provided that he/she is born alive.

II. Proof of being alive and death

1. Burden of proof

ARTICLE 29-A person should prove that he/she is alive for use of any right. Where a person states that he/she is alive at any time or during the death of any other person, then he/she must present a proof for such statement.

If the case involves more than one person and where it is not possible to prove which one of the persons has died before or after, then all of them are regarded being died at the same time.

2. Means of proof

a. In general

ARTICLE 30- Birth and death is proved by registrations in the birth record.

If there happens to be no registration in the birth record, or if it is understood that the records available in the birth registration office are not correct, then the real fact is proved by all kinds of evidence.

b. Presumption of death

ARTICLE 31- If a person disappears under the circumstances where there is a definite indication of a death even if the body is not found, then he/she is regarded as deceased.

III. Decision for absence

1. In general

ARTICLE 32-Where a person disappears under risk of death, or there is a presumption about death of a person who does not appear for a long time, the court may declare this person absent upon claim of the persons having vested interest in such death.

The court located at the last settlement place of the person in Turkey; if he/she is never settled in Turkey, then the court at the place where the birth record is kept; or in case of non-existence of such registration, the court at the registration place of the mother or father is accepted as the competent court.

2. Trial procedure

ARTICLE 33-In order to assert judgment for absence, at least one year should pass as of the presumed death, or expiry of five years period is required as of the date of last indication is received about the existence of that person.

The court calls for the persons who have relation with the person subject to assertion through properly made announcement in order to gather information within a certain time.

This period is at least six months as of the date of first announcement.

3. Dismissal of claim

ARTICLE 34- The claim for absence is dismissed if a person subject to judgment for absence appears before the expiry of announcement period, or one hears from him during the said period, or information is received about the date of his death.

4. Judgement

ARTICLE 35- The court may adjudicate for absence if no response is given to the announcement and the rights thereof are used considering that the death of the absentee is proved.

The judgment of absence becomes valid as of the date on which the loss of a person under risk of death is proved to be true, or from the date of last indication is received about his existence.

SECOND CHAPTER LEGAL ENTITIES FIRST SECTION GENERAL PROVISIONS

A. Status of a legal entity

ARTICLE 47- Group of persons organized to create a single body and independent property groups constructed for special object, are defined as legal entity as per the provisions contrasting its qualities, relations etc.

The groups comprising persons and properties of which the object is contrary to the laws and ethics may not be entitled to possess the status of legal entity.

B. Capacity of using rights

ARTICLE 48- The legal entities are entitled to use all the rights vested upon and the capacity to undertake all kinds of obligations other than the characteristics related to real persons such as sex, age, kinship etc.

C. Capacity to act

1. Conditions

- 2. ARTICLE 49-** Legal entities are regarded to have the capacity to act whenever they get organized under the prevailing laws and as set out in incorporation documents.

II. Use of will

ARTICLE 50- The will of a legal entity is expressed through its organs.

The organs may put the legal entity under obligation by legal transactions and all other acts.

The organs of legal entity are also individually responsible from their defaults.

D. Domicile

ARTICLE 51- Unless otherwise is stated in the incorporation certificate, the domicile of the legal entity is the place where the business is performed.

E. Dissolution of legal entity

I. Limited activity

ARTICLE 52- In case of dissolution of a legal entity, the capacity of the legal entity to act continues during the course of liquidation, but in the limited manner, until the liquidation process is finalised.

II. Liquidation of assets

ARTICLE 53 –Unless otherwise is stated in the law and incorporation certificate, the liquidation of the assets of a legal entity is executed according to the provisions relating to official liquidation of assets.

III. Assignment of assets

ARTICLE 54 - Unless otherwise is provided by the law or incorporation certificate, or contrary statement is made by the authorised bodies, the assets of legal entity are transferred to the public association or corporation engaged in the same kind of activity or having the same object.

Such assets are used only for the purpose they are assigned in the initial stage of incorporation to the extent it is deemed appropriate.

The assets of legal entity subject to dissolution under court decision due to non-conformity with the laws or ethics, in all circumstances are transferred to the relevant public association.

F. Reserved provisions

ARTICLE 55 - The provisions of the law relating to public legal entities and business companies are hereby reserved.

SECOND SECTION ASSOCIATIONS

A. Incorporation

1-Definitions

ARTICLE 56- An association is defined as a society formed by unity of at least seven real persons **or legal entities*** for realisation of a common object other than sharing of profit by collecting information and performing studies for such purpose.

**/ Modified by Law No. 4963*

No association may be formed for an object contrary to the laws and ethics.

II. Right to form an association

ARTICLE 57-Every person has the right to form an association without obtaining prior consent.

The founders of association should possess the capacity to act.

III. By-laws

ARTICLE 58- Every association should have by-laws.

It is necessary to indicate the title, object,*, income sources, membership conditions, organs and organization as well as the list of provisional board of directors in the by-laws of the association.

**/ Deleted by law No: 5253 “domicile, founders”*

By-laws of the association may not contain provisions contrary to the laws.

The provisions of the relevant law are applicable in the matters that are not expressly stated in the by-laws.

IV. State of being a legal entity

1. Initial stage

ARTICLE 59-The associations are regarded as legal entity from the very moment they present declaration of incorporation, by-laws and other documents required for incorporation to the highest administrative authority at the locality of their domicile.

The content of incorporation declaration and the documents required for registration are set out in the regulations.

2. Examination

ARTICLE 60-The correctness of the file comprising incorporation declaration, required documents and by-laws of the association is examined by the highest administrative authority within sixty days.

In case of determination of contraries to the laws in the incorporation declaration, by-laws and incorrect information the status of the founders, or negligences in the presented documents; the founders are requested to recover such negligences or complete the file. If it is failed to recover the contraries to the law, or recover the negligences within thirty days as of notification date; the highest administrative authority informs the Public Prosecution Office about necessity for filing an action in the competent court of first instance for the abolition of association. The Public Prosecutor may claim from the court to give judgment for the suspension of activities of the said association.

In case the incorporation declaration, by-laws and information about the status of the founders are found to be accurate and complete, or the negligences or contraries to the law are recovered within the specified period; then his fact is notified to the association in writing and the association is registered in the log reserved for associations.

3. Announcement of by-laws

ARTICLE 61- *

**/Appealed by Law No: 5253 “By-laws of the association are announced in one of the local newspapers within fifteen days as of the written notification to the association.”*

4. First general assembly meeting

ARTICLE 62-The associations are liable to convene the first general assembly meeting and to structure the required organs according to the last paragraph of Article 60 within six months.

**/Modified by Law No: 5253*

B. Membership

I. Granting of membership

1. Rules

ARTICLE 63-Neither person may be forced to become a member of an association nor an association may be forced to accept members.

2. Conditions

ARTICLE 64-Every real person **and legal entities*** possessing the capacity to act, has the right to apply for membership in an association.

**/ Modified by Law No. 4963*

*The board of directors passes its decision about the written application made for membership at most within thirty days and the result is notified to the applicant in writing. The member whose application is accepted is registered in the book kept for this purpose.

Deleted by Law No: 5253 “Unless otherwise is stated in the by-laws”

II. Termination of membership

1. Automatically

ARTICLE 65-The membership of a person automatically terminates if he/she later on loses the qualifications required by the law or by-laws of the association.

2. Discharge from association

ARTICLE 66- No person may be forced to continue its membership in the association. Every member has the right to leave the association provided that he/she presents a written notification *.

**/Deleted by Law No: 4963/33 “before six months.”*

3. Discharge reasons

ARTICLE 67-The reasons for discharge from the association may be indicated in the by-laws.

If the reasons for discharge are clearly indicated in the by-laws; no objection may be made to such decision asserting that these reasons may not be accepted as justifiable.

If the reasons of discharge are not clearly indicated in the by-laws; a member may only be discharge on justified grounds. An objection may be made to this discharge decision stating that it is not based on justified grounds.

III. Scope

1. Right of members

a. Equal rights

ARTICLE 68-It is a basic principle to grant equal rights to the members of an association. The association may neither make discrimination among their members in respect of language, race, colour, sex, religion, sect, lineage, society and class nor may adopt any behaviour deteriorating the balance between the members.

Every member has the right to participate in the activities and administration of the association.

The member who voluntarily leaves the association or discharged on justified grounds may not have the right to raise a claim for producing advantage from the assets of the association.

b. Voting right

ARTICLE 69- Every member entitled to a voting right in the general assembly; the member is obliged to use his/her vote personally.

Honourable members may not have voting right.

2. Liabilities of the members

a. Payment of fees

ARTICLE 70- Fees payable by the members are indicated in the by-laws. If there is no such adaptation in the by-laws, then the members may make contribution to the association on equal terms for the realisation of its purpose and fulfilment of compulsory obligations. Any member voluntarily leaves the association or discharged on justified grounds, is liable to pay the fee corresponding to the period of his/her membership.

The honourable member is not liable to pay membership fee.

b. Other liabilities

ARTICLE 71- The members are liable to act in compliance with the rules established by the association and to show loyalty to the same.

Every member is liable to perform activities in conformity with the object of the association and especially should abstain from adopting behaviours that will avoid and hinder the operation of the association.

C. Organs

I. In general

ARTICLES 72- The statutory organs of the association are the general assembly, board of directors and auditors' board.

The associations may construct others besides the statutory organs. However, these organs may not be assigned with the functions, authorization and responsibilities conferred to statutory organs.

II. General Assembly

1. Features and formation

ARTICLE 73- General assembly is the highest authorisation organ of the association; it comprises members registered in the association.

2. Meetings

a. Ordinary meetings

ARTICLE 74- The general assembly meetings are held at times indicated in the by-laws of the association upon call of the board of directors.

The ordinary general assembly meetings should be held at least once in every **three*** years.

**/Modified by law No: 5253 "two"*

b. Extra-ordinary meetings

ARTICLE 75- The general assembly may be called for extra-ordinary meeting by the board of directors whenever deemed necessary by the board of directors or auditors' board, or written request of one fifth of the members.

Where no call is made by the board of directors for convening the general assembly meeting, the judge of common court assigns three members to call for general assembly meeting upon application of one of the members.

c. Decisions passed without convening a meet or without making a call

ARTICLE 76- The resolutions passed with written approval of all the members without coming together for a meeting and the decisions reached through summon of members without adopting the statutory procedure that requires written call for convening the meeting, are regarded valid.

The resolutions passed by this way may not take the place of an ordinary general assembly.

3. Call for meeting

ARTICLE 77-The general assembly is called for a meeting by the board of directors at least fifteen days before the meeting date. The date, hour, place and agenda of the meeting is announced*.

**/Deleted by Law No: 5253 “in a local newspaper and at the same time notified to the members in writing”*

The procedure for the call and the issues relating to postponement of the meeting are set out in the regulations.

4. Place and quorum of the meeting

ARTICLE 78-Unless otherwise stated in the by-laws, the general assembly meetings are held in the head office of the association.

The general assembly convenes with absolute majority of the members having the right to participate in the meeting; in cases where the meeting is held for amendment of by-laws or dissolution of association, the quorum is reached with the participation of two third of the members. Where the meeting is postponed due to failure in providing the quorum, a second meeting is held without requirement of majority. However, the number of members participating in this meeting may not be less than the double of absolute number of members comprising the board of directors and the auditors’ board.

The general assembly meeting may not be postponed more than once.

5. Convening the meeting

ARTICLE 79-After the opening of the general assembly meeting, one chairman and sufficient number of vice chairmen and a reporter is nominated for the chairing of the meeting.

Only the subjects in the agenda are discussed in the general assembly meeting. However, it is compulsory to include the other issues that are presented in writing by at least one tenth of the members in the agenda.

(Repealed by Law No: 5253, “The attendance of the commissary of the Ministry in the general assembly meetings is required. However, absence of the commissary may not prevent convening of the meeting.”)

6. Duties and powers of the general assembly

ARTICLE 80-The general assembly is the authority that passes the final resolution for acceptance of membership and discharge of members from the association; the association designates the required organs and performs the duties that are not conferred to any other organ of the association.

The general assembly supervises the other organs of the association and is entitled to dismiss them from office at any time on justified grounds.

7. Resolutions of general assembly

a. Qualified Majority

ARTICLE 81- The general assembly passes its resolutions with the absolute majority of the members attending the meeting. It is provided that, the resolutions relating to the amendment of by-laws and dissolution of the association may only be passed with the two-thirds majority of the members attending the meeting.

b. Deprivation of voting right

ARTICLE 82-No member is entitled to use his/her voting rights in any discussion bearing legal action or dispute between the association and himself, his spouse, antecedents and descendants.

Added by Law No.4963/34, The provisions of above subsection are also applicable for the persons who are to vote on behalf of a legal entity.

c. Cancellation of resolution

ARTICLE 83-Each member who is present in the meeting but does not take part in the resolutions passed by the general assembly contrary to the laws and by-laws of the association, may file a petition to the competent court requesting cancellation of the resolution within one month as of the date of resolution; for those who is not present in the meeting, this period is accepted as one month upon acknowledgment of such resolution and in all circumstances, the application period is limited to three months as of the date of resolution.

No suit may be brought in to obtain judgment against the resolutions of other organs unless the internal auditing mechanism fails to perform its functions.

The cases where the resolutions of general assembly are regarded null and void on legal grounds are hereby reserved.

III. The Board of Directors

1. Formation

ARTICLE 84-The board of directors comprises members of which the numbers are indicated in the by-laws of the association. It is always provided that such number of members may not be less than five principal and five alternative members.

Where the number of members in the board of directors becomes less than one half of the total number of the directors due to vacancies from time to time; the general assembly is called for a meeting by the board of directors or auditors' board within one month. If no call is made, then the judge of common court may assign three members to make the call upon request of any one of the members.

2. Functions

ARTICLE 85- The board of directors is the authorised organ of the association assigned to administer and represent the association; it performs the duties undertaken in conformity with the relevant legislation and by-laws of the association.

The representation power may be delegated to one of the members or to a third person by the board of directors.

IV. Auditors' board

ARTICLE 86- The Auditors' board

The auditors' board comprises members of which the numbers are indicated in the by-laws of the association. Provided that such number of Auditors' board members may not be less than three principal and three alternative members.

The auditors' board performs the auditing duty according to the principles and procedures set out in the by-laws of the association; the results of the auditing are submitted to the board of directors and general assembly in a report.

D. Dissolution

I. Dissolution *Ipsa Facto*

ARTICLE 87-Dissolution *ipso facto* may occur under the following circumstances;

- 1) If the objects of the association are not realised, or it becomes impossible to reach the goals and objects of the association, or in the event of expiry of lawful period;
- 2) If it is failed to convene the general assembly meeting within the lawful period and one of the legal organs of the association is not constituted;
- 3) If the association is declared insolvent;
- 4) If the board of directors is not elected during the period specified in the by-laws;
- 5) If it is failed to convene the general assembly meeting repeatedly two times;

Any concerned person may request verification of dissolution *ipso facto* from the judge of the common court.

II. Dissolution under resolution of the general assembly

ARTICLE 88-The association may be dissolved at any time under the resolution of the general assembly.

III. Dissolution by Court

ARTICLE 89- If the objects of the association are not compatible with the legislation and ethics, the court may give judgement for the dissolution of the association upon request of the Public Prosecutor or any other concerned person. The court takes all the necessary measures during the proceeding of the case, including suspension of activity.

E. Activities of the association

I. In general

ARTICLE 90-The associations carry out their activities according to the working procedures and in compliance with the objects set out in the by-laws of the association.

The provisions of private law possessing features of public law relating to restrictions or activities subject to permission are hereby reserved.

Judgement for suspension of operation may be given by the court upon request of the Public Prosecutor in case of determination of any activity contrary to the restrictions and limitations imposed for the operation of the association.

II. International operations

1. Freedom of operation

ARTICLE 91-The associations may operate and cooperate in international arena and open branches in abroad and become members of foreign associations and organizations to achieve the objects set out in the by-laws.

**/Deleted by Law No: 4778/34 “Where it is deemed fruitful to establish cooperation in international arena; the associations incorporated in Turkey may become a member of the associations or corporations in abroad by obtaining the consent of the Ministers’ Council.”*

2. Foreign associations

ARTICLE 92- To establish cooperation in international arena; **the foreign associations may operate, open branches, incorporate high-level organizations with the permission of Ministry of Interior and consultation of Ministry of Foreign Affairs*.

**/Deleted by Law No: 4778/35 “and may participate in the same with the intention of deriving mutual interest in cultural, economical and technical fields”*

***/Deleted by Law No: 5253 “Where it is deemed fruitful”*

III-Right of foreigners to incorporate an association

ARTICLE 93-The real persons of foreign origin who possess the right for settlement in Turkey may incorporate association or become a member of the existing associations*.

**/Deleted By Law No: 5253 “provided that it is realised on mutual basis”*

This requirement is not seek for the honourable membership.

F. Formation of organizations by the associations

I. Opening of branches

1. Formation

ARTICLE 94-The associations may open branches in any place deemed necessary. The board of founders comprising at least three persons and authorised by the board of directors for this purpose submit the incorporation declaration and other documents required for opening of a branch to the highest administrative authority of the location.

(Repealed subsection by Law No. 4963/34: The founders of the branch are required to be domiciled at the location of the branch for a period of at least six years.)

The content of the declaration for opening of a branch and other required information is set out in the regulations.

2. Legal organs of the branch and applicable provisions

ARTICLE 95-Each branch must constitute a general assembly, board of directors, auditors’ board, or appoint an auditor.

The provisions of this Law are applicable for the duties and authorisations of these organs, as well as other issues relating to the branch organization.

II. Formation of higher organizations

1. Federations

ARTICLE 96-The federations are formed by combination of at least five associations that join by establishing membership for the realisation of the same object adopted during incorporation.

Every federation has an ordinance.

The federation is regarded in the status of a legal entity upon submission of the incorporation declaration, by-laws and other required documents to the highest administrative authority of the location.

2. Confederations

ARTICLE 97-The confederations are formed by combination of at least three federations that join by establishing membership for the realisation of the same object.

Every confederation has an ordinance.

The federation is regarded in the status of a legal entity upon submission of the incorporation statement, by-laws and other required documents to the highest administrative authority of the location.

3. Common provisions

ARTICLE 98-The associations are represented in the general assembly of the federations and the federations in the general assembly of the confederations by at least three members to be nominated. The representative members are selected by the general assembly of the relevant associations and federations.

The provisions of this Law are applicable for the issues relating to the federations and confederations.

G. Income of the association

ARTICLE 99-The membership fees, profit gained from the activities of the association or from its assets, contributions and donations constitute the income of the association.

H. Reserved provisions

ARTICLE 100-The special provisions relating to the associations formed to serve for public interest and to those established under private laws, are hereby reserved.

THIRD SECTION FOUNDATIONS

A. Formation

1. Definition

ARTICLE 101-The foundations are the charity groups in the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for public use.

The entire property or all kinds of income received or to be received from the activities, or economic values of any real person or legal entity may be endowed to a foundation.

There is no membership status in the foundations.

Formation of a foundation contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, ethics, national integrity and national interest, or with the aim of supporting a distinctive race or community, is restricted.

II. Formation procedure

ARTICLE 102-The will for forming a foundation is expressed by issuance of an official deed or title acquired after a deceased person.. The foundation is regarded in the status of a legal entity when it is being registered in the records kept by the court of that location.

Realisation of transactions relating to formation of a foundation by an official deed through the intermediary of a proxy may only be possible under presentation of an authorisation certificate issued by a public notary and declaration of the properties and rights to be dedicated to the foundation in this certificate.

Application to the court is made by the dedicator if a deed is constituted; if the dedication is made under a title after a death, then the application is made *ex officio* upon notification of the concerned persons, or the judge of common court who opens the testament, or by the General Directorate of Foundation.

The court, to which the applications are made, is entitled to take *ex officio* all the necessary measures for the protection of the property and rights.

III. Appeal and annulment

ARTICLE 103-An appeal may be made against the judgment given by the court by the applicant or the General Directorate of Foundations within one month as of the date of notification.

The General Directorate of Foundations and the concerned persons may file suit of nullity in case of existence of any reason that may hinder the formation of a foundation.

IV. Registration and announcement

ARTICLE 104-Where a decision is given for the registration of a foundation, it is registered in the records kept by the competent court at the location of the foundation; also, it is registered in the central register of General Directorate of Foundations.

In the event that registration decision is given by another court, the documents required for registration are transferred to the competent court at the location of the foundation to complete the registration transaction.

Upon notification of the local court, the foundation having registered in the central register of the General Directorate of Foundations is announced in the Official Gazette.

The registration and announcement is made according to the provisions of the by-laws.

V. Acquisition of property and rights and responsibilities

ARTICLE 105-The proprietorship of the dedicated property and the rights are transferred to the foundation after it achieves the status of a legal entity.

The court which adjudicates for the registration of the foundation notifies the land register for annotation of the dedicated property in the name of the foundation.

The responsibilities of the foundation formed under the title acquired after death in respect of obligations of the inheritor are limited with the property and rights dedicated.

B. Foundation deed

I. Content

ARTICLE 106-The title, object, property and rights dedicated for this purpose, organization and type of management, and domicile of the foundation are indicated in the foundation deed.

II. Negligence

ARTICLE 107-Where the object or the property and rights dedicated for this purpose are not sufficiently indicated in the foundation deed, or in case of existence of other negligence in the declarations; this fact may not constitute grounds for the rejection of the application made to achieve the status of a legal entity.

Such negligence may either be recovered under the supervision of the competent court before adjudication of registration or may be completed after the formation of the foundation by the local court upon request of the auditing authority, also obtaining the opinion of the foundation if there is chance to do so.

Unless otherwise is expressed by the dedicator, the property and rights dedicated to the foundation under the title acquired after death and found to be insufficient to achieve the object, are endowed to another foundation having similar object by the judge referring to the opinion of the auditing authority.

C. Right of heirs and creditors to commence an action

ARTICLE 108- The right of heirs and creditors of the dedicator to commence an action are hereby reserved pursuant to the provisions relating to dedication and acquisition of title after death.

D. Organization of the foundation

I. In general

ARTICLE 109-It is compulsory to constitute an administrative organ within the body of the foundation. The dedicator may also indicate other organs in the foundation if he deems necessary.

II. Aid fund for employees and workers

ARTICLE 110-The directors of the foundation formed to render aid to the employees and workers are obliged to provide necessary information about the organization, operation and financial statute of the foundation to the individuals producing advantage from these supports.

The employees and workers endowing money to the foundation may participate in the management at least in proportion with their contribution to the fund and select representatives among themselves.

As the fund of the foundation will be created by the contributions of the employees and workers, the portion corresponding to such payments will be regarded as receivable of the

foundation against the employer. Therefore, it is necessary to provide the required guarantee conditions for this receivable.

In order to commence an action for producing advantage from the foundation, one either should fulfil the obligations relating to the payments, or such right should have been vested upon the claimant under the provision governing the foundation.

The amendments to be made in the provisions relating to participation of the employees and workers in the management and to the conditions for receiving of compensations from the fund are presented to the adjudication of the local court upon request of the authorised organ, subject to the written opinion of auditing body as set out in the foundation deed.

E. Auditing

ARTICLE 111-The foundations are audited by the General Directorate and higher organizations in order to determine whether the requirements of the foundation deed are fulfilled or not, the assets of the foundation are being used for the specified purpose and the income of the foundation is spent reasonably. The auditing of the foundations by higher organizations is subject to the provisions of the private law.

The auditing procedure, its consequences and participation share of all the foundations in the auditing expenses payable to the General Directorate of Foundations are determined under by-laws provided that it may not exceed five percent of the net profit of the foundation.

F. Change of management, object and properties

I. Change of management

ARTICLE 112-Where it is based on justifiable reasons, the court may change the organization, management and operation of the foundation upon request of the authorised organ or auditing body of the foundation subject to the written opinion of the other party.

Unless otherwise is provided in the foundation deed, the court, upon request of the auditing body, may dismiss the directors from office with the reasons listed in the by-laws by commencing a hearing and may select persons in replacement.

II. Change of object and properties

ARTICLE 113- Where the prevailing circumstances and conditions do not allow the realisation of the object foreseen by the dedicator, then the court may change the object of the foundation upon request of the authorised organ or auditing body of the foundation and referring to the written opinion of the other party.

The same provision is applicable in abrogation or change of conditions and liabilities that considerably hinder the realisation of the object.

Where there are justifiable reasons for replacement of the property and rights dedicated by more satisfactory assets, or conversion of the same into cash, the court may give permission for such changes upon request of the authorised organ or auditing body of the foundation subject to the written opinion of the other party.

G. Annual report

ARTICLE 114- During the first quarter of each calendar year, a report containing information about the assets and activities of the foundation for the previous year is submitted to the auditing board by the administrative organ of the foundation and announcement of the current status of the foundation is provided through appropriate means.

H- Suspension of activities

ARTICLE 115- Under the circumstances stipulated in the Constitution and according to the principles set out in the legislation, the Ministry of Finance may suspend the activities of the foundation until the judgement of the court is received referring to the opinion of the auditing body. The judge is entitled to consider such claim and give judgement within the shortest period.

I. Dissolution of foundation

ARTICLE 116- The foundation may dissolve *ipso facto* where the realisation of the object becomes impossible and amendment of the object is out of question and the name of the foundation is deleted from the official records upon obtaining court decision.

Where it is not possible to amend the object of the foundation revealed to carry out restricted activities, or the object is determined to be contrary to the legislation; the foundation is dissolved upon request of the auditing board or, the Public Prosecutor.

J. Other Provisions

ARTICLE 117- Provisions relating to adverse possession may not be applicable to the assets of the foundations.

The provisions relating to performance of activities by the foundations in international arena and formation of higher organizations may also be applicable to the foundation by way of comparison.

Special provisions relating to the foundations formed for public interest or under private laws are hereby reserved.