



•ALERT•

13 MAY 2019

# Third Sector Code: the deadline for amending the articles of association expires soon

Legislative Decree No. 117 of 3 July 2017, which entered into force on 3 August 2017 (**Third-Sector Code**), is a newly enacted, comprehensive regulation applicable to the non-profit organisations operating in the Third Sector, thus replacing a number of provisions scattered within the Italian law-system.

Among the several innovations, the most significant ones include:

- the introduction of the new category of Third-Sector Entities (TSE), whose notion and perimeter are defined under the Third-Sector Code;
- the list of 'activities of general interest' pursued by TSE, supplementing the list already provided for entities qualified as *ONLUS* (non-profit organisation of social utility) with reference to new activities (e.g., civil protection, social agriculture, redevelopment of unused public goods or assets confiscated from criminal organisations, animal protection);
- the identification of general and common provisions (on civil, organisational and tax matters) applicable to TSE;
- the streamlining of the procedure for registering a non-profit organisation as a legal entity in the National Third-Sector Register (which is yet to be established);
- the definition of transparency, information and publicity obligations applicable to accounting, corporate books and other records according to the entity size;
- further tax benefits both in favour of TSE and donors;



- new instruments for fund-raising activities and public/private financing in favour of TSE;
- the enactment of Article 42-*bis* of the Italian Civil Code concerning transformation, merger and demerger of associations and foundations.

More recently, Legislative Decree No. 105 of 3 August 2018 (entered into force on 11 September 2018) introduced some amendments to the Third-Sector Code, specifying, among other things, that until the National Third-Sector Register is established the current provisions will continue to apply to ***ONLUS* entities**, to **voluntary organisations** and **social promotion associations**.

However, by 3 August 2019 these entities:

- will have to comply with the mandatory provisions of the Third-Sector Code if they want to benefit from the existing tax advantages. In particular the mandatory provisions **concern a variety of issues, such as** the legal form, purposes, activities - both institutional, economic and of other nature -, the procedure for dissolution and assets devolution, the accounting and publicity obligations, as well as the members' rights;
- will be allowed to amend the articles of association with the procedures and majorities required for the resolutions of ordinary members' meeting (if a foundation is without a members' board, amendments shall be resolved by the board of directors with the majorities required under the current by-laws);
- will be allowed to follow the same simplified procedure if they wish to adopt specific amendments to prevent non-mandatory provisions from applying under the Third-Sector Code.

The requirements and the simplified procedure for amending the articles of association apply to *ONLUS* entities, voluntary organisations and social promotion associations existing as of 3 August 2017. The entities that were set up after that date must have already complied with the new applicable provisions (but if they failed to do so, they will have to remedy within the next deadline).

Moreover, the Italian Tax Authority has clarified that the *ONLUS* entities will have to resolve the necessary amendments by 3 August 2019 although being effective from the tax period following the establishment of the National Third-Sector Register (see Article 104, second paragraph, of the Third-Sector Code).

**Time is short.** Amendments to the by-laws, indeed, must be resolved by the corporate bodies and then approved by the competent state or regional authority according to the procedure and timing set out under Presidential Decree No. 361/2000 (which will remain in force until the National Third-Sector Register is established). Furthermore, any amendment aimed at inserting purely "optional" provisions cannot be resolved by the ordinary shareholders' meeting.

The **Third Sector Team** of **LCA Studio Legale** has all the necessary skills to assist non-profit organisations for the upcoming fulfilments and is ready to advise on the opportunities that will soon be implemented in the Third Sector.

#### CONTACTS

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