

28 February 2008

EUROCONFERENCE

Taking your association to the NEXT level!

Financial Management and Planning of an Association

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Introduction

- Welcome
- Growing importance of financial management and planning for not-for-profit associations
 - Precise legal requirements depending on status and size
 - Sanctions
 - Liability of Directors
 - Beyond legal obligations: Strategic thinking and management of financial difficulties
- Introduction of co-mediators



Outline

- Legal issues affecting accounting requirements (Filip Luypaert)
- Accounting obligations/Financial management/Internal control procedures (Danielle Vermaelen)
- Directors' liabilities (Filip Luypaert)
- Coping with financial difficulties (Filip Luypaert)
- Summary and Discussion Opening (Pierre Lucas)



Legal issues affecting accounting requirements

Filip Luypaert



Introduction

Applicable legislation:

Law of June 26, 1921 concerning the Not-for-Profit Associations, the International Not-for-Profit Associations and the Foundations, as modified by the law of May 2, 2002

(and following Royal Decrees)

Three forms of Not-for-Profit Associations in Belgium:

- Belgian Not-for-Profit Association
- International Not-for-Profit Association, according to Belgian law
- Branch of a foreign Not-for-Profit Association



Legal obligations

I) Obligations for Belgian Not-for-Profit Associations (1)

- Not-for-Profit Associations must maintain the minimum accounting requirements.
- The Board of Directors must draft:
 - ü Annual financial accounts of the previous financial year,
 - ü Budget for the next financial year.
- These documents must be approved by the General Meeting of Members, within 6 months of the closure of the financial year.
- The General Meeting of Members must appoint a statutory auditor once certain conditions are met.



Legal obligations

I) Obligations for Belgian Not-for-Profit Associations (2)

- A membership register must be kept at the registered seat of the association and must be deposited at the clerk's office of the Court of Commerce.
- The association dossier at the clerk's office of the Court of Commerce must be kept up to date:
 - ü articles of association and changes thereof
 - ü decisions of appointment and dismissal
 - ü membership register and changes thereof (annually)
 - ü decisions concerning nullity, dissolution and liquidation
 - ü annual accounts



Legal obligations

I) Obligations for Belgian Not-for-Profit Associations (3)

- Some documents (or at least extracts) must be published in the annexes to the Belgian Gazette:
 - ü articles of association
 - ü documents of appointment or dismissal
 - ü document concerning nullity, dissolution and liquidation
 - ü changes of the documents above



Legal obligations

I) Obligations for Belgian Not-for-Profit Associations (4)

SANCTIONS

- possible liability for directors of the association
- in case of no or irregular membership register: form of suspended legal personality
- in case annual accounts have not been deposited : form of suspended legal personality
- in case annual accounts have not been deposited for 3 years in row: possible judicial dissolution



Legal obligations

II) Obligations for International Not-for-Profit Associations, according to Belgian law

- International Not-for-Profit Associations with registered seat in Belgium receive legal personality by Royal Decree.
- In general, the same obligations and rules as for Belgian Not-for-Profit Associations apply.
- Main difference: flexible rules for the internal organisation of the association.
- Second difference: no obligation to keep a membership register.



Legal obligations

III) Obligations for branches of foreign Not-for-Profit Associations (1)

ü Not-for-Profit Associations of foreign countries with legal personality can legally establish a branch in Belgium: a so called “center of activities”.

ü In general, the same obligations and rules as for Belgian Not-for-Profit Associations apply.

ü All “centers of activities” of a certain foreign association located in Belgium are collectively considered as one Belgian Not-for-Profit Association.



Legal obligations

III) Obligations for branches of foreign Not-for-Profit Associations (2)

1 Exception:

No obligation to draft a budget for the next financial year.



Accounting Obligations

Financial Management

Internal Control Procedures

Danielle Vermaelen



Accounting Obligations



Overview

Law of May 2nd, 2002 + subsequent Royal Decrees

Small association	Not more than 1 criterion <ul style="list-style-type: none">• > 5 FTE• > 250 K€ non exceptional revenue• > 1.000 K€ B/S total	Simplified accounting	External audit : not mandatory
Large associations	At least 2 criteria <ul style="list-style-type: none">• > 5 FTE• > 250 K€ non exceptional revenue• > 1.000 K€ B/S total	Full accounting	External audit : not mandatory
Very large associations	More than 100 FTE or at least 2 criteria <ul style="list-style-type: none">• > 50 FTE• > 6.250 K€ non exceptional revenue• > 3.125 K€ B/S total	Full accounting	External audit : mandatory



Simplified Accounting

- Journal of cash movements -> yearly overview of cash receipts and disbursements
- Yearly inventory of assets, liabilities, rights and obligations
- Valuations rules
- To be filed with commercial court (Not-for-Profit associations) or Department of Justice of Federal Government (international associations)



Full Accounting Obligation

- Accrual accounting with standard set of accounts
 - Completeness of accounting entries
 - Underlying documentation
 - Timely (cut-off) and chronological entries
 - Non reversibility of entries
 - Yearly inventory
- Mandatory format of annual accounts (including accounting principles)
- To be filed with National Bank of Belgium (Not-for-Profit associations) or Department of Justice of Federal Government (international associations)



(Non) Sense of Accounting Obligations for Not-for-Profit Associations ?

- Do annual accounts reflect the Not-for-Profit performance of the association ?
- Importance of a comprehensive activity report !
- Importance of sound corporate governance !



Financial Management



Overview

- Budgeting & budgetary control
- Cash management
- Management reporting

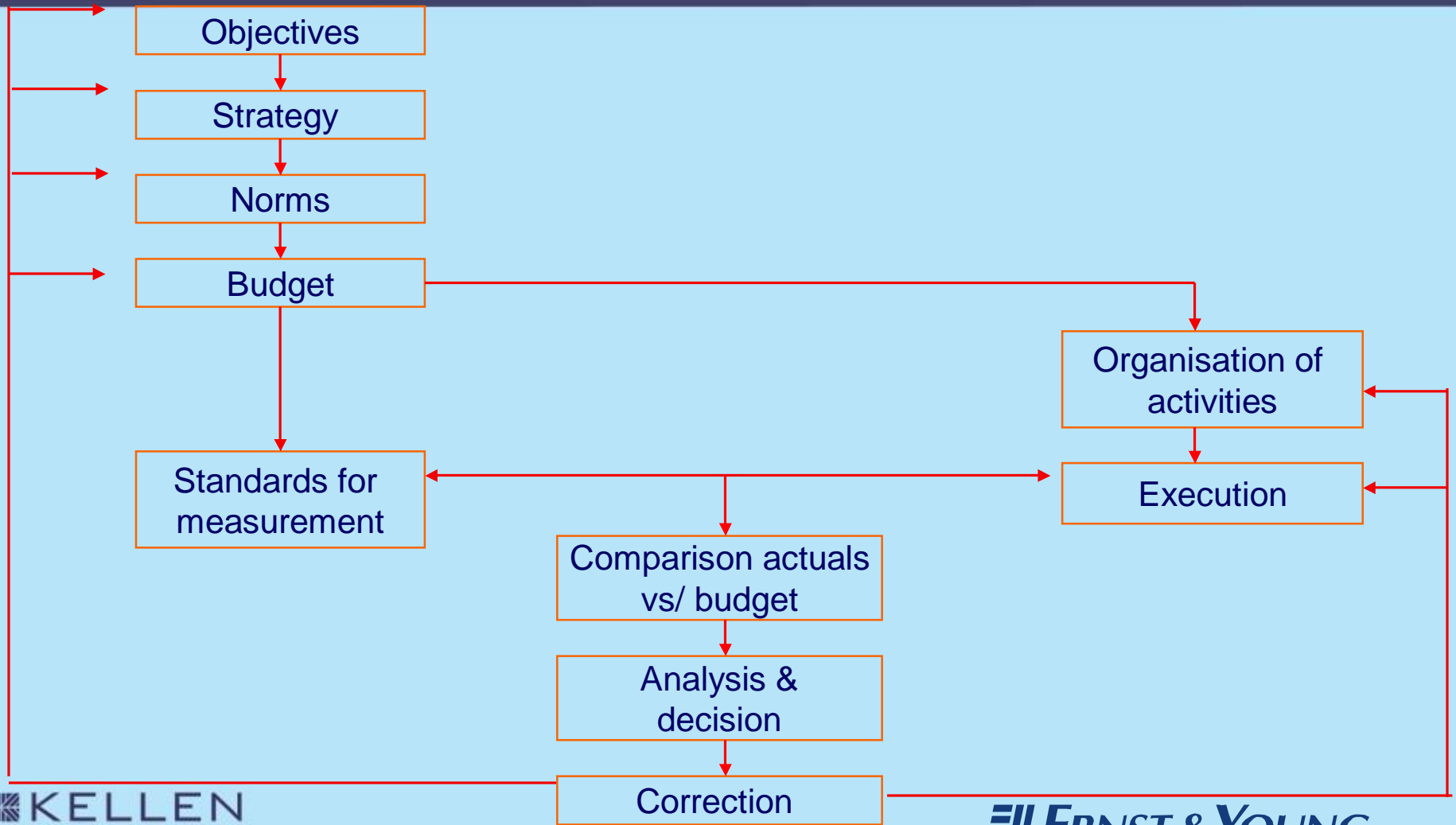


Budgeting & Budgetary Control

- Objectives of budgeting exercise
 - Warrants continuity of the association – think ahead
 - Translation of policy decided by Board of Directors
 - Authorisation / delegation by Board of Directors
 - Benchmark for actuals to budget
 - External communication tool



Budgeting Process





Budgeting & Budgetary Control : Issues

- Format? Accrual budgeting
- Timely information
- Allocation of responsibilities
- Consistency
- Analysis of differences



Cash Management

- Accrual accounting & budgeting versus cash management
- Two main components
 - Minimum “comfort” level
 - Rolling cash planning
- Monitoring
- Examples of budget and cash planning



Management Reporting

- Key performance indicators on both accounting and non accounting data
- Timelines of information
- Keep it simple



Internal Control Procedures



Overview

- Definition of internal control
- Main elements of internal control in a Not-for-Profit environment



Definition of Internal Control

- Internal control is a process designed to provide reasonable assurance regarding the achievement of objectives in the following categories
 - Effectiveness and efficiency of operations
 - Reliability of financial reporting
 - Compliance with applicable laws and regulations
- Importance of internal control
- Is different from Internal Audit



Main Elements of Internal Control in a Not-for-Profit Environment

- Organisation chart
- Segregation of duties : decide, safeguard, registration, control
- Physical safeguarding
- Manual of procedures



Directors' Liabilities

Filip Luypaert



Liability: introduction

Three types of liability:

- Contractual
- Extra-contractual
- Criminal

The same rules regarding liability apply to directors of:

- Belgian Not-for-Profit Associations
- International Non- Profit Associations according to Belgian law
- “Centers of activities” of foreign associations



Contractual liability

Different liability rule applies than for directors of companies

In general: directors of a Not-for-Profit Association act under a mandate of agency



Individual liability: directors are liable for the damage caused by their personal error.

Therefore, to claim damages from a director under contractual liability one must prove an error in the fulfillment of his duties.



Contractual liability

Error in the fulfillment of his duties?

- Judicial review:
- If a careful and insightful director under the same circumstances would act the same way (culpa levis in abstracto),
 - Only marginal review.

Directors who don't receive remuneration for their mandate are judged more leniently.



Contractual liability

Error in the fulfillment of his duties?

For instance:

- Not drafting the budget within 6 months of the closure of the previous financial year, except for “force majeure”.
- Not drafting the annual accounts within 6 months of the closure of the previous financial year, “except for “force majeure”.
- Not depositing the membership register with the clerk’s office.
- Outrageous expenditures when the accounts already show negative figures.



Contractual liability

Only the association itself can claim damages based on contractual liability.

Articles 14 and 15 (Belgian Not-for-Profit Association)
26 octies, §2 (International Not-for-Profit Association)
49 (“Center of activities”)



One exception: when the action of a director has exceeded his mandate.

The director will be deemed to have committed himself instead of the association.



Contractual liability

Extent of the damage to be indemnified:

Article 1150 of the Belgian Civil Code:



Only damages foreseeable at the moment one commits himself (start of the contract).



Except in case of evil intent

All damages



Extra-contractual liability

Liability based on article 1382 of the Belgian Civil Code:

“ Any action of a man, by which another suffers damage, commits the person by whose fault the damage arose, to indemnify this damage.”



Damage originating from a violation of the general obligation for carefulness.



Extra-contractual liability

Liability based on article 1382 of the Belgian Civil Code:

Proof must be given of

- an error
- the damage and the extent of damage
- a causal relationship between the error and the damage

Judicial review: If a careful and insightful person
under the same circumstances would
act the same way



Extra-contractual liability

For instance:

- Outrageous expenditures when the person knows the association cannot sustain such expenditures.
- Committing the association for severe expenditures without taking sufficient action to acquire enough resources to cover them.
- Failure to take action against another director when it is known this other director abuses the legal personality of the association.



Extra-contractual liability

Extent of the damage to be indemnified:



All damages



End of liability

Two possible ways for liability to end:

- Statutory limitation
- Discharge



End of liability

Statutory limitation

Article 2262bis of the Belgian Civil Code



10 years

Applicable to both contractual and extra-contractual liability

Article 198 of the Belgian Company Code does not apply to Not-for-Profit Associations (5 years statutory limitation).



End of liability

Discharge

Discharge of a director by the General Meeting of Member ends only contractual liability.

Unless discharge was given based upon false documents (invalid discharge)!

Dismissal of a director does not end liability unless discharge is given at the same moment.



Financial difficulties

Filip Luypaert



Financial difficulties

Belgian Law grants legal personality for all mentioned forms of Not-for-Profit Associations



Associations have their own assets



Assets of members and directors cannot be claimed to indemnify creditors of the association unless the director or member can be held liable by those creditors



Financial difficulties

Judicial dissolution

In case a Not-for-Profit Association cannot comply with its commitments, judicial dissolution can be asked for by

- A member
- A third party with a valid interest
- The State Counsel's Office

Article 18 (Belgian Not-for-Profit Association)

Article 55 (International Not-for-Profit Association according to Belgian law)

“Centers of activities” cannot be judicially closed for failure to comply with its commitments. Instead the foreign Not-for-Profit Association can be sued to comply with the commitments of its branch.



Financial difficulties

Bankruptcy

A Not-for-Profit Association can be requalified as a company (without or with limited legal personality!) when:

- the association conducts acts of commerce or industry
- or
- has as goal to provide its members with material benefits

Only a judicial court has the power to requalify

(at the request of any party with a valid interest or the State Counsel's office)

An association can be requalified in a General Partnership (VOF/SNC) or Civil Law Partnership



Financial difficulties

Bankruptcy

When a Not-for-Profit Association is requalified as a company it can be declared bankrupt if the conditions of bankruptcy are met:

- the company conducts commercial activities as laid down in article 2 of the Belgian Code of Commerce
- the company has ceased to pay its debts
- the company no longer receives credit for its debts



Financial difficulties

Bankruptcy

The fact that a Not-for-Profit Association (with legal personality) is requalified in a partnership (without legal personality) implies that



bankruptcy of the requalified association will extend to the members of the association!

(the assets of the members can be claimed by creditors)



Financial difficulties

Bankruptcy

- The conditions for a Not-for-Profit Association to be requalified imply violations against the articles of association and/or the law



- The fact that a Not-for-Profit Association is requalified can be seen as an error of a director in the fulfillment of his duties



- Possible contractual liability and extra-contractual liability for the directors of the association



- Giving discharge to directors who violate the law or the articles of association, can be regarded as an error for the purpose of art. 1382 of the Belgian Civil Code

- Possible extra-contractual liability for members of the association



Conclusion

Directors of Not-for-Profit Associations can be held liable for mistakes made in the fulfilment of their duties or for extra-contractual errors which cause damage.

Even members must remain watchful to avoid liability.

Keep an eye on the law, as the law will always keep an eye on you!



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Conclusion

- Precise rules apply for financial planning and management of associations
- Should be seen as support to sound management
- Importance of good cooperation between association staff and directors
- Discussion opening



Discussion



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