

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

**A JOINT PROJECT OF THE UNIFORM LAW COMMISSION,
THE UNIFORM LAW CONFERENCE OF CANADA, AND
THE MEXICAN CENTER OF UNIFORM LAW**

**TO CREATE A HARMONIZED LEGAL FRAMEWORK
FOR UNINCORPORATED NONPROFIT ASSOCIATIONS
IN NORTH AMERICA**

AMENDMENTS TO THE CIVIL CODE OF QUÉBEC

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, have not been adopted by the Uniform Law Conference of Canada. They do not necessarily reflect the views of the Conference or its Delegates.

**Québec, QC
August 10–14, 2008**

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INTRODUCTION

[1] This report was prepared by Professor Michelle Cumyn of Laval University, who was one of the Canadian members of the Joint Drafting Committee to Harmonize the Law of Unincorporated Nonprofit Associations in North America. The Joint Drafting Committee was composed of delegates of the ULCC, the ULC (formerly NCCUSL) and the MCUL. The Committee members have agreed on a Statement of Principles, drafted by Harry Haynsworth, and on that basis, they have proceeded to prepare draft legislation implementing such principles into the law of Mexico, the United States and Canada. The following report was approved by the Committee at its last meeting in March 2008. It concerns itself with implementing the Statement of Principles in the law of Québec.

[2] In Québec, unincorporated associations (also named contractual associations) are governed by the Civil Code. Québec's first civil code, the *Civil Code of Lower Canada*, which came into effect in 1866, did not contain any specific provisions on associations. The *Civil Code of Québec* ("Civil Code" "Code" or "C.c.Q."), which came into effect on 1 January 1994, now has provisions setting out the law of unincorporated associations at articles 2186, 2187 and 2267 to 2279. The association is envisaged by the Code as a nominate contract alongside partnerships.

[3] There is currently much dissatisfaction in Québec with respect to the law of *incorporated* associations. A number of incorporated associations are created by private enactments. Others are constituted by virtue of semi-private enactments such as the *Act respecting societies for the prevention of cruelty to animals* or the *Fish and Game Clubs Act*. Finally, associations may be incorporated by letters patent under Part III of the *Companies Act*, providing that they are "for objects of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional, athletic or sporting character, or the like, but without pecuniary gain" (s. 218). By a recent account, there are 1597 laws in force in Québec governing incorporated associations. A project is under way to reform the law in this area. However, a consultation document circulated by the Enterprise Reg-

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istrar of Québec in 2004 was widely criticised, and the reform process appears to be at a standstill.

[4] It is estimated that there are approximately 50 000 unincorporated associations in Québec. The number of incorporated association was 46 500 in 2004.

[5] The deliberations of the Joint Drafting Committee have revealed both the strengths and weaknesses of the Civil Code provisions on associations. Only limited amendments are required to harmonize the Civil Code with the Statement of Principles, and these would make significant improvements to the law as it now stands. It is suggested that a reformed chapter on contractual associations would go a long way toward achieving some of the goals being pursued in the current reform of incorporated associations. By creating an optimal regime for unincorporated associations, the Québec legislature would relieve many non-profit organisations of the need to incorporate. Reforming the law of incorporated associations could then focus on the particular needs of a more circumscribed group of organisations.

[6] This report is comprised of two parts. Part I (Principles to Code) addresses each of the principles in turn, comparing it with the corresponding provisions of the Civil Code and indicating what amendments, if any, are required to harmonize the latter with the Statement of Principles. Comments are provided where necessary. Part II (Code to Principles) then sets out the codal provisions in numerical order, incorporating the suggested amendments, with references to the corresponding principles. The reader ought to have close at hand the full Statement of Principles (May 2007, by Harry Haynsworth) for commentaries on each of the principles. The commentaries have not been reproduced below, although they have of course been considered throughout.

[7] Please bear in mind that this report has not been reviewed by an experienced drafter and that no input from the Québec government has been obtained at this stage.

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Part I – Principles to Code

[8] Each principle is reproduced below, followed by the corresponding provisions of the Civil Code. The latter may recur under different principles. The existing Civil Code provisions are reproduced on the left side of the page, while on the right, amendments required by the principle under review are indicated, if any. Comments follow, where necessary. The amendments that are not considered to be absolutely necessary in order to harmonize the Civil Code provisions with the Statement of Principles, but desirable for the sake of greater clarity, are highlighted in grey.

PRINCIPLE 1. A UNA is an unincorporated organization formed pursuant to an agreement, written or oral or inferred by conduct, by two or more persons to pursue one or more common lawful nonprofit purposes that is not organized as a trust, a cooperative, a domestic partnership, or, except as otherwise provided in the Act, formed under any other statute that governs the organization and operation of certain designated unincorporated associations, and that is not merely a means of holding title to property as co-owners. A UNA has members, managers and governing principles.

2186. A contract of partnership is a contract by which the parties, in a spirit of cooperation, agree to carry on an activity, including the operation of an enterprise, to contribute thereto by combining property, knowledge or activities and to share any resulting pecuniary profits.

A contract of association is a contract by which the parties agree to pursue a common goal other than the making of pecuniary profits to be shared between the members of the association.

2250. The contract by which an undeclared partnership is established may be written or verbal. It may also arise from an overt act indicating the intention to

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A contract of association is a contract by which the parties agree to pursue a common goal other than the making of pecuniary profits to be shared between the members of the association.

Mere indivision of property existing between several persons does not create a presumption of their intention to form a partnership or an association.

2250. The contract by which an undeclared partnership is established may be written or verbal. It may also arise from an overt act indicating the intention to

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2267. The contract by which an association is established may be written or verbal. It may also arise from overt acts indicating the intention to form an association.

No change required.

Comment: It is not necessary to specify that associations are distinct from all the other institutions listed in the principle, as these are defined and regulated elsewhere in the Code. The courts will characterize a particular arrangement by choosing from the different possible juridical forms set out in the Code, which are generally considered to be mutually exclusive. However, for greater certainty, a paragraph which is currently found at article 2250 C.c.Q. on undeclared partnerships could be moved to article 2186, thus making it applicable both to partnerships and associations.

The Civil Code uses “common goal” at art. 2186 and “object” at article 2268, to designate what Principle 1 calls “common purposes” (note the plural). Query whether the Civil Code should not adopt only one of these expressions at both articles 2186 and 2268 (and why not “common purposes”).

PRINCIPLE 2. The agreement forming the UNA becomes part of the UNA’s “governing principles,” an important term that should be defined in the Act. Governing principles are all the agreements that govern the purpose or operation of a UNA and the rights and obligations of its members and managers. If written, they are usually found in the UNA’s constitution, articles of association, bylaws or regulations. If not covered by a writing, they would be established practices, which should also be a defined term (see Calif. Corp. Code §18010) (“established practices” means the practices used by an unincorporated association without material change or exception during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.”)

2267. The contract by which an association is established may be written or verbal. It may also arise from overt acts indicating the intention to form an association.

No change required.

2268. The contract of association governs the object, functioning, management

No change required.

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and other terms and conditions of the association.

It is presumed to allow the admission of members other than the founding members.

2272. Every member is entitled to participate in collective decisions, and he may not be prevented from exercising that right by the contract of association.

Collective decisions, including those to amend the contract of association, are taken by a majority vote of the members, unless otherwise stipulated in the contract.

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Collective decisions, including those to amend the contract of association, are taken by a majority vote of the members, unless otherwise stipulated in the contract.

The contract of association may also be amended by the written or verbal consent of all members or by an established practice of the association.

Comment: The “contract of association” referred to in the Civil Code provisions is equivalent to the “governing principles” referred to in the Statement of Principles. Article 2272 may appear to require that any modification of the contract association whose content is first established by art. 2267 must be made by a majority vote of the members. The last paragraph is added to dispel this ambiguity.

PRINCIPLE 3. “Members” of a UNA are the persons who, under the governing principles of a UNA, are entitled to participate in the selection of persons who are authorized to manage the affairs of the UNA or in the development of the UNA’s governing principles or policies and have become members pursuant to Principle #35.

2272. Every member is entitled to participate in collective decisions, and he may not be prevented from exercising that right by the contract of association.

Collective decisions, including those to amend the contract of association, are taken by a majority vote of the members, unless otherwise stipulated in the contract.

No change required.

The contract of association may also be amended by the written or verbal con-

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sent of all members or by an established practice of the association.

[as previously amended]

PRINCIPLE 4. “Managers” are all those persons who have managerial responsibility within the UNA. The term includes directors, trustees, administrators and officers and anyone else (e.g., the minister of a church that is a UNA) who has been authorized to exercise governing, managerial or administrative authority. A manager may or may not be a member of a UNA.

2269. Failing any special rules in the contract of association, the directors of the association are elected from among its members, and the founding members are, of right, the directors of the association until they are replaced.

No change required.

2270. The directors act as mandataries of the members of the association.

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Their only powers are those conferred on them by the contract of association or by law, or those arising from their mandate.

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The association is administered and represented by its directors, who bind it to the extent of the powers vested in them by the contract of association, by a decision of the members or by law.

Comment: The new formulation of art. 2270 is based in part on art. 312 C.c.Q.

PRINCIPLE 5. A UNA may engage in profit-making activities but any profits that result from such activities must be used or set aside for the UNA’s nonprofit purposes.

2186. [...]

A contract of association is a contract by which the parties agree to pursue a common goal other than the making of pecuniary profits to be shared between the members of the association.

No change required.

Comment: It is easily inferred from article 2186 that profits may be made and used to further the purposes of the association, but may not be distributed to members.

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PRINCIPLE 6. As of the effective date of the Act, all pre-existing organizations formed in the enacting jurisdiction that meet the definitional requirements of a UNA are governed by the Act without the organization having to take any action. The Act also applies to UNA's operating in the enacting jurisdiction and in existence prior to or subsequent to the effective date of the Act under the laws of another jurisdiction except with respect to the relations among the members and managers and between the members, managers and the UNA, which are governed by the jurisdiction designated in the foreign UNA's governing principles, and in the absence of applicable governing principles, by the jurisdiction where the foreign UNA has its main place of activities.

3083. [...]

The status and capacity of a legal person are governed by the law of the country under which it was formed subject, with respect to its activities, to the law of the place where they are carried out.

3111. A juridical act, whether or not it contains any foreign element, is governed by the law expressly designated in the act or the designation of which may be inferred with certainty from the terms of the act.

[...]

3112. If no law is designated in the act or if the law designated invalidates the juridical act, the courts apply the law of the country with which the act is most closely connected, in view of its nature and the attendant circumstances.

Associations

3116.1. The status and capacity of an association and the relations between the association, its members and its directors are governed by the law designated in the contract of association or, if no law is designated, by the law with which the association is most closely connected.

To determine the applicable law, account is taken in particular of the place of administration of the association, the

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**place where its property is situated and
its object and the places where it is to
be fulfilled.**

Comment: Issues of transitional law should be dealt with in the statute amending the Civil Code and not in the Civil Code itself.

Issues of conflict of law raise the important question whether an association, once it is granted legal personality, should be characterized as a contract or as a legal person for the purpose of applying choice of law rules. Articles 3083, 3111 and 3112 appear in the book of the Code dealing with conflict of laws. Applying article 3083, the rule applicable to legal persons, or applying articles 3111 and following, the rules applicable to contracts, may lead to different results. A new provision (art. 3116.1) dealing especially with associations should be added to the Book on conflict of laws. The proposed article is based on article 3107 applicable to trusts, which appears to be most appropriate for associations.

Discussions within the Joint Drafting Committee have revealed that the common law and civil law traditions tend to adopt different choice of law rules with respect to the status and capacity of legal entities. Under American law, a state would recognize the association as a legal entity according to its own laws, even if the association was formed under the laws of a state that did not recognize the association as a legal entity. Conversely, a state would not confer entity status on an association where its own laws did not permit it, even if the association was formed under the laws of a state that did recognize it as a legal entity. This position is reflected in the uniform acts presented for adoption both in the American states and Canadian provinces outside Québec. While an American member of the committee argued persuasively in favor of the civil law conflicts rule, it was considered by the group that attempting to reverse the underlying choice of law doctrine in the United States was unrealistic. By the same token, given the underlying choice of law rules applicable in Québec, we cannot recommend that the common law solution be followed with respect to associations. Proposed article 3116.1 therefore deliberately reflects the civil law approach to this matter.

PRINCIPLE 7. A UNA is a legal entity separate and apart from its members and managers.

2267. The contract by which an association is established may be written or verbal. It may also arise from overt acts indicating the intention to form an association.

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The association is a legal person distinct from its members and directors. The effects of juridical personality set forth in Title Five of Book One apply to associations in accordance with their nature.

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PRINCIPLE 8. Once formed, a UNA continues in existence until it is dissolved and its assets have been liquidated.

2187. The partnership or association is created upon the formation of the contract if no other date is indicated in the contract.

No change required.

2277. A contract of association is terminated by the expiry of its term or the fulfilment of the condition attached to the contract, or by the accomplishment or impossibility of accomplishing the object of the contract.

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It is also terminated by decision of the members.

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The juridical personality of the association continues to exist for the purposes of the liquidation.

2278. When a contract of association is terminated, the association is liquidated by a person appointed by the directors or, failing that, by the court.

No change required.

Comment: To avoid the association's assets and liabilities being left in a state of limbo when the contract of association is terminated pursuant to article 2277, it is important to specify that the association continues in existence until liquidated, as stated by principle 8. The added paragraph follows the same formulation as article 357 C.c.Q.

PRINCIPLE 9. Principles of law and equity supplement the Act unless displaced by a particular provision of it.

PRINCIPLE 10. A provision in a statute in the enacting jurisdiction governing a particular type of UNA prevails over an inconsistent general provision of the Act, to the extent of the inconsistency.

PRINCIPLE 11. The Act supplements the enacting jurisdiction's regulatory laws and rules that are applicable to nonprofit organizations. In the event of a conflict, these

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other laws and rules prevail.

Preliminary provision

The *Civil Code of Québec*, in harmony with the *Charter of Human Rights and Freedoms* and the general principles of law, governs persons, relations between persons, and property.

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *Jus Commune*, expressly or by implication. In these matters, the Code is the foundation of all other laws, although other laws may complement the Code or make exceptions to it.

300. Legal persons established in the public interest are primarily governed by the special Acts by which they are constituted and by those which are applicable to them; legal persons established for a private interest are primarily governed by the Acts applicable to their particular type.

Both kinds of legal persons are also governed by this Code where the provisions of such Acts require to be complemented, particularly with regard to their status as legal persons, their property and their relation with other persons.

334. Legal persons assuming a juridical form governed by another title of this Code are subject to the rules of this chapter; the same applies to any other legal person if the Act by which it is constituted or which applies to it so provides or indicates no other rules of functioning, dissolution or liquidation.

They may, however, make derogations in their by-laws from the rules concerning

334. Legal persons assuming a juridical form governed by another title of this Code, **with the exception of associations**, are subject to the rules of this chapter; the same applies to any other legal person if the Act by which it is constituted or which applies to it so provides or indicates no other rules of functioning, dissolution or liquidation.

They may, however, make derogations in their by-laws from the rules concerning

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their functioning, provided the rights of the members are safeguarded.

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1377. The general rules set out in this chapter apply to all contracts, regardless of their nature. Special rules for certain contracts which complement or depart from these general rules are established under Title Two of this Book.

Comment: The Code contains general rules on legal persons in Title 5 of Book 1 on persons (art. 298-364), which supplement the *Companies Act* (provincial corporations) and the *Canadian Business Corporations Act* (federal corporations), as well as other laws creating or governing corporations. These rules are divided into two chapters. The first, entitled Juridical Personality (art. 298-333 C.c.Q.), deals with the effects of juridical personality and the obligations and disqualifications of directors. The second, entitled Provisions applicable to certain legal persons (art. 334-364 C.c.Q.), deals with the functional structure of certain legal persons and their dissolution and liquidation. Recognizing associations as legal persons initially entails that associations are governed by all of these provisions, especially in view of articles 300 and 334 reproduced above, to the extent that such rules are not displaced by the more specific rules on associations.

At the same time, associations are nominate contracts and as such, are governed by general contract law, pursuant to art. 1377. It is foreseeable that the law of contracts will diverge from the law of legal persons in some respects, and that conflicts might arise in cases where it is necessary to look beyond the specific provisions on associations to a more general legal principle. An example already noted is choice of law (see above). It is therefore important to include clear indications of the extent to which the provisions on legal persons are applicable as a back-up default regime for associations.

Fortunately, Title 5 is structured in such a way that the provisions that need to be included are to be found in the first chapter, whereas the provisions that need to be excluded are to be found in the second chapter. Explicit references to the first chapter are therefore added to art. 2267 and at art. 2274 (see below), while the second chapter, which is introduced by art. 334, is excluded by the amendment proposed to that article. In particular, the provisions of the second chapter relating to the functional structure of certain legal persons sets out the organizational structure typical of corporations, with senior officers, a board of directors and annual general meetings of members, as well as formal requirements for decision-making. These provisions must not be made to apply to associations, which may be much more informal.

PRINCIPLE 12. A UNA in its own name may acquire, hold, encumber and transfer property, may execute contracts in its own name, and may be a beneficiary of a trust, a legatee, or a devisee under a will.

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PRINCIPLE 13. A UNA, in its own name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in any arbitration, mediation or other form of alternative dispute resolution.

PRINCIPLE 14. A claim for relief by or against a UNA does not abate merely because of a change in its members or managers.

2271. The directors may sue and be sued to assert the rights and interests of the association.

~~2271. The directors may sue and be sued to assert the rights and interests of the association.~~ **The association has a patrimony and full enjoyment of civil rights. It may sue and be sued.**

Its acts bind none but itself, except as provided by law.

Comment: Principles 12, 13 and 14 need not really be restated, since they are a direct consequence of the association being a legal person. Still, the principal effects of legal personality might be reaffirmed at article 2271, for the sake of greater clarity. The reformulation of art. 2271 is based on articles 301, 302 and 309 on legal persons.

PRINCIPLE 15. The Act does not affect an action or proceeding commenced or right accrued before its effective date.

PRINCIPLE 16. The Act does not affect an action or proceeding commenced or right accrued before its effective date.

Comment: issues of transitional law should be dealt with in the statute amending the civil code and not in the civil code itself.

PRINCIPLE 17. Provisions for service of pleadings, venue in actions against a UNA and enforcement of judgments or orders against a UNA should be included in the Act, unless they exist in the enacting jurisdiction's other statutes and regulations.

Comment: such issues are dealt with very comprehensively in the *Code of Civil Procedure*, see art. 60, 61(e), 129, 409, 844, 629, 858ff of that code.

PRINCIPLE 18. A UNA is liable for its acts or omissions and for the acts or omissions of its managers, employees and agents acting within the scope of their office, employment and agency to the same extent as if the UNA were a nonprofit corporation.

PRINCIPLE 19. Except as otherwise provided in Principle 24, a monetary judgment against a UNA may be enforced only against the property of the UNA.

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PRINCIPLE 20. A member or manager of a UNA is not liable for a debt or liability of the UNA merely by reason of being a member or manager of the UNA.

2274. Where the property of the association is insufficient, the directors and any member administering in fact the affairs of the association are solidarily or jointly liable for the obligations of the association resulting from decisions to which they gave their approval during their administration, whether or not the obligations have been contracted for the service or operation of an enterprise of the association.

The property of each of these persons is not applied to the payment of creditors of the association, however, until after his own creditors are paid.

2275. A member who has not administered the association is liable for the debts of the association only up to the promised contribution and the subscriptions due for payment.

~~**2274.** Where the property of the association is insufficient, the directors and any member administering in fact the affairs of the association are solidarily or jointly liable for the obligations of the association resulting from decisions to which they gave their approval during their administration, whether or not the obligations have been contracted for the service or operation of an enterprise of the association.~~

~~The property of each of these persons is not applied to the payment of creditors of the association, however, until after his own creditors are paid.~~

~~**2275.** A member who has not administered the association is liable for the debts of the association only up to the promised contribution and the subscriptions due for payment.~~

A member is liable toward the association for anything he has promised to contribute to it.

Comment: Article 2274 must be deleted, because it is not consistent with legal personality. Possibly the most significant benefit of harmonizing the Civil Code with the Statement of Principles is that directors will no longer be subjected to the liability created by article 2274. Article 2275 should be restated, since members are not in fact liable to third parties, but directly to the association for anything they have promised to contribute. The new formulation is based in part on art. 315 C.c.Q. As such, it is not strictly necessary to restate it here, although it would be preferable to do so for greater certainty. This rule does not prevent a creditor of the association from exercising an oblique action against the members for any amounts owing by the later to the former, where applicable (see art. 1627ff C.c.Q.).

PRINCIPLE 21. A member or manager of a UNA is liable for a contractual obligation of the UNA if the member or manager expressly assumes personal liability for the obligations or the member or manager executes a contract on behalf of the UNA

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without authority to execute the contract or without disclosing that the member or manager is acting as an agent on behalf of the UNA.

Comment: This rule need not be replicated, as it already arises under the law of mandate (agency) and administration of the property of others: see art. 1319ff, 2158 and 2159 C.c.Q.

PRINCIPLE 22. Liability for a tortious act or omission for which a UNA is liable is not imputed to a member or manager of the UNA merely by reason of being a member or manager of the UNA.

Comment: This is already dealt with by the amendment to article 2271 (above).

PRINCIPLE 23. Subject to laws other than the Act limiting the liability of volunteers of nonprofit organizations, a member or manager of a UNA is liable for the member's or manager's own tortious acts or omissions.

Comment: This already flows from the general principles of civil liability, see art. 1457 C.c.Q.

PRINCIPLE 24. A member or manager of a UNA may be subject to liability for the debts and other obligations of the UNA under the alter ego liability doctrine that applies to members of a nonprofit corporation, taking into account differences in form between a UNA and a corporation.

Comment: Principles equivalent to the American alter ego liability doctrine are stated at art. 316ff C.c.Q. Article 2267 (as amended) would bring them into play.

PRINCIPLE 25. A member of a UNA may assert a claim against the UNA; and a UNA may assert a claim against a member.

Comment: This flows from article 2267, as amended and need not be restated. Also see the amendment to art. 2275 (above).

PRINCIPLE 26. In the absence of provisions to the contrary in the UNA's governing principles, members of a UNA have equal governance rights and a majority of votes cast on a matter by members present and voting at a properly called meeting shall govern as to that matter.

2272. Every member is entitled to participate in collective decisions, and he may

No change required.

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not be prevented from exercising that right by the contract of association.

Collective decisions, including those to amend the contract of association, are taken by a majority vote of the members, unless otherwise stipulated in the contract.

The contract of association may also be amended by the written or verbal consent of all members or by an established practice of the association.

[as previously amended]

PRINCIPLE 27. Members solely in their capacity as members of a UNA are not agents of the UNA and have no power to bind the UNA. Only managers have the power to bind the UNA in accordance with general agency principles.

~~2270. The directors act as mandataries of the members of the association.~~

~~Their only powers are those conferred on them by the contract of association or by law, or those arising from their mandate.~~

The association is administered and represented by its directors, who bind it to the extent of the powers vested in them by the contract of association or by law, or by a decision of the members.

[as previously amended.]

~~2270. The directors act as mandataries of the members of the association.~~

~~Their only powers are those conferred on them by the contract of association or by law, or those arising from their mandate.~~

The association is administered and represented by its directors, who bind it to the extent of the powers vested in them by the contract of association, by a decision of the members or by law.

A member does not have the power to bind the association unless he is a director or has been specially empowered to act on its behalf.

PRINCIPLE 28. A manager becomes a manager in accordance with the UNA's governing principles. If the UNA's governing principles do not provide a method for selecting managers or if they do but no managers have been selected, all the members shall be deemed to be managers.

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2269. Failing any special rules in the contract of association, the directors of the association are elected from among its members, and the founding members are, of right, the directors of the association until they are replaced.

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Comment: it is important to provide a default rule in case no managers have been selected. Principle 28 provides that in such a case, all members are managers, while article 2269 provides that the founding members are directors until they are replaced. The former solution appears preferable, since an association might start out with a clear structure and then later in its existence, lapse into a state of relative disorganization, such that there no longer appear to be any directors. In such a case, the “all members” rule appears preferable to the “founding members” rule.

PRINCIPLE 29. In the absence of provisions to the contrary in a UNA’s governing principles, managers of a UNA have equal rights in the management and conduct of the UNA’s activities. A difference arising among the managers may be decided by a majority of the managers, unless otherwise provided in the UNA’s governing principles.

2269. Failing any special rules in the contract of association, the directors of the association are elected from among its members, ~~and the founding members are, of right, the directors of the association until they are replaced.~~ **If no directors have been selected, all the members are deemed to be directors.**

2269. Failing any special rules in the contract of association, the directors of the association are elected from among its members, ~~and the founding members are, of right, the directors of the association until they are replaced.~~ **If no directors are selected, all the members are deemed to be directors.**

[as previously amended]

Where the association has several directors, a majority of them may act unless the contract of association requires them to act jointly or in a determinate proportion.

Comment: Formulation of the new paragraph is based on article 1332 C.c.Q. on the administration of the property of others.

PRINCIPLE 30. The notice and quorum requirements for meetings of members and

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managers are determined by the UNA's governing principles.

Comment: This is already implicit in article 2268.

PRINCIPLE 31. Managers of a UNA have the same duties of loyalty, good faith and care that directors and officers of a nonprofit corporation have under the enacting jurisdiction's nonprofit corporation law.

2274. Directors have the obligations and disqualifications set out in articles 321 to 330 of the Book on Persons.

327. Minors, persons of full age under tutorship or curatorship, bankrupts and persons prohibited by the court from holding such office are disqualified for office as directors.

327. Minors, persons of full age under tutorship or curatorship, bankrupts and persons prohibited by the court from holding such office are disqualified for office as directors.

However, minors and persons of full age under tutorship may be directors of associations constituted as legal persons that do not aim to make pecuniary profits and whose objects concern them.

However, minors and persons of full age under tutorship may be directors of associations ~~constituted as legal persons that do not aim to make pecuniary profits and~~ whose objects concern them.

COMMENT. The article numbered 2274 is new. It replaces an article that was previously deleted. It is necessary to modify article 327 to account for the fact that such article now applies both to incorporated and unincorporated associations.

PRINCIPLE 32. Members and managers of a UNA shall have the same rights to inspect and copy the UNA's books and records and to disclosure of information about the UNA's operations as members and directors and officers of nonprofit corporations have under the enacting jurisdiction's nonprofit corporation code. These rights may be limited or conditioned, if not manifestly unreasonable, but not wholly eliminated by the governing principles of the UNA.

2273. Notwithstanding any stipulation to the contrary, any member may inform himself of the affairs of the association and consult its books and records even if he is excluded from management.

No change required.

In exercising this right, the member is bound not to impede the activities of the association unduly nor to prevent the oth-

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er members from exercising the same right.

PRINCIPLE 33. Managers of a UNA are liable for breaches of the duties specified in Principle 31 to the same extent as directors and/or officers of a nonprofit corporation are liable under the enacting jurisdiction’s nonprofit corporation law.

Comment : This principle is already implemented by article 2274 as previously amended.

PRINCIPLE 34. A UNA should have the same right to indemnify and advance attorneys’ fees and other costs of litigation to its members and managers as a nonprofit corporation has under the enacting jurisdiction’s nonprofit corporation law to indemnify and advance costs to its members, directors and officers.

Comment: This would already be the case by virtue of the general law of administration of the property of others, contracts and civil liability. A UNA may undertake to indemnify its members and directors so long as they have acted in good faith, without gross negligence and without breaching their duties to the association. Where a director is not at fault and has incurred losses in performing his or her duties to the association, the association would be bound to indemnify the director (see art. 1367, 1369, 2154 C.c.Q.).

PRINCIPLE 35. A person becomes a member of a UNA and can be suspended, dismissed or expelled from a UNA in accordance with the UNA’s governing principles. In the absence of applicable governing principles, a person can become a member or be suspended, dismissed or expelled from a UNA by majority vote of the members as set forth in Principle #26. A member who is suspended, dismissed or expelled shall remain liable for any damages or obligation the member owes to the UNA.

PRINCIPLE 36. A member may voluntarily withdraw or resign from membership in a UNA in accordance with the UNA’s governing principles. In the absence of applicable governing principles, a member may withdraw at any time but shall remain liable for any monetary or other obligation the member owes to the UNA at the time of withdrawal.

2268. The contract of association governs the object, functioning, management and other terms and conditions of the association.

No change required.

It is presumed to allow the admission of members other than the founding mem-

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bers.

2276. Notwithstanding any stipulation to the contrary, a member may withdraw from the association, even if it has been established for a fixed term; if he withdraws, he is bound to pay the promised contribution and any subscriptions due.

A member may be excluded from the association by decision of the members.

PRINCIPLE 37. Unless otherwise provided in the UNA's governing principles, a member cannot transfer any of the member's membership interest in the UNA.

2276. Notwithstanding any stipulation to the contrary, a member may withdraw from the association, even if it has been established for a fixed term; if he withdraws, he is bound to pay the promised contribution and any subscriptions due.

A member may be excluded from the association by decision of the members.

No change required.

2276. Notwithstanding any stipulation to the contrary, a member may withdraw from the association, even if it has been established for a fixed term; if he withdraws, he is bound to pay the promised contribution and any subscriptions due.

A member may be excluded from the association by decision of the members.

Unless the contract of association provides otherwise, membership rights cannot be transferred by a member and do not pass to his heirs.

Comment: it is important to include this rule, since property, including rights deriving from a contract, is presumed to be transmissible, see art. 1441 and 1637 C.c.Q. This rule also reflects an important difference between associations and partnerships.

PRINCIPLE 38. A UNA may be dissolved by any of the following methods:

(a) **If the governing principles of the association provide a method for dissolution, by that method.**

(b) **If the governing principles of the association do not provide a method for dissolution, by the affirmative vote of a majority of the members.**

(c) **If the UNA's operations have been discontinued for at least three years by the managers or, if the UNA has no incumbent managers, by its last preceding incumbent managers.**

If the UNA's operations have been discontinued, by court order.

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2277. A contract of association is terminated by the expiry of its term or the fulfilment of the condition attached to the contract, or by the accomplishment or impossibility of accomplishing the object of the contract.

No change required.

It is also terminated by decision of the members.

The juridical personality of the association continues to exist for the purposes of the liquidation.

[as previously amended]

Comment: Article 2277 is consonant with Principle 38, except that it does not contain a rule to the same effect as paragraph c. The reason for the latter rule is that it may be difficult to organize a meeting of members in order to terminate the association, in cases where it has long been inactive. In our view, it would then be possible to consider the association at an end because of the accomplishment or impossibility of accomplishing its purpose.

Principle 39. Winding up and termination of a UNA must proceed as follows:

- (a) **All known debts and liabilities must be paid or adequately provided for;**
- (b) **Any assets subject to a condition requiring return to the person designated by the donor must be transferred to that person;**
- (c) **Any assets subject to a trust (e.g., endowment or restricted gifts) must be distributed in accordance with the trust agreement; and**
- (d) **Any remaining assets must be distributed as follows:**
 - (i) **As required by other law that requires assets of a nontaxable UNA to be distributed to another nontaxable UNA with similar purposes;**
 - (ii) **In accordance with the UNA's governing principles; and in the absence of applicable governing principles, to the current members of the association per capita or as the current members direct; or**

If neither (i) nor (ii) apply, the net assets will escheat to the enacting jurisdiction by the means generally provided for escheat of property in the enacting jurisdiction's law.

2278. When a contract of association is terminated, the association is liquidated

No change required.

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by a person appointed by the directors or, failing that, by the court.

2279. After payment of the debts, the remaining property devolves in accordance with the rules respecting the contract of association or, failing special rules, it is shared equally among the members.

No change required.

However, any property derived from contributions of third persons devolves, notwithstanding any stipulation to the contrary, to an association, legal person or trust sharing objectives similar to those of the association; if that is not possible, it devolves to the State and is administered by the Minister of Revenue as property without an owner or, if of little value, is shared equally among the members.

PRINCIPLE 40. Provisions for mergers of UNAs with or into any other type of legal entity, and for conversion (transformation) of a UNA into another type of legal entity, should be specifically authorized by the Act, unless authority for these types of transactions already exists in the enacting jurisdiction's other statutes. The provisions should contain the types and contents of documents (e.g., plan of merger or conversion), the required vote to approve the transaction, and the legal effect of the transaction. See Model Entity Transactions Act Articles 2 and 5.

Comment: Section 221 of the Companies Act provides that an association constituted for one of the objects contemplated by s. 218 of the Act may apply for letters patent and continue its existence under the Act, thus converting into a non-profit corporation. Merger of two contractual associations is possible if a decision of the members of each association allows it.

Part II – Code to Principles

[9] This part sets out the Civil Code provisions on associations in numerical order, incorporating the amendments suggested above. Both English and French versions are provided. Corresponding principles are referenced in brackets. The amendments which are considered not to be essential in order to harmonize the Civil Code provisions with the

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Statement of Principles, but merely desirable for the sake of greater clarity, are highlighted in grey.

2186. Le contrat de société est celui par lequel les parties conviennent, dans un esprit de collaboration, d'exercer une activité, incluant celle d'exploiter une entreprise, d'y contribuer par la mise en commun de biens, de connaissances ou d'activités et de partager entre elles les bénéfices pécuniaires qui en résultent.

Le contrat d'association est celui par lequel les parties conviennent de poursuivre un but commun autre que la réalisation de bénéfices pécuniaires à partager entre les membres de l'association.

La seule indivision de biens existant entre plusieurs personnes ne fait pas présumer leur intention de former une société ou une association.

2187. La société ou l'association est formée dès la conclusion du contrat, si une autre époque n'y est indiquée.

2267. Le contrat constitutif de l'association est écrit ou verbal. Il peut aussi résulter de faits manifestes qui indiquent l'intention de s'associer.

L'association est une personne morale distincte de ses membres et de ses administrateurs. Les effets de la personnalité juridique énoncés au Titre cinquième du Livre premier s'appliquent aux associations conformément à leur nature.

2186. A contract of partnership is a contract by which the parties, in a spirit of cooperation, agree to carry on an activity, including the operation of an enterprise, to contribute thereto by combining property, knowledge or activities and to share any resulting pecuniary profits.

A contract of association is a contract by which the parties agree to pursue a common goal other than the making of pecuniary profits to be shared between the members of the association.

Mere indivision of property existing between several persons does not create a presumption of their intention to form a partnership or an association.

[Principles 1, 5]

2187. The partnership or association is created upon the formation of the contract if no other date is indicated in the contract.

[Principle 8]

2267. The contract by which an association is established may be written or verbal. It may also arise from overt acts indicating the intention to form an association.

The association is a legal person distinct from its members and directors. The effects of juridical personality set forth in Title Five of Book One apply to associations in accordance with their nature.

[Principles 1, 2, 7, 24, 25]

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2268. Le contrat d'association régit l'objet, le fonctionnement, la gestion et les autres modalités de l'association.

Il est présumé permettre l'admission de membres autres que les membres fondateurs.

2269. En l'absence de règles particulières dans le contrat d'association, les administrateurs de l'association sont choisis parmi ses membres, ~~et les membres fondateurs sont, de plein droit, les administrateurs jusqu'à ce qu'ils soient remplacés.~~ **Si aucun administrateur n'est nommé, tous les membres sont présumés être des administrateurs.**

Lorsque l'association compte plusieurs administrateurs, ils peuvent agir à la majorité d'entre eux, à moins que le contrat d'association ne prévoit qu'ils agissent de concert ou suivant une proportion déterminée.

~~2270. Les administrateurs agissent à titre de mandataire des membres de l'association.~~

~~Ils n'ont pas d'autres pouvoirs que ceux qui leur sont conférés par le contrat d'association ou par la loi, ou qui découlent de leur mandat.~~

L'association est administrée et représentée par ses administrateurs, qui l'obligent dans la mesure des pouvoirs que le contrat d'association, la décision des membres ou la loi leur confèrent.

Un membre n'a pas le pouvoir de lier l'association, sauf s'il est administra-

2268. The contract of association governs the object, functioning, management and other terms and conditions of the association.

It is presumed to allow the admission of members other than the founding members.

[Principles 2, 30, 36]

2269. Failing any special rules in the contract of association, the directors of the association are elected from among its members, ~~and the founding members are, of right, the directors of the association until they are replaced.~~ **If no directors are selected, all the members are deemed to be directors.**

Where the association has several directors, a majority of them may act unless the contract of association requires them to act jointly or in a determinate proportion.

[Principles 4, 28, 29]

~~2270. The directors act as mandataries of the members of the association.~~

~~Their only powers are those conferred on them by the contract of association or by law, or those arising from their mandate.~~

The association is administered and represented by its directors, who bind it to the extent of the powers vested in them by the contract of association, by a decision of the members or by law.

A member does not have the power to bind the association unless he is a direc-

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teur ou s'il a été spécialement habilité à agir en son nom.

tor or has been specially empowered to act on its behalf.

[Principles 4, 27]

~~2271. Les administrateurs peuvent ester en justice pour faire valoir les droits et les intérêts de l'association.~~
L'association est titulaire d'un patrimoine et elle a la pleine jouissance des droits civils. Elle peut ester en justice.

~~2271. The directors may sue and be sued to assert the rights and interests of the association.~~
The association has a patrimony and full enjoyment of civil rights. It may sue and be sued.

Ses actes n'engagent qu'elle-même, sauf les exceptions prévues par la loi.

Its acts bind none but itself, except as provided by law.

[Principles 14, 22]

2272. Tout membre a le droit de participer aux décisions collectives et le contrat d'association ne peut empêcher l'exercice de ce droit.

2272. Every member is entitled to participate in collective decisions, and he may not be prevented from exercising that right by the contract of association.

Ces décisions, y compris celles qui ont trait à la modification du contrat d'association, se prennent à la majorité des voix des membres, sauf stipulation contraire dudit contrat.

Collective decisions, including those to amend the contract of association, are taken by a majority vote of the members, unless otherwise stipulated in the contract.

La modification du contrat d'association peut aussi résulter du consentement écrit ou verbal de tous les membres ou d'une pratique établie de l'association.

The contract of association may also be amended by the written or verbal consent of all members or by an established practice of the association.

[Principles 2, 3, 26]

2273. Tout membre, même s'il est exclu de la gestion, et malgré toute stipulation contraire, a le droit de se renseigner sur l'état des affaires de l'association et de consulter les livres et registres de celle-ci.

2273. Notwithstanding any stipulation to the contrary, any member may inform himself of the affairs of the association and consult its books and records even if he is excluded from management.

Il est tenu d'exercer ce droit de manière à ne pas entraver indûment les activités

In exercising this right, the member is bound not to impede the activities of the as-

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de l'association ou à ne pas empêcher les autres membres d'exercer ce même droit.

~~2274. En cas d'insuffisance des biens de l'association, les administrateurs et tout membre qui administre de fait les affaires de l'association, sont solidairement ou conjointement tenus des obligations de l'association qui résultent des décisions auxquelles ils ont souscrit pendant leur administration, selon que ces obligations ont été, ou non, contractées pour le service ou l'exploitation d'une entreprise de l'association.~~

~~Toutefois, les biens de chacune de ces personnes ne sont affectés au paiement des créanciers de l'association qu'après paiement de leurs propres créanciers.~~

2274. Les administrateurs ont les obligations et les incapacités établies aux articles 321 à 330 du Livre des personnes.

~~2275. Le membre qui n'a pas administré l'association n'est tenu des dettes de celle-ci qu'à concurrence de la contribution promise et des cotisations échues.~~

Le membre est tenu envers l'association de ce qu'il promet d'y apporter.

2276. Un membre peut, malgré toute stipulation contraire, se retirer de l'association, même constituée pour une durée déterminée; le cas échéant, il est tenu au

sociation unduly nor to prevent the other members from exercising the same right.

[Principle 32]

~~2274. Where the property of the association is insufficient, the directors and any member administering in fact the affairs of the association are solidarily or jointly liable for the obligations of the association resulting from decisions to which they gave their approval during their administration, whether or not the obligations have been contracted for the service or operation of an enterprise of the association.~~

~~The property of each of these persons is not applied to the payment of creditors of the association, however, until after his own creditors are paid.~~

[Principle 20]

2274. Directors have the obligations and disqualifications set out in articles 321 to 330 of the Book on Persons.

[Principles 31, 33]

~~2275. A member who has not administered the association is liable for the debts of the association only up to the promised contribution and the subscriptions due for payment.~~

A member is liable toward the association for anything he has promised to contribute to it.

[Principle 20]

2276. Notwithstanding any stipulation to the contrary, a member may withdraw from the association, even if it has been established for a fixed term; if he withdraws, he

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paiement de la contribution promise et des cotisations échues.

Il peut être exclu de l'association par une décision des membres.

Sauf stipulation contraire du contrat d'association, les droits d'un membre dans l'association sont incessibles et non transmissibles à ses héritiers.

2277. Le contrat d'association prend fin par l'arrivée du terme ou l'avènement de la condition apposée au contrat, par l'accomplissement de l'objet du contrat ou par l'impossibilité d'accomplir cet objet.

En outre, il prend fin par une décision des membres.

La personnalité juridique de l'association subsiste aux fins de la liquidation.

2278. Lorsque le contrat prend fin, l'association est liquidée par une personne nommée par les administrateurs ou, à défaut, par le tribunal.

2279. Après le paiement des dettes, les biens qui restent sont dévolus conformément aux règles du contrat d'association ou, en l'absence de règles particulières, partagés entre les membres, en parts égales.

Toutefois, les biens qui proviennent des contributions de tiers sont, malgré toute stipulation contraire, dévolus à une association, à une personne morale ou à

is bound to pay the promised contribution and any subscriptions due.

A member may be excluded from the association by decision of the members.

Unless the contract of association provides otherwise, membership rights cannot be transferred by a member and do not pass to his heirs.

[Principles 36, 37]

2277. A contract of association is terminated by the expiry of its term or the fulfilment of the condition attached to the contract, or by the accomplishment or impossibility of accomplishing the object of the contract.

It is also terminated by decision of the members.

The juridical personality of the association continues to exist for the purposes of the liquidation.

[Principles 8, 38]

2278. When a contract of association is terminated, the association is liquidated by a person appointed by the directors or, failing that, by the court.

[Principle 39]

2279. After payment of the debts, the remaining property devolves in accordance with the rules respecting the contract of association or, failing special rules, it is shared equally among the members.

However, any property derived from contributions of third persons devolves, notwithstanding any stipulation to the contrary, to an association, legal person or trust shar-

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une fiducie partageant des objectifs semblables à l'association; si les biens ne peuvent être ainsi employés, ils sont dévolus à l'État et administrés par le ministre du Revenu comme des biens sans maître ou, s'ils sont de peu d'importance, partagés également entre les membres.

Modifications aux autres dispositions du Code civil

327. Sont inhabiles à être administrateurs les mineurs, les majeurs en tutelle ou en curatelle, les faillis et les personnes à qui le tribunal interdit l'exercice de cette fonction.

Cependant, les mineurs et les majeurs en tutelle peuvent être administrateurs d'une association ~~constituée en personne morale qui n'a pas pour but de réaliser des bénéfices pécuniaires et dont l'objet~~ les concerne.

334. Les personnes morales qui empruntent une forme juridique régie par un autre titre de ce code, **à l'exception des associations**, sont soumises aux règles du présent chapitre; il en est de même de toute autre personne morale, si la loi qui la constitue ou qui lui est applicable le prévoit ou si cette loi n'indique aucun autre régime de fonctionnement, de dissolution ou de liquidation.

Elles peuvent cependant, dans leurs règlements, déroger aux règles établies pour leur fonctionnement, à condition, toutefois, que les droits des membres soient préservés.

2250. Le contrat constitutif de la société en participation est écrit ou verbal. Il

ing objectives similar to those of the association; if that is not possible, it devolves to the State and is administered by the Minister of Revenue as property without an owner or, if of little value, is shared equally among the members.

[Principle 39]

Amendments to other provisions of the Civil Code

327. Minors, persons of full age under tutorship or curatorship, bankrupts and persons prohibited by the court from holding such office are disqualified for office as directors.

However, minors and persons of full age under tutorship may be directors of associations ~~constituted as legal persons that do not aim to make pecuniary profits and~~ whose objects concern them.

334. Legal persons assuming a juridical form governed by another title of this Code, **with the exception of associations**, are subject to the rules of this chapter; the same applies to any other legal person if the Act by which it is constituted or which applies to it so provides or indicates no other rules of functioning, dissolution or liquidation.

They may, however, make derogations in their by-laws from the rules concerning their functioning, provided the rights of the members are safeguarded.

2250. The contract by which an undeclared partnership is established may be written or

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peut aussi résulter de faits manifestes qui indiquent l'intention de s'associer.

~~La seule indivision de biens existant entre plusieurs personnes ne fait pas présumer leur intention de s'associer.~~

3116.1. L'état et la capacité d'une association et les relations entre l'association et ses membres et administrateurs sont régis par la loi désignée par le contrat d'association ou, en l'absence de désignation, par la loi qui présente avec l'association les liens les plus étroits.

Afin de déterminer la loi applicable, il est tenu compte, notamment, du lieu où l'association est administrée, de la situation de ses biens et de son objet et des lieux où celui-ci s'accomplit.

verbal. It may also arise from an overt act indicating the intention to form an undeclared partnership.

~~Mere indivision of property existing between several persons does not create a presumption of their intention to form an undeclared partnership.~~

3116.1. The status and capacity of an association and the relations between the association, its members and its directors are governed by the law designated in the contract of association or, if no law is designated, by the law with which the association is most closely connected.

To determine the applicable law, account is taken in particular of the place of administration of the association, the place where its property is situated and its object and the places where it is to be fulfilled.

[Principle 6]