TUNISIA[1]

I. Overview of Country

Tunisia is a constitutional republic, with a president serving as chief of state, prime minister as head of government, a bicameral legislature and a court system influenced by French civil law. The country recognizes many different forms of association. The new Tunisian Constitution, enacted on January 27, 2014, guarantees in its Article 35 the Freedom of Association.[2] In the case of for-profit organizations, the laws recognize general partnerships, limited partnerships, branch offices, joint-stock companies, and limited liability companies. Tunisia also recognizes one form of not-for profit organizations, called associations. Each of these categories will be discussed in further detail below.

II. Registration Procedures

A. For-Profit Organizations

The Tunisian Commercial Company Code (CCC) recognizes multiple different forms of for-profit organizations, including companies limited by shares, also called joint stock companies; limited liability companies; partnerships; and branch offices.

a. Laws

Pursuant to the CCC, an organization has to be created by an agreement evidenced in writing and signed by its constituents.[3] Each organization has its legal personality, distinct and separate from its constituents.[4] An organization cannot be created for more than 99 years but might be prorogated.[5]

The law of Commercial and Companies Register governs the registration of all types of organizations.[6] Each application to register must provide the company's name, the type of organization, the purpose of the company, the amount of share capital, the address of the principal place of business or the place of incorporation, the term of the company, and the name, address, and nationality of the partners or shareholders and the directors.[7] Tunisian Law expressly prohibits any commercial entity from providing political contributions.[8] There are no other limitations.

1. Registration Process for Joint Stock Companies

Articles 160 to 389 of the CCC govern joint stock companies. Joint stock companies are established with a minimum of seven shareholders.[9] The nominal value per share cannot be below TND 1[10] and the minimum equity required is TND 5,000.[11] The board of directors of a joint stock company is

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[1] The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.
[2] See. http://www.legislation-securite.tn/fr/node/33504 (no English Translation).
[3] C.C.C., Article 3. Note: this article does not apply to General Partnerships.
[4] C.C.C., Article 4. Note: this article does not apply to General Partnerships.
[5] C.C.C., Article 8.
[6] Loi n°1995-44 du 02/05/1995 relative au registre du commerce.
[7] *Id.* Article 11.
[8] Décret-loi n° 2011-87 du 24 Septembre 2011 organisant les partis politiques, Article 19.
[9] C.C.C., Article 160.
[10] The monetary unit of Tunisia is the Tunisian Dinar (TND) which is equivalent of about 0.51 US dollar.

comprised between three to twelve directors.[12] The directors appoint the Chairman and General Manager of the company.[13]

Below is a summary of the steps to be completed in order to register a joint stock company.[14] Note that, although the documentation must be registered with different desks, all of the desks are located in the same building, the Trade Court, and registration usually takes no more than a day. This is what Tunisian law calls "One stop Shop," which was implemented to facilitate companies' registration.

- Provisional Submission of the Draft Articles of Incorporation (only for publicly traded company)
  The draft statutes have to be submitted to the Trade Court Clerk. The main terms of the articles of incorporation have to be translated in Arabic. Usually, this step is completed immediately, upon receipt of such articles.

- Publication of the Notice of Pre-incorporation (only for publicly traded companies)
  Such publication must be made in the Official Journal of the Republic of Tunisia (JORT) and will take effect immediately. The notice must be both in French and in Arabic.

- Subscription to Capital and Payment Schedule
  This subscription has to be made at the Tax Control desk. Among the documents to be deposited are the following: a copy of each subscription bulletin, with an attestation by the person depositing the funds that the funds have been transferred; 10 copies of the statutes signed by the stockholders if the company is not a publicly traded company; a copy of the attestation that a declaration of intention to invest has been submitted. This step takes about 24 hours to be completed.

- Registration of the Resolution of the First Board Meeting and Statutory Board Minutes
  The registration must be made at the Tax Office desk and the applicant must furnish 10 copies of the resolution and the statutory board minutes. It would usually take about a day to be completed.

- Declaration that a Company Exists and Tax Identification Card
  The incorporators must go to the Tax Inspection desk and fill out a form that will be provided by the receiver. Several documents have to be provided, including a copy of the declaration of intention to invest, 10 copies of the articles of incorporation, and 10 copies of the list of subscribers and their respective payment schedule. The promoter will immediately be provided with a tax identification card.

- Final Submission to the Trade Register
  The incorporators must submit, among other things, two forms to be filled in and signed by the appointed Chairman or his agent, two registered copies of the articles of incorporation, two copies of the list of subscribers, two copies of the tax identification card, and a TD 15 stamp.

- Publication in the JORT
  The publication must be in both Arabic and French and has to be sent to the JORT. It will take effect immediately.

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[11] C.C.C., Article 161.
[12] C.C.C., Article 189.
[13] C.C.C., Article 190.
[14] C.C.C., Article 163-182. For an English simplified version, also see: http://www.tunisieindustrie.nat.tn/en/doc.asp?mcat=13&mrub=99&msrub=184&dev=true#SA .

- Enrollment in the Trade Registry
  Finally, the incorporator must submit a copy of the publication in the JORT to the Trade Court Clerk and a TD 5 tax stamp for each extract requested by the Trade Registry.

2. Registration Process for Limited Liability Companies (LLC)

LLCs are the most commonly formed companies in Tunisia and require at least two partners and a maximum of 50 members. If this number is exceeded, then the LLC must be re-qualified as a joint stock company.[15] The CCC does not provide for a minimum capital, but whatever the amount, it must be released at the time the company is incorporated.[16] When contribution is in kind, the promoters must appoint an independent auditor to value the assets.[17] LLCs can also be constituted by a single person, and they are called Sole Limited Liability Companies (SLLC).[18] The registration procedures are identical for both the LLC and SLLC.

- Registration of the Articles of Incorporation
  The promoters must submit a copy of a declaration of an intention to invest, as well as a copy of the board minutes designating the general manager of the LLC. The company must also provide 10 copies of the articles of incorporation. This subscription has to be made at the Tax Control desk. Among the documents to be deposited are the following: a copy of each subscription bulletin, with an attestation by the person depositing the funds that the fund have been transferred; 10 copies of the statutes signed by the stockholders if the company is not a publicly traded company; a copy of the attestation that a declaration of intention to invest has been submitted. This step takes about 24 hours to be completed.

- Declaration that a Company Exists and Tax Identification Card
  The promoters must go to the Tax Inspection Desk and fill out a form that will be provided by the receiver. Several documents must be provided, including a copy of the declaration of intention to invest, a copy of the articles of incorporation, a copy of the document nominating the managers, if the articles of incorporation do not already specify it.

- Final Submission to the Court Clerk
  The incorporators must submit, among other things, two forms to be filled in and signed by the appointed Chairman or his agent; two registered copies of the articles of incorporation; two copies of the list of subscribers; two copies of the tax identification card a TD 15 stamp; two copies of the document specifying the address of the head office, certificate of ownership or leasing agreement; and the signature of the legal representatives.

- Publication in the JORT
  The publication must be in both Arabic and French and has to be sent to the JORT. It will take effect immediately.

- Enrollment in the Trade Registry
  Finally, the incorporator must submit a copy of the publication in the JORT to the Trade Court Clerk and a TD 5 tax stamp for each extract requested by the Trade.

[15] C.C.C., Article 93.
[16] C.C.C., Article 97.
[17] *Id.*
[18] C.C.C., Article 90.

3. Registration Process for General Partnerships

A general partnership is formed with a minimum of two partners, considered as merchants.[19] A general partnership is a company with unlimited liability for partners, as they respond personally, jointly and severally for the debts of the company. General partnerships are the only type of organization not subject to a specific registration procedure.[20] The only requirements are the following: declaration that the company exists; getting a tax identification card; and enrollment with the Trade Registry within a month of constitution.[21] There is no registration or publication requirement.[22]

4. Registration Process for Limited Partnerships

Limited Partnerships are formed between two groups of partners: active partners, who have unlimited liability and active participation in the management, and sleeping partners, who have liability limited to their contribution and no active participation in the management.[23] The registration procedure is identical to the one required for limited liability companies. (See section above.)

5. Branch Offices

Branch offices are an extension of the parent company and have no legal personality or financial autonomy. In this respect, the establishment of a branch office is relatively simple. The branch must be registered with the Trade Registry and the deadlines and registration procedures are identical to the LLCs. The branch managers acting on behalf of the parent company must be granted express authority to do so.

ii. Case Law

No relevant case law on point could be located.

b. De-Registration Procedures

i. Laws

The CCC provides that any organization in the process of winding up its assets has the obligation to expressly mention so in any document the company issues.[24] The partners or shareholders must designate a person in charge of winding up the assets, the bankruptcy receiver.[25] If not, then the Court will judicially appoint one.[26] Whether appointed by the members of the organization or judicially appointed, such appointment must be registered with the Trade Registry and published in the JORT within 15 days of the appointment.[27]

Once all of the assets have been wound up, the receiver has the obligation to submit the books of the organization to the Trade Registry situated within the district where the company was incorporated or

[19] C.C.C., Article 78.
[20] *Id.*
[21] C.C.C., Article 14.
[22] C.C.C., Article 15.
[23] C.C.C., Articles 54-66.
[24] C.C.C., Article 29.
[25] C.C.C., Article 30.
[26] *Id.*
[27] C.C.C., Article 32.

had its principal place of business. Books will be kept for three years. Finally, the receiver must submit a notice of de-registration to the Trade Registry and must publish the de-registration in the JORT, and in two recognized periodicals, one in Arabic and one in French within five days of such notice.

Tunisian law recognizes five different causes of dissolution: (i) when the organization's term has expired; (ii) when its activity has expired; (iii) by an agreement of its constituents; (iv) the death of a constituent; and (v) judicial dissolution,when sought by one of the constituents.[28] Tunisian law does provide a cause of action for the government to institute dissolution proceedings.

There are no de-registration procedures specific to each type of organization.

ii. Case Law

No relevant case law on point could be located.

B. Not-For Profit Organizations

The main form of not-for profit organizations in Tunisia are associations. The new Tunisian Constitution, enacted on January 27, 2014, guarantees in its Article 35 the Freedom of Association.[29] However, until 2011, constitution of an association was subject to prior investigation and approval by the government.[30] On September 24, 2011, the government enacted the new Law on Tunisian Associations (TLA).[31] The law expressly recognizes the freedom of association in Tunisia and abolishes the prior investigation requirements. The law, however, still requires prior approval from the government before proceeding with the registration of an association.

a. Laws

Tunisia recognizes two types of associations: (i) the associations created under the laws of Tunisia, and (ii) foreign associations. Tunisia also recognizes foundation and non-governmental organizations, which are subject to the same law as associations.[32]

The law defines an association "as an agreement between two or more persons by virtue of which they operate permanently to achieve objectives other than the realization of profits."[33] The associations are required to, in their bylaws, activities, and funding, observe the principles of the rule of law, democracy, plurality, transparency, equality, and human rights as stipulated in international agreements ratified by Tunisia.[34] The law prohibits associations from the following:

- Adopting in their bylaws, data, programs or activities any incitement for violence, hatred, fanaticism or discrimination on religious, racial or regional grounds.
- Carrying out commercial activities for the purpose of distributing monies to their members for personal benefit or exploitation of the association for tax evasion purposes.

[28] C.C.C., Article 21.
[29] See http://www.legislation-securite.tn/fr/node/33504 (no English translation available).
[30] Loi n° 59-154 du 7 Novembre 1959 relative aux associations.
[31] Décret-loi n° 2011-88 du 24 Septembre 2011 relatif aux associations. For an English version, see: http://www.icnl.org/research/library/files/Tunisia/88-2011-Eng.pdf.
[32] T.L.A., Article 48.
[33] T.L.A., Article 2.
[34] T.L.A., Article 3.

- Collection of money to support political parties or candidates for national, regional or local elections or extending material support to them. This prohibition excludes the right of the association to express its political opinions and positions vis-à-vis issues of public affairs.[35] It does not prohibit an association from advocating for the rights of Tunisian citizens.

The public authorities are prohibited from directly or indirectly impeding or hampering the activity of an association.[36]

1. Domestic Associations

Each natural person, Tunisian or foreign, resident in Tunisia has the right to establish an association, affiliate thereto, or to withdraw therefrom.[37]

The establishment of an association is subject to approval.[38] Those desiring to establish an association should send to the Government Secretary General a registered letter, with receipt acknowledgement, containing the following:

- A declaration providing the title, purpose, objectives, and address of the association and its branches, if any.
- A copy of the national identification card of the founders of the association who are Tunisian natural persons, or a copy of the identity card of the guardian, if applicable, and a copy of the residence permits for foreign founders.
- Two original copies of the articles of association signed by the founders or their representatives. The articles of association must contain the following:
    - The official name of the association in Arabic and any foreign language, if appropriate.
    - The address of the headquarters of the association.
    - A statement of the association's objectives and their method of implementation.
    - A statement of the association's organizational structure, method of election, and the powers of each administrative body of the association.
    - Identification of the body within the association which has the power to amend the internal bylaw and make decisions regarding dissolution, merger or division.
    - Definition of the decision-making methodology and mechanisms of dispute resolution.
    - The amount of the monthly or annual membership fees, if any.
- Before the letter is sent, a notary public must certify that it contains the aforementioned information.[39]

Once the registered letter receipt is received by the association's representative, he/she must publish within seven days an announcement in the JORT with the name, purpose, objectives, and address

[35] T.L.A., Article 4.
[36] T.L.A., Article 6.
[37] T.L.A., Article 8.
[38] T.L.A., Article 10.
[39] T.L.A., Article 10.

of the association. The official publisher is required to proceed with the publication within 15 days of the date of deposit.[40]

The association is considered legally constituted from the date of sending the aforementioned letter, and it acquires legal personality from the date of publication of the association's announcement in the JORT.[41] Unlike the previous law regulating associations, the law promulgated in 2011 provides for an automatic registration, and there is no longer governmental discretion.

2. Foreign Associations

A foreign association is a branch of an association established in accordance with the laws of another country.[42] The representative of the foreign association shall send a registered letter, with receipt acknowledgement to the Government Secretary General, including the following:

- Name of the association.
- Address of the main office of the association branch in Tunisia.
- Statement of the activities which the association branch desires to practice in Tunisia.
- Names and addresses of the directors of the foreign association in Tunisia.
- A copy of the identity card of each Tunisian director and a copy of the residence permit or passport of each foreign director.
- Two copies of the bylaws of the association signed by the founders or their representatives.
- An official document evidencing that the mother foreign association is legally constituted in its country.[43]

Note that the letter must be translated into Arabic by an official translator. The Government Secretary General, upon clear contravention between the bylaws of the foreign association and the requirements of articles (3) and (4) of the TLA, may issue a justified decision to refuse the registration of the foreign association within thirty days of the date of receiving the letter indicated above .

Pursuant to Article 22, the founders of the foreign association branch in Tunisia may appeal a registration refusal as per the procedures applicable to the article of exceeding authority in accordance with the Law Pertaining to the Administrative Court.[44]

The representative of the foreign association shall submit an announcement to the official publisher of the Republic of Tunisia providing the name of the association, its purpose, objectives, and address, together with a copy of the minutes or decision mentioned above, within a period not to exceed seven days if approved.[45]

ii. Case Law

No relevant case law on point could be located.

[40] T.L.A., Article 11.
[41] T.L.A., Article 12.
[42] T.L.A., Article 20.
[43] T.L.A., Article 21.
[44] Law No. 4 of the Year 1972 dated 1 June 1972.
[45] Décret-loi n° 2011-88 du 24 Septembre 2011 relatif aux associations (Article 22).

b. De-Registration procedures

i. Laws

The de-registration procedure of all associations, domestic or foreign, is governed by Article 33 of the TLA. The dissolution of the association may be voluntary, by virtue of a resolution from its members pursuant to its bylaws, or mandatory, in accordance with a court decision. The association must inform the Government Secretary General of its decision to dissolve by virtue of a registered letter, with receipt acknowledgement, within 30 days of the date of the decision. In this case, the association shall appoint a judicial liquidator.

The court will appoint a liquidator in the event a judicial decision to dissolve the association is issued. The association must submit a statement of its movable and immovable assets for the purposes of liquidation. This statement shall be used as a reference for the settlement of its liabilities. The remaining assets are to be distributed pursuant to the bylaws of the association, except for those originating from assistance, donations, grants, and wills. In those cases they shall succeed to another association with similar objectives defined by the competent organ of the association.

ii. Case Law

No relevant case law on point could be located.

C. Analytical Comparison

Tunisia's legal framework makes the registration process harder for not-for profit organizations. While the registration process for for-profit organizations takes no more than 24 hours, and is not subject to any prior approval, registration of an association can take up to 22 days and is subject to prior government approval. Although the TLA makes it easier than it was previously, not-for profit organizations are still more regulated and subject to more barriers than for-profit organizations in terms of registration procedures.

III. Tax Laws

A. For-Profit Organizations

a. Laws

LLCs, joint stock companies, and LPs are liable to corporate income tax on their profits stemming from any business they carry on in Tunisia. Foreign companies not carrying on business in Tunisia but deriving certain types of income from Tunisia are subject to corporate tax. Companies are liable to corporate income tax at the rate of 30 percent. It has been reduced to 25 percent since 2014. However, a number of companies and legal entities, such as companies operating in handicraft activities, agriculture, and fishing, are taxable at the rate of 10 percent. This tax rate is also applicable to profits made on export activities, starting in 2015. Other companies operating in sectors of banks, insurance, production and services linked to petroleum, telecommunications are subject to a rate of 35 percent on their corporate income. Exporting companies are liable to income tax at 10 percent since 2014.

When a Tunisian company holds 75 percent or more of the shares of one or more Tunisian companies, the group may choose to be taxed as a single entity. Hence, the subsidiaries are treated as branches of the parent company and corporate tax is payable only by the parent company. To benefit from the integrated scheme, the parent company must make the commitment to list its shares on the stock market before the end of the year. Under this system, the profits and losses of all controlled branches, subsidiaries and partnerships in Tunisia and abroad are consolidated.

General partnerships are not subject to corporate tax rate of 30 percent. However, the partners will taxed on the earnings made within the partnership pursuant to the income tax regulations. Taxable income is determined on the basis of regular accounting results. The tax rate on income depends on the amount of income and can be up to 35 percent.

All economic activities conducted in Tunisia, including industrial and handicraft activities, liberal or commercial professions, are subject to value-added tax.[46]Finally, collected dividends distributed by Tunisian companies are tax-exempt for both residents and non-residents companies. Individuals are subject to withholding tax at five percent since 2015 if it exceeds 10,000 TND per year.[47]

Tunisian tax legislation has established a certain number of incentives to investment and creation of projects in certain sectors of activity, either by Tunisian or foreign promoters being resident or non-resident or in partnership according to the overall development strategy. These are mainly aimed at accelerating growth rate and job creation within activities related to the following fields: agriculture, fishing, manufactories, public infrastructures, tourism, transportation, craftsmanship, education, healthcare, professional formation, environmental protection, culture, and real estate.[48] Various tax incentives are available for total exporting companies. One hundred percentof the exporting activity income is deductible from total taxable income. This deduction is made notwithstanding the minimum tax. From January 1, 2014, the exporting activity income is taxable at the rate of 10 percent. Major incentives are available for investments made by enterprises settled in areas that need development, known as ,regional development zones. Income stemming from investments carried out in these areas is fully deductible from the taxable income during the first ten years of activity but, for subsequent business years, only 50 percent is deductible from the tax base. As part of the promotion of Small and Medium Enterprises, the Finance Act 2011 has provided management measures to support businesses created from January 1, 2011. It concerns new investment for which the turnover does not exceed 300,000 DT for service activities and non-commercial professions, and 600,000 DT for trade and activities such as processing and consumption on the premises. Companies are deductible from taxable income, revenues, or profits from operations conducted during the first three years of operation. The benefit of this advantage is subject to the condition that the keeping of accounts is in conformity with accounting law firms.

b. Case Law

No relevant case law on point could be located.

B. Not-For Profit Organizations

a. Laws

A not-for profit organization is not subject to corporate taxation. Its members are not subject to personal income taxation either, since distribution of any kind of profit is expressly prohibited. The Amended Finance Law for 2012 provides a new framework for the commercial transactions made by

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[46] Note: the rate varies depending on the activity, but the standard rate is 18 percent.
[47] For more details on Tunisian laws on taxation, see: file:///C:/Users/ae34880/Desktop/ABA%20Project/Tunisia/worldwide%20tax%20guide%202014%20v3.pdf .
[48] Investment Incentives Code, Article 1.

associations, as well as the not-for profit transactions made by associations. In fact, pursuant to Article 55, not-for profit transactions are not subject to the VAT, and Article 56 also exempts associations from paying VAT in connection with the acquisition of goods or renovation services.[49] The law provides that donations made by corporations to an association are tax deductible up to 0.2 percent of their corporate income. The law, however, does not provide for tax deduction of donations made by individuals.

b. Case Law

C. Analytical Comparisons

Overall, tax laws favor not-for profit organizations which, unlike for-profit organizations, are not subject to corporate income tax or personal income tax and are even exempted from paying VAT for certain transactions.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Foreign Investment/Foreign Funding Laws

i. Laws

According to the U.S. Department of Commerce's recent report, Doing Business in Tunisia, the Tunisian Government places a priority on attracting foreign direct investment (FDI) to the country and more than 3,000 foreign companies currently operate in Tunisia.[50] Foreign investment in Tunisia is regulated by the Investment Code,[51] last amended in 2009.[52] The current Investment Code divides potential investments into two categories: (1) "Offshore" investment, defined as entities where foreign capital accounts for at least 66 percent of equity and at least 70 percent of production is destined for the export market. Some exceptions to these percentages exist for the agricultural sector; (2) "Onshore" investment, which cap foreign equity participation at a maximum of 49 percent in most non-industrial projects. In certain cases subject to government approval, "onshore" industrial investment may attain 100 percent foreign equity.

Further, the current investment codes provides specific regulations for what it calls "protected sectors." Until recently, the government actively discouraged foreign investment in the service sector, including restaurants, real estate, and advertising. As to foreign ownership of agricultural land, it is to date prohibited, but land can be secured through long-term (up to 40 year) leases, subject to renewal at any time. Some high priority projects may obtain even longer lease terms up to 99 years. FDI in state monopolies, such as power generation, water, postal services, can be carried out following completion of a concession agreement. With few exceptions, domestic trading is conducted only by a company set up under Tunisian law, where both the majority of share capital and management is Tunisian. Tunisia's Association Agreement with the EU, which provides duty-free treatment of EU exports, can impart

[49] Loi n° 2012-1 du 16 mai 2012, portant loi de finances complémentaire pour l'année 2012, available at: http://www.impots.finances.gov.tn/actualites/LF2012/LFC_2012_Fr.pdf .
[50] Available at: http://photos.state.gov/libraries/tunisia/231771/PDFs/2014%20ccg.pdf.
[51] Law No. 1993-120.
[52] As explained in the report, Tunisia's current investment code is widely viewed as outdated and overly complicated. A new Code that aggregates Tunisia's fragmented legislation and establishes a modern, open investment regime is under review. The goals of the new Code include job creation, compliance with international standards, reduced regional economic disparities, and infrastructure development in the country's less-developed west and south-central regions. Proposed revisions that relax constraints on FDI may include expansion of targeted high priority investment sectors, additional duty-free treatment of production inputs, and lower differential rates of taxation between the Code's "offshore" and "onshore" sectors.

additional barriers to non-EU foreign investment. The EU provides significant funding to Tunisia for major investment projects. Clauses in the agreement prohibit non-EU member countries from participation in many EU-funded projects.

ii. Case Law

No relevant case law on point could be located.

b. Political Contribution Laws

i. Laws

Tunisian law expressly prohibits any commercial entity from providing political contributions.[53]

ii. Case Law

No relevant case law on point could be located.

B. Not-For Profit Organizations

a. Foreign Investment/Foreign Funding Laws

i. Laws

The financial resources of the association are comprised of the following: (1) subscriptions of its members; (2) public assistance; (3) donations, grants and wills whether domestic or foreign; and (4) revenues resulting from the association's assets, its activities, and its projects.[54] The law, however, prohibits associations from accepting assistance, donations, or grants from countries not linked with Tunisia by diplomatic relations, or from organizations which defend the interests and policies of those countries.[55] The law does not restrict the activities that can be performed by a foreign association.

ii. Case Law

No relevant case law on point could be located.

b. Political Contribution Laws

i. Laws

As mentioned earlier, the law governing associations expressly prohibits associations from collecting money to support political parties or candidates for national, regional or local elections or extending material support to them.[56]

ii. Case Law

No relevant case law on point could be located.

[53] Décret-loi n° 2011-87 du 24 Septembre 2011 organisant les partis politiques, Article 19.
[54] T.L.A., Article 34.
[55] T.L.A., Article 35.
[56] T.L.A.,. Article 4.

C. Analytical Comparison

Tunisian law prohibits political contributions by both not-for profit organizations and for-profit organizations. With regards to FDI, Tunisia law seems more open to investments made by for-profit organizations, since the law does not expressly prohibit participation, donation, or grant by a foreign entity. However, the investment code still protects certain sectors and sometimes restrains access to certain sectors by requiring a majority of Tunisian shares. As explained, a new Investment Code is currently being drafted and intends to make FDI easier in Tunisia.

V. Auditing and Reporting Requirements

A. For-Profit Organizations

a. Laws

For-profit organizations are required to maintain their account pursuant to the Accounting System of Establishments established by the Law Pertaining to the Accounting System of Establishments. The Commercial Company code provides the guidelines pertaining to the reporting and auditing requirements.[57] Indeed, appointment of statutory auditors is mandatory for legal entities if they meet two of the following figures:

- Total assets: TND 100,000
- Total revenues excluding taxes: TND 300,000
- Average number of employees: 10 employees

The statutory auditor should be registered with the Tunisian Chartered Accountants institute (OECT) if the legal entity is a credit institution, an investment fund, a company listed on the Tunisian stock exchange, a public institution, an association authorized to grant microcredit, or a company meeting two of the following figures:

- Total assets: TND 1,500,000
- Total revenues excluding taxes: TND 2,000,000
- Average number of employees: 30 employees

The legal entity should appoint a second auditor if it is a credit institution, a multiline insurance company, a company with consolidated assets exceeding one hundred million dinars or a company with bank commitments and outstanding bonds exceeding TND 25 million.[58]

The CCC also requires companies to file their accounting documents with the Trade Registry within one month following the annual shareholders' meeting. With respect to publicly traded companies, the law requires that they present a preliminary un-audited financial statement to the Financial Market Council and the Tunis Stock Exchange within one month of the fiscal year end, accompanied by a limited review report issued by the statutory auditor. Further, the law also requires that publicly traded companies to file their audited financial statements at least 15 days prior to the annual shareholders

[57] C.C.C., Article 13.
[58] C.C.C., Article 13 ter.

meeting. Such companies are also required to publish their audited financial statements in the Official Journal of the Financial Market Council.

b. Case Law

No relevant case law on point could be located.

B. Not-For Profit Organizations

a. Laws

The law enacted in 2011 provides a new framework in terms of auditing and reporting. Since 2011, associations must maintain accounts pursuant to the Accounting System of Establishments established by the Law Pertaining to the Accounting System of Establishments.[59] The association and its branches must maintain the following registers:

- A register of members, including the names, addresses, nationalities, ages and professions of the registered members.
- A record of the minutes of the association's Board of Directors.
- A register of the activities and projects in which the type of activity or project is registered.
- A register of financial or in-kind assistance, donations, grants and wills, with a differentiation between the monetary, in kind, public, private, domestic, and foreign sources of assistance.[60]

The association must publish information about the foreign assistance, donations and grants it receives and record its source, value, and purpose in one written media outlet and on the website of the association, if any, within one month of the date of the decision to request or accept it. The association must also inform the Government Secretary General of the same, in a registered letter with receipt acknowledgement within the same period.[61] The association must maintain its financial records and registers for 10 years.[62]

The law also recognizes specific auditing requirements, depending on the annual revenue of the association:

- Associations whose annual revenues exceed 100,000 dinars must appoint an auditor for their accounts from among the accounting experts mentioned in the list of the Accounting Experts Commission in the Tunisian Republic or those included in the list of the accountants group in the Tunisian Republic, under the heading Accounting Specialists.
- Associations with annual revenues exceeding 1,000,000 dinars should select one or more auditors from among the auditors mentioned in the list of the Accounting Experts Commission in the Tunisian Republic.[63]

Finally, each association benefiting from public funds shall provide an annual report to the Account Department including a comprehensive detailed description of its funding sources and expenditures.[64]

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[59] Law No. 112 of the Year 1996 dated 30 December 1996.
[60] T.L.A., Article 40.
[61] T.L.A., Article 41.
[62] T.L.A., Article 42.
[63] T.L.A., Article 43.
[64] T.L.A., Article 44.

b. Case Law

No relevant case law on point could be located.

C. Analytical Comparison

Both for-profit and not-for profit organizations are subject to auditing and reporting requirements. Both are required to appoint an independent auditor to ensure transparency. Associations, however, are not required to publish their accounting document in an official publication, but rather, on their website. Finally, auditing and reporting requirements are more stringent for publicly traded companies.

VI. Penalties For Non-Compliance

A. For-Profit Organizations

a. Civil

i. Laws

Pursuant to the CCC, the organization will be deemed void in case of failure to observe the registration requirements.[65] Further, the partners or directors, depending on the type of organization, might be subject to a civil fine up to TND 3,000.

ii. Case Law

No relevant case law on point could be located.

b. Criminal

i. Laws

The CCC expressly provides that failure to conform with the auditing and reporting requirements is punishable by six months of imprisonment and/or a fine of TND 5,000. Such provision also applies to directors who would obstruct the auditing procedure.[66]

ii. Case Law

No relevant case law on point could be located.

B. Not-For Profit Organizations

a. Civil

i. Laws

[65] Article 17.
[66] Article 13 sexis CCC

The law enacted in 2011 provides specific penalties applicable to associations in case of non-compliance with the aforementioned regulations. Pursuant to Article 45, an association may be dissolved by a decision issued by a Court of First Instance in upon the request of the Government Secretary General or any concerned person in the event the association persists in violating the above provisions despite being warned, and despite being suspended, after exhausting all methods of appealing the suspension. The provisions of the Civil Code and Commercial Procedures Code apply to the judicial procedures pertaining to the dissolution of the association and liquidation of its assets.

Such penalty, however, can only be imposed upon the following procedure:

- First, the Government Secretary General must define the committed violation and warn the association of the necessity of remedying the violation within a period not to exceed 30 days of the date of the warning notification.

- Second, a suspension not to exceed 30 days can be ordered by a Court of First Instance in Tunisia based on a petition submitted by the Government Secretary General in the event the violation is not remedied within the period provided by the first paragraph of this Article. The association may appeal the suspension decision in accordance with the expedited judiciary procedure.

ii. Case Law

No relevant case law on point could be located.

b. Criminal

i. Laws

The law does not seem to provide for criminal penalties in case of violation of the aforementioned.

ii. Case Law

No relevant case law on point could be located.

C. Analytical Comparison

The law penalizes both for-profit and not-for profit organizations for non-compliance with the statutory requirements. The law seems more favorable to not-for profit organizations, since it does not provide for criminal penalties in case of non-compliance and provides for a safe-harbor procedure before suspending the activity of the association.

OVERVIEW CHART

Issue	**For-Profit Organizations**	**Not-For Profit Organizations**	**Similarities**
Registration Procedures	24 hours No Prior Approval Register with the Trade	Up to 15 days Prior Governmental Approval required Register with the	No similarities

	Registry	Government Secretary General	
Tax Laws	Taxation on Corporate Income Except for GP Taxation on Personal Income for GP only	No Taxation on Corporate Income No VAT on certain operations	No similarities
Financial Transaction Laws	Some sectors are protected and require more than 50% of Tunisian Ownership	The law prohibits grants, assistance, or donations from countries not linked with Tunisia by diplomatic relations, or from organizations which defend the interests and policies of those countries.	Prohibition to make political contributions
Auditing/Reporting Requirements	Publication of Accounting Documents in an Official Publication	Publication of financial documents on the association's website.	Obligation to appoint an independent auditor Auditing is carried out pursuant to the standards provided by the Accounting Experts Commission of the Tunisian Republic
Penalties	Civil and Criminal Penalties are Imposed for non-compliance	Only Civil Penalties and No Criminal Penalties Safe Harbor Procedure before suspending the association's activity	Failure to conform with the auditing requirements is punished by a civil fine