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COUNTRY REPORT

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I. INTRODUCTION

The first not-for-profit organizations (NFPOs) in Estonia were established during the so-called "era of awakening" in the 1860s. These organizations emphasized the development of the cultural and national identity. In the independent Republic of Estonia that existed from 1919 to 1939, Estonian society was extremely organized. Hundreds of voluntary organizations, including the League of Singers, the Red Cross, and the Temperance League, were established and active at this time. Most voluntary organizations were disbanded upon the establishment of Soviet power, and those that continued to exist became institutions under the control of the communist regime.

NFPOs began to emerge again during the independence movement (1987-91). Once Estonia gained independence in 1991, approximately 400 organizations were established each year, including many organizations created during Estonia's pre-war period of independence. The Law on Citizens' Unions, passed by Supreme Soviet in the late 1980s to regulate all private organizations (political parties, associations, trade unions, congregations, etc.), rapidly became insufficient. In March 1994, the Law for Not-for-profit Associations and their Federations was passed to replace the Law on Citizens' Unions. Although only one year old, this law already needs so many revisions that the Ministry of Justice has decided that a new law, rather than an amended one, is necessary. In addition, since the Law for Not-for-profit Associations and their Federations only regulates membership organizations, the legal basis for the activities of foundations under private law is practically non-existent.

II. PROVISIONS OF THE GENERAL LAWS

A. Consistency and Clarity of the Laws

Laws from the pre-war period, the Soviet period, and the present simultaneously exist in Estonia. New drafts are constantly produced but are often outdated by societal changes before they can be passed. Without a law regulating foundations, their status and registration is unclear and difficult. Some foundations are registered under a law no longer in force, and others are artificially registered under the Law on Not-for-profit Associations and their Federations. Until the draft laws on associations and foundations are passed, this confusion will continue.

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B. Constitution

The Constitution of the Republic of Estonia protects the freedom of association.

C. Types of Organizations

The Law on Not-for-profit Associations and their Federations defines a not-for-profit association as:

a voluntary association of at least three physical persons which is registered according to the procedures established by law and operates according to the self-governing principles of its members to achieve cultural, educational, religious, social or other goals.

§ 2, art.1. A federation is an association of at least three associations sharing similar goals.

The legislature explicitly recognized the existence of other types of NFPOs in the Law on Not-for-profit Associations and their Federations by providing that

the by-laws of legal persons that under the current legislation are not organizations or associations, including organizations of legal and physical persons that were registered under the law "On Citizens' Unions" as well as those non-profit organizations that were established to collect and distribute assets for a specific cause will be brought into agreement with the legislation regulating their creation and activities after the passage of the appropriate legislation.

§ 40, art.1.

Separate laws for religious entities and political parties have been enacted, but currently no laws regulate trade unions and foundations. Approximately 450 foundations are registered with the Statistical Office under the old Law on Citizens' Unions (most of these are waiting for a law on foundations, which was promised by the legislature more than a year ago) or under the Law on Associations (by artificially registering as associations).

D. Purposes

Associations may have any not-for-profit purpose not directed at harming the interests, rights, or freedoms of other persons, as protected by the constitution and laws of Estonia. Associations also may not have purposes directed against the constitutional order of Estonia or democratic principles, that challenge by force the territorial unity of Estonia, or in any other way violate criminal law.

E. Registration and Incorporation Requirements

The decision to found an association must be made by at least three physical persons at a founding meeting. Legal persons may not be founders or members of an association. At the founding meeting, the decision to found the association must be recorded, the list of founders and the by-laws (by-laws) of the association must be ratified, and the board of directors (or director) and

auditing committee (or auditor) must be elected. Foreigners may not serve on the governing body or auditing committee of an association. The organization's by-laws must contain the goals of the organization and the means for achieving them; the procedures for creating, using, and disposing of assets; the procedures for changing and amending the by-laws; and the basis and procedures for reorganizing or dissolving the organization.

The registering authority depends on the extent of the organization's activities. If the association and its members are all within one county, the association must register with the appropriate county government. If the association and its members are located in Tallinn, the registration decision is made by the Tallinn City Government. Associations active nationally must present their application for registration to the government, which will assign registering authority to the ministry in charge of activities similar to the organization's purpose to register the association. In addition to the application for registration, the association must submit a copy of the organization's by-laws, a copy of the minutes of the founding meeting, and a list of the association's founding members.

Within fifteen days after the application is submitted, the registering authority must review and respond to the application. During this time, the registering authority must verify that the by-laws are not in violation of the constitution and laws of Estonia and that the requirements of the Law on Not-for-profit Associations and their Federations have been met. If the authority needs to review the legality of the association's by-laws, it may extend the review period up to three months. Once the authority decides to accept or reject registration, it is required to issue an edict or order, in which it explains the legal basis for its decision. If accepted for registration, the association is added to the national database of nonprofit organizations maintained by the Statistical Office of Estonia. The information in this database, however, is often not updated and the database is not open to the public, making it difficult to obtain an overview of the existing organizations. An association becomes a legal entity once the registering authority approves its registration. The rejection of registration may be appealed to the administrative courts.

Since the law provides no standards for the registration of foundations, many difficulties have arisen, causing problems for both domestic and foreign foundations wishing to conduct activities in Estonia.

F. General Powers

The only restrictions of the powers of NFPOs are contained in the section above describing an association's purposes.

G. Memberships Organizations

Associations are provided wide discretion to exclude and remove members and to design procedures concerning the registration of members. The rules chosen by the organization must be articulated in the organization's by-laws.

III. GOVERNANCE

An association must have a board of directors (or director) and an auditing committee (or

auditor), and the members of both boards must be Estonian citizens or foreigners registered for permanent residence in Estonia. The association's by-laws may limit the responsibilities of these bodies. Unless the by-laws provide otherwise, only the general assembly of members may change the association's by-laws.

Members of the association who act beyond the scope of their authority will be held liable criminally, civilly, or administratively according to the nature of their activities.

IV. DISSOLUTION, WINDING UP AND LIQUIDATION OF ASSETS

A. Voluntary Dissolution

The association's by-laws must contain provisions governing the conditions and procedures for dissolution and the distribution of remaining assets. The decision to dissolve the organization may be made by the general assembly of members. An organization's board of directors may choose to dissolve the organization as well, if granted this authority by the organization's by-laws.

After deciding to dissolve the organization, the board or general assembly must elect a liquidating commission to distribute the organization's assets. This authority must last for at least two months. This commission must publish a notice of the association's dissolution in the newspaper, satisfy the demands of the association's creditors, and distribute the remaining assets, after satisfying the creditors, according to the directions set out in the organization's by-laws. If no provisions for the distribution of assets are contained within the organization's by-laws, the liquidation commission may distribute the assets for general benefit purposes.

B. Involuntary Dissolution

An association may be involuntarily dissolved by the administrative court upon a finding that the association:

1. is directed against the constitutional order of Estonia, or tries to alter forcibly the territorial entirety of Estonia, or is in another way in contradiction of the criminal law;
2. weakens the security of the state or undermines the foreign policy relations of the state;
3. encourages national, racial, religious, or political hatred, violence, or discrimination;
4. encourages hatred, violence, or discrimination between social classes;
5. undermines the public order, morality, rights and freedoms of other persons, or health; or disgraces the honor or good name of other persons;
6. is in violation of the laws or the goals set forth in the organization's by-laws or the means of achieving them;
7. violates the procedures contained in the current legislation requiring the association to inform the registering authority of changes in the association's by-laws.

An association or federation may also be dissolved if has fewer than three members.

After deciding to dissolve involuntarily an association, the administrative court will appoint a liquidating commission and assign a deadline for the association's activities to cease, not to exceed three months from the date of the decision. A copy of the dissolution decision is sent to the registering authority and to the Statistical Authority.

V. REGULATION

A. Regulatory Authorities

The registering authority is responsible for its regulation. If this authority finds that an organization is in violation of the laws and should be dissolved, it may bring a suit against the association in the administrative courts. If the administrative court agrees that the association is violating the laws, it may block the association's activities for six months and assign a fine of 100 to 30,000 crowns. It may also dissolve the association.

All NFPOs must report annually to the Tax Department.

VI. FOREIGN ORGANIZATIONS

Foreign organizations may register according to the procedures described above for domestic organizations. Due to the uncertainty surrounding foundations, foreign foundations may find it difficult to register in Estonia.

VII. MISCELLANEOUS

A. Mergers and Split-ups

There are no limitations on the merging and splitting-up of associations. The decision to merge or split-up must be made by the general assembly of members, or by the board of directors, if granted the authority to do so by the organization's by-laws.

B. Dealings in Property

No limitations exist on an NFPO's dealings in property. NFPOs may own any assets necessary to achieve their statutory goals, excluding illegal items.

C. Investment Abroad

NFPOs may invest abroad without restriction.

D. Political Activities

NFPOs are not prohibited from conducting political activities by the laws. The purpose of an association may not be to conduct political activities, however, since political parties are regulated under a separate law.

VIII. FISCAL RULES IN FORCE

A. Income Tax

NFPOs are not automatically exempt from any taxes. Since 1994, the Income Tax Law has provided that every organization may apply for a tax exemption from the Ministry of Finance, which reviews the applications on a case-by-case basis. Based on this review, the ministry compiles a list of tax-exempt not-for-profit organizations. This famous "List" must be reapproved by the government each year. The List for 1994 was divided into three sections: 1) religious organizations, 2) not-for-profit organizations, and 3) foundations not regulated and registered under current legislation. Only 196 organizations appeared on the List out of approximately 2000 NFPOs registered at the time.

The principal problem with the List is that the system is complicated, undemocratic, and no clear criteria exist for the Ministry's decisions. According to the Ministry of Finance, the main criteria in compiling the List for 1994 was whether the NFPOs conducted any economic activities. Since the exemption decision is made on a case-by-case basis without standardized criteria and information, the decision-making process is both time-consuming and problematic. The government itself agrees that the process needs improvement, but the Tax Department of the Ministry of Finance has emphatically stated that tax exemption will not be widened until a clear definition of not-for-profit organizations exists. The necessary laws have been drafted by the Ministry of Justice and are under consideration in the Parliament, and hopefully their eventual passage and enactment will encourage the Tax Department to remedy the situation. The List's importance to the sector is diminished, however, because the List only contains 196 organizations.

B. Deductibility of Donations

Natural persons may not deduct from their taxes donations made to NFPOs. Legal persons may deduct up to 10 percent of their tax base for donations to organizations on the List of exempt NFPOs.

C. Payments from Nonprofit Organizations

Grants and stipends from NFPOs given to natural persons are exempt from tax for the grantee if the organization making the grant is contained in the List of exempt organizations, and grant-making is one of the activities contained in the organization's by-laws.

D. Related and Unrelated Business Activities

Section 5(2) of the Income Tax Law provides that organizations on the tax-exempt List will be taxed on income derived from unrelated business activities. In practice, however, the major criterion used by the Ministry of Finance in compiling the List is whether an organization pursues economic activities. As a result, the importance of the distinction for tax purposes between related and unrelated economic activities is diminished. Organizations not on the List are taxed on all economic activities, including activities that are related to their statutory purposes.

E. Value Added Tax (VAT)

The law on VAT from August 25, 1993, as amended in June 1994, contains a list of goods and services exempt from VAT. Goods purchased with non-refundable foreign aid are also exempt from VAT.

IX. COMPLIANCE

Since there are essentially no tax benefits to NFPO status, there are few problems with compliance. Compliance is made difficult, though, for the many organizations not directly governed by the Law on Not-for-profit Associations and their Federations, because there are no clear rules governing many of their activities

X. GOVERNMENT FUNDING

In general, NFPOs may compete for government funds. Government funding is also available to NFPOs for certain purposes on a case-by-case basis (for example, for the establishment of a foundation dedicated to aid the handicapped). In addition, the Law on Gambling requires a certain percentage of revenues to be given to the Red Cross and the Children's Fund.

Partnerships between NFPOs and the government (especially local governments) are not common. More often these partnerships are established in times of emergency, such as during the establishment of the Crisis Centre after the ferry boat disaster in 1994.

XI. PROPOSED LEGISLATION

Two draft laws, the draft Law on Not-for-profit Associations and the draft Law on Foundations, are being discussed by the Commissions of the Parliament and hopefully will be passed in fall 1995. Both of these laws incorporate principles contained in the laws of several countries of continental Europe, taking into account the acts recently passed in Estonia regulating the status of juridical persons included in the General Part of the Civil Code and the Business Code. The International Center for Not-for-profit Law provided significant technical assistance during the drafting process.

The main difference between the current law and the new drafts lies in connecting the acquisition and termination of legal capacity, as well as procedures governing foundations, with a register of NFPOs. This register would be maintained regionally by the courts with the business register and register of real estate. Beginning in 1996, these draft laws would create four regional registers in Estonia. These registers also would be open to the public.

Some of the principal changes contained in the draft laws are as follow:

Draft Law on Not-for-profit Associations

The greatest change made by the new law is that legal persons will be permitted to found and join associations. Therefore, it will no longer be necessary to treat the federation as a separate legal entity. The governing bodies of associations will be better regulated and their responsibilities set out more clearly. In addition, the rights and responsibilities of the members of an association will also be better defined. Also, this law will more explicitly regulate the dissolution, merging and splitting-up of associations.

Draft Law on Foundations

The first draft of a law on foundations, the draft Law on Charitable Foundations, was written in 1992 by a lawyer from the Open Estonia Foundation and amended several times by foreign and domestic experts. In cooperation with the Estonian Foundation Centre and the Ministry of Culture and Education, a new draft was developed, entitled the draft Law on Private Foundations. The Ministry of Justice, which had taken a leading role in drafting new laws for NFPOs, did not accept the draft law, but recognized the urgent need to provide a legal basis for the activities of foundations.

The draft law defines a foundation as “a non-membership legal entity established under the private law to manage property and use it to pursue its statutory objectives.” The law permits foundations to engage in economic activities, but limits disbursements to charitable or social purposes. The Board of the Estonian Foundation Centre has proposed changes to clarify this section by defining “charitable or social purposes” as such activities as culture, education, sports, science, health, social services and welfare.

The draft law also permits foundations to conduct activities prior to registration. The governance of the foundation is set out in detail, as is regulation.

XII. CONCLUSIONS

NFPOs welcome these new draft laws that clearly recognize and regulate the two main types of NFPOs: membership and non-membership organizations. The drafts are very detailed in places (perhaps too detailed for sector leaders without a legal background).

The most important achievement of the not-for-profit sector in Estonia is that we have begun a continuous dialogue between NFPOs, Parliament, and the government. Several meetings and seminars attended by representative of the government and the sector on legal and fiscal issues have been held. Even the List of exempt organizations, although it is far from what the sector desires, is better than the complete lack of exemption for NFPOs that existed in 1993. Fortunately the government agrees that a new solution for tax exemption is needed, and hopefully the enactment of the two new draft laws will lead us in the right direction.