

BRIEF

Tajikistan: The Law of the Republic of Tajikistan on Social Entrepreneurship

JANUARY 14, 2025

Introduction

On January 2, 2025, the President of the Republic of Tajikistan signed the Law of the Republic of Tajikistan on Social Entrepreneurship (SE) (hereinafter “the Law on SE”).

The purpose of the Law on SE is to provide a legal basis for SE. It provides state guarantees of protection, state support and expansion of the activities of subjects of SE,¹ specifically focusing on supporting socially vulnerable groups of people. Overall, the adoption of the Law on SE may be considered a major positive development.

The Parliamentary Working Group on SE (hereinafter “the SE WG”)² developed the Law on SE through a participatory process, with representatives of civil society organizations (CSOs) serving as official members of the SE WG. After finalizing the initial draft law in early 2024, the SE WG conducted public consultations to solicit input on the draft law from CSOs in Dushanbe and the regional centers of Bokhtar and Khujand,³ as well as from small and medium size businesses (SMBs) in Dushanbe. Several important recommendations from CSOs and SMBs were incorporated into the adopted Law on SE.

¹ “Subjects of SE” include social enterprises and social entrepreneurs. For additional information, please see Section 1 of this Brief.

² On October 2, 2023, the lower chamber of the Parliament established the Parliamentary Working Group (WG) on SE (“SE WG”) after years of civil society advocacy to draft a law that would define SE and ensure state support for those engaging in SE. The SE WG included members of the parliament, government officials from key bodies, such as the Ministry of Justice (MoJ), and CSO representatives. The Eurasia Foundation and the International Center for Not-for-Profit Law (ICNL) provided technical assistance to the SE WG.

³ ICNL, upon request from the SE WG, organized public consultations to solicit input on the draft law in Dushanbe and the regional centers of Bokhtar and Khujand. In addition, ICNL and its partners organized consultations with small and medium size businesses (SMBs) in March 2024. The consultations took place before the circulation of the draft law within government ministries, which provided a critical opportunity for CSOs to influence the content of the draft law. ICNL also reviewed and provided comments on the initial draft law that were later shared with the SE WG members.

Since not all of the recommendations were accepted, additional law reform is necessary to make the new Law implementable and impactful. Nevertheless, adoption of the new law establishes an important base for reforms and supports the development of SE in Tajikistan.

Presently, the authors of this Brief have not identified any provisions in the Law on SE which would have a negative impact on subjects of SE. However, the implementation of the Law on SE and future reforms to establish specific preferences for subjects of SE will help to identify which provisions require review and possible revision.

The purpose of this Brief is to:

1. identify key novelties in the law affecting subjects of SE; and
2. identify additional needed law reforms to make the Law on SE fully implementable.

1. Key Novelties in the Law on SE Affecting Subjects of SE

1. **The Law on SE introduces new legal terms**, including:
 - a. **“Social Entrepreneurship** – refers to entrepreneurship aimed at supporting the socially-vulnerable groups of population and conducted with the purpose of delivering goods, performing works and rendering services of social nature pursuant to the provisions under this Law;”⁴
 - b. **“Social Enterprise** – refers to a legal entity included in the Registry of Entities of [SE] as per procedures under this Law and operating in the sector of [SE];”⁵
 - c. **“Social Entrepreneur** – refers to an individual entrepreneur included in the Registry of Entities of [SE] as per procedures under this Law;”⁶
 - d. amongst other terms.

These terms can be used in other laws, i.e. the Tax Code of the Republic of Tajikistan, the Law of the Republic of Tajikistan on State Procurement, the Law on the State Budget of the Republic of Tajikistan, the Law of the Republic of Tajikistan on State Social Order, among others, to define specific state support for social enterprises and social entrepreneurs.

2. **Both legal entities and individuals⁷ meeting certain requirements may be included into the registry of subjects of SE** and potentially benefit from state preferences. Legal entities in any legal form may be considered “social

⁴ Article 1 of the Law on SE.

⁵ *Id.*

⁶ *Id.*

⁷ Article 1 1) and 2) of the Law on SE

enterprises.”⁸ CSOs requested that both legal entities and individuals be eligible as subjects of SE.

3. **The Law on SE makes clear that public associations may be considered “social enterprises”** when meeting special requirements.⁹ The SE WG did not include CSOs’ request that public associations implementing entrepreneurial activities be automatically included into the “Registry of Entities of SE” (without a qualification test). The SE WG did include CSOs’ request to make it clear that public associations may be “social enterprises.” However, one concern raised by some public associations following adoption of the law is that now all requirements applicable to public associations applying for inclusion in the registry may be applied in practice to all public associations carrying entrepreneurial activities. Such a situation would be highly problematic, as currently public associations may carry out entrepreneurial activities without limitations. The authors of this Brief do not share this concern. It is our understanding that the Law on SE does not make it mandatory for all public associations engaged in entrepreneurial activities to be registered in the Registry. The SE status cannot be granted to public associations automatically or only by the decision of the state authorities, as a public association must decide on its own whether to apply for this status.¹⁰ If the public association carrying out entrepreneurial activities does not have a registered SE status, it should not be required to meet the requirements established for SE organizations. If, in practice, state authorities try to apply such requirements to all public associations carrying out entrepreneurial activities, it will be a violation of the Law on SE.¹¹
4. **The Law on SE does not make it mandatory for all entities and persons carrying out activities which might be considered SE to register in the Registry of Entities of SE (“Registry”).** All entities and persons may continue their activities, as prior to the adoption of the Law on SE, without such registration as long as they do not strive to receive state support,¹² which will only be available to those included in the Registry. This was also a request from

⁸ Article 15 of the Law on SE.

⁹ Article 16 of the Law on SE.

¹⁰ Please, see articles 16.4, 7.1 and 16.1 of the Law on SE.

¹¹ The only limitations on entrepreneurial activities include the requirement that “income from entrepreneurial activity must not be distributed amongst members and participants of the public association and must be spend for achieving statutory goals” (Article 31.3 of the Law of the Republic of Tajikistan on Public Associations.)

¹² State support to subjects of SE is defined in Article 26 of the Law on SE. Presently, the SE Law only declares support in compliance with legislation or, per non-mandatory decisions of the state bodies, and the legislation, other than the SE Law itself, does not contain any special incentives or preferences for subjects of SE.

CSOs. However, this is the understanding of the authors of this Brief. The implementation of the SE Law must be closely monitored, and, if it appears that organizations are required to register in the Registry, it will be problematic.

5. The Law on SE identifies ***“the designated state body in the area of state registration of legal entities and individual entrepreneurs in the area of SE,”***¹³ which will review applications for inclusion in the Registry, maintain the Registry, and carry out tax control over activities of social enterprises and social entrepreneurs on their compliance with the Law on SE. Although the Law on SE does not name this state body, this is the State Tax Committee. In addition, the Law on SE refers to *“the designated state body in the area of SE.”*¹⁴ This state body is authorized to implement state policy in the area of SE, participate in development of documents on strategic planning and in development of legislation in the area of SE, carry out cooperation with subjects of SE, analysis of environment for SE, monitoring and provision of recommendations to develop SE, amongst other responsibilities. The Law on SE does not name this state body.
6. The Law on SE also determines **criteria and terms for social enterprises and social entrepreneurs for inclusion in the Registry of Entities of SE.**

For social enterprises, the criteria include:

- a. Recognition as a social enterprise *“if it is established to address challenges of socially-vulnerable group of population or sale and / or supply of social goods, and delivery of social services,”* and meets one of the following criteria:
 - *“At least 50 percent of the total number of employees in the enterprise belong to socially vulnerable groups of the population, and the wage fund for the socially vulnerable group constitutes at least 50 percent of the total wage fund of employees.*
 - *The income received from [SE] activities in the previous calendar year constitutes at least 50 percent of the total income of the enterprise.*
 - *At least 50 percent of the income received in the previous calendar year is reinvested in the implementation of [SE] activities.”*¹⁵

For individuals, *“An individual entrepreneur is considered a social entrepreneur if they meet one or more of the following criteria:*

- 1) *Belongs to a vulnerable group of the population;*

¹³ Article 12 of the Law on SE.

¹⁴ Article 12 of the Law on SE.

¹⁵ Article 17 of the Law on SE.

- 2) *Engages in activities directly related to addressing the challenges of a socially vulnerable group of the population or sale and / or delivery of social goods and services;*
- 3) *Ensure that income from sale of goods, performance of works, and provision of services during the previous calendar year constitutes at least 50 percent of total income of the [SE];*
- 4) *Reinvest at least 50 percent of income generated from the previous calendar year in the implementation of [SE] activities.”¹⁶*

Notably, the Law on SE does not allow the State Tax Committee, as the designated state body to implement the Law on SE, to request additional documents and information from applicants for inclusion in the Registry.¹⁷ It is the authors' understanding that the State Tax Committee will make its determination based on information submitted as a part of tax reporting. In addition, the State Tax Committee will use its existing authority to conduct tax inspections to verify the compliance of activities of subjects of SE with the requirements of the Law on SE.

2. Additional Necessary Law Reforms to Make the Law on SE Fully Implementable

1. The Law on SE does not contain a procedure for inclusion of applicants into the Registry. It also does not establish timelines for consideration of inclusion in or exclusion from the Registry, amongst other topics which must be regulated for the Registry to become operational.
2. It is important to introduce amendments to other laws which would guarantee preferences to subjects of SE to be included in the Registry. For example, the Law on SE states that *“tax and customs benefits and other state preferences shall be provided in compliance with the legislation of the Republic of Tajikistan.”¹⁸* These are extremely important to motivate legal entities and individuals to engage in SE activities and apply for inclusion in the Registry. Without such benefits, the Law on SE will have limited, if any, impact.
3. The Law on SE also envisions placement of a state social contract with subjects of SE in compliance with legislation of the Republic of Tajikistan.¹⁹ The relevant changes must be made to such legislation before applicability.

¹⁶ Article 19 of the Law on SE.

¹⁷ Article 23.1 of the Law on SE.

¹⁸ Article 261.1) of the Law on SE.

¹⁹ Article 261.2) of the Law on SE.

4. Similarly, it will also require amendments to prioritize the conclusion of direct procurements in implementation of social projects under the legislation on state procurement.
5. Other legislation to be drafted and/or amended includes the following:
 - a. the provision of financial support to social enterprises from state target funds, defining terms and making them mandatory in certain instances;
 - b. the provision of material support, including leasing state and municipal property on preferential terms, defining terms and making them mandatory in certain instances;
 - c. defining the instances in which specific government bodies are obligated to organize vocational education and training, additional professional education, retraining, and advanced training for employees of social enterprises;
 - d. defining the instances in which specific government bodies are obligated to allocate state grants to social enterprises or social entrepreneurs for the implementation of social projects;
 - e. defining the instances in which specific government bodies are obligated to offer free consultations, methodological assistance, and informational support, including funding opportunities and participation in the procurement of goods, works, and services.

“The designated state body in the area of SE,²⁰” not identified in the Law on SE, must organize the implementation of further reforms.

While the authors recognize that the provision of incentives must be fiscally responsible and feasible, without real incentives, the Law on SE will have little practical effect. Establishing a roadmap for the upcoming reforms, identifying state bodies responsible for implementation, setting timelines, and committing to the development of necessary legislative changes in a participatory manner could serve as important initial steps.

Further, recognizing the spirit of the successful participation of the government, the parliament, and civil society in drafting the Law on SE, it would be highly beneficial if such reforms continue with the direct participation of CSOs and SMBs.

The International Center for Not-for-Profit Law (ICNL) stands ready to continue providing technical assistance with the upcoming reforms, including comparative law analysis and sharing experience of other countries.

²⁰ Article 12 of the Law on SE.