



**International Center
for Not-for-Profit Law**

Noncommercial Law

(Textbook)

Bishkek-2012

УДК 342
ББК 67.99(2)1

Authors:

N.A. Idrisov, legal consultant of International Center for-Not-for Profit Law – **Chapters 1, 3, 5.**

U.Y. Pak, Ph.D in Law. – **Chapters 2, 19.**

N.B. Alenkina, Senior Lawyer, ARD/Checchi USAID - **Chapters 4, 8.**

L.A. Makarenko, Advisor of Chairman of the Accounts Chamber - **Chapter 6.**

Y.N. Shapovalova, the first class lawyer – **Chapters 7, 9.**

Muratbek kyzy Saltanat, Ph.D., dean of law and business faculty of the Kyrgyz State Juridical Academy – **Chapters 10, 11.**

A.A. Duishonbaev, senior teacher of UNESCO “Constitutional law and Gender Politics” faculty of the Kyrgyz-Russian Slavik University– **Chapters 12, 18, 20.**

Maksat Makambay, Ph.D, manager of the international law faculty of the International University of Kyrgyzstan – **Chapter 13, 14**

G.T. Isakova, Ph.D, Associate Professor of American University of Central Asia, **T.P Ibraimov**, executive director of consulting company “Gratas”– **Chapters 15, 16.**

V.V. Ovcharenko, consultant of ICNL/Kazakhstan – **Chapter 17.**

Executive editor: **N.A. Idrisov**, Reviewer: Ph.D, president of Kyrgyz State Juridical Academy **K.K. Kerezbekov**

H 47 Not-For-Profit Law; (TEXTBOOK) /UNDER executive edition of N.A.Idrisov – Б.:Т. ДЭМИ, 2012 – 248 с.

ISBN 9967-23-529-2

The first publication of the current textbook was prepared by authors’ team under financing, organizational and technical assistance of International Center for-Not-for Profit Law (ICNL) and published in 2006. The textbook is dedicated for students of jurisprudence, state and municipal governance, management at noncommercial organizations and others. Author’s team tried to generalize cases from practical regulation of noncommercial organizations. Textbook recommended as a basic learning material to provide a classes on “Noncommercial law”. Besides analyzis of the current legislation, the textbook covers historical and theoretical aspects, good world practice and different points of view to general legal problems.

After the first edition of the textbook in 2006 there were adopted a several normative legal acts concerning to noncommercial organizations, in particularly the Constitution (2010), Tax Code (2008) and others. The present edition is the second and updated by the expert of ICNL Azamat Talantbek uulu and Aida Rustemova in 2012 coordinated a chapters of the textbook in accordance to a new legal acts adopted since 2006 to 2012.

H 1203021400-06
ISBN9967-23-529-2

УДК 342
ББК67/99(2)1

© International Center for-Not-for Profit Law (ICNL), 2012

Table of Contents

Overview of Noncommercial Organizations	6
Chapter 1. Concept, Role and Classification of Noncommercial Organizations	6
Noncommercial Law Discipline	6
§ 1. Correlation of Noncommercial Organizations and Similar Concepts	6
§ 2. Noncommercial Organizations	8
§ 3. The Role of NCOs in Civil Society	10
§ 4. Organizational and Legal Forms of NCOs	14
§ 5. Classification of NCOs	16
§ 6. Structure of Noncommercial Law	17
Chapter 2. Regulation of NCOs	19
§ 1. Historical Development of Legal Status of NCOs	19
§ 2. Sources of the Law of NCOs	22
§ 3. The Constitutional-Legal Bases of Activities of NCOs	24
§ 4. Civil and Legal Status of NCOs	27
Chapter 3. Creation of NCOs	31
§ 1. Creation of Nonregistered NCOs and Their Status	31
§ 2. Differences between Registered and Nonregistered NCOs	32
§ 3. Procedure for State Registration of an NCO	34
§ 4. Notification of the registering body on changes of the information about NCO	51
Chapter 4. Management of NCOs	38
§ 1. Administering Principles of NCOs	38
§ 2. Governing Bodies	38
§ 3. Statutory Documents	40
§ 4. Conflicts of Interest	43
Chapter 5. Financing NCOs	46
§ 1. General Provisions Concerning Financing NCOs	46
§ 2. Organic Income of NCOs	48
§ 3. Government Financing of NCOs	50
§ 4. Business and Individual Endowments and Grants	53
§ 5. Limitations on Foreign Financing of NCOs	55
Chapter 6. Taxation and Social Payments of NCOs	Ошибка! Закладка не определена.
§ 1. Main Principles of Granting Tax Benefits to NCOs in the Kyrgyz Republic ...	Ошибка!
Закладка не определена.	
§ 2. Income Tax	Ошибка! Закладка не определена.
§ 3. Income Tax and Social Payments to the Social Fund	Ошибка! Закладка не определена.
§ 4. Value Added Tax	Ошибка! Закладка не определена.
§ 5. Excise Tax	Ошибка! Закладка не определена.
§ 6. Land Tax	Ошибка! Закладка не определена.
§ 7. Property Tax	Ошибка! Закладка не определена.
§ 8. Sales Tax	Ошибка! Закладка не определена.
§ 9. Conclusion	Ошибка! Закладка не определена.
Chapter 7. Reorganization, Liquidation and Bankruptcy of NCOs	57
§ 1. Reorganization of NCOs	66
§ 2. Liquidation of NCOs	71
§ 3. Bankruptcy of NCOs	74

Specifics of Legal Regulation of Membership NCOs.....	77
Chapter 8. Public Associations	77
§ 1. The Right of Association	77
§ 2. The History of the Legal Regulation of Public Associations	78
§ 3. Notion and Features of Public Associations	79
§ 4. The Creation and Activity of Public Associations.....	81
§ 5. Membership in Public Associations	82
§ 6. Governance of Public Association.....	83
§ 7. Reorganization and Liquidation of a Public Association	84
Chapter 9. Associations of Legal Entities (Associations and Unions)	86
§ 1. Notion and Forms of Associations of Legal Entities	86
§ 2. Legal Status of Associations of Legal Entities	87
§ 3. Creation and Termination of Associations of Legal Entities	88
§ 4. Administration and Legal Status of Members of the Association	90
§ 6. Political and Economic Impacts of Associations of Legal Entities	92
Chapter 10. Noncommercial Cooperatives.....	94
§ 1. Historical Development of the Legal Status of Noncommercial Cooperatives	94
§ 3. Procedure for Formation of Noncommercial Cooperatives	96
§ 4. Rights and Obligations of Members of Noncommercial Cooperatives	98
§ 5. Conclusion	100
Chapter 11. Partnership of Homeowners	102
§ 1. Notion and General Provisions on Partnerships of Homeowners.....	102
§ 2. Organization and Activity of Partnership of Homeowners	104
§ 3. Legal Status of Members of Homeowners' Partnerships	105
§ 4. Governance and Control of Homeowners' Partnerships	107
Chapter 12. Jamaat (Community Organization).....	109
§ 1. Notion of Jamaat	109
§ 2. Legal Status of Jamaat	110
§ 3. Creation of Jamaat	112
§ 4. Interaction of Jamaat with State Bodies and Local Self-Administration Bodies	113
§ 5. Financial-Economic Basis and Property of Jamaat	114
§ 6. Governing Bodies of a Jamaat	114
§ 7. Formation and Activity of a Local Development Foundation	115
Chapter 13. Credit Unions	116
§ 1. History of Credit Unions.....	116
§ 2. Major Features of Credit Unions	118
§ 3. Governance of Credit Unions	118
§ 4. State Regulation of Credit Unions	121
§ 5. Credit Transactions	123
Chapter 14. Trade Unions.....	125
§ 1. Notion of Trade Unions	125
§ 2. Creation of Trade Unions	126
§ 3. Property of Trade Unions	126
§ 4. Governance of Trade Unions	127
§ 5. Legal Status of Trade Unions	128
Chapter 15. Political Parties	132
§ 1. History of Political Parties	132
§ 2. Notion and Features of Political Parties	133

§ 3. Constitutional and Legal Regulation of Interactions between the State and Political Parties	135
§ 4. Procedure for Foundation and Termination of Political Parties	136
§ 5. Financing of Political Parties	138
Chapter 16. Religious Organizations	140
§ 1. Notion of Religious Organizations; their Emergence and Role	140
§ 2. Interaction of Religious Organizations and the State	142
§ 3. Religious Organizations and Freedom of Conscience	144
§ 4. Procedure for Foundation and Termination of Religious Organizations and their Legal Status	146
Legal regulation of Non-Membership NCOs	148
Chapter 17. Foundations	148
§ 1. Introduction.....	148
§ 2. Foundations in International Practice	148
§ 3. Foundations in Kyrgyzstan	151
§ 4. Creation of Foundation	154
§ 5. Foundation Governance	155
§ 6. Termination of Foundation	157
Chapter 18. Institutions.....	158
§ 1. The Meaning of the so-called “Institution”	158
§ 2. Legal Status of the Institution.....	158
§ 3. Governing Bodies of Institutions	161
NCOs with Special Status.....	162
Chapter 19. Charitable Organizations.....	162
§ 1. The History of Charitable Organizations	162
§ 2. Notion of Charitable Organization	163
§ 3. Legal Status of Charitable Organization.....	165
Chapter 20. Territorial and Public Self-Administration Bodies (TPS)	169
§1. Notion and History of TPS Bodies	169
§ 2. Legal Status of TPS Bodies	172
§ 3. TPS Governing Bodies	177

Overview of Noncommercial Organizations

Chapter 1. Concept, Role and Classification of Noncommercial Organizations

Noncommercial Law Discipline

§ 1. Correlation of Noncommercial Organizations and Similar Concepts

In international practice, there are many concepts similar to the concept of “noncommercial organization:” not-for-profit organization, public association, civil organization, civil society organization, voluntary organization, nongovernmental organization, charitable organization, community organization, third sector organization, and so on.

The diversity of concepts is a linguistic reflection of the existing reality. Various components are contained in the meaning of the above-mentioned concepts, which are directly related to reality. These components are:

- *The public component* (public organizations) – organizations that help individuals participate in public life;
- *The civil component* (civil organizations or civil society organizations) – organizations operating in civil society;
- *The economic component* (noncommercial organizations or not-for-profit organizations) – organizations owning property and carrying out economic activity (apart from their principal noncommercial activity), and using revenues generated in pursuit of their of statutory goals;
- *The political component* (nongovernmental organizations, third sector organizations) – organizations that are independent from the state, and unrelated to commercial sector;
- *The voluntary component* (voluntary organizations and public organizations) – organizations created voluntarily by individuals.

The choice of concept depends on which component is more important in the real-life situation. For example, if it is necessary to emphasize the voluntary factor, then the concept of “voluntary organization” is used; if the economic factor, then the concept of “noncommercial organization” is used.

Since the adoption of the Civil Code of the Kyrgyz Republic as of May 8, 1996 # 15, the concept of “noncommercial organization” has been widely used. This is a legal concept, defined in the Civil Code of the Kyrgyz Republic as of May 8, 1996 # 15 and the Law of the Kyrgyz Republic “On noncommercial organizations” as of October 15, 1999 # 111. The content of the given concept will be explained in detail in the next paragraph.

Distinctive Features of Nongovernmental Organizations

In many countries, including Kyrgyzstan, the concept of “nongovernmental organization” or NGO is used more frequently than “noncommercial organization” and other, similar concepts. Because the definition of this concept is not set out in the legislation of the Kyrgyz Republic, it is not considered a legal concept. Meanwhile, in international practice, there are criteria for determination of this kind of organization. Traditionally, NGOs include public benefit noncommercial organizations, excluding political parties, trade unions, and religious organizations. In the next paragraph the public benefit organization will be explained in detail.

Following research conducted by John Hopkins University, five main criteria of NGOs were proposed, as follows:

- 1) **Institutionalism.** The organization formally exists as a legal entity, has an organizational structure, public benefit goals, and a specific set of activities.
- 2) **Independence from the state.** The organization may not be a part of the system of state bodies, and may not have any power authorities like state bodies whether on the national or local levels. However, the organization may receive state subsidies or any other assistance from the state, and representatives of state bodies can not participate in NGO’s governance.
- 3) **Self-administration.** The organization must have its own corporate governance structure and a system of internal control over its own activities, meaning internal rules and procedures on decision-making. This internal structure allows an organization to operate autonomously, without further control by the state.
- 4) **Non-distribution of profits.** Organizations may not distribute profits from their activities among founders, members, directors or officers. The organization should have the right to earn revenue from economic activity, donor’s contributions and other legal sources; however, such revenues may only be used for statutory goals.
- 5) **Volunteerism.** Normally, organizations are created voluntarily, and involve the voluntary participation of individuals in their activities, as well as the use of voluntary donations from individuals and legal entities.

These criteria define NGOs as public benefit organizations, but exclude state organizations (state NCOs), political parties, trade unions or religious organizations.

§ 2. Noncommercial Organizations

The Law of the Kyrgyz Republic “On noncommercial organizations” defines a noncommercial organization as a voluntary, self-administered organization, created by individuals and/or legal entities, based on their common interest to pursue spiritual or other nonmaterial needs in the interest of its members and/or society in general, for which profit-making is not the main goal, and in which profit is not distributed among members, founders or officers. From this definition it is possible to discern the main features of a noncommercial organization (NCO). An NCO is:

- 1) A voluntary organization;
- 2) Self-administered;
- 3) Created for:
 - Implementation of a specific public benefit activity (public benefit organization); or
 - Implementation of an activity providing a benefit to members of the given organization (mutual benefit organization); and is
- 4) An organization in which producing revenue is not the main goal, and in which profit is not distributed among members, founders or officers.

Public Benefit NCOs

In any country, due to limited financial, human, organizational and other resource limitations, state bodies are not able on timely basis to identify and solve all problems in the society (social, ecological, cultural, and educational, etc.). As a result, there are instances in which citizens, identifying certain problems that state bodies cannot resolve, do not wish to observe indifferently what is happening. Together with like-minded people -- sometimes alone as well – they may choose to create an NCO, thereby taking measures to resolve some problems. These may include assisting orphan children, protecting the environment, spreading knowledge among the population and so forth. Certainly, such NCOs are public benefit organizations.

There are cases in which individuals may create an NCO not for solving certain problems in the society, but for meeting special needs of the society or a group within the society. For example, an individual may allocate significant personal funds for opening of a new noncommercial university (i.e., to create a university in the legal form of an NCO) in which free education for the most talented youth is provided according to a new methodology. Or individuals could create a public association called the “Community of Fans of Japanese Poetry” dedicated to the popularization and publicity of a group of fans of Japanese poetry. If the public association is open to all interested persons and it conducts activities not only for its members, but also for all those who are interested in Japanese poetry, then the public association or NCO is considered to be for the public benefit.

In those countries in which the state understands the public benefit role for NCOs, it may establish favorable conditions for their establishment and activities. Leaders of these countries treat public benefit NCOs as their allies, partners, and may forge close cooperation with them so that they may assist each other. In such countries, public benefit NCOs may have different tax benefits:

- Exemption from taxation on some of their income (membership fees, grants, charitable contribution, donations);
- Tax benefits to individuals and legal entities for charitable contributions and donations.

In Kyrgyzstan, public benefit NCOs may be created in the form of:

- Public associations;
- Foundations;
- Institutions;
- Associations (unions) of legal entities;
- Jamaats (community organizations).

Mutual Benefit NCOs

Certain NCOs do not carry out public benefit activities, but instead direct their focus toward the mutual, nonmaterial benefit of the members of the organization. For example, partnerships of homeowners or condominiums and apartment management cooperatives are created by tenants for the joint management of multifamily houses. These NCOs are created as independent, self-sufficient, self-administered organizations. At the same time, in creating such an organization, the tenants of multifamily houses are taking full responsibility for maintenance of the building. Through these organizations, the flat owners are:

- 1) arranging payment for certain utility services (heating, hot and cold water, garbage disposal, public space lighting, etc.);
- 2) as appropriate, collecting funds for repair of roofing, heating system, and other infrastructure, and managing the repairs.

Farmers may also create associations of water users in order to distribute irrigation water fairly and maintain common engineering structures.

In Kyrgyzstan, the following organizations are considered mutual benefit NCOs:

- Partnerships of home or condominium owners;
- Noncommercial cooperatives formed to operate buildings, camps, garages, etc.;
- Credit unions;
- Trade unions;
- Associations of employers;

- Associations of water users;
- Some associations (unions) of legal entities (those created only for serving the interests of their members);
- Some specific types of public associations (for example, a society of philatelists, union of motorists, etc.).

In many countries, there is a consensus about the purposes for which mutual benefit NCOs may be created, and about the principles that should govern the relationships related to their activities:

- 1) Mutual benefit NCOs are needed for certain purposes of individuals and organizations, including ensuring the safety of camps, the management of multifamily houses, etc.);
- 2) Individuals and organizations that create mutual benefit NCOs are solving certain social problems and protecting their common interests;
- 3) It is necessary to create favorable conditions for the establishment of mutual benefit NCOs and for carrying out their activities.

§ 3. The Role of NCOs in Civil Society

In those countries that have a strong noncommercial sector¹ -- business sector and the government assist to NCOs in their development and there is a high level of economic and democratic development. Why does a society need not-for-profit organizations? Why, in many countries of the world, are their activities supported by the state, businesses and the general population? Why in many countries of the world are NCOs not taxable or tax-advantaged? Why do many countries of the world treat not-for-profits and the noncommercial sector on a par with the state and business sectors? There are, at least, several economic and social-political benefits of the presence and development of NCO sector in society.²

Economic Reasons Supporting the Existence and Strengthening of the Role of the NCO Sector in Society

Efficiency of NCOs. NCOs may be more efficient than state and business structures, as they may react to the needs of a population quickly and efficiently. They may render their services on the same quality level but at lower cost; for example, crisis centers, providing medical and psychological services to people who

¹Often the not-for-profit or NCO sector is called the “third sector,” after the state and business sectors.

²Leon E. Irish. Role and function of noncommercial sector. Report in working conference “Normative bases for the activity of noncommercial organizations in new democracies,” 1995.

are in a critical situation; microcredit nonbank NCOs, offering micro-credits for the benefit of the low-income population; legal and advocacy centers; as well as many other types of services.

Development of Market Economy. A developed NCO sector promotes the development of a market economy, because market economies develop more efficiently where there is a social stability and trust in state, private and public institutions. NCOs may identify and solve many problems in the society and make significant contributions to the maintenance of stability in a country.

In the economies of many developed countries, the NCO sector has a significant place. For example, in the USA in 1996, NCOs produced 6.7% of the gross domestic product (GDP), which was equivalent to USD\$434 billion, and NCOs owned private sector capital valued at 5% (or USD\$1.24 trillion).³ In Germany in 1993, 3.9% of GDP (or USD\$67.6 million). In Sweden in 1992, the NCO sector produced 4% of the GDP (or USD\$7.7 billion), in Switzerland the gross income of NCOs was 2% of GDP, and in Canada, the NCO sector represented GDP of 12%.⁴

It is also important to emphasize the role of the NCO sector in employment. Below in Table 1 are data on employment in the NCO sector in 18 countries of the world during 1990 and 1998.

Table 1. Employment in the NCO sector⁵

Country	1990 in %	1998 in %
Netherlands	-	12.4
Ireland	-	11.5
Belgium	-	10.5
Israel	-	9.2
USA	6.9	7.8
Australia	-	7.2
Great Britain	4.0	6.2
France	4.2	4.9
Germany	3.7	4.5
Spain	-	4.5

³ Data on USA was taken from the article of C. Eugene Steuerle and V. Hodgkinson, "Meeting Social Needs: Comparing the Resources of the Independent Sector and Government", "Nonprofits and Government. Collaboration and Conflict," The Urban Press, WDC, 1998.

⁴ Data on Canada, Sweden, Switzerland and Germany were taken from "The New Civic Atlas. Profiles of Civil Society in 60 Countries," CIVICUS, 1997.

⁵ L.M. Salamon, "Government - Nonprofit Relations in International Perspective," Nonprofits and Government. Collaboration and Conflict, The Urban Institute Press, WDC, 1998; H.K. Anheier, "Social Origins of Civil Society: Explaining the Nonprofit Sector Cross-Nationally," Voluntas, Vol. 9. No 3, 1998, and L. M. Salamon, "America's Nonprofit Sector: A Primer," 2nd Ed., The Foundation Center, 1999.

Austria	-	4.5
Japan	2.5	3.5
Argentina	-	3.2
Finland	-	3.0
Czech Republic	-	2.8
Peru	-	2.4
Brazil	-	2.2
Hungary	0.8	1.3

Social-Political Reasons Supporting the Existence and Strengthening of the Role of the NCO Sector in Society

Actual existence of freedom of opinion and assembly. Freedom of opinion and assembly, being Constitutional rights, guarantee the voluntary association of individuals into NCOs and are the expression of independent views on existing problems in society. NCOs stimulate the development of civic feelings of solidarity, involvement and mutual assistance, and facilitate individuals to take initiative and participate in solving state problems.

Pluralism and tolerance. Any citizen or group of citizens has the right to pursue public and personal interests. They may be: sports and music, education and medical assistance to the disabled, development of international relations, conducting independent research and many other pursuits. As these interests are varied by their nature, all individuals and organizations should show tolerance to interests of other citizens and organizations.

Facilitation of social stability and observance of laws. An NCO is a reflection of society's interests. A state should not prohibit people from helping each other people or the wider society. The most important is that an NCO has to openly carry out its activity, without violating existing legislation.

Development of democracy. A strong NCO sector is essential for the successful development of democracy. NCOs are one of the crucial factors in democratizing a society. They are necessary for the society, as through them individuals are involved in civil and social life and thereby contribute to the development of democracy. NCOs are the main mechanism through which individuals are united for the achievement of common interests, for the protection of group or individual rights. Through an NCO, individuals may attract the attention of the state bodies in order to solve day-to-day problems. NCOs may analyze the problems, and may propose alternative, non-traditional, and sometimes more rational mechanisms to solve them. NCOs may facilitate observance of laws.

Providing social and public services on another quality basis. Providing social and public services through NCOs is often less costly than through business structures, and the services provided may be more diverse than those provided by

state and business structures, for example, rendering services through such NCOs as nongovernmental museums, educational institutions, health protection centers, credit foundations and other noncommercial. It is also important to note that the main goal of private business structures is to make profit for their founders, while NCOs are designed for the benefit of a wider group of people.

Internal Qualities of NCOs that Strengthen its Role in Society

Prompt identification of problems. NCOs may promptly identify new problems in society, attracting public attention to them.

Flexibility. NCOs are able promptly to react to new circumstances and needs arising in the course of development, and to propose thoughtful solutions.

Relative independence. NCOs are able promptly to meet certain needs to which the state and business sector sometimes do not pay attention. NCOs are free to choose the direction of their activity.

Availability and responsiveness. NCOs are open to communication, and often have close links to communities and groups that are ignored by society. Membership and information in these NCOs are available for all interested.

Mediation. NCOs may connect different social groups and serve as a bridge between different political movements, reducing social, professional, and bureaucratic barriers that may deter development of the society.

Control. NCOs may monitor the honest and effective implementation of state policy.

Leadership development. NCOs may facilitate formation of a new generation of leadership, as NCOs provide an opportunity to demonstrate leadership qualities.

Guarantee of representation. NCOs provide alternate views on daily problems and strive for these views to be heard.

Encourage participation. NCOs permit active participation by different sectors of the population and thereby reduce of the possible exclusion of some groups or different views in the course of discussion of problems and decision-making.

Resource mobilization. NCOs may mobilize human and financial resources to solve development problems.

Therefore, the presence of NCOs in society is not merely the whim of some groups of enthusiasts. It is evidence of democratization of a society, evidence of decentralization of the system of state management, evidence of the expression of honorable human qualities: rendering assistance to a needy person and to the population as a whole. Democratic transformations provide individuals the opportunity to become more involved not only in the social life of society, but also in its political, economic and cultural life of the country, and that of the whole world.

A strong nongovernmental, noncommercial sector is necessary for the success of development of a democracy. NCOs are necessary for a society, as through them individuals are involved in civil and social life and make their contribution to the development of democracy. NCOs are the main mechanism through which individuals are united for promotion of their common interests, protection of group or individual rights. Through NCOs citizens may attract attention of state bodies in solving daily problems. NCOs make analysis of many daily problems, and propose alternative mechanisms for their resolution.

§ 4. Organizational and Legal Forms of NCOs

In the Kyrgyz Republic, it is possible to create only those NCOs, whose organizational and legal forms are set out in the Civil Code and law of the Kyrgyz Republic. In the legislation of the Kyrgyz Republic as of August 1, 2012, NCOs may take the following organizational and legal forms:

- 1) Public association;
- 2) Foundation;
- 3) Institution;
- 4) Association or union of legal entities;
- 5) Cooperative (noncommercial);
- 6) Partnership of home or condominium owners;
- 7) Association of water users;
- 8) Jamaat (community organization);
- 9) Credit union;
- 10) Stock exchange;
- 11) Trade union;
- 12) Association of employers;
- 13) Political party;
- 14) Religious organization.

The choice of organizational and legal form directly depends on the goals for which the NCO is being created, and on the methods by which these goals will be achieved.

Public Association – a voluntary association of individuals, united by their common interest in meeting spiritual or other nonmaterial needs. A public association is a membership organization. The highest governance body is the general meeting of members. A public association's general meeting of members creates its executive body (governing board, directorate, etc.). Specific to a public association is the fact that its goals are achieved through the activity of its members. The potential area of activity of a public association is very broad: it may be environmental protection, social support of the disabled, education, addressing

national issues (for example, through community organizations), culture and art, and so forth.

Foundation – a nonmembership organization, established by individuals and/or legal entities who make voluntary contributions to the organization, and which pursues social, charitable, cultural, educational or other public benefit goals. A foundation may also be created by a last will and testament. A foundation's characteristics contrast with those of a public association in that a foundation has no membership, and because the basis for its creation is a voluntary donation of property transferred by its founders for the pursuit of certain goals.

Institution – an organization created by an owner for carrying out managerial, social and cultural, educational or other functions of a noncommercial character and financed fully or partially by its owner. An institution may be the most appropriate organizational and legal form for such organizations as hospitals, clinics, kindergartens, schools, universities, and museums, so long as these organizations are created as NCOs⁶.

Association or union of legal entities – an organization created in order to coordinate the activities of its member organizations, as well as to represent and protect their common interests.

Partnership of home or condominium owners and building management cooperatives are created by home or apartment owners for the joint management of houses.

Camp and garage cooperatives are created by owners of camps and garages for the protection of camps and garages, and protection of the owners' common interests.

Associations of water users are created by farmers to promote the fair distribution of irrigation water and to maintain necessary engineering structures.

Trade unions and associations of employers are created for the protection of their members' interests.

Each organizational and legal form of an NCO has its own specific characteristics. In order to understand these specifics, it is necessary to refer to the relevant legislation, contained in the following normative and legal acts of the Kyrgyz Republic:

- 1) Civil Code of the Kyrgyz Republic as of May 8, 1996 # 15;
- 2) Law of the Kyrgyz Republic "On noncommercial organizations" as of October 15, 1999 # 111;
- 3) Law of the Kyrgyz Republic "On partnerships of homeowners" as of October 28, 1997 # 77;
- 4) Law of the Kyrgyz Republic "On association (union) of water users" as of March 15, 2002 # 38;

⁶ Hospitals, clinics, kindergartens, schools and universities may also be created in the form of commercial organizations (such as joint-stock company, limited liability company, etc.).

- 5) Law of the Kyrgyz Republic “On cooperatives” as of June 11, 2004 # 70;
- 6) Law of the Kyrgyz Republic “On jamaats (communities) and their associations” as of February 21, 2005 # 36;
- 7) Law of the Kyrgyz Republic “On credit unions” as of October 28, 1999 # 177;
- 8) Law of the Kyrgyz Republic “On association of employers” as of May 22, 2004 # 66;
- 9) Law of the Kyrgyz Republic “On equity market” as of July 21, 1998 # 95 (contains provisions on stock-exchanges);
- 10) Law of the Kyrgyz Republic “On trade unions” as of October 16, 1998 # 130;
- 11) Law of the Kyrgyz Republic “On freedom of religion and religious organizations” as of December 31, 2008 # 282;
- 12) Law of the Kyrgyz Republic “On political parties” as of June 12, 1999 # 50.

§ 5. Classification of NCOs

NCOs are classified by various criteria. These are set out and discussed below.

- I. Depending on the presence and absence of members, NCOs are of two types:
 - 1) membership; and
 - 2) nonmembership organizations.

Foundations and institutions are the only non-membership NCOs. All the rest of the NCOs are membership organizations.

- II. NCOs are of two types depending on the form of ownership:
 - 1) governmental; and
 - 2) nongovernmental organizations.

At the present time, governmental NCOs are mainly state institutions (kindergartens, schools, universities, medical clinics, hospitals etc.⁷), while the rest of the NCOs are nongovernmental organizations and some foundations (state foundations).

Some governmental organizations have the word “foundation” in their names, such as the Social Fund and the Foundation on Development of the Economy. According to Article 162 of the Civil Code of the Kyrgyz Republic, “foundations must be established by voluntary **nongovernmental** contributions of property.” The above-mentioned governmental organizations are either institutions (i.e., the state is an owner) or state bodies, and the word “foundation” only indicates the names of the organizations.

⁷ In compliance with the legislation of the Kyrgyz Republic, kindergartens, schools, universities, medical clinics, hospitals and other similar organizations may be created as private institutions or as commercial organizations.

III. Depending on the group of persons benefitting from the organization's activity, NCOs are divided into:

- 1) Public benefit NCOs; and
- 2) Mutual benefit NCOs.

These types of NCOs were explained in detail in § 2 of the present chapter. This division of NCOs is applied mainly for tax purposes. For both types of NCOs, there is a favorable tax regime, but public benefit NCOs enjoy additional tax benefits, such as incentives to individuals and legal entities to make charitable contributions.

IV. Depending on the purposes for which they were created, NCOs are divided into: charitable, ecological, medical, educational, sports and other organizations.

V. NCOs are also classified by their organizational and legal forms (see § 4).

§ 6. Structure of Noncommercial Law

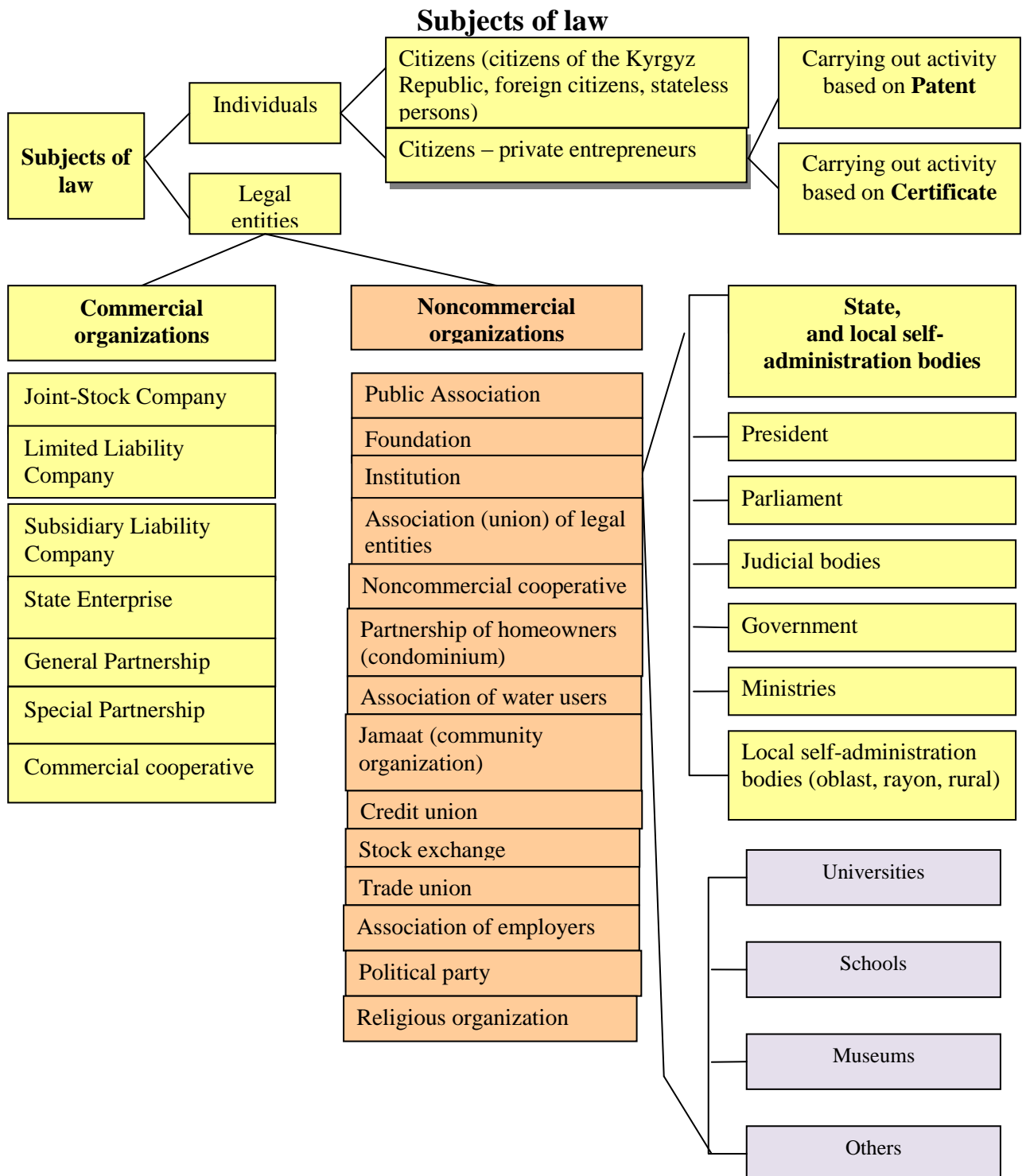
In compliance with the Civil Code of the Kyrgyz Republic, subjects of law are divided into two groups:

- 1) individuals (citizens, foreign individuals and stateless persons);
- 2) legal entities (commercial organizations, NCOs and the state -- the state as a whole, state bodies and bodies of local self-administration). As with commercial organizations, NCOs are a special group of legal entities (see Figure #1, below).

The Civil Code of the Kyrgyz Republic contains general provisions regarding legal entities. Further specific matters are contained in dozens of laws and regulations, which concern the creation and activities of each organizational and legal form of legal entity, including commercial and noncommercial organizations.

The curricula of many universities offer the opportunity to concentrate on economic law or business law, in the framework of which everything related to the activity of commercial organizations is studied in detail. Noncommercial law is analogous to the business law discipline, in the framework of which everything related to NCOs is studied. Some specialists believe it is necessary to name the discipline differently: "The legal regulation of the activities of NCOs."

The discipline of noncommercial law should contain a general study of normative and legal acts of the Kyrgyz Republic on NCOs that are not covered in the framework of civil law. The discipline covers topics on creation, specifics of certain organizational and legal forms, legal status, financing (including economic activity), specifics of taxation, and termination of activity of NCOs.



Chapter 2. Regulation of NCOs

§ 1. Historical Development of Legal Status of NCOs

NCOs originated in ancient times. As S.S. Uriev notes, “In all centuries of the existence of social groups, persons united not only on economic, but also on non-economic, bases.”⁸ However, in Kyrgyzstan “due to the social-political and economical backwardness of its territories and the unique life style of the population, more formal public associations appear only in the beginning of 20th century, related to the general public-political upsurge in Russian Empire.”⁹ At that time in Kyrgyzstan, the first public organizations were formed. “By 1917, in Osh, a union of Muslim deputies; and, in Pishpek, a Kyrgyz public committee was formed.”¹⁰ In 1917, in Osh, a union of workers and poors; in Pishpek, a union of workers and craftsmen was formed; and, in May of 1917, a revolutionary-democratic union of poverty “Bukhara” was formed.¹¹

The proper development and organizational designation of public independent action in the Kyrgyz Republic started during the years of Soviet power. The Communist Party considered public organizations “as a mean to strengthen its influence over masses, their involvement in public activity by the supervision and control of the same party.”¹² As in other union republics, the right to create public organizations was codified in the Constitution of the Kyrgyz Socialist Union Republic. The Constitution stated that “in compliance with goals of Communist structures, the citizens of Kyrgyz Socialist Union Republic have a right to unite into public organizations, which facilitate the development of political activity and independent action and redress of their diversified interests. Public organizations are guaranteed conditions for the successful implementation of activities set out in their charters.”¹³ The Constitution provided that public organizations may “participate in governing state and public affairs, [and] in solving political economic and social-cultural issues”¹⁴ and guaranteed assistance and support by the state -- particularly, in creation of necessary material conditions.¹⁵

⁸ Uriev S.S. *Pravovoe regulirovanie deyatelnosti nekommercheskih organizatsii v RF* [Legal regulation of noncommercial organizations], Moscow (1998).

<http://ngo.org.ru/ngoss/get/id13069.html>

⁹ Chinaliev U. *Osobennosti formirovaniya grazhdanskogo obshchestva v Kyrgyzskoie Respublike* [Specifics of formation of civil society in Kyrgyz Republic], Moscow (2001), p. 43.

¹⁰ *U istokov kyrgyzskoi natsionalnoi gosudarstvennosti* [At origins of Kyrgyz national statehood]/edited by T.K. Koichuev, V.M. Ploskih, T.U. Usabaliev, Bishkek (1996), p. 95.

¹¹ *Istoria kyrgyzov i Kyrgyzstana* [History of Kyrgyz people and Kyrgyzstan]/ edited by T.K. Koichuev, Bishkek (1998), pp.160 - 161.

¹² Chinaliev U. *Osobennosti formirovaniya grazhdanskogo obshchestva v Kyrgyzskoie Respublike* [Specifics of formation of civil society in Kyrgyz Republic], Moscow (2001), p. 44.

¹³ *Konstitutsia (Osnovnoi Zakon) Kirgizskoi SSR 1978 goda*, Frunze: Kyrgyzstan (1978), pp.7, 45, 49.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

At the same time, it is necessary to note that, as in other union republics, some parties and trade unions were prohibited in the first years of Soviet government in Kyrgyzstan.¹⁶ Many communities were closed, as they were, in the opinion of the government, badly executed functions of the so-called “driving belt” (the community of old Bolsheviks, political convicts, fans of Russian literature, etc.). The development of citizens’ rights and freedoms, including the right to association, was constrained by lack of regard for the essence of the law. The theory of the law-based state was considered to be bourgeois and inapplicable to the Soviet government.

The Constitutions of the USSR of 1936 and 1977, recognizing the freedom of unions, did not include the freedom of creation and activity of such organizations, other than Communist political parties.

In the republic, as in the larger USSR, there was no legislation on public organizations. As a result, issues relating to their creation and organization, as well as rights and obligations of these organizations, were not regulated. Party bodies regulated all issues related to public organizations. Only upon their decision or agreement with them was it possible to create a public association. The charters of public organizations were not registered by anybody, but were required to be coordinated with party bodies. Party bodies regularly interfered with the internal affairs of public organizations. Activities such as fora or conferences of public organizations required prior coordination with corresponding party bodies, and press publicity required the authority of the state agency on literature (“Glavlit”).¹⁷ Any public initiative was subject to prior coordination. In addition, public organizations needed to coordinate all activity with the corresponding state body.

Over many years in history of law in USSR, there was a proposal to adopt laws on public organizations, rights of trade unions, youth and youth organizations and consumer cooperative societies.¹⁸ Leaders of these organizations talked several times about the necessity to adopt legislative acts on public associations. However, these proposals were negatively perceived by the existing command and administrative system.

The creation and activities of public organizations were regulated by regulations, agency decrees and instructions. For example, the all-union community “*Znanie*” (knowledge) was created based on the Order of the Council of Ministers of the USSR as of April 22, 1947; DOSAAF (the name of a paramilitary society of the

¹⁶ Polojenie o dobrovolnyh obshestvah i souzah, utverjdennoe postanovleniem VSIK i SNK RSFSR as of July 10, 1932 // *Sobrabie zakonennii Pravitelstva RSFSR* (1932), #14, p. 331.

¹⁷ Chinaliev U. *Osobennosti formirovania grajdanskogo obshestva v Kyrgyzskoie Respublike* [Specifics of formation of civil society in Kyrgyz Republic], Moscow (2001), p. 44.

¹⁸ See Yamolskaya S. A, *Obshestvennie organizasii v SSSR* [Public organizations in USSR], Moscow (1972). P. 105; Snigireva I. O., *Problemy sovershenstvovania zakonodatelstva o profsouzah* [Problems of improvement of legislation on trade unions] См.: Ямольская Ц.А. Общественные организации в СССР. - М., 1972. - С. 105; Снигирева И.О. Проблемы совершенствования законодательства о профсоюзах// Вопросы теории общественных организаций. - М., 1977. - С. 126.

Soviet Union, namely, the Voluntary Society of Assistance to the Army, the Air Force and the Navy) was established based on an order of the Council of Ministers of the USSR as of August 20, 1951. The all-union community of old Bolsheviks was liquidated by order of the Central Committee of the all-union Communist Party of Bolsheviks as of May 25, 1935. These agency acts were indeed effective “law,” and a kind of realization of the formal right to association. The totalitarian regime did not allow study of and reference to foreign experience of the right to association, and hindered international cooperation in this area. Total state ownership of all aspects of society was extended to public organizations, as well. Trade unions, the Young Communist League (so-called “komsomol”), creative unions and voluntary communities became adjuncts to state structures.

An indispensable condition of their creation and activity was the obligation to work under party guidance to build communism. The legal status of public organizations was determined by Orders of the Central Executive Committee and the Council of National Commissioners of the USSR as of January 6, 1930, “On the procedure for establishment and liquidation of all-union communities and unions which do not pursue profit-making” and as of September 7, 1932, “On the procedure for activity within USSR of foreign and international voluntary communities and unions” as well as by the Order of the All-Russian Central Executive Committee and Council of National Commissioners of Russian Soviet Federative Socialist Republic (RSFSR) as of July 10, 1932, “On approving the Regulation of voluntary communities and unions.” In the third program of the Communist Party of the Soviet Union (“CPSU”), adopted in the XXII party session, an increase in the role of public organizations in building communism was declared in order to further transform the socialist state into a public, communist self-administered state.¹⁹

New legislation regulating the legal status of citizen associations appeared only in 1990, particularly the Law of USSR as of October 9, 1990, “On public organizations,” and approved by the Order of Council of Ministers of USSR as of January 10, 1991 # 21 “Rules on consideration of applications on registration of charters of all-union, inter-republic and international public associations.”²⁰

The existing public organizations in the Soviet period thus had a unique feature: they were state-owned and were under the total control of the CPSU, and they were adjuncts to the administrative and bureaucratic system.²¹

Significant changes appeared during the years of *perestroika*. Due to democratization, the public and political role of the population increased, the quantity of public associations increased, and new associations had no relation to the CPSU (for example: the Democratic movement of Kyrgyzstan, the association of builders, etc.), and existing public organizations, due to objective reasons, began to change the nature of their activity. There was a need for legislative regulation of

¹⁹ Бюл. междунар. договоров. – 1994. - № 9. - С. 8 – 9.

²⁰ Курс международного права. Т 1. – М., 1994. - С. 218 – 219.

²¹ Чиналиев У. Особенности формирования гражданского общества в Кыргызской Республике. - М., 2001. - С. 44 - 45

relations, connected to the creation and operation of public associations. Based on the union Law “On public associations,” the Supreme Council of the Kyrgyz SSR on February 1, 1991, adopted the Law of the Kyrgyz SSR “On public associations,” which regulated the activity of public associations, political parties, trade unions and consumer cooperatives. According to Article 1 of the law “On public associations,” a public association could be formed voluntarily, as the result of the free will of individuals, united based on common interests.

After the independence of Kyrgyzstan, and with the adoption of a new course of development of the Kyrgyz Republic, there were many proposals on the adoption of a new law for regulation of the activity of public associations. As a result, on December 15, 1999, the Law of the Kyrgyz Republic “On noncommercial organizations” was adopted whereby a special chapter was dedicated to the regulation of public associations.

§ 2. Sources of the Law of NCOs

The sources of legal regulation of organizations are legal norms, codified in different legal acts. The sources of legal norms regulating NCOs are the following:

1. international treaties and other international documents, which are effective on the territory of Kyrgyzstan;
2. national legislation and administrative law of the Kyrgyz Republic;
3. corporate acts of NCOs.

Sources of International Law

Development of NCOs is based on the realization of the right to freedom of association (or unions) codified by different international acts. The primary international acts effective on the territory of the Kyrgyz Republic, according to Article 6 of the Constitution of the Kyrgyz Republic,²² are the following:

- The Universal Declaration of Human Rights as of December 10, 1948 (Art. 20.);
- The International Covenant on Civil and Political Rights as of December 19, 1966 (Art. 22);
- The International Covenant on Economic, Social and Cultural Rights as of December 19, 1966 (Art. 8);
- The International Labor Organization (“ILO”) Convention concerning the Rights of Association and Combination of Agricultural Workers # 11 as of October 25, 1921;

²² International agreements, generally recognized principles and norms of international law in compliance with part 3 article 12 of the Constitution of the Kyrgyz Republic are the main part of the legal system of KR.

- The ILO Convention concerning Freedom of Association and Protection of the Right to Organise # 87 as of June 9, 1948.

The above-mentioned international acts possess universal character and their codified provisions were not only reflected in provisions of national legislation, but have also been duplicated in international documents of a regional character. For example, the right to freedom of association is codified in Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe on November 4, 1950; in Article 16 of the American Convention on Human Rights as of November 22, 1969; and in Article 12 of the Commonwealth of Independent States (“CIS”) Convention on Human Rights and Fundamental Freedoms as of May 26, 1995.²³

Conventions agreed by international intergovernmental and nongovernmental organizations play a special role as sources of legal regulation of NCOs -- in particular, resolutions and recommendations of UNESCO, the specialized UN agency on the issues of education, science and culture.²⁴ Referring to such source materials, Russian legal scholar G.U. Tunkin fairly noted that “they are not bodies, expressing state will,” therefore their opinions and resolutions do not directly result in the process of codification of international norms. Even so, these sources of law, first of all, influence the platform of particular state and facilitate the formation of international law; secondly, they directly regulate relations within these organizations. Many provisions developed by nongovernmental organizations are considered to be doctrine and international practice.²⁵

Legislation of the Kyrgyz Republic

In national legislation, the leading role belongs to the Constitution, which has the highest legal force. The activity of NCOs gets its Constitutional grounding in Articles 4 and 35, which codify the right to association as accepted by the international community.

After the Constitution, an important source of the legal regulation of NCOs is the Civil Code of the Kyrgyz Republic. It codifies major provisions on NCOs and sets out their separate types. Further development of provisions of the Civil Code are set out in special laws, of which at the present time there are more than ten, including the Law of the Kyrgyz Republic “On Noncommercial Organizations,” the Law of the Kyrgyz Republic “On Philanthropy and Charitable Activity,” the Law of

²³ See p. 714.

²⁴ *Deistvuushee mejdunarodnoe pravo* [Effective international law] (prepared by prof. U.M.Kolosov and prof.E.S.Krivchikova), Moscow (1996); *Kurs mejdunarodnogo prava* [International law course] – p 205 – 208; *Mejdunarodnye organizatsii sistemy OON* [International organizations of UN system]. Handbook. Mscow (1990); *Mejdunarodnye normativnye akty UNESKO* [International noramive acts] UNESCO, Moscow (1993).

²⁵ *Kurs mejdunarodnogo prava* [International law course], pp 218 - 219.

the Kyrgyz Republic “On Freedom of Religion and Religious Organizations,” the Law of the Kyrgyz Republic “On Partnership of Homeowners,” and others.

Other sources of legal provisions on NCOs include decrees of the President of the Kyrgyz Republic, Government orders of the Kyrgyz Republic and legal acts of ministries and agencies.

Corporate Acts of NCOs

Corporate or local normative acts of NCOs are the internal documents of the organization. Such acts are adopted by the governing bodies of noncommercial organization and apply only within the organization. Despite their special nature and intention, corporate provisions take a special place in the system of sources of legal norms. Local norms are codified in charters, regulations, instructions, statutory agreements, minutes, agreements, etc. As a rule, they regulate the procedural issues NCOs, serving as its “legislation,” regulating such important issues as goals and tasks of NCOs, structure, term and authority of management bodies, etc. As opposed to other sources of law, the corporate norms are adopted by NCOs without the interference of state bodies.

Agreements also have important meaning as a source of norms for NCOs. They have such features as volunteerism, achievement of agreement on all significant aspects, and equality and mutual responsibility of parties over execution of obligations.²⁶ Agreement or consensus is actively used by NCOs, from the moment of creation of NCOs and ending with the realization of different projects. It is necessary to note that agreement is used not only for consolidation of legal relationships between legal entities and citizens on economic issues, but also for establishing partnership relations and conducting joint events and campaigns.

§ 3. The Constitutional-Legal Bases of Activities of NCOs

In national legislation, the Constitution is a fundamental to the functioning of legal entities, regulating the most important spheres of their relationships. In democratic states, Constitutional norms cannot limit universally recognized international principles and provisions on human rights, including the right to freedom of association. At the same time, it is obvious that national constitutions do not mechanically copy international documents, but establish independent bases for the legal status of public associations on the territory of the given state.

As legal scholars of Western countries note, following their Constitutional norms, generally NCOs are permitted to be created freely, although there are some exceptions. B.A. Strashun and V.V. Maklakov, particularly, write:

²⁶ Himenes D’Arechaga E. Contemporary international law, Moscow (1983) p- 27

Associations should not pursue the goals of making profit, as the status of such kind of associations is regulated not by Constitutional, but civil, commercial, industrial, agricultural law. Moreover, some categories of associations are prohibited on political grounds. For example, Paragraph 78 of the Constitution of Denmark of 1953 permits the possibility to dissolve unions that are seeking to take measures for achievement of their goals by violence, incitement to violence or any other punishable impact to dissidents. The Constitution of Italy indirectly prohibits secret communities and such associations from pursuing political goals through militarized organizations. Lately, there is a tendency, together with a general declaration of the right to association, to define in constitutions the basis for some types of associations: political parties (Art. 21 of the Basic Law of Germany; Art. 4 of the Constitution of France; Art. 20 of the Constitution of Macedonia, etc.), trade unions (Art. 39 of the Constitution of Italy; Paragraph 1 of Article 23 of the Constitution of Greece; Art. 43 of the Constitution of Croatia, etc.), economic unions (Art. 7, Part 2 of Article 37 of the Constitution of Spain; § 4 of the Constitution of Hungary, etc.). Frequently, parties and other public associations are required to have an internal organization that corresponds to democratic principles.²⁷

The right to freedom of association is recognized in the main law of the country, the Constitution of the Kyrgyz Republic, adopted on June 27, 2010, as in other post-Soviet countries. Article 4 of the Constitution of the Kyrgyz Republic provides that political parties, trade unions and other public associations may be created based on free will and common interests. The given article prescribes one of the fundamental features of the organization and activity of NCOs: this is the principle of free participation, which is reflected in subsequent normative and legal acts, regulating the activity of public organizations.

Constitutional and legal regulations also cover the principles of interaction of the state and public associations. In compliance with Paragraph 2 of Article 7 of the Constitution of the Kyrgyz Republic, in Kyrgyzstan, religions are separate from the state. As a result, proponents of religious organizations may not play a role in the activities of state bodies.

In Article 35 of the Constitution of the Kyrgyz Republic, the right to association is included in a list of inherent and guaranteed human rights, along with other rights. The right to association is granted to all who are residing on the territory of the Kyrgyz Republic without any limitations, and the Constitution guarantees free enjoyment of the given right.

It is necessary to note that the Constitutional right of individuals to association is the basis for the legal status of NCOs. This Constitutional basis directly influences the normative regulation of the right to association, embodied in legislative acts.²⁸

²⁷ Uriev S.S. *Pravovoi status obshchestvennykh obiedinenii* [Legal status of public associations], Moscow (1995). <http://ngo.org.ru/ngoss/get/id13069.html>

²⁸ Aliev A.A. *Konstitutsionnoe pravo na obiedinenie v sisteme prav i svobod cheloveka i grazhdanina* [Constitutional right for association in the system of human and citizen rights and freedom], Moscow (2000).

The meaning of this right, and the legal guarantees it provides, were underestimated and ignored for a long time. Long-term political practice ignored this right, and the state did not try to facilitate the enjoyment of these Constitutional rights by individuals.

At the present time, the right to association is considered an inalienable dimension of the political rights of individuals. This right is closely related to other political rights, especially the freedom of opinion. There is a view that the right to association is one of the specific rights giving meaning to the freedom of opinion (beliefs).²⁹

The right to association contains two elements: the subjective right of citizens to associate, and the right to legal status of public associations. Specifically, the right of citizens to association is composed of:

- The right to create associations;
- The right to join them and to withdraw from them freely;
- The right to participate in the activities of an association;
- The right to protect the rights and legal interests of associations.

The legal status of a public association is a complex of its rights, obligations, responsibilities, as well as its guarantees.

The right to association applies to citizens of the Kyrgyz Republic, as well as to foreign citizens and stateless persons. The evidence is Par. 2 of Article 2 of the Law of the Kyrgyz Republic “On noncommercial organizations,” which states that “founders of noncommercial organizations may be legal entities and individuals irrespective of the place of registration of the legal entity and place of residence or citizenship of the individual.”

A popular opinion holds that the “right to association is an important precondition for establishment of entities of civil society.”³⁰ This should not be understood only as the creation of NCOs. According to V.O. Luchin and O.N. Doronin, “the given notion means any communities of individuals, formed in order to meet various needs.”³¹

Therefore, in spite of the fact that in the Soviet period the importance of the Constitutional right to association was underestimated, in contemporary Kyrgyzstan, the right to freedom of association is an inalienable right of every human being and finds its place in special legislation.

²⁹ See: Kudryavtsev V. Toporin B.K. *novoi Konstitutsii SSSR/Narod.deputat* [New Constitution of USSR/people's deputy] (1990) - № 1. - pp 3 - 5.

³⁰ Aliev A.A. *Konstitutsionnoe pravo na obiedinenie v sisteme prav i svobod cheloveka i grazhdanina* [Constitutional right for association in the system of human and citizen rights and freedom], Moscow (2000) – p.17.

³¹ Luchin V.O., Doronina O.N. *Jaloby grajdan v Konstitutsionnyi sud RF* [Citizen's appeals to Constitutional court of Russian Federation], Moscow (1998) – p.36

§ 4. Civil and Legal Status of NCOs

The basements of civil and legal regulation of NCOs are found in provisions of the Civil Code of the Kyrgyz Republic (“Civil Code”), adopted on May 1996, and the Law of the Kyrgyz Republic “On noncommercial organizations.”

In contrast to Constitutional norms, norms of civil legislation have an applied character. In compliance with Article 1 of the Civil Code, “civil legislation determines the legal status of business participants, the concept and procedure for the enjoyment of property rights and other proprietary interests, intellectual property rights, regulation of contractual and other obligations, as well as other property and related nonproperty relationships.” While business participants can be individuals, legal entities and the state, NCOs belong to the category of legal entities.

Article 85 of the Civil Code identifies all existing legal entities as either commercial or noncommercial organizations. Consistent with Paragraph 1 of the indicated article of the Civil Code, NCOs are considered legal entities, not pursuing making profit as a major goal of their activity and not distributing received profit among participants.

Legislators chose two criteria to divide the categories of legal entities: the major goal of its activity and the principle of profit distribution. The major goal of commercial organizations is making profit. Profit is distributed among owners. NCOs have no such features. Therefore it may be concluded that the definition of NCO is not based on the main features of similar types of organizations, but rather on their negative comparison with commercial organizations.

The differences between commercial and noncommercial organizations influences their legal status and legal capability. All NCOs have limited legal capability, i.e., they have only those civil rights and obligations that are provided in their statutory documents and correspond to the goals of their activity. This conclusion derives from the provisions of current legislation:

- Paragraph 1 of Article 84 of the Civil Code provides that “a legal entity has civil rights corresponding to goals of its activity, as provided in its statutory documents, and to carry out its obligations related to this activity;”
- Article 2 of the Law of the Kyrgyz Republic “On noncommercial organizations” contains a provision that “a noncommercial organization is a voluntary self-regulated organizations, created by individuals and/or legal entities based on their common interests for realization of spiritual or other nonmaterial needs for the interests of their members and/or the whole society, for which making profit is not a major goal, and in which received profit is not distributed among its members, founders and officers;”
- Article 12 of the Law of the Kyrgyz Republic “On noncommercial organizations” prescribes that “a noncommercial organization has the right

to carry out any activity that is not prohibited by law and that does not contradict the goals and tasks of the organization, as determined in its charter, program documents and other acts.”

The scope of legal capacity of an NCO derives from its charter. Therefore, the statutory documents of an NCOs should indicate its goals and scope of activity.

The article 183 of the Civil Code stipulates consequences in case of carrying out an activity by any legal entity that is beyond the scope of an organization’s legal capability: in case of carrying out an activity that does not correspond to the requirements of the law leads to nullity of a transaction; in case of carrying out an activity which does not correspond to the limits established in statutory documents leads to contestability of a transaction.

It is necessary to note that the general provisions of the civil legislation on licensing some kinds of activities also apply to NCOs (Article 12 of the Law of the Kyrgyz Republic “On noncommercial organizations”). Civil legislation does not contain any special provisions specifically applicable to NCOs; however, the consequences of carrying out a licensed activity without permission are also regulated by Article 186 of the Civil Code.

In the Kyrgyz Republic NCOs may be created with or without formation of a legal entity according to Article 6 of the Law of the Kyrgyz Republic “On noncommercial organizations.” However, the Law of the Kyrgyz Republic “On noncommercial organizations” regulates the activity of only four organizational and legal forms of NCO: public associations, foundations, institutions and associations or unions of legal entities. The rest of the organizational and legal forms of NCO is regulated by other laws of the Kyrgyz Republic, which (except for the Law of the Kyrgyz Republic “On trade unions” as of October 16, 1998 # 130) do not provide the possibility of creation of nonregistered NCOs. As a result, one may conclude that the legislation of the Kyrgyz Republic provides the possibility to establish an NCO as a legal entity but without state registration not for all organizational and legal forms, but only for certain organizational and legal forms, particularly public associations, foundations, institutions, associations or unions of legal entities and trade unions. The legal status of nonregistered NCOs is described in Chapter 5, “Creation of NCOs” of the present textbook.

According to Article 86 of the Civil Code, a legal entity is subject to state registration and considered in existence from the moment of its state registration. Therefore, the legal capacity of a legal entity begins upon state registration. After state registration, an NCO obtains the elements of status of a legal entity (Art. 83 of the Civil Code):

- 1) The right to own property, and to have limited property rights;
- 2) The right to acquire and enjoy property and private nonproperty rights and obligations (conclude a contract);

- 3) To have a seal of organization, to open settlement and other accounts in banks;
- 4) To act in lawsuits as a plaintiff or defendant.

Legal entities must have a separate balance sheet or financial statement. These provisions are based on legal doctrine, which traditionally defines four fundamental features of a legal entity.³² They are:

- *Organizational unity*, i.e., a hierarchy of governing bodies;
- *Property ownership*, i.e., property belonging only to the given organization and is separate from the property of other legal persons;
- *Independent civil and legal responsibility*, i.e., the organization independently carries out its obligations;
- *To act in business transactions in one's own name*, i.e., the organization in may acquire and enjoy in its own name civil rights and may carry obligations; may act as a plaintiff or respondent in lawsuits.

In considering the issues concerning legal entities, it is important to remember the founders' or participants' rights in the property of the legal entity. According to Paragraph 2 of Article 83 of the Civil Code, because of their participation in the formation of a legal entity, its founders (members) may have a right *in personam* in relation to this legal entity or may have proprietary interests in its property. Cooperatives are one such legal entity in which its participants have rights *in personam*. Organizations with limited property rights are those legal entities in which their founders reserve their property rights or other proprietary interests (institutions). The following legal entities in which their founders do not have property rights are: public associations, religious organizations, public foundations and associations of legal entities (unions). This is an additional difference between commercial organizations from NCOs: founders or participants of NCOs do not have property rights, except for institutions.

NCOs created by formation of a legal entity enjoy all rights provided by civil legislation for legal entities. NCOs may create branches and representative offices, participate in creation of other legal entities, etc.

NCOs are not prohibited from carrying out economic activity, subject to some limitations. Economic activity, first of all, must be directed toward achievement of the goals for which the organization was created; and secondly, must not contradict these goals. Moreover, income from economic activity must not be distributed among members or participants and must only be used for achievement of statutory goals.

Norms of existing legislation allow making some observations about what specific kinds of economic activities are permitted by NCOs. In compliance with Article 12 of the Law of the Kyrgyz Republic "On noncommercial organizations,"

³² See *Grajdanskoe pravo* [Civil Law] (under the editorship of A.P. Sergeeva, U.K. Tolstogo), Moscow (2004) – pp. 142 - 146.

an NCO has the right to carry out economic activity, including production activity, without distribution of received profit among founders, members, officers and members of governing body. Such activity may include production and sale of goods, implementation of works, rendering services with remuneration and other kinds of economic activity, if they do not contradict the goal and activities of the organization. At the same time, the legislation states that limitations of some kinds of activities of NCOs may only be set by law. It is necessary to note that the given norm is one of the democratic norms of the above-mentioned law.

Chapter 3. Creation of NCOs

§ 1. Creation of Nonregistered NCOs and Their Status

In the Kyrgyz Republic, NCOs may be created with or without formation of a legal entity, according to Article 6 of the Law of the Kyrgyz Republic “On noncommercial organizations.” In other words, an NCO may not be registered as a legal entity. However, as it is well known, in Kyrgyzstan the legislation sets at least 16 organizational and legal forms of NCO and the Law of the Kyrgyz Republic “On noncommercial organizations” regulate the activity of only four of them: public associations, foundations, institutions and associations (unions) of legal entities. The activity of the rest of the organizational and legal forms of NCO is regulated by other laws of the Kyrgyz Republic, which (except for the Law of the Kyrgyz Republic “On trade unions” as of October 16, 1998 # 130) do not provide the possibility of creation of nonregistered NCOs. As such, the legislation of the Kyrgyz Republic provides the possibility to create an NCO without state registration as a legal entity not for all organizational and legal forms, but only for some organizational and legal forms, namely, public associations, foundations, institutions, associations (unions) of legal entities and trade unions.

The Law of the Kyrgyz Republic “On noncommercial organizations” does not define the procedure for creating, carrying out activity, or establishing the legal status of a nonregistered NCO. In the given situation, one may assume that a nonregistered NCO may be created by oral or written agreement between its founders, and the procedure for performing activity and legal status of nonregistered NCO may be defined on the basis of general provisions of civil legislation.

Its legal status will depend on what kind of agreement on creation of nonregistered NCO (written or oral) was concluded. If the agreement on creation of a nonregistered NCO is concluded orally, then the organization will be less sustainable and less stable compared to a nonregistered organization than one created by written agreement. In case of disputes between members of such an NCO, it will be difficult to settle a dispute, as there would no written document (where would be written the rights and obligations of the parties) on the basis of which the given dispute would have been settled. There is a high possibility that in case of a conflict among its members, such an organization could be easily dissolved.

If the agreement on creation of a nonregistered NCO is concluded in writing, then the status of the given organization will depend on the conditions written in the agreement. Kyrgyzstan, as many other countries of the world, observes the principle of “freedom of contract” in its civil legislation (Article 382 of the Civil Code of the Kyrgyz Republic). According to this principle, parties may conclude an agreement both as provided by the legislation and outside its terms; the parties are free to

choose the conditions of the agreement. In the given situation everything depends on the intentions of the founders of a nonregistered NCO. There are many variations on setting up a nonregistered NCO. Variations may depend on the structure of governing bodies, the interrelations of the NCO and its members, the procedure for managing community property, etc.

The legal status of a nonregistered NCO differs significantly from the legal status of a registered NCO:

- 1) A nonregistered NCO does not have the powers of a legal entity, such as a registered NCO:
 - The right to own property, and to have limited property rights;
 - The right to acquire and enjoy property and private nonproperty rights and obligations (conclude a contract);
 - A seal of organization, to open settlement and other accounts in banks;
 - The right to act in lawsuits as a plaintiff or defendant.
- 2) A nonregistered NCO may, but is not obliged to have, statutory documents (charter, statutory document etc.);
- 3) A nonregistered NCO may, but is not obliged to have, a name (however, this name will not be protected by law and may be used by other organizations);
- 4) A nonregistered NCO and its donors may not enjoy tax benefits provided to registered NGOs;
- 5) A nonregistered NCO has no right to carry out economic activity;
- 6) Legislation does not provide for issuance of licenses for nonregistered NCOs.

§ 2. Differences between Registered and Nonregistered NCOs

Those who are intending to create an NCO often ask the question: “Which NCO is better, one registered as a legal entity or one that is not registered?” It is impossible to give one answer to this question. There are different NCOs and different situations; for some NCOs, it is better to operate without state registration, while for other NCOs it is impossible to operate without state registration.

After state registration, an NCO will have the status of a legal entity.

The example below will demonstrate the differences between registered and nonregistered NCOs.

Example: Young people of different professions, residents of one village, having seen the plight of the people of advanced age of their village, decided to help them. They made a list of people of advanced age who need their assistance, determined the types of required assistance, distributed among themselves obligations and started to carry out their activity: to help people of advanced age

with housework, to shop for them in the market, to work in their vegetable garden, to chop the firewood for them, etc.

One would agree that these citizens created an organization (NCO, public association) by carrying out joint activity: they planned and coordinated with each other joint activity; their activity was goal-oriented. At that time, they did not need a legal entity. There were no obstacles preventing them from carrying out their activity, therefore they did not register their organization as legal entity. However, after a while there were two events that significantly changed the situation.

Event One. One prosperous private company, having known about the noble activity of the young people, wanted to contribute to their activity and decided to give them an automobile as a gift. And there is a question: “In whose name should this automobile be registered?” Certainly, the automobile should be the property of the organization of these young people, but until it is registered as a legal entity, it may not own property. In other words, a nonregistered organization cannot own an automobile.

Event Two. A donor organization proposed that this organization of young people conclude an agreement for the acquisition of fuel (coal) for heating premises of people of advanced age during the winter. However, according to the conditions of the program, it is necessary to sign a written grant agreement, bearing the seal of the organization, and to indicate in the agreement the bank account number of the organization. As this organization was not registered as a legal entity, it had no right to conclude agreements (contracts), no seal and no bank account. The young people faced a dilemma whether to register their organization as a legal entity or not.

Registration of an NGO as a legal entity has its own advantages, as well as disadvantages. The advantages were mentioned above: the NGO will become a legal entity. Disadvantages include the following:

- 1) First of all, during registration, it is necessary to incur some expenses with the Ministry of Justice, statistics bodies, Social Fund, tax inspection, as well as in preparing a set of statutory documents, notarization of founders’ signatures in statutory documents, making a seal, opening a bank account, etc.;
- 2) Secondly, during registration, it is necessary to spend time to prepare the statutory documents of the NCO, to visit the Ministry of Justice, statistics bodies, Social Fund, tax inspection, etc.;
- 3) Thirdly, after registration, it is necessary monthly to submit reports to tax bodies and the bodies of Social Fund. Correspondingly, it is necessary to hire an accountant, to pay his or her salary, to pay taxes and make social payments to the Social Fund.

Weighing the advantages and disadvantages of registration, the young people decided to register their organization, as registration as a legal entity allows them to widen their activity and to achieve their goals by more effective methods.

It is possible to conclude that Some NCOs (public associations, foundations, institutions, associations of legal entities and trade unions) may be created and carry out activity without state registration as a legal entity. However their activities will be limited: there is certain limit (threshold) beyond which it is impossible to operate without registration as a legal entity.

§ 3. Procedure for State Registration of an NCO

Before registering an NCO it is necessary to choose the proper organizational and legal form. In the Kyrgyz Republic, an NCO must adopt an organizational and legal form defined by the Civil Code or other laws. At the present time, there are at least 16 organizational and legal forms of NCOs: public associations, foundations, institutions, associations (unions) of legal entities, noncommercial cooperatives, partnerships of homeowners (condominiums), associations of water users, jamaats (community organization), credit unions, stock exchanges, self-regulated organizations of professional participants of equity markets, nongovernmental pension foundations, trade unions, associations of employers, political parties, and religious organizations. The choice of organizational and legal form that best suits an NCO will depend on the organization's goals and its planned activities.

The next step after choosing the proper organizational and legal form is preparing the necessary documents for registration. To know which documents are necessary to register an NCO as a legal entity, it is necessary study the legislation of the Kyrgyz Republic on state registration of legal entities. The procedure for state registration of legal entities, including NCOs, is codified in the Law of the Kyrgyz Republic "On state registration of legal entities, branches (representative offices)," February 20, 2009 # 57.

Documents required for registering an NCO

- Registration application in a form approved by the registering body;
- Notarized decision on creation of NCO and on approval of the charter and formation of the NGO's governing bodies;
- Charter in two copies, signed by NCO manager;
- Notarized list of individual founders of the NCO including last name, first name, patronymic and date of birth;
- List of members of the NCO's highest body with indication to last name, first name, patronymic, date of birth and elected position.

For state registration of a branch (representative office), an applicant Must submit the following to the registering body:

- Registration application in a form approved by the registering body;
- Decision of the legal entity on creation of branch (representative office);
- Other documents, as provided by the Law.

The decision on creation of branch (representative office) shall contain:

- Branch (representative office) name in state and official languages;
- Branch (representative office) location;
- Decision of legal entity on appointment of branch (representative office) manager;
- Full name, legal address, registration data of legal entity that is creating the branch (representative office).

The corporate decision to create a branch office must state that all the information provided is accurate. Where appropriate, an organization established by law must also coordinate with the correct state bodies or local self-administration bodies. The decision to create a branch office must also be signed by a governing body of the legal entity and, if possible, sealed.

To acquire state registration of a branch office of a foreign or international NCO, an applicant must additionally submit to the registering body:

- Two copies of the approved regulation of the branch (representative office);
- Copies of statutory documents of the foreign or international NCO which decided to create branch (representative office).

A foreign legal entity creating a branch office or founding another legal entity must also submit documents certifying that it is a legal entity in its home country.

Apostille or superlegalization of documents is not required for legal entities from states that are signatories to certain international treaties and agreements along with the Kyrgyz Republic.

NCOs must submit a legalized extract that it is legal organization according to the laws of its country dated within six months of applying to operate in Kyrgyzstan.

Founders and managers also submit a copy of their passports or other proof of identity. The founders of public associations, partnerships of homeowners, religious organizations, political parties and trade unions are not subject to this requirement.

NCOs (except for jamaats)³³ register with the Ministry of Justice in the Kyrgyz Republic. A registration application from an NCO's founder or other authorized person is admitted by the registering body if all the required documents are provided and a fee is paid. Applications must be submitted in person. An NCO

³³ Jaamat (community organization) receives legal status from the moment of its registration at the representative local self governing body, i.e. village, city kenesh (local authority).

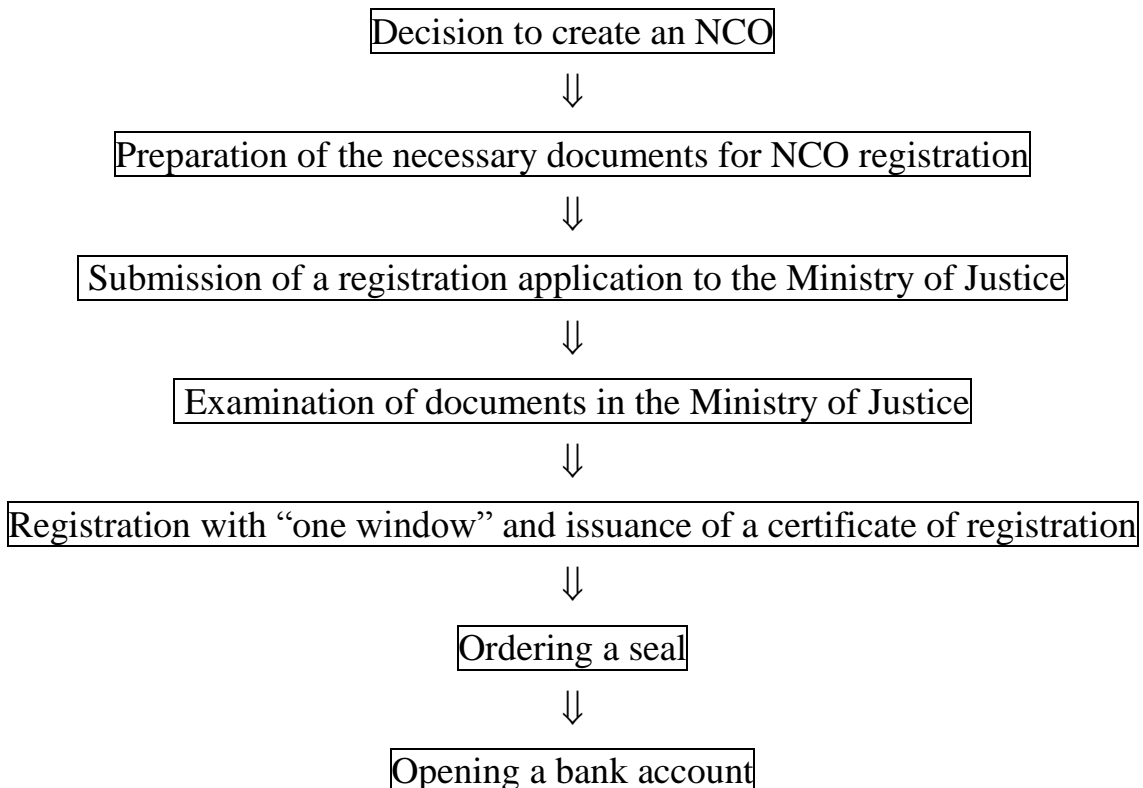
will be registered within ten calendar days of the completed application. If no shortcomings are identified in the submitted documents, then according to the principle called “one window,” state registration is carried out simultaneously with registration with tax authorities, the statistics committee and the social fund. A certificate of state registration with a registration number, taxpayer identification number and a code of republican classifier of enterprises and organizations are issued before an expiration of the 10-day registration term. From the moment of state registration, the NCO is considered a legal entity.

After state registration of the NCO, founders have right to complete the following steps:

- Order a seal and
- Open a bank account (if necessary).

Legally the first step is not compulsory. Laws and regulations do not contain a compulsory requirement that an NCO have a seal and a stamp. However, in practice, the absence of a seal may create some difficulties. For example, in Kyrgyzstan, all legal entities, including NCOs, must submit monthly reports to the tax authorities and the Social Fund, and these reports are not accepted without a seal. Also, a seal is compulsory for the organization to open a bank account. Opening a bank account is a right, not an obligation.

Procedure for creating an NCO (NCO registration and necessary steps after registration)



§ 4. Notification of the registering body on changes of the information about NCO

NCO is obliged to notify registering body in 30 calendar days if changed the following information:

- Persons in Board, Chief changed;
- Location (legal and postal address ;
- Phone number, fax and e-mail;
- Passport data or data in other document, confirming the person's identity who is a founder, member of public fund, institution, nonstate pension fund;
- Registered data of legal entity – founder (member) of public fund, institution, nonstate pension fund;
- Passport data or other document confirming the identity of a Chief.

In case of changing a data which is not obliging to state re-registration of NCO and branch (representative office) a notification signed by chief of NCO must be passed to the registering body.

In case of replacement of NCO, branch (representative office) chief with passing a notification it also must be attached a decision of appointing a new chief and copy of his passport or other document confirming his identity in accordance with Kyrgyz Republic legislation.

In case of changing the location of NCO, branch (representative office) with passing a notification it also must be attached a decision of a governing body to change the location of NCO, branch (representative office).

In case of changing the data of NCO with passing a notification it also must be attached copies of appropriate documents with amendmends.

Registering body after receiving a notification must include necessary information into the state register and notifies tax, statistic bodies and social fund.

Chapter 4. Management of NCOs

§ 1. Administering Principles of NCOs

Common standards on administration of NCOs are highlighted in Article 2 of the Law of the Kyrgyz Republic “On noncommercial organizations,” which characterizes noncommercial organizations as voluntary, self-administered organizations. This provision is further developed in Article 4 of the Law which sets the *principle of self-administration* as one of the fundamental principles of creation and activity of NCOs. The essence of the given principle is that the organization should pursue independently decisions on administrative, economic, human resources and other issues. Self-administration also refers to the independent choice of goals and manner of their pursuit by self-administered organizations.

§ 2. Governing Bodies

The governance of NCOs is, in most cases, carried out by an arrangement similar to governance in commercial organizations. In NCOs, there is:

- A supreme governing body (for example, the general meeting of members in public association);
- An executive body (for example, the directorate of a foundation).

Supreme Governing Bodies

The names of the supreme governing bodies of NCOs vary. For example, in public associations, partnerships of homeowners, credit unions and other NCOs, it is a general meeting; in trade union organizations, it is called the trade union meeting; in political parties, the congress or conference.

The main function of the supreme governing body of a noncommercial organization is ensuring the compliance of organization with its goals and the pursuit of the interests for which it was created. The competence of a supreme governing body is determined by the charter of the NCO. In addition, Article 20 of the Law “On noncommercial organizations” identifies issues that are under the exclusive competence of the supreme governing body of a public association, that is, the general meeting of members. In particular, they are:

- introduction of amendments to the charter;
- determination of priorities of the public association’s activity and the procedure for the use of its property;
- admission to and withdrawal from membership of the public association;
- procedure for formation of governing bodies;
- approval of annual report and annual statement of financial condition;
- decision on creation of branches and representative offices;

- participation in the activity of other legal entities;
- reorganization, liquidation and other issues.

The Law “On noncommercial organizations” does not clarify the issue of remuneration for members of the supreme governing body for their work. An exception is the foundation. The Law explicitly says that the supervisory council of a foundation performs its functions on voluntary basis. However, this provision does not refer to expenses directly related to performance of the function.

Executive Bodies

The executive body of an NCO supervises an NCO’s daily activity and is accountable to the supreme governing body. The executive body may be performed by one or several individuals. For example, Article 26 of the Law permits the directorate of a foundation to be composed of one or more members. The structure of the executive body, number of its members and conditions on remuneration shall be determined by the supreme governing body of the NCO.

The competence of the executive body must be determined in statutory documents. Issues under the exclusive competence of other bodies, particularly the supreme governing body, may not be delegated to the executive body. Therefore, the charter of the NCO must recite the issues belonging to executive body. At the same time, the issues shall be designed in a way so that to achieve goals for which NCO was created. It is necessary to indicate who will have the right to spend the organization’s funds, issue a power of attorney, conclude contracts, etc.

Other Bodies

The Civil Code and the Law “On noncommercial organizations” of the Kyrgyz Republic do not provide an exclusive right to appoint and fire the head of the executive body (Executive director) of public associations and associations (union) of legal entities. The general meeting of these forms of NCO is not granted the right to determine the procedure for formation of the executive body. The mentioned law grants a right to these NCOs to create governing bodies at their own discretion. In addition to the supreme and executive governing bodies in such NCOs, supervisory (or monitoring) bodies may be created. Supervisory bodies may be called differently: supervisory council, coordination council, board of trustees, board of directors, etc.

The procedure for formation and competence of a supervisory body is determined in the statutory documents of the NCO. For example, the following issues may fall under the competence of a supervisory body:

- 1) approval of long-term and key programs and priority directions of the NCO. Approval of strategic plan of NCO and plan on financial sustainability, as well as introduction of amendments to these documents;
- 2) approval of annual report and annual financial statements;
- 3) approval of organizational structure of NCO, as well as number of day-to-day management personnel;

- 4) selection, appointment and dismissal of executive director and approval of his or her administrative duties;
- 5) approval and introduction of amendments of normative acts of NCO;
- 6) nomination of candidates for supervisory body to the general meeting and their identification.

Control bodies may also be created by NCOs. Issues such as authority, procedure for creation and activity of such bodies must be regulated in the statutory documents of the NCO.

§ 3. Statutory Documents

Types of Statutory Documents

The types of statutory documents required for different organizational and legal forms of NCOs vary. Some organizations operate only with a charter, others use a statutory agreement and a charter, and a third category of NCO relies on general regulation of this type of organizations.

Public organizations, foundations and cooperatives, as a rule, must have one statutory document: a charter. Cooperatives may operate with two statutory documents: a charter and a statutory document, which may be concluded if the members desire. An association of legal entities (associations and unions) must carry out its activity with two statutory documents: a charter and a statutory agreement.

Statutory agreements regulate the relationships of the founders during the process of creation, and they regulate the ongoing activity of the legal entity. Legal experts express different opinions regarding their legal nature, with some considering such agreements to be a type of agreement on special partnership (agreement on joint activity) and others, as a distinct type of agreement.³⁴

A charter is a normative act that determines the legal position of the organization and regulates the relationships among members and the organization itself.

Statutory documents are adopted in different ways:

- a statutory agreement is concluded, and a charter is approved, by founders;
- a statutory agreement enters into force from the moment of its conclusion; a charter, from the moment of registration of the organization.

When an NCO operates based on the general regulation of this type of organization, an individual charter is not required. This relates particularly to primary trade unions that, according to the Law “On trade unions,” may operate based on regulation. Some legal experts have expressed the opinion that in this case an act based on which the given organization is created should be considered a statutory document, and this act should contain information prescribed by the legislation, which would otherwise be absent and could not be stated in general regulation of this type of organization (such as individual names, location, etc.).³⁵

³⁴ See Civil law textbook, volume 1, ed. A.P. Sergeev and U. K. Tolstoy, p. 132, Moscow (1998)

³⁵ Commentary to the Civil Code of the RF, Part I, ed. O.N. Sadikov.

According to the Law “On noncommercial organizations,” institutions and other such organizational and legal forms of NCO must have a charter and a decision of the founder-owner on creation of the institution. As described above, according to Article 87 of the Civil Code, a legal entity operates based on charter, or statutory agreement and charter, or only statutory agreement; other NCOs may operate based on general regulation on this type of organizations. As such, the Civil Code does not consider a decision of the founder-owner to be a statutory document of the legal entity. It is, most likely, an organizational and technical document, rather than a statutory document.³⁶ In case of any discrepancies regarding the statutory documents of the institution, the issue will be resolved according to the priority of the Civil Code’s provisions in relation to the provisions of other acts of civil legislation, as established by Article 2 of the Civil Code.

NCOs and their founders and members are obliged to fulfill the requirements of the NCO’s statutory documents.

Content of Statutory Documents

Mandatory requirements for the statutory documents of NCOs are determined in compliance with Article 87 of the Civil Code (requirements for statutory documents of all legal entities), Article 10 of the Law “On noncommercial organizations” (requirements of statutory documents of applicable NCOs), as well as in compliance with laws on separate types of NCOs (requirements for statutory documents of corresponding type of organizations).

The Civil Code requires that the following information be contained in the statutory documents of NCOs:

- name of NCO, indicating the type, organizational and legal form of organization and nature of its activity;
- location of NCO;
- procedure for governance of the activity;
- subject and goals of the activity.

According to the Law “On noncommercial organizations,” the charter of an NCO must address:

- control and supervisory bodies, audit bodies, their competence, procedure for their selection, withdrawal, as well as responsibility of officials;
- rights and obligations, conditions and procedure for acceptance into membership of the organization and withdrawal from it (for public associations);
- procedure for amending statutory documents of NCO;
- procedure for reorganization and liquidation;
- procedure for allocation of property in case of liquidation;

³⁶ See Tihomirov M. U., *Uchreditelnye dokumenty nekommercheskih organizatsii* [Statutory documents of noncommercial organizations], Moscow (2000).

- for foundations and institutions, identification of the group of people who are receiving assistance from the organization, except for those cases when group of people receiving from the organization is not limited;
- term of activity of the organization, if it is provided;
- other provisions, so long as they do not contradict applicable law.

There is a mandatory requirement to provide in the statutory documents the information listed in Article 87 of the Civil Code and Article 10 of the Law “On noncommercial organizations.” Omitting the required information mentioned in these articles may be seen as contradicting the requirements for statutory documents of the legislation.

In addition to providing the above-mentioned mandatory information in the statutory documents, NCOs may include other provisions, so long as they do not contradict existing law -- for example, in relation to financing the organization’s activity, commercial secrets, the procedure for accounting and reporting, personnel, board resolutions, etc.

The issue of allocating information between the charter and statutory documents has a practical meaning in such cases, when the founders of an NCO are obliged or have a right to conclude such agreement. Frequently some information is being duplicated in statutory documents of legal entities.³⁷

Article 87 of the Civil Code sets a minimum of information that must be included in the statutory agreement. In the statutory agreement, the founders are obliged to declare that they are creating an NCO and must determine:

- the procedure for joint activity upon creation;
- the conditions for transfer of property;
- the conditions for participation in the activity of the organization;
- management of NCO activity;
- the conditions and procedure for dismissal of founders (members).

Other issues may also be included in the statutory agreement by agreement of the founders.

The laws on separate organizational and legal forms of NCOs specify that the general rules of the Civil Code apply, and, in some cases, establish additional requirements that must be included in the statutory documents of such organizations. For instance, the charter of a political party, according to the Law of the Kyrgyz Republic “On political parties,” additionally must include information on:

- terms for convocation of conferences, forums;
- the procedure for decisionmaking, their implementation and forms of control;
- the sources of funds and other property of the political party.

³⁷ Id.

Changes in the charter of an NCO are applicable upon decision of its supreme governing body, except for the charter of a foundation, which may be changed by the foundation's bodies only as provided in its charter.

Sometimes the charter of a foundation prohibits foundation bodies from amending it, as founders have an interest in the creation of reliable guarantees so that the transferred property will be used strictly according to its intended purpose, even if they do not longer control it. Thus, for example, if a foundation's founders provided in the charter that the foundation manager must be appointed and dismissed by the supervisory board, then the foundation director may not have the right to make changes in the charter relating to the appointment and dismissal from the position of foundation manager by the directorate. In this case, the Supervisory Board has the right to appeal in court, claiming that the charter is void, and indicating that in Par. 1 of Article 163 of the Civil Code, the foundation director may not make this amendment.

If the failure to amend a charter will lead to consequences that were impossible to foresee during the establishment of the foundation, and the procedure for amendment is not provided or the charter cannot be changed by an authorized person, then Civil Code gives the authority to amend to the court, upon the application of foundation bodies, the supervisory board or another body that has been authorized to supervise foundation activity. For example, the charter of public foundation "Secure Elders," provided that foundation property shall include only contributions. Due to the fact that there were not enough contributions, the foundation had no opportunity to render necessary assistance to rest homes and citizens. There was no opportunity in the foundation charter to introduce amendments. In this case, according to Article 162 of the Civil Code, the supervisory board may refer to the court with an application on amending the charter and asking the court to introduce such a change, according to which the foundation could carry out economic as well charter goals.³⁸

§ 4. Conflicts of Interest

The notion "conflict of interest" is introduced and explained in Article 13 of the Law "On noncommercial organizations." In this law, transactions between NCOs and interested parties relating to disposal of the organization's property, indicates the presence of a conflict of interest. Therefore, a conflict of interest may be defined as a situation in which the professional and personal interests of a person (employee or manager) influence his ability to make a decision in the interests of the organization.

There are two approaches to the given phenomenon: narrow and broad. According to the narrow definition, used predominantly in American legislation, conflicts of interest include the situation in which a director or employee of the organization has a personal, material interest in a proposed transaction in which the

³⁸ *Практическое пособие по применению части I Гражданского Кодекса Кыргызской Республики* [Practical manual on application of part I of the Civil Code of the Kyrgyz Republic], Technologiya Publisher, pp. 112-113, Bishkek (1999).

organization is one of the parties. Lately, this definition has been interpreted more broadly: Conflicts of interest may also include situations in which a director or worker has obligations in several organizations, and these obligations conflict with each other. For example, when the manager of one organization participating in the board of directors of another organization, which discusses the possibility to finance the first organization. In such a case, the manager of the first organization must inform the directors about his role in the first organization and refuse to participate in the discussion and decisionmaking on financing of his own organization, so as to avoid any conflict of interests.³⁹

In this regard, any relationships that are in fact, or could be perceived as, not in the interests of the organization, may be considered conflicts of interests. At the same time, undisclosed conflicts of interest may bring harm to the reputation of a person and an organization, even if the decision was made in the interests of the organization. For example, an NCO purchased an expensive flat for its office from the member of board of directors, or the director hired his wife, a highly qualified specialist, for a modest salary. Despite the fact that these actions were done in the interests of the organization, it will be difficult to avoid unfavorable resonance, if the organization has not taken measures on disclosing the conflicts of interest.

In order to maintain confidence to the organization, it is important to follow some procedures on prevention and resolution of conflicts of interest. For these purposes, some organizations adopt an internal regulation on conflicts of interest, and employees of the organization are required to confirm their familiarity with it by providing a signature to that effect. And in some legal systems, there is a general prohibition on conflict of interests. In such case, there is no necessity to develop special regulations on this issue for each NCO.⁴⁰

Article 13 of the Law “On noncommercial organizations” determines who are considered interested parties. They are:

- officials of NCOs;
- members of the NCO’s governing bodies;
- persons who, due to their relationship with the organization, may influence the disposal of the organization’s property.

Self-dealing occurs when listed persons personally or through their representatives conclude transactions with NCOs. Conflicts of interest also result when an NCO concludes transactions with relatives of interested parties, as well as with their creditors.

Article 14 of the Law “On noncommercial organizations” includes guidelines on dealing with potentially interested parties. Frequently, the organization may only receive information about a possible conflict of interest from the person with the potential conflict. This person must inform an authorized body of the organization about his interest in the transaction, so as to avoid suspicion in one’s own dishonest

³⁹ See *Sovet direktorov v NKO i Polojenie o konflikte interesov: perspektivy prakticheskoi realizatsii v Sentralnoi Azii* [Board of Directors in NCO and Regulation on conflict of interests: perspectives of practical realization in Central Asia].

⁴⁰ See Structure and governance

behavior. For example, in a foundation, an authorized body is the supervisory board. Such information must be delivered before the adoption of a decision on concluding a transaction by the corresponding body. In such a situation, the organization may use different means to resolve potential conflicts, including excluding the self-interested person from participation in the discussion of issue, recusal or reexamination of the conflict.

Transactions that involve a conflict of interest may only be concluded only after approval by an authorized body. The approval must be given by a sufficient number of disinterested members of the authorized body who have agreed that the transaction may be concluded with the disclosed conflict of interest. In case of approval, the self-interested party does not become responsible if there are unfavorable consequences.

The law also prescribes consequences for the dishonest behavior of a self-interested party for failure to notify a conflict of interest in an upcoming transaction. The court may void a transaction with a conflict of interest if an NCO or its members bring a law suit based on Article 195 of the Civil Code. This provision sets out transactions concluded with abuse of authority of the statutory body of the legal entity. A prosecutor may also refer the case to the court, as he is by law entrusted with the obligation to enforce the law.

If, as a result of concluding a transaction with a conflict of interest, an NCO suffered a loss, then self-interested parties will be obliged to pay damages to the NCO. In addition to the payment of damages, the self-interested party must return to the NCO all income received as the result of concluding the transaction. If damages are awarded as the result of actions of several self-interested parties, they will carry joint responsibility to restore the damage of NCO.

Chapter 5. Financing NCOs

§ 1. General Provisions Concerning Financing NCOs

Sources of NGO Finance

The existence of NCOs in any country is impossible without the presence of the following conditions: sound legislation facilitating the creation of an NCO; the absence of serious barriers imposed by organs of the state hindering the activities of NCOs; and a legal framework that enhances the opportunities for NCOs to procure financing.

NCOs often face difficulties in financing their activities. In fact, this is quite a difficult problem that often generates intense discussion. Examining contemporary international practice, the income of NCOs may be divided into three categories:

1. Organic income – income generated by the organizations itself (i.e., membership fees, income from commercial activity, income from securities and invested capital);
2. Income received from the state;
 - Specifics concerning the methods available to NCOs to generate income vary depending on the country. In some countries, a significant portion of an NCO's income is received directly from the state, while in other countries, the state does not provide any financial assistance to NCOs;
3. Additionally, in some countries, NCOs derive a significant portion of their income from commercial activities. In many other countries, NCOs are not legally permitted to engage in commercial activities regardless of whether or not the income from these activities is for the purpose of financing the NCO's non-profit activities;
4. In some countries where there is a high level of philanthropic activity, both legal entities and individuals alike direct significant funds to NCOs for charitable purposes. Again, in many other countries the culture of philanthropy and charitable giving may be low.

The following table contains statistics related to NCO financing in Japan, the United States, and some European countries. The information contained in this table is from 1995.⁴¹

⁴¹ L.M. Salamon, "Government - Nonprofit Relations in International Perspective" Nonprofits and Government. Collaboration and Conflict, The Urban Institute Press, Washington, D.C., 1998.

Country	Organic resources	State financing	Philanthropic sources (endowments of individuals and legal entities, grants)
Japan	62 %	34 %	4 %
Australia	62 %	31 %	7 %
USA	57 %	30 %	13 %
Hungary	55 %	27 %	18 %
Germany	33 %	64 %	3 %
Netherlands	38 %	60 %	2 %
France	35 %	58 %	7 %
Great Britain	45 %	47 %	8 %

As one may see from the table, membership fees and income from economic activity constitute a major portion of income for the NCO sector in Japan, Australia, the United States, and Hungary. State financing is also a major source of NCO income and, specifically, is the major sources of income for the NCO sector in Germany, Netherlands, France and Great Britain. Philanthropic activity by legal entities and individuals constitute a much smaller portion of NCO income than state or organic financing; however, in the total volume of NCO's income the percentage of individual and corporate endowments is quite high.

What types of NCO support and financing exist around the world?

- *Direct financing programs* – typically state-sponsored programs that provide financing directly to NCOs.
- *NCO financing through intermediary charitable organizations* - financing may be provided through an intermediary that awards grants to NCOs. Financing may also flow through a microfinance program in which the state, private sector, and citizens all participate by providing funds to general pool that is then distributed in small amounts to various NCOs. The intermediary organization is the most prevalent mechanism for NCO financing as state and business organizations frequently do not have funds and time to conduct such programs and the required monitoring.
- *Joint ventures*- Government and private commercial organizations may create joint ventures with NCOs to finance NCO activities.

Prerequisites to Government and Private Sector Financing

Certain requirements related to transparency and accountability are imposed on NCOs that receive funding from the government and private sector. Prior to

providing financing, both the government and the private donors often require NCOs to provide them with information such as the following:

- The NCO's mission, goals, and proposed activities;
- How the organization is governed and whether the organization is working within the framework of law? Whether the organization is demonstrating good system of management?;
- Level of specialization of both the NCO as an organization, and also the level of specialization of its staff;
- How the organization plans to contribute to development in the state or region.

When funding NCOs, both the government and private sector expect that NCOs:

1. Work exclusively in the interests of society, rather than in the interests of its individual members and founders;
2. Have internal governance structures that are based on democratic principles, respect human rights, and are nondiscriminatory; The governance of an NCO should be professional, but at the same time the level of administrative expenses should not be too high.
3. NCOs should regularly report required information in a transparent manner so as to avoid creating mistrust on the part of the general population, government, and private sector. NCOs are required to publish financial reports regularly on both proposed and current programs. It is critical that NCOs have in place controls that ensure accuracy in reporting. These controls must be internal as well as external.
 - Internal controls – an audit commission or other supervisory body responsible for managing the reporting process; and
 - External controls – independent accountants, auditors, or other experts who examine the organization's activities.

§ 2. Organic Income of NCOs

Membership Fees

The legislation of the Kyrgyz Republic does not contain any limitations on the amount an organization may charge for membership fees, nor does it mandate a particular process by which an organization may collect membership fees. NCOs must independently determine the amount and procedure for payment of membership fees.

However, this mechanism may not be the best option. If an NCO wishes to change the amount of fees or the method for collection, then it must amend the charter, meaning that it is necessary to re-register with the Ministry of Justice. As the result, most NCOs apply methods for collecting membership payments that prevent them from violating the legislation, among which the following:

- NCOs often include in their charters a provision that states that the amounts and method for collection of membership fees must be determined by members at a general meeting of the NCO;
- the vote by members during the general meeting is then recorded in the minutes.

Presently, in Kyrgyzstan, due to several different factors, it is unclear what portion of NCO income is received from membership fees. For example, NCOs such as noncommercial cooperatives (garage, camp, apartment and building management), homeowner associations and associations of water users fully derive their incomes from membership fees. Trade unions also receive a significant portion of their income from membership fees. Public associations, associations of legal entities, political parties, and jamaats (community organizations) receive a much smaller portion of their income from membership fees.

Income from Economic Activity

In international practice, there are different approaches of different countries on the issue of whether or not to allow an NCO to carry out economic activity?

- 1) Some countries do not permit NCOs to carry out economic activity. In such countries, NCOs are permitted to create subsidiary commercial companies that may in turn carry out economic activity. In this case, the profit may be transferred to the owner of the company, i.e., to the NCO, which then may direct the use of these funds for achievement of its goals.
- 2) Some countries allow NCOs to carry out only certain economic activity that is consistent with the main purposes of the NCO. For example, public association working to support the disabled may open a shop for the sale of specialized goods intended for the disabled (for example, wheelchairs, prosthesis, etc.).
- 3) Some countries allow NCOs to carry out all types of economic activity, except those which are specifically prohibited by law. In these countries, there is a list of prohibited types of economic activity. Examples may include, for example, a gambling organization (casino, gambling machine) or sale of alcohol drinks and tobacco products etc.
- 4) Some countries allow NCOs to carry out any types of economic activity as is the case with commercial organizations.

In relation to economic activity, Kyrgyzstan, established a regime that is closer to the last of the above-mentioned approaches. Article 12 of the Law of the Kyrgyz Republic “On noncommercial organizations,” contains the following provision:

A noncommercial organization shall have the right to conduct economic activities, including production, provided that the profit is not distributed among the founders, members, officials and other employees and members of the governing bodies. Such activities may include production and sales of goods, performance of services, rendering of paid services, and other types of business activities, provided that such activities do not contradict the goals and objectives of the organization.”

As appears from the given provision, in Kyrgyzstan, there are small limitations: the types of economic activity of an NCO may not contradict the goals and tasks of the organization. For example, a public association with the goal of “tobacco control” may not sell tobacco products. In Kyrgyzstan, therefore, there is a favorable regime for NCOs to pursue income from economic activity.

An NCO has the right to carry out types of activity that require special permission (license) on the territory of the Kyrgyz Republic only after receiving the necessary license.

At the present time in Kyrgyzstan there is also not clear picture on the volume of NCO income received from economic activity. For example, universities, schools, kindergartens, museums, medical clinics and hospitals, receive a major part of their income from economic activity (tuition, partial payment of patients for treatment, etc.). Noncommercial cooperatives (garage, camp, and apartment or building management) and most partnerships of homeowners do not carry out economic activity. Public associations, foundations, associations of legal entities and jamaats (community organizations) receive a small portion of their income from economic activity.

Income from Securities and Invested Capital

A special group of NCO income consists of:

- Income from securities (dividends and interest, increase in value of securities);
- Income from capital invested in commercial structures, subsidiary commercial companies (profit, increase in capital value);
- Interest from savings accounts.⁴²

§ 3. Government Financing of NCOs

Government financing of NCO activity is an old and well-known mechanism of NCO support in many countries of the world. At the same time, government financing is considered one of the major sources of NCO income. According to research conducted in 1995 in 22 countries of the world, the average portion of NCO financing from the government was 42%.⁴³

Why Should Government Finance and Support NCOs?

NCOs are an important element of democratic society. In olden times, NCOs were known throughout the world as organizations that render assistance to those who need it. However, at the present time, they have taken an additional role: to be responsible for the development of the society as a whole, as well as for the

⁴² J.Kendall and M. Knapp, “The Voluntary Sector in the UK,” Manchester Univ. Press, 1996, p. 117.

⁴³ L.M. Salamon, “Government-Nonprofit Relations in International Perspective” Nonprofits and Government. Collaboration and Conflict, The Urban Institute Press, WDC, 1998, p. 337.

improvement of the welfare and well-being of those in the society. It is no wonder that because of this, NCOs have become an indispensable component of the economic and public development of many countries. NCOs are beginning to be accepted for their ability to work directly with people. NCOs began to deal with such problems as the war against poverty, distribution of humanitarian assistance, employment assistance, development of entrepreneurship and economy, opening access to financial resources, democracy development, advocacy of civil rights, women's problems, problems of vulnerable populations, problems of community and regional development, and many other social and economic problems.

As NCOs play an important role in the economic and democratic development of the society, government bodies in many countries fully support NCO activity. However the degree of support depends on the degree of government understanding of the NCO sector's role. In countries where the government understands the positive role of the NCO sector in society, favorable conditions for their creation and operation are established. Moreover, in such countries, the government, using different means, finances and supports NCO activity.

Means of Government Financing of NCOs

Looking at international practice, it is possible to identify different means of government financing of NCO.

- **Grants** awarded for conducting programs. The government provides financial support to an NCO program, which is conducted in the framework of the government program. The grant may be awarded for the support of all or part of the NCO program. The main principle of grant support is selection of the NCO on a competitive (tender) basis.
- **Contract with NCO** for the conduct of particular activity. Government organizations usually conclude a contract with a particular NCO for the conduct of particular program -- usually, when an NCO has unique experience that may be applied in another region (for example, work experience with the disabled, work experience with women exposed to violence, experience in microfinancing, etc.).
- **Loan/credit allocation.** Loans and credits are considered as the rarest form of NCO financing. However, with microcredit, the goal of which is to increase the well-being of poor and vulnerable population, credits or loans to microfinance organizations (such as microcredit foundations and credit unions), are a major source of NCO activity support.
- **Reimbursement of some NCO costs.** Some NCO costs may be reimbursed by government or local bodies. These may include rental payments, registration fees, custom fees, public utilities, etc.
- **In-Kind Gift.** An in-kind gift is usually considered a nonfinancial mean of NCO activity support. It is a non-repayable transfer of equipment, premises, furniture, medicinal substances, etc. into NCO ownership.
- **Preferential taxation.** One of the legal and fiscal mechanisms of NCO financing is providing preferential taxation of NCO activity, as well as charitable

endowments of business and citizens. For NCOs to work efficiently, the government should establish preferential mechanisms of taxation, especially for public benefit NCOs, so that society may receive the maximum benefit from activity of the NCO sector for social and economic development of the country.

- ***Issue of non-taxable bonds.*** An NCO may also issue non-taxable bonds. This is one of new forms of NCO financing. Such financing is appropriate for NCOs implementing housing, medical and social programs, as well as private educational institutions.
- ***Conduct of lotteries and auctions.*** The government may finance NCO activity out of funds received from lotteries and auctions. Frequently, lotteries and auctions are also conducted by NCOs.

Financing and Support of NCOs by the Kyrgyzstan Government

At the present time, Kyrgyzstan has implemented certain of the above-mentioned means of government financing of NCO activity.

Grants awarded for the conduct of programs. Kyrgyzstan does not utilize this method of government financing.

Contract with NCO for the conduct of a particular activity. Kyrgyzstan does not yet widely use this method of government financing, but, at the present time, a draft law on social contracting is being prepared. After adoption of the new law, this method will likely find wider application.

The regulation “On territorial and public self-administration bodies,” as of October 10, 2001, grants rights to local self-administration bodies to delegate by agreement some powers to those territorial and public self-administration bodies registered as NCOs. The delegation normally is accompanied by a transfer of the financial resources necessary to undertake the delegation. And most likely, the above-mentioned powers and financial resources are transferred based on an agreement (contract) to ensure their implementation.

Loan/credit allocation. This method of government financing in Kyrgyzstan is used for the support of credit unions. A financial company dedicated to the support and development of credit unions grants credits to credit unions. These credits are the major source of support of credit union activity.

Reimbursement of some NCO costs. This method of government financing is rarely used in Kyrgyzstan.

Gift. This method of government financing is widely practiced in Kyrgyzstan. The regulation “On territorial and public self-administration bodies,” as of October 10, 2001, gives local self-administration bodies the right to transfer to territorial and public self-administration bodies (registered as an NCO) economic objects, residential and nonresidential stock. There were cases when, based on the given regulation, local self-administration bodies transferred such premises as clubs, kindergartens and bath houses.

Preferential taxation. Preferential taxation is widely applied in Kyrgyzstan. The tax code provides a range of tax benefits for NCOs. Also, the Tax Code provides tax benefits for legal entities that have made contributions to charitable organizations (such NCOs as charitable foundations, government institutions: schools, universities, hospitals, etc.).

Issue of non-taxable bonds. This method of government financing is not practiced in Kyrgyzstan.

Conduct of lotteries and auctions. Lotteries are very rare in Kyrgyzstan, and auctions are not conducted; however, the legislation does not prohibit either method of finance.

§ 4. Business and Individual Endowments and Grants

Business Endowments

The business sector cannot exist outside of society; it is interested in social stability in the society. The business sector also carries responsibility for providing customers with goods and services, employing the population, development of the social sphere and communities. In order to carry out their public obligation, major companies may create foundations (for example, the Hitachi Foundation in the USA and Fundesco in Spain). Other major commercial companies and small enterprises prefer to finance NCOs directly or through charitable foundations.

NCO financing by commercial companies from year to year is growing. For example, in 1997, corporate financing reached USD\$ 8.2 billion.⁴⁴ According to the European Foundation Center, in Europe in 1996, corporate charity reached USD\$2 billion. Most donations by businesses are directed toward education, social and humanitarian services, development of culture and arts, solving housing problems, and environmental protection.

It is also important to note that many well-known, major, commercial companies in the world provide support not only in their country, but also in many other countries of the world, irrespective of whether they carry out business in these countries. There is a tendency toward globalization of charitable activity by businesses.

In Kyrgyzstan, the business sector is at the initial stages of its development and does not yet carry out significant charitable activity. In order to encourage greater charitable activity by the business sector, the government has provided tax benefits (Article 208 of the Tax Code), as follows:

Donations, including cash and property to charitable organizations, as well as to organizations of culture and sports, regardless of the form of ownerships, made during the relevant period of tax year in an amount not exceeding 10 percent of taxable income of the taxpayer-donor, are entitled to a deduction from total annual income.

⁴⁴ A.E. Kaplan, "Giving USA 1997," NY: AAFRC Trust for Philanthropy, 1997.

Individual Donations

Individual charity includes material and financial charity by citizens, as well as voluntary, unremunerated participation of citizens in NCO activity. Individual charity is known from old times. In all countries of the world, people have helped each other either directly or through organizations. Individuals mainly contribute to the support of social and educational programs (support of hospitals for impoverished, schools, for medical examination), as well as for the support of churches.

At the present time, individual charity also is one of the sources of financing of the NCO sector. For example, in Germany, 44% of the adult population annually donates to NCOs approximately 0.3% of their income, which in turn comprises 2.1% of the total income of the NCO sector.⁴⁵ In 1995, the population of the USA directed 2.7% of income and 0.7% of equity capital (such as securities, real estate, deposits, bonds, etc.) toward charitable activity.⁴⁶ In Great Britain in 1993, 81% of the adult population participated in charitable activity, and made a contribution in the sum of approximately GBP 5.3 billion.⁴⁷ There is also a well-known, traditional Islamic charitable tradition, Al-Zakat, according to which every Muslim must give to the poor 2.5 % of his or her income.⁴⁸

In Kyrgyzstan, in relation to the charitable activity of individuals, there are no statistics. However, most individual charity in Kyrgyzstan is carried out not through NCOs, but rather, directly, by rendering assistance to needy people. At the present time, the Tax Code does not provide any tax benefits to citizens for their donations.

Grants

A grant is a non-repayable donation to an NCO, or to a particular program carried out by the NCO. Grant-giving foundations are charitable foundations, allocating funds to NCOs or providing individual grants for research or other types of activity. Grant-giving foundations exist in various forms in a majority of the countries of the world. There are four types of grant-giving foundations:

- **Grant-making foundations, whose grants are generated by income from assets.** For example, a foundation with assets of USD \$20 million, generates income which may allow it to award grants of USD \$1 million per year, or a foundation with assets of USD\$2 million may be able to award grants of USD\$100,000.⁴⁹
- **Grant-making foundations, whose grants are earned from economic activity.** Usually such foundations have different business structures, income from which is directed to grant activity.

⁴⁵ Data on New Zealand and Germany is taken from "The New Civic Atlas. Profiles of Civil Society in 60 Countries," CIVICUS, 1997.

⁴⁶ E. Wolff, "The Economy and Philanthropy," *Philanthropy and the Nonprofit Sector in a Changing America*, Indiana Univ. Press, 1999, pp. 81-82.

⁴⁷ P. Halfpenny, "Economic and Sociological Theories of Individual Charitable Giving: Complementary or Contradictory?" *Voluntas*, Vol .10, No 3, 1999, p199.

⁴⁸ A. Kandil, "Defining the Nonprofit Sector: Egypt," Working Papers of the John Hopkins Comparative Sector Project; National Center for Sociological and Criminological Research, Cairo, 1993.

⁴⁹ S.B.Scheerer, "Building Indigenous Foundations that Support Civil Society," *Sustaining Civil Society. Strategies for Resource Mobilization*, CIVICUS, 1997, p.305.

- **Operational foundations.** These foundations utilize income from principal and income received from different sources, including their own economic activity, for implementation of their programs.
- **Community foundations,** whose principal derives from capital received from different sources. The income earned from donated principal is directed in the form of grants to implementation of some programs, improving the well-being of a vulnerable population within the community or the development of the community itself.

The number of grant-making foundations in the world is also significant. For example, in the USA in 1996, the activity of 41,588 foundations is registered; in Switzerland, there are more than 8,000; in the Czech Republic, more than 4,500; in Germany, around 7,000.⁵⁰

The assets of many foundations are valued in the millions and billions of US dollars. For example, the assets of the MacArthur Foundation in 1996 were USD\$3.4 billion; the Ford Foundation, USD\$8.2 billion, and the assets of the C. S. Mott Foundation and Aga Kahn Foundation, more than USD\$100 million.

In Germany, grant-making foundations own assets of USD\$14 - 29 million and annually allocate grants of USD\$2.5 million.⁵¹ In the USA in 1996, grant-making foundations had assets of more than USD\$267 billion and allocated grants of more than USD\$13 billions.⁵²

In Kyrgyzstan, at the present time, a majority of NCOs carry out their activity on the basis of grants received for implementing different programs. Grant-making foundations in Kyrgyzstan (as with the NCO sector in general) are at the initial stages of their development. Local foundations are not yet able to make significant grants to NCOs out of their own funds. Financing different programs of NCOs is mainly carried out by foreign grant-making foundations, international organizations and governments of developed democratic countries.

§ 5. Limitations on Foreign Financing of NCOs

At the present time, the legislation of the Kyrgyz Republic has series of provisions prohibiting foreign financing of activities of particular forms of NCOs for political purposes. In Article 4 of the Constitution of the Kyrgyz Republic, there are provisions providing that:

In the Kyrgyz Republic the following are not permitted:

- activities of foreign political parties, public and religious organizations, and their representative offices and branches, that are pursuing political goals;
- the formation and activity of political parties, public associations, religious and other organizations, that are threatening the Constitutional system, or state and nation-wide security.

⁵⁰ Data on Switzerland, Czech Republic and Germany is taken from "The New Civic Atlas. Profiles of Civil Society in 60 Countries," CIVICUS, 1997.

⁵¹ S. Toepler, "Foundations and their Institutional Context: Cross-Evaluating Evidence from Germany and the United States," VOLUNTAS, Vol. 9, No 2, 1998, p.155.

⁵² L.M. Salamon, "America's Nonprofit Sector. A Primer," 2nd Ed. The Foundation Center, 1999, p.26.

In Paragraph 2 of Article 161 of the Civil Code of the Kyrgyz Republic, there is a provision stating that:

It is not permitted to finance political parties or public associations that are pursuing political goals, or trade unions, by foreign legal entities and citizens, foreign states or international organizations.

However, in the above-mentioned legal acts, there is no definition of “political goals.” In a particular situation, the notion of “political goals” may be interpreted differently. In its broader sense, the word “policy” means state affair (or public affair). As such, the notion of “political goals” may include not only goals of coming to the power, but also such goals as democracy development, war against poverty, struggle for fair elections, and many others.

In all countries of the world with established democratic traditions, NCOs may receive foreign financing and use it to carry out a wide range of activities relating to public policy formation, including activities directed to promote legislative reforms, to oppose state policy on different issues, to participate as observers during elections or to assist the state in development of the policy in certain areas. Certain limitations on the issues of foreign financing have a place in relation to a few types of organizations (for instance, political parties), and in relation to certain kinds of activities of NCOs (for instance, financial support of candidates of election campaigns to the state bodies).

The policy of granting these rights to NCOs in the Kyrgyz Republic was arrived at through a democratic process, complying with international best practice; the state does not hinder NCOs that are receiving foreign financing from carrying out various activities, but rather promotes such activity and cooperates with them.

Most likely, when the Constitution and the Civil Code of the Kyrgyz Republic were under the process of being adopted, the legislature, by the term “political goals,” intended the narrower meaning, the “goal of coming to power.” Any broader interpretation of the notion of “political goals” could apply in practice a prohibition on financing NCO activity from abroad and could contradict international law and international best practice.

Chapter 6. Taxation of NCOs and Payment of Insurance to Social Fund

§ 1. Main Principles of Granting Tax Benefits to NCOs in the Kyrgyz Republic

In Part 11 of Article 153 of the new Tax Code of Kyrgyz Republic as of October 17, 2008 #230 (hereinafter – Tax code), there is a definition of the notion of NCO for taxation purposes, according to which:

Noncommercial organization is an organization fulfilling the following requirements:

1) the given organization is registered in an organizational and legal form provided by the legislation of the Kyrgyz Republic for NCOs, as well as with other legislation of Kyrgyz Republic;

2) the given organization does not pursue profit-making as the main goal of its activity, and does not distribute received profit among its members, founders and officials.

Therefore, for taxation purposes, NCOs are those organizations that are established in the organizational and legal forms of public association, foundation, religious organization, association of legal entities in the form of association (union) and in other forms provided by legislative acts of Kyrgyz Republic.

The status of NCO by itself is not a ground for an application for a special tax regime or for enjoying tax benefits. If an ordinary NCO receives income, it is considered as an income tax payer, like all other entities. If during 12 successive months, the organization reaches the registration threshold for value-added tax (“VAT”) (today it is 4 million soms), then it is considered a VAT-payer. Workers in an NCO pay income tax. NCOs are also subject to sales tax, land tax and property tax.

Nevertheless, tax legislation stimulates development of NCOs, especially charitable organizations. Charitable organizations are free from (1) profit tax (for all kinds of incomes), (2) VAT, if the supplies are for charitable purposes and (3) sales tax. As for ordinary NCOs, particular types of income, turnovers and NCO supplies having public benefit character are exempted from taxes. This approach does not allow any organization, having declared noncommercial status, to be exempt from taxes *per se*. Unless its income, turnover and supplies are considered as non-preferential, it does not pay taxes. If the organization generates taxable income, turnover and supplies, then taxes are paid according to general rules. This may occur at any stage of activity, as NCOs have the right to carry out economic activity that is not prohibited by law and to receive income or to acquire supplies that are subject to taxation.

§ 2. Income Tax

Tax legislation, as a rule, does not exempt NCOs from income tax. If there is taxable income, then tax is levied at the rate of 10%. As an exception, according to Item 2 of Part 1 of Article 212 of the Tax Code, the income of communities of certain disabled persons (namely, groups I and II), as well as enterprises of blind and deaf people of the Kyrgyz community, where disabled, blind and deaf persons come up to not less than 50% of the number of employees and their combined salaries comprise not less than 50% of all salaries are free from profit tax. The list of stated enterprises is determined by the Government of the Kyrgyz Republic. The list is limited, and along with enterprises, NCOs of disabled persons are also included into this list.

In compliance with Item 1 of Part 1 of Article 212 of the Tax Code, the income of charitable organizations is exempt from taxation. On the basis of this Article incomes of charitable organizations can be exempted from profit tax.

In compliance with Part 2 of Article 153 of the Tax Code, “a **charitable organization** is an NCO that is:

- 1) created as such, and is carrying out charitable activity in compliance with the legislation of the Kyrgyz Republic on NCOs and charitable activity;
- 2) not participating in production and/or the sale of excise goods and gambling business;
- 3) not participating in support of political parties or election campaigns”.

Part 1 of the same article defines **charitable activity** as a voluntary activity of an individual and/or legal entity, directed toward realization of charitable goals provided for by the legislation of the Kyrgyz Republic on charitable activity on transfer of assets, rendering services and accomplishment of works to citizens and legal entities on unselfish (free of charge or preferential conditions) basis or for payment which does not exceed incurred expenses.

In order to acquire the status of a charitable organization, NCOs are not obliged to make a prior application to tax bodies and to receive written confirmation from them on the right to tax benefits that are established for charitable organizations. However, they shall comply with criteria established by the laws for charitable organizations. The legislation sets quite strict criteria for the organization to be considered charitable. In compliance with the Law of the Kyrgyz Republic on Philanthropy and Charitable Activity, a charitable organization is an organization in which not less than 98% of received funds are spent on charitable goals. The list of charitable goals is also determined by this law. It means that expenses on workers' salaries, acquisition of equipment for them, office rental and other necessary material resources may not comprise more than 2% of received funds. It is potentially a very harsh framework (subject to the further provisions set out below) and if the

organization cannot comply with the standards and a tax audit is undertaken, then income tax (as well as VAT and sales tax) will be levied in addition to fines and sanctions.

Moreover, in compliance with Part 3 of Article 189 of the Tax Code, the following categories of income are not included in the total annual income of NCOs:

- 1) membership and entrance fees;
- 2) humanitarian assistance and grants, on the condition that they are only used for charter purposes,
- 3) the value of donated assets, on the condition that they are only used for charter purposes.

Parts 6 and 7 of Article 153 of the Tax Code gives the following definitions to the notions “grant” and “humanitarian assistance”:

Grants are assets transferred free of charge by states, international, foreign and domestic organizations to the Government of the Kyrgyz Republic, bodies of local self-administration, state bodies, as well as to NCOs, not participating in the support of political parties or candidates of election campaigns.

Humanitarian assistance consists of assets, transferred free of charge by states and organizations to the Government of the Kyrgyz Republic, bodies of local self-administration, state bodies, NCOs, as well as to needy individuals, in the form of food, hardware, outfit, equipment, medical drugs and medicines, and other property, for improvement of life conditions of the population, as well as for warning and liquidation of emergency situation of military, ecological and technological character, on condition of their use and/or free of charge distribution.

Parts 4 and 29 of the same Article gives the following definitions to membership and entrance fees:

Entrance fees are assets transferred by a person, during his or her initial entrance into the NCO, based on membership in the amount and in the order provided in constituent documents of the given organization, on condition that the given transfer may not be conditioned exchange of services to the member of the given organization free of charge or at a price below cost.

Membership fees are assets transferred by a member of an NCO, in the amount and subject to the order provided in constituent documents of the organization, on condition that the transfer was not be conditioned on the exchange of goods, works, services to a member of the given organization either free of charge or at a price below cost.

Not including abovementioned incomes into aggregate yearly income of NCO, it is important to have in mind that revenues related to deriving income that is free from taxation do not fall into deduction for tax purposes. Consequently, it is necessary to keep separate records of incomes and revenues on statutory noncommercial activity and on commercial activity (if an NCO conducts commercial activity). It's logical. However there are still some moments that are not reflected in legislation. For instance, how to be with capital assets acquired for this funds, if it's

possible to depreciate them, as it is usually done. There are no answers for this question in legislation.

There are many problems with distinguishing between fees for rendered services with membership and entrance fees. The definitions in the legislation do not fully solve this problem. There is a range of cases when sports and health-related institutions, rendering services to the population, re-name fees for services as membership fees so as to avoid taxation. These examples show that there is an urgent necessity to prepare official commentaries on the given issues.

Commercial enterprises and individual entrepreneurs also enjoy particular tax benefits on income tax for charitable activity. In compliance with Article 208 of the Tax Code, assets, including cash and property, gratuitously delivered to charitable organizations (at balance value), as well as to organizations of culture and sports, regardless of the form of ownerships, in the tax period, in an amount not exceeding 10% of taxable income of the taxpayer who transferred them, providing that these assets are not used for the benefit of taxpayer, are entitled to deduction from total annual income.

§ 3. Income Tax and Social Payments to the Social Fund

All commercial and noncommercial organizations are obliged to:

- 1) pay, out of their own funds, insurance fees to the Social Fund in the amount of 17.25% of all payments accrued for the benefit of hired workers (employer's portion);
- 2) deduct from accrued salary of workers and transfer:
 - insurance fees to the Social Fund in the amount of 10% of the worker's accrued salary (employee's portion);
 - income tax to the state budget in the amount of 10% of the worker's accrued salary.

Incomes of employees of NCOs are liable to income tax according to general rules. They also pay income tax when their salaries are paid out of non-taxable income, such as grants, entrance and membership fees. Income tax is usually levied on the organization-employer that pays salary.

However, certain incomes received by individuals from **NCOs**, particularly, assets gratuitously delivered to individuals hard up in social rehabilitation and adaptation, medical assistance with incomes lower than subsistent minimum: (a) refugees and (b) severely ill, are not liable to income tax. This provision is reflected in Part 37 of Article 167 of the Tax Code.

The Tax Code does not offer any incentives for individual taxpayers, who are **not registered** as individual entrepreneurs, to make charitable donations.

Donations received by individuals are not reflected in tax legislation. The definition of grant included in the Tax Code does not contemplate these payments and consequently they are included in the total annual income of the individual for taxation purposes. Of course, such situation is not rational, since grants, for instance, that are awarded to individuals for education, research, literature and other activity have specific designated purposes. Grants are not “pure income” of the grant recipient, as they are allocated for conducting particular activity (work).

Similar problems may rise if individuals receive donations from an organization that is not considered to be charitable. These funds must be included in the total annual income of individual for taxation purposes. At the same time, net worth value of humanitarian aid received by individual (Part 23 of Article 167), as well as gratuitous assistance received from an individual are considered by the Tax Code as gifts, and are not subject to taxation.

§ 4. Value Added Tax

In general, NCOs are exempt from VAT. However, in most cases they do not pay this tax, as the volume of taxable supplies usually do not reach the registration threshold, which today is KGS 4 million over a period of 12 successive months. If the registration threshold is reached, an organization must, during the month following, register with the tax bodies as VAT payer and monthly pay this tax and submit reports until the organizations ceases acquiring taxable supplies and annuls its registration.

VAT is levied in the following way. If goods, works and services are acquired from a VAT payer, then the taxable amount on acquisition is indicated separately from the final acquisition price in the invoice. While preparing a report, a taxpayer must calculate the VAT sum produced by the buyer during the month, and then deduct paid and payable VAT. If VAT on supplies exceeds VAT on acquisitions, then the difference is paid to the state budget. If the difference is negative, then paid sum is accrued and used for payment of taxes in future periods.

Nevertheless, Article 252 of the Tax Code exempts from VAT taxation particular supplies that are carried out by NCOs: supplies by NCOs for payments that do not exceed the expenses to carry out these supplies are free from VAT, if these supplies are:

- 1) for the social welfare and protection of children or indigent citizens of advanced age; or
- 2) in the sphere of education, medicine, culture and sports.

It seems that granting such benefits is well-grounded. If there is no positive difference, then there is no value added tax. However, the given article in fact does not work. It is very rare to have an organization that carries out the types of supply indicated in the given article. In practice, in order to receive the tax benefit, an organization submits to the tax bodies a planned cost estimate, in which income equals expenses -- in other words, there is no profitability. It is difficult to follow and check this cost estimate, as short periods of income and expenses do not coincide.

Moreover, due to price changes, expenses will change as well. If there is a savings, then VAT is levied, with the application of punitive measures and fines. There is also another problem. If all supplies are not profitable, and profit is not earned, then the organization cannot purchase fixed assets unless they are purchased with income not generated as the result of supplies -- such as grants, membership and entrance fees.

In compliance with Article 251 of the Tax Code, charitable organizations are exempt from payment of VAT, if supplies are for charitable purposes. However the Tax Code does not explain what is meant by “supplies for charitable purposes.” Article 1 of the Law on Philanthropy and Charitable Activity enumerates the goals for which charitable organizations may be created. These goals may be considered an interpretation of “supplies for charitable purposes.”

It is necessary to note that if a person supplies goods to NCOs free of charge, then the responsibility for payment of VAT is on the supplier.

§ 5. Excise Tax

NCOs are not exempt from excise tax on excise goods they may produce. However, as a rule, they do not produce such goods. Charitable organizations dealing with such types of activity immediately lose their status, even if they are guided by good goals.

According to tax legislation, excised items include a limited list of goods, such as alcoholic drinks, tobacco products, combustive-lubricating materials and some other luxury goods. Either the physical volume or value of good is counted as a measurement for taxation. Basic rates of excise tax are determined in the Tax Code.

The Tax Code does not stipulate any benefits applicable to NCOs, including charitable organizations.

§ 6. Land Tax

Land tax is collected from individuals having abstract of title or a document confirming right of enjoyment of land plot. Land tax includes tax on agricultural lands and lands of human settlement, industry, transportation, communication, defense, nature preservation, health-improvement, recreation, forest resources, etc. Rates are determined by the Tax Code on a case-by-case basis, depending on location and classification of lands (their purpose of use).

Particular NCOs are exempt from payment of land tax. In compliance with Item 5 and 9 of Paragraph 1 of Article 343 of the Tax Code the followings are exempt from land tax:

- 5) lands of organizations of disabled persons, war participants and similar categories of people, and lands of communities of blind and deaf people;
- 9) lands of liturgical objects of religious organizations, registered in the way prescribed by legislation of Kyrgyz Republic

Land owned by an NCO that does not qualify for any of these exemptions is subject to land tax according to the general rule.

Liturgical objects are immovable property of religious organizations meant for committal of rituals, blessings in purpose of joint affiliation and advancement of religion.

§ 7. Property Tax

Immovable and movable properties that are in state, municipal and private ownership are liable for property tax. Property tax differs from land tax in that land tax can be used only for land plots, while the property tax is used for constructions raised on land plots.

Taxpayer of the property tax is its owner. In case when it's impossible to determine ownership (for instance, when there is no registration of deeds), the taxpayer of property tax is organization or individual using this property. State property given in use of individual is subject to property tax; in this case tax is collected from property user.

Property tax was introduced in Kyrgyzstan with the adoption of the Tax Code, which was effective January 1, 2009.

However on March 27, 2009 a moratorium was introduced on application of this tax pending development of new mechanism of its implementation. With adoption of subsequent amendments in the Tax Code this tax was enacted on January 1, 2011.

Groups of Property

According to the Tax Code, property is divided into four groups:

- 1 group: dwelling houses, apartments, detached houses meant for permanent or temporary living and not used for conducting entrepreneurial activity;
- 2 group: dwelling houses, apartments, detached houses, rest homes, sanatoriums, health resorts, industrial, administrative, manufacturing, as well as other capital constructions meant and/or used for conducting entrepreneurial activity;
- 3 group: permanent premises from metal and other constructions, such as kiosks and containers meant and/or used for conducting entrepreneurial activity;
- 4 group: transportation vehicle, including self-propelled machines and mechanisms.

Tax Rate

Calculation of ratable value of immovable property (1, 2, 3 groups) depends on year of construction, type of building materials (brick, concrete etc.), location of

property, not only in within the country, but also within the particular inhabited locality

The tax rate for property used for economic activity is 0.8 percent of the taxable value. If the property is not used for carrying out an economic activity, the rate is set much lower—only 0.35 percent of the taxable value.

The tax rate for property of 4th group depends on type of the engine, engine displacement, useful life of the vehicle and other specifications (Article 328 of the Tax Code).

Features of Property Tax Payment by NCO

According to the Tax Code property of an NCO used by the NCO for noncommercial purposes (for instance, used as office) and not used for conducting entrepreneurial activity does not fall into any of abovementioned groups. Therefore, such property of NCO shall not be subject to property tax. But, even if some part of NCO's property is given in rent or used for entrepreneurial activity, then all property is classified as 2 group and is subject to property tax at the rate of 0,8 % of taxable value. In other words, there is no mechanism in Tax Code that could make it possible to proportionally correlate parts of one immovable property to different groups (1 or 2 second group).

Invariant of purpose of use particular NCOs are exempt from property tax depending on spheres of their activities. In accordance with Items 2 and 3 of Part 1 of Article 330 of the Tax Code the followings are not subject to property tax:

(2) property of associations of disabled persons of the I and II groups, organizations of Kyrgyz communities of blind and deaf, where disabled persons compose not less than 50 % of all employees and their salary amount to not less than 50 % of the whole salary fund, as well as institutions and enterprises of correctional system. The list of mentioned organizations is determined by the Prime Minister's office of Kyrgyz Republic;

(3) property of organizations conducting activities in the spheres of science, education, healthcare, culture, sports, social welfare and protection of children or needy citizens of advanced age.

§ 8. Sales Tax

Sales tax is indirect tax (extra charge for goods' or services' price) that is levied from customer and paid to budget by vendor from total price of good or service. Sale of goods, accomplishment of works and rendering services are subject to sales taxes. The sales tax rate varies, depending on whether the sale of goods, works and services is subject to VAT or not. The other criterion for determination of the sales tax rate is whether it is for trading activity or not.

For the sale of goods, works and services that are either subject to VAT and VAT-exempt, the rate is 1% on trading activity and 2% on any other activity. If the

sale of goods, works and services is not subject to VAT and is not VAT-exempt, sales tax rate is 2% on trading activity and 3% on any other activity, correspondingly.

According to Paragraph 2 of Article 315 of the Tax Code, the sale of goods, accomplishment of works and rendering of services **by NCOs** are exempt from VAT, so long as the payment does not exceed the cost, and if it is:

1) for social welfare and the protection of children or indigent citizens of advanced age;

2) in the sphere of education, medicine, science, culture, and sports .

In compliance with Part 4 of Paragraph 1 of the same Article, charitable organizations are fully exempt from sales tax on any activity, including an entrepreneurial activity.

§ 9. Conclusion

The development of NCOs in democratic state should be encouraged. Frequently, they may solve those social tasks that cannot be solved alone by a developing country with a limited budget. NCOs are in a position to accumulate available funds of economic players, foreign donors and individuals and direct them toward the achievement of public benefit goals.

The tax regime for NCOs in Kyrgyzstan is far from ideal and has substantial shortcomings. The Tax Code does not preserve the norm of (1) encouraging citizens (other than individual entrepreneurs) to make donations to charitable organizations, (2) exempting charitable organizations from land tax, (3) exempting of NCOs from property tax (except for some part of NCO conducting activities in particular spheres). Property tax is a crushing burden for NCOs, as well as charitable organizations. Above are only some, the most obvious shortcomings of the Tax Code. There is a lot to be done to bring the conditions of NCO taxation in Kyrgyzstan closer to conditions established for NCOs in developed democratic countries.

Chapter 7. Reorganization, Liquidation and Bankruptcy of NCOs

The termination of an NCO occurs as a result of its *reorganization* (other than merger or acquisition), *liquidation* or *bankruptcy*.

§ 1. Reorganization of NCOs

Basic Notions and Forms of Reorganization

The reorganization of an NCO is one of the most interesting and at the same time the least-studied areas of private law, including for domestic law experts as well.

In the legal literature, the reorganization of a legal entity is considered as one of the means of termination its activity. This method differs from liquidation by the presence of succession,⁵³ i.e., where there is a passing of rights and obligations to another entity or entities, which are successors of the reorganized legal entity.

A reorganization of an NCO, as with any other legal entity, may be in the form of a merger, accession, splitting up, separation, or transformation.

A merger of organizations results from the creation of a new organization with all rights and obligations of the prior organizations, and termination of the former organizations. The rights and obligations of each of them pass in compliance with deed of assignment to the newly created legal entity.

The accession of an organization results from the termination of one or more organizations, with the passing all rights and obligations to another organization in compliance with deed of assignment. During accession, a new legal entity is not formed, but rather changes the legal status of legal entity (volume of rights and obligations), to which acceded one or several other organizations.

The splitting up of an organization results from termination of its activity, with the passing of all rights and obligations to a newly-created organization, in compliance with a separation balance sheet.

The separation of an organization is considered the creation of one or more organizations with the transfer of some of the rights and obligations of the reorganized legal entity, but without termination of the former, in compliance with a separation balance sheet.

The transformation of an organization means the change of its organizational and legal form, and as a result a legal entity of a different type appears. During the transformation of the organization, all rights and obligations of the reorganized legal entity are passed to the newly-created legal entity in compliance with a deed of assignment.

The reorganization of an NCO, according to the general rule, is carried out either voluntarily, by a court decision or decision of the founders, or by the statutory

⁵³ Telukina M. V., *Reorganizatsia kak sposob prekrashenia deyatel'nosti juridicheskikh lis'* [Reorganization as a mean of termination of legal entity], 2000, p.40.

body, which is authorized by statutory documents; or involuntarily, by a decision of the state body authorized in relation to financial and credit organizations or institutions, for which the licensed activity is the only permitted type of activity. An example of the latter are microcredit agencies, created in any organizational and legal forms of NCO, which may be reorganized by decision of National Bank in compliance with Article 10 of the Law “On microfinance organizations in the Kyrgyz Republic.”

The use of any of above-mentioned forms of reorganization may not lead to disadvantageous consequences for creditors of the reorganized legal entity. Therefore, the law requires founders, members of the organization or the body which adopted the decision on reorganization of the legal entity, in written form, to inform all creditors of the reorganization. The creditors have the right to demand termination or execution of obligations before a due date, and compensation for damages.

The requirements for the contents of the deed of assignment and separation balance sheet are set by the Civil Code. These documents must contain a plan for succession of all obligations of the reorganized legal entity in relation to its all creditors and debtors, including obligations that are in dispute by the parties. The deed of assignment and separation balance sheet must be approved by founders (members) of legal entity or body that adopted the decision on reorganization. If the separation balance sheet does not identify a successor of the reorganized legal entity, the newly created legal entities will carry joint responsibility for obligations of the reorganized legal entity in relation to its creditors. These rules comprise the most important legal guarantees of rights and interests of creditors of the legal entity to be reorganized.

Specifics of NCO Reorganization

In relation to NCOs, it is problematic to determine permissible reorganization forms. The concern is preserving the status of the NCO, as well as changing the type of organization – that is, the transformation of an NCO to a commercial type of organization.

Frequently, special NCO laws on reorganization refer to the Civil Code, thus the law related to admissible reorganization forms does not directly regulate the relationships. And the Civil Code provisions dedicated to reorganization and NCOs, set out only general reorganization procedures (Art. 92 – 95 of the Civil Code), while the transformation of commercial organizations is considered only in relation to associations of legal entities (associations and unions).

The absence of legal provisions dedicated to detailed regulation of NCOs is typical not only for domestic private law; the same is true in many foreign jurisdictions.

The table below was prepared for clarifying the application of reorganization procedures to NCOs. In it, existing forms of NCOs are divided into two basic types:

- 1) Non-membership organizations;
- 2) Membership organizations.

Table 2

	Merger	Accession	Separation	Splitting up	Transformation to noncommercial organization	Transformation to commercial organization
Non-membership organizations						
Institution	+	+	+	+	+	-
Foundation	+	+	+	+	-	-
Membership organizations						
Public association	+	+	+	+	+	-
Association of legal entities	+	+	+	+	+	+
Religious organization	+	+	+	+	+	-
Political party	+	+	-	+	-	-
Trade union	+	+	+	+	+	-
Credit union	+	+	+	+	-	-
Noncommercial cooperative	+	+	+	+	+	-
Association of employers	+	+	+	+	+	-
Association of water users	+	+	+	+	+	-
Partnership of homeowners	+	+	+	+	+	-

Some forms of NCOs that are the most interesting in terms of regulation, will be further considered in more detail.

Institution

The Law of the Kyrgyz Republic on NCOs does not include provisions on procedures and permissible forms of reorganization of the so-called “institutions.” Neither does the Civil Code regulate these relationships. Therefore, the process of reorganization of institutions is the same as the process of reorganization of other NCO forms.

At the same time, separate special normative and legal acts of the Kyrgyz Republic provide some limitations, for example, for educational institutions. According to Article 42 of the Law of the Kyrgyz Republic “On education,” educational groups may be reorganized to educational organizations of other types, if the founder undertakes a personal obligation to meet certain requirements of educational organizations. The reorganization of educational organizations is carried out, as a rule, at the end of the academic year.

Foundation

The organizational and legal form of foundation takes a special place in the domestic system of legislation on legal entities. The Law of the Kyrgyz Republic “On noncommercial organizations” determines that the supervisory council has the competence to adopt a decision on reorganization of a foundation (Art. 28). However, permissible reorganization forms are not set out. Relying on the general rule, it would not be possible to reorganize a foundation within the framework of organizational and legal forms of the foundation. However, one also needs to take into account civil enforcement practice when reorganization relationships are not regulated and therefore sometimes it is interpreted that reorganization of foundation is not admissible.

According to the opinion of Russian legal expert D.I. Stepanov, “foundation reorganization in the form of transformation to the legal entity of another type according to the general rule is not permissible, otherwise, in practice, people will stop following the norm on inadmissibility of out-of-court liquidation of a foundation.”⁵⁴

Of special, practical interest is the issue of the interrelationship between provisions dedicated to the organizational and legal form of foundation and provisions on non-state pension foundations. In contrast to public foundations, the law “On non-state pension foundations in the Kyrgyz Republic” directly sets out permissible reorganization forms for the non-state pension foundation. In particular, the law permits four forms (merger, accession, splitting up, separation), in addition to transformation. And the reorganization of a pension foundation is carried out based on the decision of the general meeting of foundation founders in coordination with its regulating body, and in compliance with the resolution of an independent auditor (Art. 31).

Associations of Legal Entities

Reorganization of an association of legal entities is carried out according to general rules of reorganization of legal entities, as set out in civil legislation.

In contrast to other organizational and legal forms of NCOs, in relation of which the legislation does not provide an opportunity to change the type of legal entity from NCO to commercial, an association of legal entities may be subject to

⁵⁴ D.I. Stepanov, *Formy reorganizatsii nekommercherskikh organizatsii* [Reorganization forms of noncommercial organizations], published in attachment to the magazine “Khozyaistvo i pravo” [Economics and law] (2003), # 10, p. 16.

transformation to an economic partnership or community, if its members decide to carry out economic activity (Part 1 of the Article 165 of the Civil Code). The decision is related to the specifics of the organizational and legal form of associations of legal entities, as the association does not have the opportunity to carry out economic activity. This requirement of the legislation is set only for associations of commercial organizations. Note that, should such an association carry out economic activity, it is not obliged to transform into an economic partnership or community.

Other NCO forms

As regards such NCOs as public association, trade union, religious organization, noncommercial cooperative, partnership of homeowners, association of employers and association of water users, the relevant law of the Kyrgyz Republic does not define which specific reorganization forms are permitted. As such, it is possible to refer to the general rule that such NCOs may utilize different reorganization forms.

Specifics of Transformation of NCOs to Commercial Organizations

The legislation dedicated to reorganization of NCOs does not fully regulate the range of possible transformation forms. The general principle is that transformation of a legal entity is possible only by preserving the initial level of legal capacity (general or special). Otherwise, it would be impossible to apply the rule of universal succession, because certain rights and obligations arising out of general succession would hang in the air when the successor is only capable of assuming certain, specific obligations. And, vice versa, an organization with special legal capacity may not transfer to a successor more rights than it has.⁵⁵

Thus, the transformation of an NCO to a commercial entity, and vice versa, is an exception to the general rule. The legislation of the Kyrgyz Republic regulates such transformation only in relation to associations of legal entities, which may be transformed to an economic partnership or community. Utilizing this approach, one may read the legislation as implying the non-application of the reorganization procedure to other organizational and legal forms of NCOs. However, developed systems of corporate law have gone further and established a general principle on the possibility of reorganization of NCOs, as a result of which a commercial organization is created, and vice versa.⁵⁶ The possibility of such reorganization is considered one of the manifestations of the principle of freedom of incorporation.⁵⁷

The specifics of reorganization as transformation means as well that the number of parties to the civil relationships does not change; all rights and obligations of the organization to be reorganized pass to the newly-created organizational and legal form. Therefore the legislation, in a range of cases, applies limitations on

⁵⁵ Civil law textbook, volume 1, 6th edition, updated under the editorship of A.P. Sergeev, U.K. Tolstoy, Publisher "Prospekt" (2003), p. 162

⁵⁶ Edward P. Welch, Andrew J. Turezyn. *Folk on the Delaware General Corporation Law: Fundamentals*. Boston, N.Y., Toronto, London. 1993, p.618,625,689.

⁵⁷ Marta Meinema, *Mandatory and Non- Mandatory Rules in Dutch Corporate Law*, 6.4 EJCL 157,158 (2002), www.ejcl.org/64/art64-10.html[08.01.03]

transformation from one form to other, taking into account the specifics of different NCOs and the diversity of goals they are pursuing.

Considering the above-mentioned points, it is possible to conclude that the legal regulation of reorganization of NCOs is not uniform and not consistent. In practice, this problem frequently leads to difficulties, and therefore it is necessary to conduct legislative reforms directed to its improvement, and to build a consistent system of legislation on legal entities.

§ 2. Liquidation of NCOs

Basic Notions; Grounds for Liquidation

Liquidation of noncommercial organization differs from reorganization. During liquidation, the NCO terminates its existence as a legal entity without passing its rights and obligations to other subjects. The Civil Code regulates in detail the grounds and procedures for liquidation, with the help of imperative norms, defining the content and sequence of actions during liquidation.

According to the general rule established by Article 96 of the Civil Code, a voluntary liquidation is carried out by the decision of its founders (members), or the statutory body of a legal entity, as authorized by statutory documents. Typical grounds for voluntary liquidation are:

- inexpediency of further existence of the organization;
- expiration of the term for which it was created;
- achievement or impossibility of achieving the charter goals of the organization.

Paragraph 1 of Part 2 of Article 96 of the Civil Code contains an additional basis for voluntary liquidation: the decision of a court on the nullity of registration of the legal entity. This rule causes confusion, because if the decision of the court enters into force, then the participants of the organization must respect it. It means in this case, liquidation is carried out based on a court decision, not on the willingness of participants.

Forced liquidation of noncommercial organization is carried out only by court decision. In Part 2 of Article 96 of the Civil Code, only certain grounds for forced liquidation are listed:

- carrying out an activity without proper permission (license);
- carrying out an activity prohibited by law;
- carrying out an activity with other repeated or gross violations of the legislation;
- systematically carrying out an activity that contradicts charter goals;
- withdrawal of a license from financial and credit organizations or institutions, for which the operations established in the license are the only permitted type of activity.

The list of grounds for forced liquidation is not exhaustive; there are also other grounds for liquidation of the organization by court decision, in cases provided by the Civil Code.

In relation to liquidation of particular types of NCOs, the law provides specific procedures. A decision on liquidation of a public foundation may be decided only in the courts by application of interested parties. Grounds for this type of liquidation include:

First of all, insufficiency of foundation property for carrying out its goals, when the probability of receiving necessary property is unlikely (this additional ground for liquidation of foundations is not relevant to other legal entities, considering the special importance of property for achievement of charter goals);

Secondly, if foundation goals cannot be achieved and the necessary changes of foundation goals may not be produced;

Thirdly, if a foundation deviates from its charter goals of activity;

And many other cases, provided by the law.

Bankruptcy may be considered one of the bases for forced liquidation.

Liquidation Procedure

The legislation of the Kyrgyz Republic sets a general procedure for liquidation that must be in strict compliance with the Civil Code and other laws. The liquidation procedure generally may be divided into three stages:

Stage 1 includes decisionmaking by founders (members) or the authorized body on liquidation of the NCO, appointment of a liquidation commission (liquidator), and setting procedures and terms for liquidation in compliance with the requirements of the Civil Code. Next, the founders (members) of the NCO or authorized body must adopt a decision on liquidation, and they are obliged immediately to inform the body that carries out the state registration of legal entities.

Stage 2 includes activity of the liquidation commission on identification of creditors, paying debts and distribution of property. At this stage, the liquidation commission works to identify creditors and bills receivable. For this purpose, the liquidation commission publishes in print media information on liquidation of the NCO, including procedures and terms for application of creditor's claims. The term for application of creditor's claims may not be less than two months from publication. The liquidation commission has the power to control actions of authorized body relating to disposal of the property of the legal entity. In particular, the statutory body may only transfer property or repay debt with the consent of the liquidation commission.

By the deadline for the application of creditor's claims, the liquidation commission must prepare an interim balance sheet reflecting the assets of the organization to be liquidated once the creditor's claims have been considered. The interim liquidation balance sheet must be approved by the founders (members) of the organization or the body that adopted the decision on liquidation.

If the available funds of the organization to be liquidated (except for institutions and associations of legal entities) are not sufficient for settlement of creditor's claims, then it may be liquidated in bankruptcy (insolvency) (see chapter 9.3). According to Article 164 of the Civil Code, if an institution lacks sufficient funds, its owner retains subsidiary liability on obligations of the institution. Similarly, according to Article 165 of the Civil Code, its members carry subsidiary liability on obligations of associations of legal entities. In other words, the creditors of these organizations have a right to settlement of their claims at the expense of institution owners and members of associations of legal entities.

Creditors of the organization to be liquidated are paid by the liquidation commission as set by the Civil Code and in compliance with the interim balance sheet as approved.

Stage 3 includes completion of the liquidation procedure. This involves preparation of the final liquidation balance sheet by the liquidation commission, which describes liquidation results of the organization and completion of the creditor's claims settlement. The liquidation balance sheet must be approved by members or by the body that adopted the decision on liquidation.

The liquidation of an NCO is considered complete and the organization terminated after a note is entered into the unified state registry of legal entities in compliance with the procedure set by the Law of the Kyrgyz Republic "On state registration of legal entities."

Specifics of Liquidations of Particular Forms of NCO

The legislation of the Kyrgyz Republic provides some specifics relating to the procedures on distribution of NCO property after settlement of creditor's claims in liquidation. During foundation liquidation, any remaining property is put toward the goals indicated in the foundation charter and not otherwise subject to distribution to the founders. During the liquidation of a non-state pension foundation, pension assets are directed only to settlement of depositor and recipient claims.

Funds from the of pension foundation property intended for ensuring its charter activities are directed to settlement of depositor's and recipient's claims, if there are insufficient pension assets and all other debts in compliance with sequence set by the legislation of the Kyrgyz Republic. Foundation funds, including revenues from sale of its property and after settlement of all obligations, are directed to the goals indicated in the foundation charter.

A credit union charter may stipulate that, in case of voluntary liquidation and after settlement of all obligations that exceed the total sum of paid savings shares, credit union assets may be distributed among its members in compliance with the conditions set out in the credit union charter. The liquidation of a credit union is carried out taking into account the following specifics:

- the credit union must submit its original license to the National Bank of the Kyrgyz Republic within three days from the decision on self-liquidation;

- the credit union must cease granting loans from the moment of the decision on self-liquidation;
- the credit union must settle all claims of its creditors and members.

Property and financial funds of associations of water users left after settlement of all obligations, other than fixed assets received from the government free of charge, are subject to distribution among association members by decision of the liquidation commission or body, having decided on liquidation in compliance with the conditions set by the charter.

§ 3. Bankruptcy of NCOs

Basic Notions; Legal Regulation of NCO Bankruptcy

Bankruptcy (insolvency) refers to the inability fully to settle creditors' claims on monetary undertakings, including the inability to make compulsory payments to the state budget and off-budget foundations (Part 1 of Article of the Civil Code), once such inability is recognized by a court or declared at a meeting of creditors held with the consent of the legal entity. A court must make an acknowledgement that a legal entity is bankrupt. The legal entity may also be declared bankrupt extra-judicially, in compliance with the legislation on bankruptcy.

Contemporary legislation defines the notions of insolvency and bankruptcy. In prerevolutionary Russian law, these notions were different. Insolvency was considered as insufficient property for settlement of creditors' claims, and bankruptcy was considered to be causing damages to creditors by increasing and hiding property of the owner, i.e., the "criminal side of those civil relationships which is called insolvency."⁵⁸ Such a difference is sometimes reflected in foreign legal schemes.⁵⁹

In contemporary legal regimes, the rules on insolvency are applied to legal entities, as well as to individuals, and not exclusively to those carrying out economic activity. Therefore, bankruptcy is not only related to the liquidation of commercial organizations.

It is important to note the legislative progress in this direction, which strengthens the tendency on broadening categories of entities subject to bankruptcy (insolvency), and gradually backing down from direct dependence between carrying out an economic activity and possibility of the debtor being recognized as bankrupt. Previously, the Law of the Kyrgyz Republic "On bankruptcy" as of January 15, 1994, No. 1431–XII, permitted an application of bankruptcy procedures only on the part of economic subjects (enterprises and banks irrespective of ownership forms, and their economic associations). The Civil Code of the Kyrgyz Republic, adopted in 1996, backed down from this principle, having recognized as bankrupt (insolvency) subjects foundations and cooperatives, and having legislated at the same time the

⁵⁸ G. F. Shershenovich, *Kurs torgovogo prava* [Trade law course], volume 4, Moscow (1912), p. 148, 580.

⁵⁹ *Grajdanskoe i torgovoe pravo kapitalisticheskikh gosudarstv* [Civil and trade law of capitalistic states], Moscow (1993), p. 441.

impossibility of applying bankruptcy procedure to institutions (Art. 96 of the Civil Code). Is it possible to consider the given norm as imperative?

An answer to this question is in the Law of the Kyrgyz Republic “On bankruptcy (insolvency)” as of October 15, 1997, No. 74. This law sets bankruptcy procedures of commercial and noncommercial organizations. The given law is applied to noncommercial organizations only in cases directly provided in the given law or other normative and legal acts on particular organizational and legal forms of NCOs (except for institutions).

It is important to note that the Law “On bankruptcy (insolvency)” as well as the Civil Code identify those organizational and legal forms, associations of legal entities and institutions, to which application of bankruptcy procedure is meaningless, as there is a possibility of recovering debt from members.

Criteria for Application of Bankruptcy Procedures to an NCO

As bankruptcy is applicable to NCOs as well as to commercial organizations, it is necessary to pay special attention to the answer to the question: why is bankruptcy of NCOs possible, and which forms of NCOs may be recognized as bankrupt?

In analyzing norms, defining notion of bankruptcy (insolvency) and goals of application of bankruptcy institute, it is important to set criteria for attributing NCOs to legal entities, which may be subject to bankruptcy.

Part 1 of Article 100 of the Civil Code sets out the criteria for application of bankruptcy to legal entities, including NCOs as well. Major criteria are their participation in civil and legal relationships in which legal entity possesses civil rights, corresponding to its goals, and carries obligations related to them. NCOs participate in different proprietary relationships and may be in the role of debtor and creditor. Like commercial legal entities, NCOs (except for institutions, as well as associations of legal entities) are independently responsible for their undertakings. Any way there is responsibility for non-execution or improper execution of an obligation.

There are insignificant limitations on participation of NCOs in economic turnover. Participation in economic activity does not contradict the essence of NCOs; the major difference with commercial organizations is that NCO profit must be directed to achievement of charter goals, and may not be distributed to founders. Therefore, in relation to its opportunities to enter into different transactions, the legal capacity of NCOs in essence does not differ much from legal capacity of commercial organizations. Moreover, the definition of bankruptcy (insolvency) does not indicate to the criteria that indebtedness must occur only while economic activity is being carried out.

The next criterion necessary for an application of bankruptcy is the presence of a property in the ownership or economic management control of the organization, which may be claimed to. This criterion is related to the legal entity's independent property responsibility.

Most NCOs hold property based on the right of ownership. Institutions own property based on the right of day-to-day management, and as such, have quite

limited property disposal opportunities. The application of bankruptcy procedures here is meaningless, as all property belongs to the owner, who carries additional responsibility in relation to the organization's debts. Due to this fact, bankruptcy is not applicable to institutions.

It is thus possible to conclude that one of the criteria for non-application of bankruptcy on NCO is the presence of a subsidiary responsibility of its founders. Due to this, such NCOs as associations of legal entities may not be considered as bankrupt, as its members carry subsidiary responsibility on its debts.⁶⁰ It is also possible to conclude that almost all NCOs have economic prerequisites to bankruptcy.

As NCOs actively participate in civil transactions, it is necessary to ensure as creditors' interests, including interests of organization's workers, as well as interests of the organization itself in case the organization becomes insolvent. As such, one task of bankruptcy is to protect creditors' interests and proportional settlement of their claims in established sequence procedure, as well as granting an opportunity for the debtor to restore its financial standing, and to continue activity after settlement of creditor's claims. The non-application to NCOs of bankruptcy not only decreases the opportunity for creditors to recover debts from insolvent NCOs, but also infringes the interests of the organization-debtor, as the organization is no longer entitled to use funds provided by the legislation on bankruptcy in order to restore solvency.⁶¹ However, it is unlikely to apply bankruptcy to NCOs without taking into account the goals of their activity.

Therefore, in order to ensure the equality of subjects of civil relationships, it is necessary to solve the problem with bankruptcy of NCOs by conducting legislative reforms, particularly by introducing amendments to the Civil Code and legislative acts on bankruptcy, identifying the types of NCOs to which bankruptcy is applicable.

Bankruptcy of Particular Types of NCO

Bankruptcy of NCOs is regulated by the legislation on bankruptcy. Certain specifics are described below.

Bankruptcy of public foundations

A public foundation may only be recognized judicially as bankrupt. During bankruptcy, a special administration (liquidation method) or out-of-court settlement is applied. The procedure of readjustment or rehabilitation is not applied.

The judicial bankruptcy process is carried out by the manager of a public foundation, based on a decision of the supervisory council or other supervisory body. In the case of liquidation of a public foundation, any property left after settlement of

⁶⁰ Civil law textbook, volume 1, responsible editor professor E.A. Suhanov, 2nd edition, updated, Publisher "BEK", Moscow (2002), p. 207, 272, 268.

⁶¹ U. Svit, *Vozmojno li bankrotstvo nekommercheskih organizatsii* [Whether bankruptcy of noncommercial organizations is possible], 'Rossiiskaya justisia', # 10 (2000).

creditors' claims are directed to social, charitable and other public benefit goals, as indicated in the foundation charter and as directed by the administrator.

Bankruptcy of cooperatives

A cooperative may be accepted as bankrupt judicially, upon the application of creditors. The conditions for bankruptcy and liquidation of cooperatives are:

- non-settlement of creditors' claims for payment of debts and other obligations (for goods, services etc.) fully at maturity;
- debtor's refusal to settle such claims fully at maturity;
- debtor's inability to settle such claims fully at maturity;
- non-settlement of creditor's claims by debtor in the process provided by Article 27 of the law on bankruptcy prior to the court's decision on the merits of bankruptcy case;
- ascertainment of fact by the authorized supervisory body on the excess of debtor's obligations over its assets;
- within three months of approval of an annual balance sheet that includes covering losses by additional fees, the non-execution of obligations by cooperative members.

At the same time, cooperative members carry subsidiary responsibility on cooperative's obligations to the extent of the invested portion of the additional fees of each cooperative member.

Provisions on bankruptcy in case of insolvency also are applicable to credit unions and micro-credit agencies, and they are liquidated like banks, and in compliance with the legislation on bankruptcy.

Specifics of Legal Regulation of Membership NCOs

Chapter 8. Public Associations

Public associations are the most widespread organizational and legal form of NCOs, due to both the long history of their recognition in law and the relative simplicity of their creation, management and activity.

§ 1. The Right of Association

According to Article 35 of the Constitution of the Kyrgyz Republic, each person has the right to freedom of association. Individuals have the right to create public associations on the basis of free will and common interests. The state insures the observance of the rights and legitimate interests of public associations. Thus, the right to association does not mean that it is only the right to create registered public association. It is much wider and includes a right to associate without forming an organization.

Freedom depends in part upon individuals' level of organization. Within the framework of a public association, individuals have the opportunity to protect their interests by using various forms of jointly organized public activity and uniting their efforts to carry out particular tasks.⁶² The right to association, and to creation of unions and associations, is enshrined in most current European Constitutions. Some of them give this right only to citizens⁶³ (Austria, Belgium, Bulgaria, Germany, Greece, Denmark, Italy, Kazakhstan, Lithuania, Luxembourg, Macedonia, Moldova, Monaco, Portugal, Romania, Ukraine, Croatia, Sweden); others, to everyone who is on the territory of the country.⁶⁴

Members of a public association possess all the rights and perform all the duties stipulated in the charter: to participate in the decision-making process on issues related to the activity of association; to select and be selected to its governing bodies, etc. One may serve as member of more than one public association.

The formation and activity of public associations and other organizations may not cause damage to the Constitutional system, the state or national safety (Item 4 of Article 4 of the Constitution). The Criminal Code of the Kyrgyz Republic, in Item 259, provides financial penalty or jail for term up to 2 years for creation of a public association which trespasses to the person and rights of individuals and Constitutional system.

Associations are forbidden from creating military formations. The creation of secret associations is not allowed. Article 4 of the Constitution permits associations to undertake any actions and activity, except those that are forbidden or limited by the Constitution and laws of the Kyrgyz Republic.

This discussion has described how the basic right of citizens to freedom of association is regulated today. At the same time, the historical roots of public associations are much deeper.

§ 2. The History of the Legal Regulation of Public Associations

The status of public associations has been changing as society and the status of individuals has changed: from an unlimited right to association in Ancient Greece; until regulation of the separate rights and duties of associations in Ancient Rome; through professional medieval corporations, with rigid regulation of labor and the way of life of members, and prohibitions for creation of political organizations; to trade unions and political parties of the XIX century, and assignment of the right to freedom of association to national legislatures; and, in the middle of the XX century, to international norms.⁶⁵

⁶² Soodanbekov S.S. and Ukushev M.K., *Konstitusionnoe pravo Kyrghyzskoi Respubliki* [Constitutional right of the Kyrgyz Republic] (General and Specifics parts), Bishkek (2001), p. 210

⁶³ Specific of Island's Constitution is that this right is granted to the population (i.e. citizens by essence of art 74 and others).

⁶⁴ *Konstitusionnoe pravo gosudarstv Evropy* [Constitutional law of European states: textbook for student of law universities and departments, responsible editor D.A. Kovachev, Moscow (2005).

⁶⁵ See Uriev S.S., *Pravovoi status obshchestvennykh ob'edinenii* [Legal status of public associations], Moscow (1995).

International recognition of human rights in the General Declaration of Human Rights of December 10, 1948, became a significant event in the world history. The status of public associations received an international legal basis and everyone's right to freedom of associations (unions) was recognized as an inalienable human right.

In spite of the fact that the right was proclaimed in the very first editions of the Constitutions of Soviet Union and union republics, any public organization until the beginning of the 1990s was created with the permission, approval and control of party bodies.

The normative status of public associations was defined by Orders of Central Executive Committee and Council of National Commissioners of USSR as of January 6, 1930 "On procedure for establishment and liquidation of all-union communities and unions which do not pursue profit-making" and as of September 7, 1932 "On procedure for activity within USSR of foreign and international voluntary communities and unions", as well as by the Order of All-Russian Central Executive Committee and Council of National Commissioners of Russian Soviet Federative Socialist Republic (RSFSR) as of July 10, 1932 "On approving Regulation on voluntary communities and unions".

The Law of the USSR "On public associations" became the first law regulating the legal status of associations, in 1990. One year later, on February 1, 1991, the Law "On public associations" was adopted in the Kyrgyz Republic, which provided the right to unite into organizations on the basis of common interests. The law defined the legal status of public associations, regulated in detail the procedure for their creation, rights and activities and the financial basis of public associations. Public associations directly included political parties, mass movements, trade unions, women's and veteran organizations, organizations of disabled persons, youth and children's organizations, scientific, technical, cultural and educational, sports and other voluntary communities, creative unions, foundations, associations and other associations.

The development and liberalization of civil relationships have necessitated amendments to the laws of public associations. Today, the legislation in this sphere has been completely updated. The Civil Code of the Kyrgyz Republic of 1996, along with the regulation of general provisions on NCOs in Item 161, sets out the legal basis for public associations. The basic normative-legal act that defines the legal status, procedures of creation and principles of the activity of public associations is the Law of the Kyrgyz Republic "On noncommercial organizations," from October 15, 1999, No. 111.

§ 3. Notion and Features of Public Associations

According to Item 85 of the Civil Code, a public association is an independent organizational and legal form of NCO.⁶⁶ The notion of public association is described in Item 161 of the Civil Code and in Item 2 of the Law "On noncommercial

⁶⁶ In Russian Federation in contrast to legislation of the Kyrgyz Republic public association is a generic term, which means any voluntary, self-administered, noncommercial formation, created by initiative of citizens united based on common interests for implementation of common goals, determined in the charter of public association.

organizations.” Public associations are recognized as voluntary associations of individuals who have united on the basis of their common interest in satisfaction of spiritual or other non-material needs.

A legislative definition of the notion of “public association” highlights the general features characterizing this type of NCO:

- Volunteerism,
- Association of citizens,
- Basis – common interests,
- Purpose of creation – satisfaction of spiritual or other non-material needs.

Each of these features is discussed below in more detail.

Voluntary association. The Constitution of the Kyrgyz Republic guarantees that joining and withdrawing from public association is voluntary. Public associations are created as a result of the free will of its members. It is not possible to create a public association on the basis of an administrative act, such as an order, for example.

Association of individuals. A public association may only be created by physical persons. It is one of few forms of NCOs in which legal entities cannot participate as members. This feature of public associations distinguishes them from other organizational and legal forms. By contrast, associations (unions) may only have legal entities as members.

The feature of *common interests of citizens* characterizes public organizations as those created by people pursuing the same goal.

The purpose of creation is *satisfaction of non-material needs*. Public associations are created in order to satisfy various, non-material and, first of all, spiritual needs. In general, the notion of “non-material needs” includes any interest that is not directed toward the generation of material benefits.⁶⁷ The notion of “spiritual needs” also covers a wide range of goals. This term is very often used to indicate only the religious needs of citizens, which is unjustified narrowing of the given concept. In broad terms, *spiritual* is opposed to *material*. Spiritual needs are needs from the world of ideas, knowledge and art values.⁶⁸ As much as spiritual needs may vary, public associations created for their satisfaction may also vary. And it is necessary to note that the satisfaction of spiritual needs is frequently identified with the satisfaction of material needs, for example, in the activities of such public associations as a union of writers, union of composers or chamber of tax advisers, or the Association “Lawyers of Kyrgyzstan.” Their main purpose is representation and protection of the participants’ interests -- that are connected to various kinds of economic activities, which ultimately provide realization of basic, non-material purposes. There are also examples of charitable funds that have created commercial organizations, for example, in order to process agricultural products for the market,

⁶⁷ *Nekommercheskie organizatsii Kyrgyzstana* [Noncommercial organizations of Kyrgyzstan: legal basis, accounting and taxes], Bishkek (2004), p. 136.

⁶⁸ *Grajdanskoe pravo Rossii* [Civil law of Russia: general part], ed. O.N. Sadikov, Moscow (2001).

directing profits to needy and large families for clothes, books and school supplies for high school students. This activity of a fund corresponds to the requirements of the law and satisfies its charter goals. The non-material needs of individuals are very diverse. Therefore, the legislation regulates the activity of associations only in the most important spheres (political parties, trade unions, religious organizations, co-operatives, etc.).

In spite of the fact that public associations and religious organizations are mentioned in one of the article of the Civil Code, they are not identical, because the goals, organizational principles and activities of public associations and religious organizations have different and specific characters. For this reason, the activity and legal status of public associations and religious organizations were always regulated by different laws. The law on NCOs does not regulate the activity of religious organizations.

§ 4. The Creation and Activity of Public Associations

To obtain the status of legal entity, public associations must register with the Ministry of Justice. Only after state registration, and from the date of inclusion into the state register of legal entities, a public association obtains the rights of a legal entity and its inherent legal capacity.

The Law on NCOs also acknowledges the existence of public associations without state registration and without the rights of legal entities. Some types of unregistered public associations are known in domestic legislation as “territorial and public self-administration bodies” (“TPS Bodies”). TPS Bodies are voluntary associations directed to solve local issues, i.e. issues that arise where the members are living. They include councils and committees of micro-districts, housing complexes, houses, streets, quarter committees and other bodies created by residents, taking into consideration local conditions and traditions. Comparing the legal capacity of such organizations with organizations that have the status of legal entity, it is necessary to note that the former do not become subjects of civil relationships.⁶⁹ For example, Item 173 of the Civil Code permits that participants of transactions may be either physical or legal entities. Therefore, a public association may not conclude a transaction as such without forming a legal entity. Instead, for example, an agreement may be concluded by a participant of the public association independently, or on the basis of a power of attorney on behalf of other participants. Thus, state registration of public associations essentially expands the volume of legal capacity of the given civil society institutes.

Public associations registered as legal entities possess additional rights in pursuit of its charter goals and for the protection of the common interests of participants.⁷⁰ A public association may own lands, buildings, transport, equipment, property for social purposes, monetary resources, securities and other property

⁶⁹ See *Grajdanskoe pravo* [Civil law. Volume I], ed. E.A. Suhanov, Moscow (2004).

⁷⁰ Melnikov T.E., *Novii poryadok registrasii obshchestvennykh ob'edinenii* [New registration procedure of public associations], Magazine “Advokat”, # 11 (2002).

necessary for the material maintenance of its activity specified in the charter. It may also have the opportunity to participate in a certain public legal relationships.

Public associations have the right to carry out an economic activity. However, as public associations are NCOs, economic activity should not be their main goal. The economic activity of these organizations should be of the means of obtaining resources used for realization of charter goals. Such activity may include manufacture and realization of goods, work performance, services providing with the goal of receiving compensation, and other types of economic activity, if it does not contradict the goals of the organization.

§ 5. Membership in Public Associations

The main feature of a public association is its membership. A public association is an organization created for the protection of the common interests of its members and for the achievement of its charter goals through joint activity. A voluntary association assumes free, conscious will; therefore, such organizations allow capable citizens to pursue their common interests in satisfying spiritual or other non-material needs and in seeking a joint solution to the charter tasks of the organization.

The legislation on public associations includes as participants only founders and members. The difference between them is when they joined the public association. At the moment of creation, public association must have no less than three founders. All members have equal rights in managing the activity of the association: each member has one voice in decision-making. They also bear equal responsibilities, including membership fees, for which failure to pay they may be excluded from the organization according to the process set out in the charter. The legislation does not limit members of public associations from participating in several such organizations.

Membership is based on an individual application or document that allows existing members to consider the overall number of members of the organization. The rights and duties, conditions and procedure for membership admission and withdrawal is an essential component of the charter of a public association.

The property relationships between a public association and its members develop on a voluntary basis. The legislation does not place limitations on the founders in defining the amount of membership fees and types. Therefore, the founders may hand over any property as a membership fee, including monetary funds. Payment of membership fees is not based on a civil-law obligation and, therefore, an application for recovery of these fees is not possible. The only consequence for default is expulsion from the organization. According to Item 518 of the Civil Code, membership fees may be considered as donations made with a certain purpose. This purpose is to provide for the adequate functioning of the organization. Thus, each member of a public association has no ownership right to the property share that belongs to public association, even in the case of withdrawal or expulsion from membership. The ownership right received or purchased by a public association

belongs to the public association, as it is a legal entity. A public association is an entity and the only owner of its property, and its members do not receive any property rights. For this reason, the legal relationship that develops within the membership organization frameworks carries only an organizational, non-property character. There is no mutual property responsibility between these organizations and their members. As a legal entity, a public association is responsible for its obligations and is not responsible for its member's obligations. Members of a public association are likewise not responsible for the obligations of a public association. A participant's withdrawal from an organization does not involve any property consequences for him.

§ 6. Governance of Public Association

According to Item 88 of the Civil Code, the bodies through which a public association exercises its civil rights and takes up civil duties are the leading and controlling bodies. The supreme body of a public association is the general meeting, which consists of all its members. A general meeting has a quorum if no less than one-third of its members who should participate in the decisionmaking process are present, except that when a public association has more than 100 members, then no less than 25 members must be present. When the legislature established the quorum requirement, it derived from the fact that a public association may have a great number of people as its members who might be difficult to gather for general meeting. However, in practice, the problem turns out to be a lack of legal regulation. For example, in a public association consisting of 3 members, a decision is recognized as legitimate if it was made by one of them. In that case, each member of the public association has the right to take functions of general meeting and to make decisions.

The competence of a general meeting is the most important issue reflected in the charter. Thus, the exclusive competence of the general meeting includes the following issues:

- to introduce amendments to the charter;
- to define priority directions of the activity of public association and the procedure for property use;
- to accept and expel and permit the withdrawal of members of the public association (if otherwise is not provided by the charter);
- to provide the procedure for formation of governing bodies;
- to approve the annual report and annual balance;
- to make decisions on creation of branches and representatives;
- to participate in the activity of other legal entities;
- to reorganize and liquidate;
- to decide other issues, except those referred by the charter to competence of other bodies of public association.

A public association may make decisions by carrying out sessions of the general meeting and by written questioning of members. The manner of carrying out sessions of the general meeting and written questioning is regulated by the charter.

A public association may create other governing bodies. In this case, the members of the public association are granted broad freedom. Such governing bodies are created and have the powers and activities delegated by the charter of the public association. For example, a permanently operating executive body (board, directorate etc.), the head of which is an individual executive body of the organization may be created in public association. The resolution of issues that are not indicated as being within the exclusive competence of the supreme body are considered to be within the competence of the governing bodies of public association. The members of a public association may also decide to establish a supervisory body (supervisory board, council, etc.).

§ 7. Reorganization and Liquidation of a Public Association

The rules for reorganization and liquidation of a public association are contained in the civil legislation. Of all the different types of reorganization, the legislation only refers to merger, splitting up and separation, in reference to public associations. As a result of the splitting up or separation of a public association, at least two new entities emerge. Concerning merger, it is important to note that because of the different legal capacity and also purposes of creation of commercial entities and NCOs, these two types of entities may not merge.

Members of a public association have the right to decide to liquidate their entity, in accordance the general rules of civil legislation. In contrast with funds and noncommercial co-operatives, a public association cannot be put into bankruptcy. The property remaining after satisfaction of the requirements of creditors is distributed pursuant to the decision of the liquidating commission or the body that decided to liquidate. For example, the public association "Ukuk," an international legal fund, decided to liquidate. Its charter requires that the property remaining after liquidation goes on the purposes specified in the charter. "Ukuk" handed over the property to the association "Lawyers of Kyrgyzstan," which has the same purposes.⁷¹ Thus, if legal continuity is not raised during liquidation, the remaining property (taking into consideration the noncommercial character of the given organization) is not subject to division among members, and will continue to be used for the initial purposes for which the public association was created.

Summary

Public association possesses the following basic characteristics:

- Participants – only individuals;
- Voluntary association;
- Basis – common interests;

⁷¹ Practical manual on application of part I of the Civil Code of the Kyrgyz Republic, Bishkek (1999), p. 7 – 8.

- Purpose – satisfaction of spiritual or other non-material needs;
- Noncommercial organization, but has the right to carry out industrial or other economic activities only for achievement of purposes for which they were created;
 - Participants do not retain the rights to property handed over to public association, including membership fees;
 - Participants are not liable for obligations of the organization, and the organization is not liable for obligations of its members;
 - The property and membership fees handed over by members to the public association belong to public association;
 - Presence of a charter.

Chapter 9. Associations of Legal Entities (Associations and Unions)

For legal entities, the tendency to co-ordinate joint efforts is the same natural process as for physical persons. Therefore, the norms that regulate associations of legal entities are similar to those for public associations. For legal entities, the necessity to unite is historically and politically caused by reaction to “external irritants.” The obsessive financial and political control of bureaucratic institutions, imprudence of competitors, intervention of foreign business, variability of economic climate force one organization to unite with others on the basis of common interests. In this chapter, the legal and political aspects of this phenomenon are considered in more detail.

§ 1. Notion and Forms of Associations of Legal Entities

Associations of legal entities are associations of commercial and/or noncommercial organizations, whose members themselves corporations, which have the purpose of coordinating their members’ activities and also representing and protecting their common interests. Associations of legal entities are independent legal entities that pursue non-commercial goals, and thus are also considered NCOs.

Associations and unions are forms of associations of legal entities. Domestic legislation, as with other legislation of CIS countries, does not differentiate between “association” and “union.” Both are considered varieties of associations of legal entities. At the same time, according to universal rules on interpretation, *association* is an association of one type of activity,⁷² while *union* is an association for achievement of particular joint goals.⁷³ Thus, for an association, the dominant feature is a single type of participants, while for a union, it is the common goals of the association. In practice, an association is an association of one type of organization, as considered from the perspective of the features of the organizational in general, while unions are associations in which the basis are shared issues (for example, territorial generality, or common market on sale of products).

In developed legal systems, mainly on the European continent, the division of legal entities into **corporations and institutions**, where corporations represent voluntary associations of physical and (or) legal entities, organized on the basis of membership of their participants, is traditional. Associations of legal entities (associations and unions)⁷⁴ may be in a group of corporate (member) organizations. Also, in western legislation, the notion “association” is applicable to associations of both physical and legal entities.⁷⁵

⁷² Ojegov S.I., Shvedova N. U., *Tolkovyi slovar’ russkogo yazyka* [Russian dictionary], Moscow (1993), p. 28

⁷³ *Id.*, p. 779

⁷⁴ Civil law textbook: volume 1, ed. E.A. Suhanov, 2nd edition, Publisher “BEK”, pp. 180-181 (2002).

⁷⁵ *Regulirovanie pravovogo statusa nekommercheskih organizatsii v grazhdanskikh kodeksah gosudarstv mira* [Regulation of legal status of noncommercial organizations in civil codes of states of the world], ed. V. Ovcharenko, 4th edition, p. 47 (2005).

§ 2. Legal Status of Associations of Legal Entities

In *Bases of the Civil Legislation of the USSR and Union Republics* (hereafter “*Bases of Civil Legislation*”), developed during the last years of USSR’s existence, the term “*economic association*” is used. This term included voluntary associations of legal entities (commercial organizations), created on a branch, territorial or other principle, with the goal to coordinate activity, protect the rights, and represent the common interests in the state and other bodies as well as in international organizations. Article 23 of *Bases of Civil Legislation* permitted that “[e]conomic associations may be created by their participants in the form of economic associations (unions) and enterprises.” That is, according to *Bases of Civil Legislation*, associations and unions were equal. However, according to the same source, economic associations belonged to the group of commercial organizations. This was due to the fact that the legislation allowed associations to carry out the centralized performance of certain industrial and other economic functions by mutual decision of participants. Also, according to Item 18 of the “*Bases of Civil Legislation*,” economic associations of legal entities (commercial organizations) were considered legal entities, the participants of which preserved their liability rights.

In 1991, with adoption of the Law of the Republic of Kyrgyzstan “On public associations,” public associations were granted the right to unite into unions on a voluntary basis. Public associations included political parties, mass movements, trade unions, female and veterans’ organizations, organizations of disabled persons, youth and children’s organizations, scientific, technical, cultural and educational, sports and other voluntary communities, creative unions, community, funds, associations and other associations of citizens. Thus, the abovementioned law provided that either commercial or noncommercial organizations could unite into associations and unions.

On October 29, 1994, the Inter-Parliamentary assembly of CIS state-participants adopted the *Model Civil Code for CIS Member States (Part 1)* (“*Model Code*”), which is the basis of the Civil Codes of CIS countries and has defined the legal bases of the organization and activity of associations of legal entities (associations and unions). As such, associations of legal entities were recognized as NCOs without the right to realize economic activity (for commercial organizations), and the possibility to create associations of commercial and (or) noncommercial organizations was provided.

In 1996, on the basis of the Model Code, the first Part of the Civil Code of the Kyrgyz Republic was developed and adopted. And, in 1999, the Law “On noncommercial organizations” of the Kyrgyz Republic was adopted and it defined the legal status of associations of legal entities.

Specifics of Regulation of Associations of Commercial Organizations

The goal of an *association of commercial legal entities* is to coordinate the economic activity that is carried out by them, as well as to represent and protect their common interests. The possibility to implement other activities by the association, including economic activity, is excluded. Thus, in comparison with other NCOs that independently define their spheres of activity and possess the right to carry out certain types of economic activity, *the legal capacity of associations of commercial organizations is limited*.

If, by decision of its participants, an association of legal entities carries out economic activity, the association will be transformed into an economic community or partnership, or may create an economic community for realization of economic activity, or may participate in such a community. However, the income received from such activity may not be distributed among participants of the association; it should go for needs of the association as a whole.

Property of Associations of Legal Entities

An association of legal entities is the owner of the property purchased with the regular and one-time inpayments from participants, and also other sources permitted by the legislation. The property of an association of legal entities is primarily formed from entrance and membership fees of participants and their donations, which become association property. The law does not set any requirements for minimum property of such NCOs, or in relation to participants' fees. This property may be used by the association consistent with the special legal capacity provided in its statutory documents. While there may be some rights of participants in a legal entity to its property, this is not the case with associations of legal entities. In these groups, the founders and participants do not preserve obligations or rights in relation to that property. In addition, founders and participants of the legal entity do not have rights to property upon withdrawal from the organization, nor at its liquidation.

In the event the organization becomes indebted, the members of an association of legal entities bear subsidiary responsibility in the amount and in the order provided by the statutory documents. Such subsidiary responsibility of members of an association of legal entities is an essential feature of its civil-legal status. The possibility to define independently the amount and order of subsidiary responsibility represents an exception of the general rules on subsidiary responsibility on obligations.

§ 3. Creation and Termination of Associations of Legal Entities

Founders of associations of legal entities may be two or more legal entities. The legislation does not establish any restrictions concerning the types of uniting organizations, for example, commercial and NCOs, national and foreign legal

entities. It is not necessary that it should be noncommercial or commercial organizations of one type, for example, or only fund or only religious organizations, only joint-stock companies or limited liability companies. It is acceptable to create mixed unions, although the practical necessity to coordinate the activity or jointly protect common interests often arises in groups (types) of legal entities with similar activity.

Also, the legislation does not provide a minimum number of participants for such organizations; this is defined by the founders. The same legal entity may be in several associations of legal entities, including associations with similar activities. As a rule, the statutory documents of associations of legal entities provide for simplified manner of acceptance and withdrawal of members. It allows them to add and remove members without going to the Ministry of Justice.

Statutory documents of association of legal entities include the *statutory agreement* signed by its members, and the *charter* confirmed by them. There are numerous requirements for the charter. The legislation establishes obligatory requirements concerning the name of the association. The name of the association of legal entities should contain the main goal of its activity and activity of its members with inclusion of word "association" or "union."

Besides the general data for all legal entities (Item 4 of the Article 87 of the Civil Code of the Kyrgyz Republic), such as name of a legal entity, legal address, purpose and goal of the activity (that defines the character of its special legal capacity), the statutory documents of an association of legal entities should contain the conditions on the structure and competence of the governing bodies and the procedure for making decisions. Decisionmaking should include the issues that are to be decided unanimously and those that require a qualified majority of votes of members. It also should contain the order of distribution of the property remaining after liquidation and the order of responsibility of members for the obligations of the association. The legislation does not regulate in detail the legal capacity and procedure of the activity of association of legal entities, providing some flexibility for its founders and members.

Termination of activity of association of legal entities through reorganization and liquidation is carried out according to general rules of reorganization and liquidation of legal entities that are provided in civil legislation. An association of legal entities (of commercial organizations), if permitted to carry out an economic activity, may be *transformed into economic partnership or community*. Upon the liquidation of an association of legal entities, the rest of the property which remained after its liquidation goes on the purposes defined in its charter.

There is a question whether it is possible to use bankruptcy procedure in order to terminate the given organizational-legal form. According to Item 165 of the Civil Code, members of an *association of legal entities* carry subsidiary responsibility on obligations in the amount of and order stipulated in statutory documents. Thus, in case of insufficient means, creditors may demand repayment of their debts at the

expense of the personal property of the members of the association. For this reason, bankruptcy is not meaningful here, in spite of the fact that these matters are not regulated by the legislation.

§ 4. Administration and Legal Status of Members of the Association

As associations of legal entities are created on the basis of corporate memberships, its *supreme body* is the *general meeting of participants* (i.e., their representatives), the competence and operating procedure of which should be defined in the charter. The legislation of the Kyrgyz Republic applies to associations of legal entities the regulations that regulate activity of public associations. According to Item 20 of the Law of the Kyrgyz Republic, “On noncommercial organizations,” the *exclusive competence of the general meeting* of an association includes the following issues:

- to introduce charter amendments;
- to define priorities of the activity of public association and the order of property usage;
- to accept and withdrawal members of public association (if otherwise is not provided by the charter);
- the order of formation of governing bodies;
- to approve the annual report on the activity and annual balance;
- to make decision on creation of branches and representations;
- to participate in the activity of other legal entities;
- to reorganize and liquidate;
- Other issues except those referred by the charter to competence of other bodies of public association.

As with other governing bodies, the legislation of the Kyrgyz Republic preserves the right of their creation to participant’s decision, but their powers and the order of creation and activity should be regulated in the charter.

Members of an association of legal entities preserve their independence and the rights of their own legal entity. An association of legal entities is not responsible for the obligations of its members. Members of an association of legal entities carry subsidiary responsibility on obligations in the amounts and order stipulated in statutory documents. The basis and limits of members responsibilities are defined in the statutory documents of the association.

Members of an association of legal entities have the right to participate in decisionmaking regarding the organization’s activity on an equal basis with other members. Members of an association of legal entities also have the right to use its services free of charge, if not otherwise stated in the statutory documents and if not otherwise considered to be services.

The legislation provides a special procedure for withdrawal of members of an association of legal entities. A member of an association of legal entities has the right *by its own decision (voluntarily)* to leave the association upon completion of the financial year, since his withdrawal does impact his duty to make certain payments. However, for two years from the moment of withdrawal, the member carries subsidiary responsibility for the obligations of the association, in an amount proportional to his or her fees. The subsidiary obligation of members follows from the fact that an association of legal entities is financed by its members.

A member of an association of legal entities has those responsibilities set out in statutory documents, including the payment of member fees and other payments, for violation of which it may be *expelled (compulsory order)* from the association by a decision of the other participants.

In relation to property payment and member's withdrawal from association of legal entities the rules on withdrawal from association of legal entities are applied, i.e. he or she carries subsidiary responsibility on obligations of association proportionally to his or her fees within two years from the moment of his withdrawal.

New members may be accepted into an association by the decision of its participants. The order of acceptance of new members and voting procedure should be stipulated in the statutory documents of the association of legal entities.

§ 5. Some Problems of the Laws regarding the Activities of Associations of Legal Entities

The most problematic legal issues in relation to associations of legal entities are their *creation and functioning*. Another important aspect that is necessary to highlight is the issue of the composition of association members. As mentioned above, in the Civil Code and the Law of the Kyrgyz Republic "On noncommercial organizations," associations (unions) are presented as associations of legal entities. The definition says that *individual entrepreneur* is a person who is carrying out economic activity **without formation of a legal entity**, according to the civil legislation.

In the legislation of the Kyrgyz Republic there are no norms that provide the possibility for an association of *legal and physical persons* to unite within the framework of an association of legal entities. The given situation demands resolution, as, in practice, associations of such entities are widely disseminated in the Kyrgyz Republic, and moreover, there are legislative norms regulating independent forms of associations, such as *associations of water users, partnership of homeowners and associations of employers* representing associations of physical and legal entities.

By its legal nature, associations of legal entities (associations and unions) are close to public associations. The general rules on public associations apply for associations of legal entities as well.

Following the examples of the structure of associations of physical persons (public associations) and legal entities (associations and unions) in foreign countries, it would be possible to create a legal form of association that would explicitly permit legal and physical persons to associate.

Economic Activity of Associations of Legal Entities

The legislation does not contain restrictions on economic activity by associations of NCOs. However, Item 1 of Article 165 of the Civil Code restricts economic activity of associations of commercial organizations: “if by a decision of its participants, an association (union) carries out an economic activity, such association (union) is a subject to transformation to an economic community or association.”

In legal practice, there are certain complexities with the application of norms on associations of legal entities, as the legislation does not regulate the economic activity of associations of legal entities that have both commercial and noncommercial members. It would be reasonable for the legislator not to differentiate between regulation of the activity of association of commercial and NCOs, as the specifics of the organizational-legal form “association of legal entities” is coordination of the activity of their participants as well as representation and protection of their common interests.

§ 6. Political and Economic Impacts of Associations of Legal Entities

The experience of economic reforms in countries with a transition economy shows that their success depends in part on support of reforms by associations of entrepreneurs interested in effective economic transformation. The mechanism of their interaction with the state in the process of political and economical transformation is straightforward: *companies through their associations jointly wield political influence on the legislative process in order to effectuate their interests.*

In addition, associations of legal entities are actively involved in legislative activity and discussions of new normative legal acts, national concepts and development programs on the initiative of *state bodies*. Associations of legal entities also participate in advice and coordination of state formations. As an example, the Higher Economic Council of the Government of the Kyrgyz Republic created in February 2006 included representatives of the business community in addition to senior officials of the Government and Parliamentarians.

The main principles of political and economical influence of associations of legal entities on community development are:

- Participation in legislative activity;
- Joint participation with public authorities and local self-government bodies in resolving social and economic problems and in defining priorities of social and economic policy;
- Making joint decisions on building economic relations within the private and state sectors.

The state also may look to associations of legal entities to achieve certain purposes. Associations of entrepreneurs are frequently used as a tool of economic control from the government side. For example, in Latin America, some authorities concluded large-scale agreements with trade unions and groups of businesspeople, who influence salaries, prices and other major economic parameters. Though these agreements strengthen stable economic conditions, they frequently limit market reaction to changing conditions, and also narrow market openness for competing companies, which are not key goals of business.⁷⁶

In other words, there are also some problems with reliance on these associations. Private companies do not always have or express common interest in regulatory or legislative changes. In fact, enterprise structures often have opposite views on legislative and political decisions. Very often, the efforts of associations of entrepreneurs focus on creation of advantages for themselves, for example, in preference to competitors by restricting the latter's access to the market. Such associations may begin with latent pressure on the government in order to preserve their advantages, and they may gradually become opponents of reforms.

Due to the low level of political culture in countries with transition economies, there are some negative tendencies that may distort the public role of associations of legal entities, namely:

- Lobbying of interests to narrow enterprise fields (closing markets, raising barriers to healthy competition);
- Use of associations of legal entities to carry out latent monopolies, favoritism and other anti-market economic tendencies.

⁷⁶ Association of entrepreneurs and democratic reforms: John Sullivan, *Economic Reform Today*, Number 2, 1995.

Chapter 10. Noncommercial Cooperatives

§ 1. Historical Development of the Legal Status of Noncommercial Cooperatives

A study and assessment of the situation surrounding noncommercial cooperatives is impossible without considering the history, emergence, and development of the cooperative system. It is necessary to begin with an examination of the time period during which Kyrgyzstan was still a member of the USSR. It is during this time period when the cooperative system originated.

On May 20, 1924, the All-Russian Central Executive Committee and the Council of National Commissioners of the USSR adopted a decree titled “On consumer cooperation,” which marks the beginning of the cooperative system’s existence in the USSR. It is well known that, during the existence of the USSR, there was a strong sector known as “consumer cooperatives” in the country. The activity of consumer cooperatives was regulated by various legal acts of the Council of Ministers of the USSR. On May 26, 1998, the law “On Cooperation in USSR,” which united all normative acts concerning the regulation of cooperatives, was passed. This law divided cooperatives into 2 types: industrial and consumer.

There is currently a false belief that all consumer cooperatives are noncommercial cooperatives and that the terms “consumer cooperative” and “noncommercial cooperative” are synonymous. However, the meaning of “consumer cooperative” during Soviet times was different from the current meaning of the term “noncommercial cooperative.” During the existence of the USSR, the system of consumer cooperative included domestic service organizations (food stores, tailor's workshops, shoe repair shops, photo shops, and beauty salons), markets, housing, dachas, garage cooperatives and many other organizations. When comparing these entities to contemporary organizations, it becomes apparent that the majority (except for housing, dachas, and garage cooperatives) transformed into commercial organizations.

Upon gaining independence, Kyrgyzstan began the process of reforming majority branches of national legislation. In addition, the legislation on cooperatives was partially reformed. On December 12, 1991, the law of the Kyrgyz Republic “On Cooperation on the Republic of Kyrgyzstan” was adopted. This law divided cooperatives into two groups:

- 1) Industrial cooperatives; and
- 2) Consumer cooperatives.

The new law contained elements of the Soviet approach to the regulation of cooperative relationships. The chapter entitled “Consumer Cooperatives” included material on the so called “Commercial Consumer Cooperatives.” The “Consumer Cooperatives” chapter also listed types of consumer cooperatives (home builders, house operating, dacha, garden and other types of consumer cooperatives), and

dedicated one or more articles to each item of the list. The articles of the law discussed the goals of creation and legal status of each.

In 1996, the Civil Code of the Kyrgyz Republic (“Civil Code”) was adopted, which required that cooperatives be divided into two types:

- 1) Industrial cooperatives; and
- 2) Consumer cooperatives.

Article 160 provided a definition of the term “consumer cooperative.” A major feature of consumer cooperatives was that income received by a consumer cooperative could not be distributed among its members. However, Article 160 of the Civil Code did not list the types of consumer cooperatives and did not provide specifics of their legal status.

In February of 2003, Article 160 was removed from the Civil Code. From then on, the notion of “noncommercial cooperative” began to be widely used, instead of the notion “consumer cooperative.”

On June 2, 1999, the law of the Kyrgyz Republic “On Cooperatives” was adopted, remaining in effect until June of 2004. This law divided cooperatives into two distinct categories, different from those already discussed:

- 1) Commercial; and
- 2) Noncommercial cooperatives.

On June 11, 2004, the law of the Kyrgyz Republic “On Cooperatives” was adopted. This law contained a one-sided approach: the majority of the norms contained in the law regulate relationships related to agricultural cooperatives. In fact, the June 2, 1999 law “On cooperatives” and the June 11, 2004 law “On cooperatives” were adopted in light of events conducted to reform agricultural cooperatives.

§ 2. Notion of Noncommercial Cooperative

In compliance with Article 152 of the Civil Code, the term “cooperative” is defined as a voluntary membership association of individuals and legal entities. The goal of a cooperative is jointly to meet material and other needs by organizing on democratic principles, as provided by the charter, and funded in addition by members’ fees. In other words, a cooperative (from the Latin for cooperation) is an organization based on the principle of individual membership with the goal of meeting material and other needs of a material-economic character.

The essence of a noncommercial cooperative is that citizens (sometimes natural persons and legal entities) are united with the goal of meeting some need. For example, a noncommercial cooperative may be formed to meet housing needs in the form of apartments or cottages, or to meet automobile storage needs in the form of a garage for automobiles

One of the best examples of noncommercial cooperatives is the house-building cooperative. Individuals who are unable to claim a free apartment from the state, those who have the right to receive an apartment from the state, but are unable to because of social norms and those who are not able to buy at market price, are able to

unite into a house-building cooperative. Its primary activity will be housing construction. The members will build enough separate apartments or other residential premises in order to meet the needs of each member of the cooperative. The construction is funded by the fees from members (shareholders) of the cooperative.

The members of these house-building cooperatives are provided with residential premises at self - cost of these premises. Under Article 85 of the Civil Code, NCOs are permitted to carry out economic activity in furtherance of their purpose. On the basis of this provision, house-building cooperatives are permitted to carry out economic activity in order to receive additional construction financing, assuming there are no further limitations in the cooperative's charter. It is important to note that income received from the economic activities of house-building cooperatives may be used solely for housing construction.

According to data compiled by the Ministry of Justice of the Kyrgyz Republic, there are currently 580 noncommercial cooperatives registered in 2010.

The law of the Kyrgyz Republic "On Cooperatives" redefines the legal and economic bases for the formation and activity of cooperatives and their unions in the Kyrgyz Republic. According to the law, a cooperative is a voluntary association of individuals and legal entities based on membership and created to meet members' economic and other needs. The activity of a cooperative is based on the following principles:

- voluntary association;
- membership of citizens;
- funded by member fees;
- economic independence;
- creation of a charter as the statutory document;
- participation of the cooperative's members in governance of the cooperative, each with the same rights, regardless of the amount paid in fees;
- membership cannot be limited to one consumer cooperative, i.e. a member of a house-building cooperative may be simultaneously a member of a dacha building cooperative, garage building cooperative, etc.;
- members must be obligated to contribute additional fees to cover losses of the cooperative;
- subsidiary responsibility of cooperative member for any unpaid portion of the membership fee;
- income received by the cooperative may not be distributed among members of the cooperative.

§ 3. Procedure for Formation of Noncommercial Cooperatives

The procedure for the formation of a noncommercial cooperative is regulated by the law of the Kyrgyz Republic "On Cooperatives" and the law of the Kyrgyz Republic "On State Registration of Legal Entities and Branches (Representative

Offices),” as of February 20, 2009. A noncommercial cooperative may be formed as a legal entity. The establishment of a noncommercial cooperative includes 2 stages:

- 1) the adoption of a decision on the establishment of a noncommercial cooperative; and
- 2) state registration of the noncommercial cooperative.

According to Article 8 of the law of the Kyrgyz Republic “On Cooperatives,” in order to create a cooperative, the individuals and legal entities wishing to form the cooperative must form an organizational committee. The organization committee must then prepare a draft of the cooperative’s charter, prepare and conduct a statutory meeting, and prepare and conduct the meeting for the noncommercial cooperative. At the statutory meeting the cooperative’s members must:

- Decide on the formation of the cooperative and accept membership in the cooperative;
- Prepare a registry of the cooperative’s members indicating, for natural persons: last name, first name, patronymic, date of birth, and address, and for legal entities: the name, legal address; and, for both individual and corporate members, the quantity of paid and unpaid shares assigned to each member, along with the signatures of the cooperative’s members;
- Determine the value of each share;
- Approve the cooperative’s charter; and
- Elect the governing bodies of the cooperative.

The following requirements are set in the cooperative’s charter:

- The cooperative’s name;
- The location of the cooperative;
- The cooperative’s legal address;
- The purpose and goals of the cooperative’s activity;
- The term for which the cooperative is created;
- The procedure for entrance into the cooperative;
- The procedure for termination of membership in the cooperative;
- The conditions for the amount, composition and procedure for contribution of share and entrance fees of cooperative’s members;
- Descriptions of all types of shares, if there is more than one type; an indication of the quantity of each type; which members may own which types; and the rights and privileges granted to each share type;
- The voting rights of members;
- The procedure for distribution of revenues and losses of the cooperative;
- Provisions regarding the composition and competence of the cooperative’s governing bodies along with their decisionmaking, including issues which are adopted unanimously or by a qualified majority of votes;

- The rights and obligations of members;
- The procedure for formation and use of the cooperative's funds;
- Liability of members, including liability for failure to contribute or pay for a compulsory share;
- Liability of members in should the cooperative incur losses or become bankrupt;
- The terms and procedures for returning a member's share fees in case of membership termination;
- The procedure and conditions for reorganization and liquidation of the cooperative;
- The procedure for calling a general meeting;
- The procedure for organizing work with persons who are cooperative members;
- The minimum value of real estate, alienation and other transactions which are subject to approval by the general meeting;
- The cooperative's name must include the word "cooperative."

The cooperative's charter may also contain other provisions necessary for its activity that are not contrary to the legislation of the Kyrgyz Republic.

An important consideration in the creation of noncommercial cooperatives is the number of founders. According to the law "On Cooperatives," the number of cooperative members may not be less than seven.

To register with the state as a legal entity, a consumer cooperative must submit a number of documents to the registering body, including:

- An application form approved by the Ministry of Justice of the Kyrgyz Republic;
- The minutes of the statutory meeting;
- The statutory agreement or decision of founders on creation of the organization; and
- The charter.

Refusal of registration is possible only as the result of:

- Failure to comply with requirements concerning statutory documents;
- Invalidity of submitted information; or
- The unreliability or illegality of one of the founders.

If an application for registration is denied, a written denial must be issued, which may then be appealed.

§ 4. Rights and Obligations of Members of Noncommercial Cooperatives

Chapter 3 of the law of the Kyrgyz Republic "On Cooperatives" is dedicated to the rights and obligations of the cooperative. As long as it is not contrary to the terms of the cooperative's charter, a single cooperative may include both individuals and legal entities as members. A cooperative's individual members must be 18 years and

older. A legally authorized person may represent the interests of a legal entity that is a cooperative member.

A cooperative's members have the following rights:

- to withdraw freely from the cooperative;
- to enjoy all services provided by the consumer cooperative;
- to participate in the cooperative's governance, to select and to run for office of the governing and controlling bodies of the cooperative in compliance with cooperative's charter, to make proposals related to cooperative's activity;
- to enjoy the benefits and advantages provided by the charter of the cooperative for its members;
- to be familiar with the documentation of financial-economic activity of the cooperative, according to the procedure set by the charter;

Members of the cooperative are obliged:

- to contribute entrance and share fees in the amount and according to the procedure set in the cooperative's charter;
- to follow the legislation of the Kyrgyz Republic along with the charter and other internal acts of the cooperative;
- to contribute an additional fee to cover any of the cooperative's losses.

Article 12 of the law "On Cooperatives" provides that individuals or legal entities who wish to join a cooperative after its state registration must submit a membership application to the directorate of a cooperative. The membership application must include an agreement to fulfill the requirements of the cooperative's charter and other internal documents, as well as an agreement to pay a declared share fee. The cooperative directorate decides whether to accept or deny the application within 4 weeks from the day of receipt of the application. The decision to accept an application is approved during a regular general meeting of cooperative's members.

Each member of the cooperative is given a membership book, which includes:

- The last name, first name, patronymic and address, date of birth, and date of entrance into cooperative of each member;
- The quantity of both declared and paid shares and the dates of their contribution;
- The quantity of additional shares and dates of their contribution.

The cooperative's charter sets forth: the procedure for accepting members of the cooperative, termination of membership, expulsion from cooperative membership, and other conditions surrounding issues of membership.

Article 14 of the law sets forth the procedure for termination of membership in the cooperative and prescribes the following cases of withdrawal:

- Voluntary withdrawal;
- Death of member;
- Expulsion;
- Liquidation of a legal entity that is a member of the cooperative.

A member has the right to withdraw from the cooperative by submission of a written application to the directorate of the cooperative no later than 12 months prior to his or her withdrawal. A withdrawing member may only transfer his share fee to another individual or legal entity if such transfer does not conflict with procedures set forth in the cooperative's charter. If share fees will be transferred, the members of the cooperative enjoy a preferential right to purchase such share fee. A member of the cooperative transferring his share fee to another member of the cooperative may terminate his membership prior to end of the 12-month notification term normally required for withdrawal.

An individual's membership in the cooperative may also be terminated based on additional grounds provided in the cooperative's charter, such as:

- if he or she does not carry out the obligations set forth in the law "On Cooperatives" and in the cooperative's charter;
- if as a result of his or her actions, or inaction, the cooperative incurred damages.

The cooperative council has the authority to terminate an individual's membership. The council's decision is then subject to approval during a regular general meeting of cooperative's members.

The decision to exclude members of cooperative's council, members of cooperative's directorate may only be made by the general meeting of the cooperative's members for violating of cooperative corporate acts and criminal law.

A person who has been denied membership in the cooperative has the right to appeal the decision of general meeting in court according to the procedure provided by the legislation of the Kyrgyz Republic.

A member of a cooperative who terminates his membership shall be paid the value of his share fee or shall be given property equivalent in value to his share fee. This and any other amounts due to be paid, as set forth in the cooperative's charter, shall be paid no later than 3 months after the end of the financial year in which he terminated his or her membership in the cooperative. At the same time, a member of cooperative who terminated his membership has no right to demand the return of that particular property which he contributed as a share fee, unless permitted by the cooperative's charter.

§ 5. Conclusion

There are presently gaps in the legislation relating to the regulation of noncommercial cooperatives. One may argue that the reforms on legislation in the Kyrgyz Republic did not significantly alter the legislation on noncommercial cooperatives. Moreover, laws adopted in later years, focused on the development of agricultural cooperatives, led to partial removal of the legal basis for noncommercial cooperatives that existed prior to the reforms. Currently, cooperatives are regulated by more than one law. We would propose that it is necessary to adopt two laws:

- 1) A law “On Commercial Cooperatives” or a law “On Agricultural Cooperatives” to regulate the creation, rights and obligations of commercial cooperatives; and
- 2) A law on “Noncommercial Cooperatives” which would set procedures for the creation, rights and obligations of various NCOs such as housing construction, housing, garage, dacha cooperatives, and similar organizations.

The law on noncommercial cooperatives should regulate, in detail, all relationships existing in this sphere, including a determination of the various types of noncommercial cooperatives and other specifics of their legal status.

Chapter 11. Partnership of Homeowners

§ 1. Notion and General Provisions on Partnerships of Homeowners

Legal experts and normative legal acts use the notion of “partnership” to define various types of associations – subjects of economic turnover. Researchers studying civil legislation of the 1920s divided partnerships into two major categories: partnerships pursuing commercial goals and cooperative partnerships.⁷⁷ The goal of cooperative partnerships was defined as “meeting various needs of the human mind, feeling, sense of taste, etc.”⁷⁸

After elimination of nongovernmental commercial organizations at the end of the 1920s and beginning of the 1930s, including partnerships, the term “partnership” was used rarely, and it began to be used in relation to some types of consumer cooperatives. For example, the term was used for horticultural or dacha partnerships. Partnership forms were not fully reconsidered until the adoption of the laws of the USSR “On Cooperation in USSR,” “On Property in USSR,” “On Enterprises in USSR,” and later in a range of other legislative acts.

Based on an analysis of contemporary legislation, the partnership classification is utilized for various entity types. However, the key differentiating factor is the goal of the organization and activities of the partnership. Part One of the Civil Code of the Kyrgyz Republic covers such types of partnerships as general and special partnerships. It indicates that partnerships are legal entities whose primary goal is profit-making, and, thus, they may be called commercial partnerships.

In addition, the chapter titled “Some Types of Obligations” in the Civil Code of the Kyrgyz Republic allows for the possibility of creating an entity called a contractual partnership. In this form of partnership, individuals agree amongst themselves to act jointly and to provide contributions, without creating a formal legal entity.

In contrast to associations there are partnerships created to meet the needs of their members -- for which reason they are called partnerships of the consumer type. These partnerships are further divided into two independent organizational and legal forms: consumer cooperatives and homeowner’s partnerships.

There are conflicting points of view frequently found in legal literature concerning these entities. A majority of researchers think that homeowners’ partnerships belong to the consumer cooperatives category.⁷⁹ Those supporting this idea base their argument on the fact that the legislature imposed similar requirements on homeowners’ partnerships and consumer cooperatives. Indeed, both homeowners’ partnerships and consumer cooperatives are considered to be NCOs in terms of their legal entity status. However, there are weighty arguments for classifying homeowners’ partnerships as an independent organizational and legal form.

⁷⁷ Danilov E.N., *Tovarishstva // Sovetskoe hozyastvennoe pravo* [Partnership. Soviet economic law], Moscow, p. 77 (1926).

⁷⁸ Ratner A.S. *Grajdanskii kodeks sovetskikh respublik* [Civil code of Soviet republics], Kiev, p. 490 (1927).

⁷⁹ See eg. Commentary to the Civil Code of the Russian Federation, Moscow, p. 313 (1995); Mushinskii V.O., *Osnovy grajdanskogo prava* [Bases of civil law], Moscow, p. 40 (1995); Civil law of Russia: textbook, Moscow, p. 220 (2003).

One of the major differences between homeowners' partnerships and consumer cooperatives, particularly when considering housing cooperatives (the closest by goal of activity), is that there are no equity relationships in homeowner's partnerships. In cooperatives, members own share funds, which are funds of the legal entity. The funds have a strictly targeted purpose; they are intended exclusively for the payment of construction or value of a constructed house.⁸⁰ Members of homeowners' partnerships own the premises outright, i.e. they paid or purchased residential premises based on other grounds before entering the partnership or before the partnership's formation.

Another difference between homeowners' partnerships and consumer cooperatives is that members of a homeowner's partnership have no obligation to cover the organization's losses by contributing additional fees, whereas members of cooperatives are required to cover losses.

A significant difference is based on property relationships. According to the general rules, a homeowner's partnership does not own or have rights in the premises or in common areas of an apartment building. A house-building cooperative on the other hand, is the owner of the residential premises, as well as the common areas within it.

The organization and activity of homeowners' partnerships is narrower than the corresponding sphere of consumer cooperatives. Homeowners' partnerships may only be formed by owners of residential and other premises, and only for the purposes of ensuring operation of the apartment complex and for use of apartments and their common areas (Art. 248 of the Civil Code and Art. 1 of the Law of the Kyrgyz Republic "On Partnership of Homeowners"). In regard to consumer cooperatives, they may be formed with the goal of meeting various material and other needs.

Taking into consideration the above-mentioned differences, and also taking into account a norm contained in Part 3 of Article 85 of the Civil Code, which permits the creation of different forms of NCOs provided by law, it is possible to discuss a new organizational and legal form, the homeowner's partnership formed as an noncommercial organization.

For a more detailed analysis of the differences between consumer cooperatives and homeowners' partnerships, it is necessary to indicate that homeowners' partnerships may be created based on several types of consumer cooperatives -- for example, housing and house-building cooperatives where members fully pay share fees. In these cases, the last part of the fee transforms relationships; compulsory housing relationships transform to property relationships. The core of house building relationships, share relationships, ceases to exist, and the right to use the house is not based on membership in the cooperative, but rather on the ownership right.

As such, we propose that, in compliance with Article 1 of the law of the Kyrgyz Republic "On Partnership of Homeowners," a **homeowner's partnership** is a form of association of homeowners: a noncommercial organization created for

⁸⁰ See Genekhadze E.N., *Jilishno- stroitelnye kooperativy v gorode i na sele* [House building cooperatives in the city and village], Moscow, p. 105 (1976).

joint management and operation of real estate, maintenance of common property, and disposal of the property within established legislative limits.

§ 2. Organization and Activity of Partnership of Homeowners

In compliance with Article 248 of the Civil Code, a homeowner's partnership (hereinafter "partnership") is a noncommercial organization, created and operating in compliance with the legislation. The Civil Code assumes that a law has been adopted regulating the organization and activity of this "type" of noncommercial organization. However, taking into account the necessity to regulate property relationships regarding the common areas of apartment complexes, the legislator, having adopted the law of the Kyrgyz Republic "On Partnership of Homeowners" on October 28, 1997, extended a subject of indicated legislative act in the Civil Code, having added regulation of relationships of shared property of owners of residential and nonresidential premises of apartment house.

The creation of two or more partnerships in one building is not permissible (Article 3 of the Law of the Kyrgyz Republic "On Partnership of Homeowners"). According to Article 84 of the Civil Code, legal entities are subject to state registration by the Ministry of Justice according to the procedure prescribed by the Law "On State Registration of Legal Entities". A homeowner's partnership comes into existence as a legal entity immediately upon registering with the state.

In order to meet the needs of its members, a partnership enters into relationships with various legal entities and individuals. The purpose of a partnership's activities may include:

- Ensuring that owners consent to the procedure for exercising their rights of ownership, use, and disposal of common property;
- Ensuring proper technical, fire-safety, ecological and sanitary conditions of the apartment complex;
- Carrying out reconstruction, maintenance, repair and management of the apartment complex;
- Providing public utilities to owners;
- Ensuring the implementation of rules on usage and maintenance of the house and its adjacent territory;
- Protecting the interests of the owners;
- Representing the common interests of the owners with public authorities and bodies of local self-administration, as well as in court.

Certainly the main task of a homeowner's partnership is carrying out the functions of a supervisory or management organization, which will ensure efficient management of common building areas and services for the residents. The partnership may take care of the management, servicing and exploitation of the residential and nonresidential premises, or it may outsource to other organizations.

In the first case, the partnership may contract with those who specialize in servicing residential and adjacent premises such as locksmiths, electricians, cleaners, custodians, etc. By suggestion of the directorate head, rules may be adopted at a

general meeting regarding the labor personnel of the partnership, including regulations on payment.

If the partnership chooses to outsource, it may contract with a management organization to provide services to the residential complex. Under the contract, the management organization is obliged to carry out routine repair of the house (except for individual apartments), clean the nonresidential premises and adjacent areas, dispose of garbage, maintain the central heating, water supply, etc. Gas and elevator equipment is normally maintained through the use of specialized organizations, with which the partnership or the management company may conclude the necessary contracts.

Because partnerships are NCOs, they are only able to perform activities specifically enumerated in their charter. The Civil Code of the Kyrgyz Republic allows partnerships to carry out economic activity subject to two limitations:

1) The economic activity must serve the goals for which the partnership was created; and

2) The organization may not distribute any profits earned from the activity among participants of the organization.

A partnership carrying out an economic activity is independently liable for any debts incurred. The members of the partnership, however, are not liable for its debts.

§ 3. Legal Status of Members of Homeowners' Partnerships

According to the provisions of Chapter 11 of the Civil Code and the law of the Kyrgyz Republic "On Partnership of Homeowners," the following persons may be members of the partnership:

- First, individuals who own residential premises in apartment complexes and thus have an interest in the common property of the real estate. The interests of minors, as well as individuals lacking legal capacity, are represented by their parents, guardians or trustees.
- Second, legal entities that own residential premises in apartment complexes, along with an interest in common property, based on ownership rights, economic management rights (state and municipal enterprises) or day-to-day management rights (state and municipal institutions), may be members of a partnership.

In instances of termination of a member's ownership rights in residential premises due to death of the individual, liquidation of the legal entity, sale of the premises, or other grounds, membership in the partnership is terminated immediately upon the loss of the ownership rights.

In case of the reorganization of a legal entity that is a member of the partnership, or the death of a partnership member, the member's successors or heirs may enter the partnership following a decision of the general meeting of the partnership's members.

All members of a partnership possess broad rights and have a range of obligations. The major rights and obligations of a partnership's members are set out

in the law of the Kyrgyz Republic “On Partnership of Homeowners.” The detailed rights and obligations are further named in the partnerships’ charters. A homeowner has the right to sell, rent, devise, transfer, and dispose of the premises in any other way that is in compliance with the legislation of the Kyrgyz Republic. When ownership rights are transferred to a new owner, the rights to the partnership’s common property is also transferred. The homeowner cannot alienate his or her share in the partnership’s common property separate from his or her ownership rights over the premises. A member of a partnership retains voting rights and all the obligations imposed by the legislation and partnership’s charter even if he or she resides elsewhere or transfers his or her accommodation right over the premises to another person.

If a homeowner uses the premises as security for a particular obligation or mortgage, the partnership should immediately send written notification to the creditor holding the pledge or mortgage in the following cases:

- If the homeowner is more than 60 days late on payments owed for common expenses;
- If the insurance on the common property is changed or terminated; or
- If a decision of the partnership regarding a delay on payment for common expenses is adopted by the court on appeal.

Homeowners are obliged:

- To comply with requirements of the law of the Kyrgyz Republic “On Partnership of Homeowners” and the partnership charter;
- To comply with all technical, fire-safety, sanitary and maintenance rules of the complex, residential premises and adjacent territory; and
- To pay for common expenses of the partnership proportionally to their share in the common property.

Procedure for Creation of a Partnership

A partnership may be formed if no less than 51 percent of the apartment owners in the complex consent. An initial group of apartment owners may call for a founding meeting. As a result of the principle of voluntary membership, some owners may decline to join the partnership; however, all owners of the premises are required to pay common expenses according to Article 26 of the law. Any owner of the premises who later desires to become a member of the partnership has the right to do so without consent from the partnership. Persons who do not own property in the premises cannot become members of the partnership.

A partnership has no right to violate the rights of homeowners who refused to become members of the partnership. The partnership may not create advantages and benefits regarding the use of common shared property and extend those advantages and benefits only to members of the partnership. The partnership may not also impose additional obligations upon homeowners who refuse to become members of

the partnership which are not necessary expenditures on management of the partnership.

§ 4. Governance and Control of Homeowners' Partnerships

Partnerships form governance and control bodies. Such bodies may be divided into the general meeting, in addition to executive-administrative, control and other bodies.

The general meeting of the partnership is its highest governing body. The following issues are under the exclusive jurisdiction of the general meeting of the partnership:

- Approval and introduction of changes to the charter;
- Selection and dismissal of directorate, officers of the partnership, and members of the revision or audit commission, when necessary;
- Approval of the annual report of the directorate;
- Approval of the annual budget;
- Consent for loans that exceed 10% of the annual expenses for maintenance of the partnership's common areas;
- Approval of capital expenditures related to improvements of the common property;
- Restoration of the partnership's building, in case of damage or destruction to more than 50% of the building as a result of natural disasters;
- Determination of the penalty for delay in payment by members of common expenditures;
- Approval of special fees not provided in the annual budget;
- Decisionmaking regarding the transfer of management responsibilities over the partnership's common property to an individual or legal entity, as well as determination of the services the manager will provide the partnership;
- Consideration and adoption of terms and conditions of contracts to be concluded;
- Limits on the use of common property;
- Termination of the partnership.

Each apartment belonging to a member of the partnership is granted one vote in the general meeting of the partnership, even if there is more than one owner of the apartment, unless provided otherwise in the charter.

The general meeting of the partnership may decide on issues if at least 51% of votes are represented at the meeting. Decisions of the general meeting of the partnership require a majority vote of the members present at the meeting, except for

decisions regarding the following issues, which require at least 75% of the votes present at a general meeting:

- Approval and introduction of changes to the charter;
- Approval of capital expenditures related to improvements to the common property;
- Restoration of the partnership's building in cases of damage or destruction to more than 50% of the building as a result of natural disasters;
- Transfer of management responsibilities over the partnership's common property to an individual or legal entity, as well as a determination of the services the manager will provide to the partnership;
- Consideration and adoption of terms and conditions of contracts to be concluded;
- Setting limits on the use of common property;
- Termination of the partnership.

The unanimous consent of all members of the partnership is required to take out a loan that exceeds 10% of the annual expenses for maintenance of the partnership's common property. When a tie occurs, the vote of the chairman of the organization is decisive. Decisions of the general meeting are binding all owners, including those who were not present in the meeting, irrespective of their reasons for not being there. The general meeting of the partnership has the right to consider other issues, as well. At the request of at least 20% of members present at a meeting, either in person or through their authorized persons, a decision may be adopted by secret vote.

The directorate must send written notification to all members of the partnership indicating that a general meeting of the partnership will be held. The notices must be handed to each member of the partnership personally, under signature, or by registered letter.

Partnerships may form a revision or audit commission, composed of members of the partnership appointed to a 2-year term, in order to conduct a financial audit of any sphere of activity of the partnership. The commission audits the annual report and the directorate's budget. Members of the directorate and their family members may not be members of the revision commission, which is accountable to the general meeting of the partnership.

Chapter 12. Jamaat (Community Organization)

§ 1. Notion of Jamaat

In order to discuss jamaat, it is first necessary to determine the nature of a community, or a community organization. There are a variety of definitions associated with this term because the community, as a particular phenomenon and institute, is studied by various sciences. Despite the abundance of differences, the term community is defined here as an autonomous social substructure of society, which is united by common territory of residence and constant and permanent activity. Relating this definition to real life, it is possible to say that a community is a group of individuals residing in one geographical territory who have common needs and resources, and carry out joint activities for the benefit of the community itself.

The origins of the Kyrgyz community go back to ancient times. From the XVIIth through the first half of the XIXth centuries, it was a main carrier of tribal way of life, which occupied a significant place in public life during that period. The community of Kyrgyz people was considered during that period to be an administrative and public unit. Rural community of farmers, community of nomads, community in documents of the Kokand khanate and in Kyrgyz oral language was called **jamaat** (from Arabic *jamaa*). The historically tribal or community organization with strong internal links was supported by the Kokand khanate in the first half of the XIXth century. As a main unit of society, the community contained all of the elements of the public-economic and ideological inter-relationships of the Kyrgyz people in ancient times. Communities had broad authority on particular territorial units; they solved problems in the economy and the social sphere, everyday life problems, in marital-family relations, and determined ideology within the community. The community was composed of several groups related to each other by tribe, common economic interests, and ideological unity.⁸¹

It is important to remember that the community was the first type of organization. Therefore, it is necessary to provide a definition of the meaning of “organization.” An organization is an association of people, jointly implementing interests, programs or goals based on a set of particular norms and rules. It is necessary to remember that organizations may have formal (registered with particular state bodies) or informal status.

Arranged according to particular territorial units, local self-administration bodies interact with public authorities and other local self-administration bodies to create good-quality living conditions for the local population and to meet the social-economic needs of local communities. However, in order to ensure efficient resolutions of local affairs, it is necessary for the population to actively participate in any given activity in addition to creating compulsory local-self-administration

⁸¹ Ploskih V.M., *Istoriya Kirgizskoi SSR: s drevneishih vremen do nashih dnei* [History of Kyrgyz SSR: from ancient times till the present], Frunze (1984).

bodies (executive-administrative, representative). This mobilization of the population into particular formations is one type of local self-administration. It also constitutes one form of direct participation by citizens in local affairs. By uniting into community organizations, the population of a particular territory is able to become more organized, consolidate to solve specific issues, prioritize the directions of an activity, fairly distribute resources, etc. Today, the activities of communities facilitate the process of determining the interests, needs, and sets of values of local communities, thereby providing local state administration and local self-administration bodies the ability to judge the degree of aspirations of residents. This, in turn, means that the local state administration and local self-administration bodies are able to more objectively assess the existing social-economic situation during managerial decisionmaking. For self-administration bodies, community organizations act as additional mechanisms to not only identify problems, but also to help provide solutions to the problems while also meeting the demands of the people. At the same time, community organizations may be used by local self-administration bodies as a means to disseminate information to the population. Communities are one of the population's means of control over the activity of local public authorities and local self-administration bodies. Finally, it is necessary to make note of the representative function of community organizations. The community represents the interests of its members, and groups within the population whose views have been formulated and expressed, in front of local public authorities.

In the Kyrgyz Republic the rights of existence and activity of communities are codified in legislation. The law of the Kyrgyz Republic "On Jamaats (communities) and their Associations," as of February 21, 2005, defines "jamaat" as a form of local self-administration organization that is a voluntary association of members of local communities who reside in the same street, block or other territorial formation of village or town, created for joint decisionmaking in local affairs.

§ 2. Legal Status of Jamaat

Community formations are similar to public associations in many aspects of their organizational and legal forms. They are voluntary, self-administered associations of individuals, created on their own initiative and based on their common interests in implementing their common goals.

A jamaat is a noncommercial organization, which, in compliance with the law of the Kyrgyz Republic "On Jamaats and their Associations," may become a legal entity. The noncommercial status of these community organizations does not prohibit them from carrying out economic activity; however, economic activities must strictly comply with the charter's goals. Any profit generated by economic activity must be directed to solving the main issues of the community and may not be distributed among the members of the community organization.

The activity of a jamaat is carried out based on principles of legality and social justice; voluntary membership; democracy; publicity; transparency and

accountability of public opinion; collegiality; free discussion during solving social-public problems, ecological, housing and other issues concerning interests of members of the jamaat; self-determination, self-regulation and self-financing based on economic independence; ensuring equal representation of households; and common interests of members the of jamaat. The jamaat independently organizes and carries out its activity within the territory where its members permanently reside.

The major goals of a jamaat are:

- Creating a sense of belonging among members of the jamaat in order to jointly solve the local issues for which they are responsible;
- Meeting the social-economic needs of members of the jamaat and the local community;
- Involving members of the jamaat in management of the jamaat and the local community;
- Rendering mutual assistance to members of the jamaat;
- Increasing the activity of the population on social mobilization.

Rights of the jamaat. The rights of a community organization depends on the role it plays within a particular territory. It is possible to say with certainty that a jamaat is a public association, which means that it has the right to deal with social problems. A jamaat also has the right to carry out economic activities in order to achieve the goals set in its charter, to participate in managerial decisionmakings by local self-administration bodies in order to ensure citizens' rights, etc. A jamaat has the right to purchase and sell property it owns, to render consultation and information services, to organize and conduct learning seminars and practical lessons on issues related to the activity of jamaat, and to carry out other tasks within its powers.

The list of rights belonging to community organizations is determined by the legislator and relates to communal economic activity. A jamaat has the right:

- To open accounts in financial and credit institutions;
- To interact on a contractual basis with local representative bodies, their executive-administrative bodies, local state administration, enterprises, institutions, cooperatives, other jamaats and other entities;
- To use its own financial resources, and other sources provided for such causes, to accomplish improvements of its territory through construction and repair of residential premises and other sociocultural, domestic and economic facilities;
- To pay rent for buildings, construction, and nonresidential premises that are owned by the jamaat;
- To solicit funds and investments from international donor organizations for the implementation of the goals and tasks of the jamaat.

Responsibility of the jamaat. Along with the above-mentioned particular rights, the jamaat has responsibilities proportional to its rights. The major goal of the jamaat

is to meet the social-economic and spiritual needs of the local community and to improve the quality of life of community members. Therefore, the community has a responsibility before the local community, and members of the community. The jamaat is responsible to individual and legal entities for all contractual undertakings when carrying out an economic activity. A jamaat becomes liable to the state when its activities do not comply with requirements set forth in the legislation of the Kyrgyz Republic.

§ 3. Creation of Jamaat

An essential difference between jamaats and other NCOs is the procedure involved with acquiring legal entity status. The legislation stipulates that a jamaat acquires its legal entity status immediately upon registration with the representative body of the local self-administration. Registration is based on applications of the jamaat's members, minutes of the general meeting, and the charter. There are several requirements that must be complied with during the process.

First of all, to organize any association, including a jamaat, an initial group must be created. Founders of the jamaat must represent at least ten households that have been united voluntarily. The legislator defines a household as a group of two or more people, jointly residing in a single housing unit, who obtain the necessities of life through joint housekeeping and through fully or partially uniting and spending their funds. These individuals may be affiliated through kinship or marriage relationships, or they may be unrelated. However, it has been acknowledged that a household may be composed of only one person, residing in a housing unit and obtaining the necessities of life. Therefore, to register a jamaat, it is necessary to have at least ten people from one territorial unit.

Secondly, during the general meeting, a charter is adopted, which regulates the activity of the jamaat, and the head of the community is elected. As a vital document of the jamaat, the charter must contain the major principles of the organization, priorities for the association's activity, and the principles of interaction with local self-administration bodies and public authorities. The community's charter, according to the legislation, must also fulfill several requirements and is required to contain the following information:

- The full and short name of the jamaat;
- Provisions on the rights and obligations of members;
- The procedure and conditions for acceptance and withdrawal or expulsion of members;
- The minimum price of the entrance and membership fee for the community along with the procedure and conditions for contributions;
- Provisions on the powers and functions of the head of the community;
- Procedure for decisionmaking by governing bodies;
- Procedural rules on the activity of jamaat;

- Procedure for election and dismissal of the head of the jamaat;
- Procedure for funds formation of jamaat and their use;
- Procedure for amending the charter;
- Procedure for accounting and audit;
- Conditions on termination of activity (reorganization and liquidation).

The last step in creation, registration of the jamaat and acquiring the status of legal entity is submission of the necessary package of documents to the representative body of local self-administration. Such documents include the application to create a jamaat, the minutes of the general meeting and the charter, which must meet the noted requirements.

Membership in and withdrawal from a jamaat, as in the majority of other NCOs, is voluntary. Nevertheless, the charter of a jamaat may determine a special procedure for entering into the community and withdrawal from it. Involuntary withdrawal or expulsion from community organization is possible only if there is a violation or improper execution of provisions and norms of charter of jamaat. Such measure in relation to members of community organization may be performed only after preliminary notice of a person to be excluded, thirty days before and after granting to him or her right to speak at the general meeting. At the same time, a member subject to such a measure preserves the right to appeal the expulsion decision of the general meeting.

A person permanently residing in a particular territory of local community, who pays membership fees, is related to the jamaat by mutual interest, who represents the interests of one household in compliance with the charter of a jamaat may become a member of a jamaat. Members of the community have equal access to use of the property of a jamaat.

§ 4. Interaction of Jamaat with State Bodies and Local Self-Administration Bodies

The state guarantees NCOs the conditions for carrying out their charter tasks. State bodies and officials must respect the rights and legitimate interests of NCOs in compliance with the Constitution and the legislation of the Kyrgyz Republic, and must provide support for their activity.

Public agencies and local self-administration bodies provide assistance to community organizations in:

- Creation of necessary legal and organizational conditions for establishment and development of the jamaat;
- Attraction of investments, grants and micro-credits for establishment and development of jamaat, and for the exercise of its right of self-administration.

Public agencies and local self-administration bodies may conduct consultations with jamaats during preparation and decisionmaking on issues concerning their

mutual interests. Public agencies and local self-administration bodies are compelled to consider an appeal by a jamaat on issues that concern its interests.

§ 5. Financial-Economic Basis and Property of Jamaat

A jamaat may own, use and dispose of financial funds, movable and immovable property, in compliance with its charter. The financial basis of a jamaat is comprised of entrance and membership fees, revenues from use of jamaat property, sponsor fees, voluntary contributions of legal entities and individual of the Kyrgyz Republic and foreign persons and entities, grants, as well as borrowed funds, credit and other financial resources. A jamaat may also make acquisitions and obtain property by transfer from legal entities and individuals.

The funds of a jamaat may be used by its members for improving the social-economic conditions of the population residing on a given territory, as well as for charitable goals.

Public agencies and local self-administration bodies may not interfere with the financial-economic affairs of a jamaat, except as provided by law.

§ 6. Governing Bodies of a Jamaat

The highest governing body of a jamaat is the *general meeting*, consisting of all the members of the jamaat. The procedure and frequency of conducting a general meeting is determined by the charter. The first general meeting of a newly formed jamaat should be opened by one of the members of of the initial jamaat group. The agenda of the first general meeting should include election of the head, development and adoption of the charter, and decisions about the activity of the jamaat. Decisions during general meetings are adopted by a simple majority of votes in the presence of not less than two-thirds of the members of the jamaat.

Competence of the general meeting of a jamaat. The following issues are within the exclusive competence of the general meeting:

- amending the charter;
- setting goals;
- acceptance and expulsion from membership (if not otherwise provided by the charter);
- election and dismissal as head of the jamaat;
- approval of annual report and annual balance sheet of jamaat;
- issues of participation of jamaat in the activity of other legal entities;
- reorganization and liquidation of jamaat;
- receiving loans and credit; use of property of jamaat;
- other issues as set out in the charter of the jamaat.

Head of jamaat. The head of the jamaat plays a significant role in decisionmaking of the general meeting of the jamaat, as well as in the distribution of resources of the community, disposal of the property, and social-economic planning

in the local community. Being a leader of the jamaat, s/he is responsible for the effective operation of the jamaat. The head of the jamaat prepares the statutory documents of the jamaat and registers them with the representative body of local self-administration of the particular territory. The position of head of the jamaat is an elective office. S/he is elected in the first general meeting out of members of community by open or secret voting by a majority of members present in the general meeting. The term of the head of the jamaat is determined in the charter.

§ 7. Formation and Activity of a Local Development Foundation

Jamaats may unite in order to pursue social-economic tasks and thereby increase the welfare of the members of the local community. When they unite, they may create on a voluntary basis a *noncommercial organization* called a local development foundation, which is a legal entity.

A *local development foundation* is a public foundation formed by contributions from jamaats and their associations, sponsors, organizations and international donors on voluntary basis. The charter of a local development foundation regulates the procedure for formation and liquidation of the entity and sets the conditions for collection of funds. The entity must also be registered with the Ministry of Justice.

The directorate of the foundation is elected during the general meeting of founders, in compliance with the charter.

The fees of jamaats, contributions of individuals and legal entities, and sponsorship funds of international donors, nongovernmental and other organizations may be solicited as contributions to local development foundations.

Grants of funds from a local development foundation are carried out publicly by the directorate.

Chapter 13. Credit Unions

§ 1. History of Credit Unions

One of the major activities of financial organizations is accepting deposits and providing credit to legal entities and individuals. Credit relationships have a difficult position in world history. Two thousand three hundred years before our century, trading companies were established to provide loans. In support of these loans, ships, goods, houses, valuables, as well as slaves were pledged as security.

As regards the history of credit unions, they first appeared thanks to efforts of weavers in Rochdale, England in 1844. Their positive experience spread to Germany, where, in 1850, Hermann Schulze Delitzsch created a “loan association” in a Prussian village. By 1859, in two German provinces, there were 183 cooperatives that united more than 18 thousand shareholders. A great contribution in the emergence of movement of credit unions was made by Friedrich Wilhelm Raiffeisen, a public figure of the XIXth century. As the mayor of a small Bavarian town, he organized the first financial cooperative for residents of his district, where people could make deposits and extend loans to each other.

People trusted credit consumer cooperatives because they united people with similar interests or of one region, which provided the basis for confidence in the use of the money. Banks could not provide such a basis, because they worked with those who had money. These depositors – the owners of the “people’s cash” -- formed a movement that expanded very quickly.

In Canada, the first “people’s cash” entity was opened by Alphonse Desjardins on December 6, 1900, in a Quebec town. And today, the network of such organizations is spread throughout Canada, even among people who do not live a poor life. After credit was extended to private persons in this way, the institutions were legislatively codified in 1906 and began to be popular. The total sum of credit union assets exceeded CAD\$77 billion. It consists of the cooperative sector -- around 1.5 thousand “people’s cash” institutions throughout Canada -- and the corporate sector – insurance companies, investment and consulting firms and processing centers that service credit cards.

In many countries, credit unions had a particular orientation. For example, in agrarian countries, they were created with the goal to support farmer economics during crop failure years. And in more developed countries, credit consumer cooperatives were more specialized in loan and savings transactions of their shareowners. Credit unions have demonstrated their stability during economic crisis. There are many well-known examples in which, during a crisis, banks became bankrupt while credit unions survived.

As regards Russia, the idea for a credit cooperative was imported from Germany. In 1865, Prince A.I. Vasilchikov organized the first loan and savings partnership in the Costroma district. In 1869, the Tver’ district organized depositaries of small artisans, which allowed 60 nail workshops to be opened in the course of several years. In Odessa in 1874, a credit partnership was organized by German craftsmen. At that time, cooperatives, partnerships, unions, and associations of

mutual credit were organized predominantly near agricultural producers (agricultural credit cooperatives), or else credit cooperatives united small craftsmen, members of artisans' guilds or traders -- but there were also consumer credit communities. Such credit cooperatives were a strong system of support of small entrepreneurs and trade. At the end of the XIXth century, such organizations were widespread in Russia. And Russia had at that point already developed legislation on credit cooperatives. After the revolution of 1917 and until the 1930's, credit cooperatives successfully developed in Russia, mainly in the form of credit and savings and loans for agricultural and commercial cooperatives.

After the introduction of the monopoly of the State Bank of the USSR, all credit cooperatives were forcibly liquidated (1930's of the XXth century). Nevertheless, the traditions of mutual credits between people were preserved in the substitute form of mutual assistance depositories and "black cash" depositories, which existed until the reforms of the 1990's.

Microcredit

Microcredit, or providing credit to groups without an underlying pledge of security, was the idea of Professor of Economics Muhammad Yunus from Bangladesh, the founder of Grameen Bank. Since 1983, this type of group credit without pledge has demonstrated to the whole world its efficiency and profitability -- not only in relation to credit organizations, but also in relation to their clients. It is important to note that its main users are women. The other specifics of microcredit are as follows:

- The credit institution gives credit to the poorest population, predominantly rural;
- Pledged property is not required;
- The borrowers, not the credit organization, decide how funds will be spent;
- The credit organization supports clients in realization of their plans;
- Interest rates are very low.

The microcredit approach has assisted 10,000 poor families to overcome poverty. Grameen Bank has provided credit for around USD\$3 billion. At the present time, the Grameen model is used in 56 countries of the world. According to its founder, Grameen Bank is probably the most-studied financial organization in the world. According to assessments of the World Bank, more than one-third of its borrowers have overcome poverty, and the remaining one-third is approaching the same goal.

The Grameen model has been accepted not only by its nearest neighbors – the Philippines, Malaysia, China and other Asian countries, Latin America and Africa, but also by Europe and the USA. The majority of microcredit organizations in the USA operate according to the Grameen model. And in developed countries, the primary reason for the success of microcredit is the inaccessibility to the majority of people of traditional bank services, as the result of which the difference between poor and rich is increasing.

Microcredit programs have been officially recognized throughout the world. The General Assembly of the United Nations adopted a decision in 2005 to make microcredit accessible to more than 100 million poor people around the world.⁸²

In Kyrgyzstan, the creation and development of the market for micro-financial services has been assigned an important role. The leader in this respect is a network of credit unions that has been expanding during the past four-plus years.

§ 2. Major Features of Credit Unions

The Law of the Kyrgyz Republic “On credit unions” as of October 28, 1999, regulates the procedure for the creation and activity of credit unions. According to the law, a **credit union** is a noncommercial financial-credit organization, created for providing assistance to its members by combining the personal savings of members of the credit union and providing mutual credit at acceptable interest rates, as well as rendering financial services (Article 1 of the Law). A credit union is a special type of non-bank credit organization empowered to enter into particular transactions and specific tasks.

Credit unions differ from banks in certain consumer specifics. Members are shareowners of the credit union; they are not mere clients, as in a bank. As such, many forms of bank legislation may not be applied to credit unions. The shareholders are the owners of the credit union and have more rights than bank clients, particularly as they participate in management and control of the credit union.

The Law of the Kyrgyz Republic “On micro-financial organizations” assumes that credit institutions may be commercial as well as noncommercial institutions. Credit unions may only transact financial-credit activity, and their transactions are strictly regulated by the Law and their individual license (Article 4 of the Law of the Kyrgyz Republic “On credit unions”). A credit union is, first of all, a financial-credit institution created for the purpose of providing mutual assistance to its members.

The experience of other countries shows that the major source of internal investments into the national economy is the savings of households and enterprises. Credit unions may become efficient instruments for domestic investment of funds of the population. Individuals become investment owners, and the accrued investment income of citizens increases the overall national welfare level.

§ 3. Governance of Credit Unions

Credit unions, which are legal entities and which have special legal status, need to create a system of governing bodies as with any legal entity. The organizational structure of credit unions includes its governing bodies, set by the legislation of the Kyrgyz Republic on credit unions, as well as state control over the activity of credit unions. There is a classic, international model for the structure of governing bodies which is applied to credit unions around the world.

⁸² Monthly publication “Panorama”, pp. 12-16, Almaty (1998).

The tasks required of governing bodies are the following:

- to ensure an opportunity for online decisionmaking;
- to facilitate development;
- to ensure control;
- to facilitate realization of the goals for which the entity was created.

Structure and Functions of Governance of Credit Unions

The internal organizational structure of credit unions is built on the same principles that were established during the creation of the first credit unions. These principles have acquired a fundamental character and have not lost relevance through the present. They are:

- mutual assistance;
- self-administration;
- equality of members of credit union;
- one person – one vote;
- common interests;
- democratic control.

It is important to note that these principles found reflection in the Law of the Kyrgyz Republic “On credit unions” (referred to as the Law in this chapter). Chapter IV of the Law, concerning the governing bodies of credit unions, is dedicated to their internal organizational structure. For a more detailed analysis, it is necessary to look in detail at the articles of the Law that set out the structure of the governing bodies of credit unions.

Articles 14 – 19 of the Law envisage the following structure of governing bodies of credit unions:

- general meeting of members;
- directorate;
- credit committee;
- revision or audit commission;
- external audit.

Article 14 of the Law determines the competence of the general meeting of members of the credit union, and defines the most important issues that are of concern to the members. This Article also indicates the procedure for conducting the general meeting of members. Although issue on quantity of conducting general meetings of members is not provided, and there is a reference norm to the charter of credit union, it shall be conducted not less than once in a year and no later than three months after end of financial year. There is not prohibition against conducting unscheduled meetings.

The general meeting of members is the main governing body of a credit union. The Law determines its powers, including:

- 1) approval and amendments to the charter;
- 2) approval of business plan and budget and financial and annual reports;

- 3) approval of interest, credit, investment and dividend policy in compliance with set principles and norms;
- 4) election and withdrawal of members of directorate, credit committee and revision commission and regulations of these bodies;
- 5) announcement of the dividend to be distributed;
- 6) decision on reorganization and/or liquidation of credit union;
- 7) determination of the amount of remuneration for members of directorate, credit committee and revision commission, if such remuneration is permitted by the charter;
- 8) other issues, as permitted by law.

The following issues must be decided at the annual meeting of credit union members:

- 1) approval of annual financial plan and report on its implementation;
- 2) approval of annual results and report of the directorate of credit union;
- 3) election of members of directorate, credit committee and revision commission.

Article 15 of the Law determines the quorum and procedure for voting by members during the general meeting, and requires that members of the credit union may not vote through an authorized representative. In contrast to commercial organizations (joint stock company, limited liability company), where voting may depend on the contribution of members based on a proportionality principle, the members of the general meeting of a credit union have only one vote irrespective of the amount of their shareholding. In order to be effective, a quorum of not less than 50% of members of credit union must be present at the general meeting.

The executive body of a credit union is the directorate. The members of the directorate must be members of the credit union. Issues related to the day-to-day activity of the credit union and not in the competence of general meeting may be included in the powers of directorate. They are:

- 1) approval and changes to the rules on activity of the credit union;
- 2) preparation of proposals in relation to credit, interest, loan and investment policies, in compliance with set principles and norms;
- 3) setting the procedure and amounts for contributions of additional fees by members;
- 4) solving issues related to acceptance of new members and expulsion of current members;
- 5) determination of the procedure for remuneration of hired employees, if not otherwise provided by the charter of the credit union;
- 6) carrying out other functions related to daily activity of credit union and which are not under the competence of the general meeting.

Decisions of the directorate are considered to be approved if not less than 2/3 of members participate in the session. Decisions are adopted by the majority of votes. Directorate meetings must be recorded in minutes and signed by the directorate members.

Article 17 of the Law determines the scope of work of the **credit committee** and sets its sole power: deciding on granting loans or credit to members of the credit

union. Given the committee's ongoing work with lending, the legislature provided a norm setting the quantity of meetings depending on the quantity of applications. The goal of the meetings of credit committee is to decide on each loan application. In case of a denial, the applicant has the right to appeal to the general meeting of the credit union or to the directorate.

The revision commission is responsible for the regular control of accounts, documents and financial standing in credit union. According to art. 19 of the Law, other external audit functions may also be delegated to it, if the credit union decides against an external audit.

The revisions commission interacts with the credit union's governing bodies, although Article 18 of the Law does not invest it with the competence to make managerial decisions. The revision commission has a control function, which allows it to review the activity of a credit union and to develop recommendations directed toward the elimination of violations.

Overall, the internal structure of governing bodies of credit unions corresponds to the structure utilized for other legal entities. A range of issues under the competence of governing bodies, according to Article 19 of the Law, is related to the decision whether to conduct an external audit.

§ 4. State Regulation of Credit Unions

The basis for regulation of credit unions is the state policy codified in the Order of the National Bank of the Kyrgyz Republic as of June 5, 2000, # 22/8, "On the concept of regulation of credit unions." According to the concept, "[c]redit unions should become in the future the financial infrastructure of the village." In order to fulfill this goal, the "role of the state is to create favorable conditions for development of credit unions."

On the basis of the state policy mentioned in the Concept and the Law "On credit unions," one may distill the principles of external administration. They are:

- preserving a stable financial system;
- protecting members' interests;
- minimizing risk.

From these principles, the following roles are assigned to the regulating bodies:

- to facilitate development of an efficient and competitive system of financial institutions; and
- to guarantee that the activity of credit unions is in compliance with the legislation of the Kyrgyz Republic.

The major functions of external governing bodies are:

- **regulating**, in the form of issuance of normative and legal acts and issuance of licenses;
- **monitoring**, by which governmental bodies are granted the right to review and monitor the activity of credit unions for compliance with legislation of the Kyrgyz Republic;
- **supervisory**, which is in the form of issuance of normative and legal acts

directed to ensuring rights of regulating bodies to apply sanctions and to terminate activity of credit unions by suspending their activity by legislative acts of the Kyrgyz Republic.

The interest of the state in the development of the system of credit unions, as a financial structure, is reflected in the definition of the bodies that are part of external governance of credit unions. According to Article 30 of the Law “On credit unions,” the regulatory function is delegated to the National Bank, which sets the financial standards for credit unions and proposes changes to the legislation.

In compliance with the order of National Bank’s directorate # 19/7, as of September 16, 1997, National bank delegated supervisory functions over the activity of credit unions to Financial Company on the support and development of credit unions (further ‘Financial Company’). In order to carry out its functions, the Financial Company provides borrowed funds to credit unions, controls the efficiency of use of credit resources, the credit financing of credit unions’ members, accounting, and compliance with legal principles.

In a credit contract concluded between the Government of the Kyrgyz Republic and the Asian Development Bank (ratified by Decree of the President of the Kyrgyz Republic # 25, as of January 26, 1998), it is possible for credit unions to privatize the Financial Company. If privatized, credit unions will have the possibility to impact the policy of Financial Company, including regulating the activity of credit unions. The regulatory “concepts” currently in effect provide the possibility (after privatization of Financial Company) to return supervisory functions over credit unions to the National Bank.

In connection with the system of external administration of credit unions, it is necessary to note the role of associations of credit unions, which have functions to protect and represent common interests of credit unions, to coordinate their activities, to carry out joint projects and to solve other common tasks and problems.

Article 9 of the Law of the Kyrgyz Republic “On licensing” as of March 3, 1997, the regulation “On licensing of credit unions,” approved by the order of the directorate of the National Bank as of November 15, 2000, # 40/2, and the regulation “On licensing particular types of economic activity,” approved by order of the Government of the Kyrgyz Republic as of May 31, 2001, do not permit credit unions to carry out activities without a license from the National Bank.

Article 11 of the Civil Code of the Kyrgyz Republic and the regulation “On licensing particular types of economic activity” set features according to which activities carried out by individuals and legal entities will be considered “financial.” They are:

- independent activity;
- activity carried out at one’s own risk;
- profit-making is the main goal of the activity;
- an entity or individual should be registered as one carrying out financial activity.

The absence of one of these features indicates that the activity is not “financial.”

§ 5. Credit Transactions

A credit union, being a credit-financial organization, in its essence is created for meeting the needs of its members in various financial services. Therefore, an important aspect of the activity of a credit union is a study of its transactions. The principal activity of credit unions is rendering *financial services*. In Article 3 of the Law “On credit unions,” the major goals and categories of credit union activities are set out:

- meeting the needs of members by combining their funds and providing loans;
- attracting members of credit union to participate in administration of its activity;
- rendering financial services.

Article 4 of the Law “On credit unions” provides the right of credit unions to conduct the following transactions:

- attraction of monetary funds from their own members by purchase of savings share;
- granting loans to members on the condition of maturity, credit recovery and payment of interest.

Part 4 of Article 4 of the Law “On credit unions” establishes the rule that credit unions have the right to attract deposits and render other financial services upon fulfillment of certain requirements and receipt of additional license in compliance with the requirements of bank legislation.

Thus the law envisages permission for certain activity in connection with rendering financial services. According to Article 4 of the Law “On banks and bank activity,” a credit union is a specialized credit institution and operates based on a license from the National Bank and is eligible to carry out particular bank transactions, part of which as it was noted earlier are financial services included in the list of financial services, according to the Tax Code of the Kyrgyz Republic. A credit union may render bank services (based on a license from the National Bank) and other financial services, under license, if required.

Therefore in the regulation “On licensing credit unions,” it is desirable to define the specific list of services that credit unions may render and the conditions on meeting requirements to receive an additional license in compliance with requirement of bank legislation.

A description of the goals of regulation of credit unions is contained in the concept “On regulation of the activity of credit unions,” approved by the order of directorate of the National bank as of June 5, 2000, # 22/8, as follows: “Considering that credit unions in the future will become the financial infrastructure of the village, regulation of their activity carries strategically important character.” The intention to concentrate credit unions only in villages is disputable. If one considers credit unions as a part of the institutional infrastructure of the state, credit unions should assist with development of financial support for overcoming poverty and formation of small and medium sized businesses. In the future, credit unions may be converted to a more traditional financial institution. And it does not matter where credit unions will develop: in the city or the village.

Germany and Holland may be cited as examples – places in which credits for agriculture do not exceed 5% of all loans, and where there has been a focus on “stimulation of development of small entrepreneurship for the welfare of the district,” and not only for agricultural production. The other example that relates to the activity of loan-savings community is the *Dzelzselniek* Credit Union in Riga, Latvia. This institution demonstrates that a credit union may help workers of the local railway to save and increase their own funds, as well as to receive access to cheap credits for different consumer needs. The experience of charities directed to education and health support on the local level organized by the credit unions of Arizona and Oregon in the USA is also very interesting.

Credit Unions and Nonfinancial Services

Irrespective of future development scenarios of credit unions, credit unions may and must render services of nonfinancial character. In Part 3 of Article 5 of the Law “On credit unions,” the following rule appears: “A credit union has the right to purchase, give for rent, use, negotiate, mortgage, and sell property it owns, to render consultation and information services, to organize and conduct learning seminars and practical lessons relating to the activity of the credit union, as well as carry out other powers related to the credit union as necessary for the efficient achievement of goals of its creation. There is a current need to introduce a clear list of nonfinancial services that are permitted for credit unions in the Law “On credit unions.”

Capital Requirements

In the Law “On credit unions,” capital is defined as the “total sum of all paid savings shares, all reserves of the credit union and surplus earnings.” Another requirement defines capital in the following way: “the capital of a credit union shall be formed at the expense of the monetary funds of members. Fixed assets, securities and nonmaterial assets are not considered to be capital.”

Article 29 of the Law “On credit unions” defines the obligation to create reserves for covering possible losses on assets. These reserves may not be distributed among members, except in the case of liquidation.

Chapter 14. Trade Unions

§ 1. Notion of Trade Unions

The first trade unions emerged in the European countries and in the USA in the XIXth century. Working 14-15 hours a day without humane conditions and labor safety, being subject to fines and punishments for each offense, hired workers united into an organization for protection of their violated rights. Trade unions were created by workers of the most advanced professions of that time: ironworkers, print workers, and rail employees. Hired workers in such trade unions found a collective strength that, to some degree, could help solve labor relationship problems and protect their rights and interests. For more than two hundred years, trade unions existed as a public phenomenon, changing the content of their activities and structure depending on the tasks of a specific time period. In the process of further development of society, workers became voluntarily united into trade unions along the lines of their professional affiliation and commonality of economic and social interests.

At the present time, trade unions operate in more than 180 countries of the world and are united into more than 215 national professional groups with a total number of around a half-million members. Each of these trade unions has its own place in the social-political structure of the society, as a forum for expression, representation and protection of rights and interests of united citizens.

What is the phenomenon of trade unions? It is essentially a public association. Trade unions are part of the political system of society as a specific public organization with their tasks and functions defined by their charter. As a public organization, trade unions are based on membership, and are created based on joint activity for protection of common interests and achievement of charter goals.

Trade unions, first of all, are democratic by their essence, and international by their nature. Trade unions by their content are organizations of a humanistic type. “Humanism” refers to love of people and care about their material, spiritual and physical development, as the basis of trade union activity. Humanism attracts workers and facilitates the aspiration to unite and collectively protect their rights. Trade unions, as other organizations, have the right to unite into different unions, associations and federations.

During the time of the USSR, based on a directive of higher party organizations, there was a practice of association into trade unions according to professional and regional features. At the present time, the same structure of trade unions has been preserved. The activity of trade unions is regulated by the Law of the Kyrgyz Republic “On trade unions” as of October 16, 1998, # 130. According to Article 1 of the Law “On trade unions,” a **trade union** is a voluntary public association of citizens based on commonality of interests by types of activity in the industrial as well as the non-industrial sphere, created for the protection of labor and social-economic rights and interests of its members.

§ 2. Creation of Trade Unions

A trade union may be created in an enterprise, institution or organization, irrespective of the form of ownership or economic management. The purpose of a trade union is to be a voluntary association of citizens for the protection of labor, professional, economic, social rights and other legitimate interests of its members. If at least three workers come together in an enterprise, they have the right to create a trade union. There are requirements for the name of the group, as it must relate to the name of the enterprise and sound like a trade union.

Trade union organizations must operate in compliance with their charters and are not subject to state registration. However, trade unions preserve the right to register with the Ministry of Justice as a legal entity. The registration procedure serves a notification purpose, after which the given organization is included in the particular registry.

The activity of a trade union is limited by framework of the enterprise where the workers are employed. Trade unions, as the protectors of the labor rights of workers, are involved in the interaction with employers in the given enterprise. The organizational and legal form of the trade union takes the form of its initial trade union organization in the enterprise, the trade union unit.

Membership in the trade union is based upon the personal application of an applicant-worker. A decision is adopted at the meeting of trade union or, if permitted by the charter, by its structural unit (department or unit). If there are 15 persons or more in a trade union, a trade union committee will be elected, and in case there are less than 15 persons, a trade union organizer may be appointed. At the same time, there are representatives of the trade union in the enterprise. The legal status of the trade union organizer is the same as the legal status of a trade union committee. In the structure of the trade union organization, it is not prohibited to create particular sections such as departments, districts, units, etc.

Working (studying) citizens and pensioners who have accepted the charter of the trade union may be members of a trade union. Membership in a trade union is maintained for workers dismissed from the enterprise due either to staff cuts or closing structural sections, so long as they have not accepted another job, as well as workers who temporarily suspended from work due to child-rearing and care for ill and disabled persons.

§ 3. Property of Trade Unions

Once registered as legal entities, trade unions must comply with the requirements set by the legislation for legal entities. Although trade union's area of activity is specific and, as a rule, is limited to the interaction with the administration of the enterprise, it is a full member of civil turnover. First of all, trade unions need to have property, which they may own directly. The property base of a trade union is the property transferred to it by its founders or other persons. Trade union may own clubs, libraries, building, separate premises, transport and other property. Further

property generally includes membership fees, although the legislation does not prohibit other sources. The procedure for payment of membership fees is determined by the charter of the sectoral trade union and the federation of trade unions of Kyrgyzstan.

The amount of membership fees, or exemption from them for non-workers and pensioners (including those who terminated work due to upbringing of young children, students and school-children, who are receiving stipend) is decided by the initial trade union organization. In order to improve relations between the initial trade union organization and its members, the charter provides for penalties on violators. In many trade union organizations, members who are three months late paying their fees without a reasonable excuse may lose their right to protection from the trade union until their fees are paid. Trade unions also have the right to open accounts in banking institutions.

In order to strengthen the property status of trade unions in some countries, particularly according to the law on trade union of Poland of 1991, they may carry out economic activity. Income received from such activity should be directed toward implementation of charter goals.⁸³

§ 4. Governance of Trade Unions

As set out in regulations of the Federation of Trade Unions of Kyrgyzstan, the following may be trade union governing bodies:

- trade union meeting;
- trade union committee;
- department committee;
- revision commission.

The highest body of the trade union organization is the general meeting of members or the conference. A conference is called not less than once a year. The conference may be called by the trade union committee; one third of the members of the trade union; the revision commission; or a higher body of the trade union.

Delegates to the conference are elected in a procedure set by the trade union committee. The selection of delegates must reflect the principle of equal representation of members by substructures, depending on their number.

The general meeting or conference, as the highest body, has the right to decide any issue related to the activity of trade union organization. Its exclusive competence includes:

- selection of members of the trade union committee (or trade union organizer) and revision commission of trade union;
- decisionmaking on entrance and withdrawal from sectoral, regional or other associations of trade unions;
- determination of priorities;

⁸³ Kiselev I. Ya., *Pravovoe regulirovanie truda v gosudarstvakh Vostochnoi Evropy* [Legal regulation of labor in Central European states: Poland and Hungary experience], p. 114 (1999).

- determination of the general of the trade union, including in the framework of organization of associations, sections etc.;
- decisionmaking on conduct of collective negotiations with employers on the issues of labor and social-economic status of workers;
- hearings of employer (representative) on implementation of conditions of collective agreement;
- decisionmaking on conduct of strike or other actions;
- decision on appeal to corresponding trade union body with proposals on formation of trade union policy, issues for conduct of collective negotiations at republic, sectoral and regional levels;
- hearings on reports and information from the trade union committee on the work on social protection of working people;
- hiring and firing of trade union staff;
- approval of trade union budget, hearings of reports made by the trade union committee and revision commission;
- delegation of representatives;
- adoption of acts regulating activity of trade union organizations.

Trade union committees are the basic operational unit of the trade union movement. A trade union committee (or trade union organizer) is elected by the meeting to a term of not more than 5 years. It has the right to organize the work of the trade union between meetings, and to execute the decisions of the trade union bodies.

Trade union committees may be members of the Federation of Trade Unions in Kyrgyzstan preserving independence in its activity.

A plenary assembly decides on acceptance into the membership of the Federation of Trade Unions of Kyrgyzstan, based on the written application of the trade union. A trade union committee is accepted into the Federation of Trade Unions of Kyrgyzstan by a majority vote of those present at the meeting.

§ 5. Legal Status of Trade Unions

Trade unions are regulated by normative and legal acts, as well as by acts developed during the annual meeting of the Federation of Trade Unions of Kyrgyzstan. The rights of trade unions in the sphere of labor comprise the major part of their legal status, i.e., the set of rights and obligations in the areas of public relations. Along with rights in the sphere of labor, trade unions have a wide range of rights in the sphere of other branches of law: the rights of a legal entity, ownership right, participation in administration of state social foundations, in the sphere of ecology, privatization, etc. Trade unions have quite broad powers granted by the Labor Code and a wide range of other legislative acts, including the Law “On trade unions.”

In general, the rights of trade unions may be divided into several groups:

- representative;
- protective (in the sphere of social relations);

- controlling (on implementation of labor legislation);
- informational;
- procedural.

These rights of trade unions have one main feature: they are exercised exclusively by these organizations; therefore they are regulated by a special procedure. The set of issues within the competence of trade unions is determined by law. Trade unions protect the rights of their members in connection with their labor relations, participate in the development of state employment policy, carry out public control over the employment of citizens and compliance with the legislation of the Kyrgyz Republic on labor and employment, and propose measures on social protection of persons dismissed by enterprises.

Representative. Trade unions have general as well as specific rights to protect workers' rights. In order to achieve certain goals that are set in compliance with international and national legislation, organizations representing workers' interests are created. In the legislation of the Kyrgyz Republic, trade unions are given representative powers (Article 9 of the Law "On trade unions"). All trade unions have the right to represent working people's rights. They are empowered to express opinions and advocate for workers in relations with the state, local bodies, employers, their associations and representatives; to influence the identification of workers' interests; and to pursue social justice.

Trade unions place a priority on the search for resolution of difficult situations within the framework of a social partnership with the government and employers. And genuine partnership and consent mean that proposed claims are rational and feasible, considering specific conditions and opportunities, especially in solving issues related to problems of employment, social protection, proliferation of fundamental rights and principles in the sphere of labor, and identification of economic and financial policy. Trade unions have the exclusive right to enter into relationships with public authorities, local self-administration bodies and associations of employers, and employers themselves (through their representatives) as the social partner in labor and social-economic relations. The most efficient means for protection of workers' rights is conclusion of collective bargaining agreements and contracts at the republic, sectoral and territorial levels. As of November 1, 2005, 7,043 collective agreements have been concluded, content and quality of these collective agreement was also improved. Oblast (area), sectoral, regional and tripartite commissions and councils on regulation of social-economic and labor issues have been created and are now functioning.

Protective functions in social relationships. In social relationships, trade unions possess the right to ensure a range of protections, including: proper conditions and labor remuneration, labour protection, safety in production, housing conditions, social insurance, protection of health and cultural interests of working people, and ensuring pension. All of these rights are regulated by legislation of the Kyrgyz Republic. In the framework of competences defined by charters, territorial and sectoral associations of trade unions possess the right to participate in the development of measures on social and economic protection of working people,

identification of major criteria for the standard of living, levels of compensation (depending on change of price index), etc.

Trade unions possess rights to manage funds intended for the social insurance of working people and their family members. The Federation of Trade Unions (pursuant to the regulation on the supervisory council on administration of state social insurance as of April 5, 2001) is the body exercising particular control over the use of funds of the Social Foundation of the Kyrgyz Republic. Trade unions, within their competences, carry out functions relating to the social insurance of working people; they may send workers and their family members to sanatorium and spa treatment, trade union recreation facilities, organized medical service of trade union members; they control the legality of awarding pensions, carry out direct control over award and payment of temporary unemployment and maternity leave benefits, etc.

An important power in the area of protection of workers' rights is permitting trade unions to have *control* functions in certain areas.

First of all, their control relates to the execution of obligations that have been undertaken in collective agreements and contracts with public authorities, local self-administration bodies and employers. Trade unions have the right to control the procedure for compliance with legislation on labor and employment and to require elimination of identified violations. The powers of trade unions are facilitated by the obligation of employers to consider the proposals for elimination of violations of the legislation or to annul the illegal decision and, within one month, to notify the trade union body on results of its reconsideration and any measures taken (Art. 14 of the Law "On trade unions"). For these purposes, trade unions may create legal and technical inspections of labor conditions, and these inspections carry the same rights as state inspections undertaken according to regulations approved by the Federation of Trade Unions of Kyrgyzstan. ILO Convention # 81, "On inspection on labor in industry and trade," requires that each ILO member is obliged to maintain a system of labor inspection in industrial enterprises.

The system of labor inspection includes:

- ensuring compliance with legislative provisions concerning labor and security conditions; for example, provisions on working hours, salary, labor security, health protection and welfare, use of children's and teenagers' labor and on other issues, to the extent a labor inspector is obliged to ensure application of indicated provisions;
- providing technical information and advice to entrepreneurs and workers in order to develop the most efficient means of compliance with legislation and regulations;
- informing the responsible public agency about any inaction or abuse which are not covered by existing legislative provisions.

The procedure for implementation of collective agreements and contracts is ensured by the creation of commission on regulation of social-labor relations (Art. 21 of the Law "On social partnership in the area of labor relations").

Trade unions have a right not to admit dismissal of worker without their preliminary consent in case of an initiative of employer. Similarly, the consent of a

trade union body is necessary prior to soliciting workers to work overtime on weekends and holidays.

Trade unions, as a necessary element of civil society, are eligible to participate in the administration of state and production affairs on social-labor issues as equal partners in the three-way system of “tripatrism” that involves the state, business and labor. The given right is expressed by:

- introducing proposals to public authorities on adoption, amendments or annulment of legislative and other acts on labor and social-economic issues;
- nomination of candidates for election to other representative bodies;
- delegation of representatives to governing bodies of enterprises;
- participation in intergovernmental treaties on migration, employment, labor, price-setting and social welfare.

In contrast to labor legislation of the Soviet period, when trade unions had the right to participate in drafting laws, they do not have such a right at the present time.

The *informational* right of trade unions imposes an obligation on employers, state bodies, and local self-administration bodies to provide information to trade unions on issues related to labor relations and social-economic development. This right should not be hampered and should be free of charge. Trade unions have the right to access mass media in order to publicize their activity. Dissemination of information concerning labor legislation rules concerning protection of workers’ rights is one of the responsibilities of trade unions. The other side of this right is the opportunity to create different centers for conduct of research concerning labor activity.

Procedural. An important means to the protection of workers’ rights is the opportunity for representation by trade unions in courts. This procedural power is broadly considered to encompass the right of representation at any stage of the judicial procedure, which gives the opportunity more efficiently to protect violated rights of workers (Art. 20 of the Law of the Kyrgyz Republic “On trade unions”).

Chapter 15. Political Parties

§ 1. History of Political Parties

Political parties are associations of individuals pursuing active participation in political life. They are an indispensable dimension of contemporary democratic society. Their emergence and development is related to the evolution of civil society in general, and the particular political system in which they operate. Different studies have attributed different reasons for the emergence of political parties, among which are:

- class antagonism,
- the emergence and evolution of parliamentary systems of governance and universal suffrage,
- the necessity to adapt political elites to changing public relations.

In the nineteen twenties in Western Europe, large political parties emerged as a mean of campaigning, in order to gain the votes of the new electorates. In communist and fascist countries, leading parties monopolized power, trying to re-structure society and people. In developing countries, nationalistic parties became the means to expel colonial rulers. In all these cases, political parties were able to mobilize millions of people into the political process. “Mass parties” became a mobilizing force of mass policy in our times.

The term “party” is from the Latin root “pars,” which means party or part of a whole. This term was used in the Roman Empire for collective identification of the aristocracy and their followers, competing for honors, salary and promotion, controlled by the Senate. Since that time and until the 17th century, this word has been used along with the word “faction” (an interest group).

In 1850, none of the countries of the world (except for the USA) knew political parties, in the contemporary understanding of this word. At the beginning, they were not parties, but rather groups of parliamentarians, united by regional origin to protect their own mutual interests. Later – on a wider basis – groups came together based on a similarity of political and ideological views on an important range of issues of national policy. Out of the parliamentary parties were formed other organizations, such as trade unions, religious organizations, unions of industrialists, etc. The organizational structures of the bourgeoisie in the period of early bourgeois revolutions are considered the prototypes of contemporary political parties: religious and political groupings, for example; Presbyterians and Independents during the English bourgeois revolution of the 17th century; early parties, formed on a class-political basis during the French Revolution - Constitutionals, girondists, the Jacobins; federalists and anti-federalists in the USA after independence at the end of the 18th century and beginning of 19th century. However, during that period, parties were very weak and did not have a clear political-organizational structure. In many countries that, at the present time, are considered models of legal regulation and degree of participation of political parties in public and state life, political parties had quite a difficult path; they were persecuted as saboteurs of national unity and

sovereignty. By 1950, parties functioned in the majority of developed nations, and other countries tried to imitate them.

§ 2. Notion and Features of Political Parties

There is a variety of definitions of parties (according to some data, more than 200) which is explained by the complexity of this phenomenon and the diversity of goals of the study. An overview of contemporary achievements in the area of comparative or cross-national analysis of political parties leads to different definitions of parties, which include the following features:⁸⁴

- an ability to win during elections (Schlesinger);
- an aspiration to control the state apparatus by acquiring elected positions during a properly organized elections (A. Downs);
- an aspiration to seize power or to participate in its diminution with the support of the general population (Duverger);
- the presence of an official name and ability of candidates to occupy state positions by participation in elections (free or unfree) (Sartori);
- the presence of the goal to occupy representative positions in government by those who are openly associated with the party or with its symbols (K. Janda).

For example, a party may be defined through the prism of its formation, “which recruits and socializes new members, elects leaders through an internal process of representation and elections, permits internal disputes and decides on policy in relation to the external world.”⁸⁵ As such, a party is a special mechanism for development of a particular social world-view of an individual.

Parties are different from any other organizations:⁸⁶

- ❖ by their major goal, directed toward obtaining power by participation in elections, and by obtaining as many state positions as possible;
- ❖ in that the political goals of a party and its right to “fight” for power is legal;
- ❖ by their mission – to accumulate political interests of citizens and resources for the achievement of political goals;
- ❖ by proposals for alternatives to the official political and economic programs on community development and identification of daily issues on the political agenda;
- ❖ by a special, public-oriented strategy for receiving the support of as many voters as possible;
- ❖ by their competitive attitude toward other parties, including the party in the power;
- ❖ by their openness to followers and voters, as the programs and goals of the party are openly declared and they strive to inform all about their activity;

⁸⁴ Djanda K., *Sravnienie politicheskikh partii: issledovanie i teoria* // *Sovremennaya sravnitel'naya politologiya: khrestomatiya* [Comparison of political parties: research and theory// Contemporary comparative politics: resource book], pp. 90-92, Moscow (1997).

⁸⁵ Merkl P.H. *Modern Comparative Politics*. - N.Y.: Oxford University Press, 1970. P. 265 - 266

⁸⁶ Ibragimov T. R., *Ponyatie i opredelenie politicheskikh partii* // *Nekotorye voprosy prava* [Notion and definition of political parties // Some legal issues], pp. 24- 37, Bishkek (2000).

- ❖ by the presence of a popular label in the name of the group, for example, “liberal party,” “communists,” etc.;
- ❖ by the existence of individual membership, a hierarchy, an organized internal structure that interacts consciously and openly for the achievement of the party’s goals.

Sometimes, a political party may be created by a clan, regional, tribal or even family group, such that the social, ideological and financial basis of such organization has clan, region of residence, kinship links or a similar foundation. However, the nature of parties is that, in order to win in elections and survive, they have to expand beyond their initial, narrow group, broadening the number of their supporters and conducting deliberative and responsible policy discussions that are open to many members of society.

Legally, parties may be in government or out of it. Parties are a mechanism of representative democracy that assumes participation of the party in legitimate elections. Therefore, where parties are formally prohibited, no one may compete openly with the official government nor propose to voters alternative programs of society development. The groups that do this may be called “juntas” or “political cliques.” These regimes are not considered democratic.

By electing their representatives, different groups of people determine who will come to power, reflect their views and protect their interests in decisionmaking on state affairs. At the same time, electing a party (or a candidate from a party), voters show a preference for a particular party program and determine the future course of development and policy of the state. Therefore, if voters do not choose one of the competing party programs and candidates, it is impossible to have real parties. And when people choose independent candidates, people do not know and may not foresee how elected representative will shape policy in the future. In contrast to individual representatives, parties tend to follow a declared party program and are bound by party discipline; they are subject to greater control by voters and their political actions are more predictable.

Parties play an important role in ensuring the efficiency of the state as a whole. The efficiency of the state depends on cooperation of its different branches of power (legislative and executive) and on who (which specific personalities) and how they come to power. Parties allow the parliament to create a majority for decisionmaking, and to ensure its work is coordinated. In this way, political parties and electoral laws, through which politicians come to power, impact and in the future determine behavior of elected politicians, thus add a degree of efficiency to the functioning of the state.

Therefore, parties ensure vertical and horizontal integration of the society and the state, as well as a link between their main components. *Vertical* integration means that parties through their national and regional structures and through their members in state bodies ensure a link between nation-wide bodies and electorate in places; they develop, propose and implement their national political programs, which correspond to the aspirations and needs of ordinary citizens. *Horizontal* integration is ensured by the possibility for the parties to set clear positions for negotiations in the

parliament, the formation of factions in the parliament, as well as in ensuring a link between the legislative and executive branches of power through supporting or not supporting the president and/or prime minister's majority in the parliament. Parties reflect the existence in society of secessions and conflicts, but, at the same time, serve as channels and means to solve them. Parties create predictability and thus stability of the policy conducted by the legislative body.

Parties are political organizations that reach their goals by legitimate means, as reflected in the legislation of the country. In Kyrgyzstan, the right to create and operate parties as political organizations is regulated by a range of normative legal acts, including the Constitution and the Law of the Kyrgyz Republic "On political parties" as of June 12, 1999, # 50.

The Law "On political parties" defines "party" as a "voluntary association of citizens of the Kyrgyz Republic who have common political goals and tasks, which party facilitates the realization of the political will of a particular part of the population, and which participates through its representatives in the governance of state affairs" (Art. 1). Thus, an indispensable goal of the creation and activity of political parties is "the realization of political will of a particular part of the population" and "participation in the governance of state affairs" (Art. 3).

§ 3. Constitutional and Legal Regulation of Interactions between the State and Political Parties

Interaction between the state and society, as well as between its institutions, including its political parties, is impossible without state-legal regulation. In Kyrgyzstan, the principle of political pluralism was articulated in the declaration on state sovereignty. And the freedom of foundation and activity of parties, public associations and mass movements was codified in the Law "On public associations" as of February 1, 1991.

The Constitution exhaustively identified all possible forms of participation of political parties in state affairs, clearly defining general legal frameworks for the existence and functioning of this institution. Article 8 of the Constitution confirmed that "political parties may be created in the Kyrgyz Republic," along with other public associations based on free expression and commonality of interests. "[P]olitical parties may participate in state affairs only in the following forms:

- nomination of candidates for election in the Parliament ("Jogorku Kenesh") to state positions and local self-administration bodies;
- formation of factions in representative bodies."

Thus the right of parties to use the mechanism of representative government, including nomination of candidates and appeal to voters for the support of their candidates and programs, as part of their strategy, is explicitly set out in the Constitution of the Kyrgyz Republic. Parties should also play a significant role in the

highest legislative body of the country, as voters, having voted for a particular party, thus confirm its party program as well.

The Constitution sets a range of limitations that, on the one hand, prevent a return to a totalitarian past, when there was a monopoly by the Communist party of Soviet Union (CPSU), and, on the other hand, protect from the possible strengthening of religious impact on policy in our country. Thus, in the Kyrgyz Republic, the following are not permitted (Part 4 of the Article 8):

- merger of state and party institutions;
- activity of party bodies in state institutions and organizations. State officials have the right to carry out party activity not related to their official activity;
- membership in parties and speeches in support of particular political party by military personnel, employees of the Ministry of Internal Affairs, National Security bodies, Ministry of Justice, public procurator's office and courts;
- creation of political parties on a religious basis.

As parties deal with politics and may compete with government officials in elections, the approach of the legislator to the regulation of interactions between parties and the state is very important. According to the Law “On political parties,” the state must guarantee compliance of rights and legitimate interests of political parties and provide equal legal conditions for achievement of their goals. Intervention of state bodies and officials into the activity of political parties is permitted only in cases provided by the law. But interactions of the state and party are not equal in terms of their level of responsibility.

The Ministry of Justice is empowered by the legislator with broad powers in relation to political parties. It has the rights:

- to demand from ruling bodies of the party explanations on issues related to violations of its charter (Art. 12);
- in case the party carries out “actions beyond the limits of charter goals and tasks or not corresponding to current legislation,” to send to the ruling body of the party a written warning. And the party’s ruling body must within a month report on measures taken for elimination of the violations (Art. 13);
- to postpone for a period of two months activities of the party that exceed the goals and tasks set by its charter or violate the law. In this case, the party is prohibited from using mass media to communicate or to organize any mass events or participate in elections. Also, with some exceptions, the party’s right to use bank deposits is suspended. If, in the period of suspension, the party eliminates the violations, then its activity may be resumed (Art. 14);
- to appeal to the court on dissolution of the party (Art. 15).

§ 4. Procedure for Foundation and Termination of Political Parties

The foundation and activity of political parties are set out in the Law “On political parties,” adopted in June of 1999 (referred to in this chapter as the “Law”). In this Law, “party” is defined, its goals, principles, procedure for foundation and

activity are determined, a list of prohibitions for parties are set, interactions with the state are regulated, the liability of political parties for violation of the legislation are set, and the basis for their financial and material status are determined.

The law sets out the major principles of the foundation and activity of political parties: freedom of action; voluntary participation; equality of members; self-administration; legality; publicity and humanism (Art. 4).

In order to establish a political party, an initial meeting of 10 citizens of the Kyrgyz Republic is required, either by a founding meeting (conference) or general meeting, at which charter is adopted and governing bodies are formed (Art. 5). The political party must take a name and symbol that differentiate it from other parties registered in Kyrgyzstan. The governing bodies of the party must be located on the territory of Kyrgyzstan (Art. 11). The party must register, particularly with a view to the Law “On state registration of legal entities and branches (representative offices)” as of February 20, 2009, # 57.

The charter of the party must reflect the name of the party and its locations; the party structure, the procedure for formation, competence and terms of powers of its governing bodies, the intervals for calling conferences and meetings (which usually are the highest bodies of the party); the conditions and procedure for membership in the party and withdrawal from it; the rights and obligations of party members; the procedure for decisionmaking and implementation of decisions; the sources of funds and other property of the party; the procedure for amendments to the charter of the party; the procedure for termination of the party and divestiture of its property. The charter may contain other provisions that relate to the activity of the party and do not contradict the law (Art.8).

The law grants freedom to parties in determination of its membership: either to have fixed membership or unfixed membership. Party members must be citizens with full legal capacity of 18 years of age. The only requirement of the Law in relation to membership of any party is voluntary participation and acceptance of the party charter and program (Art. 6).

With this requirement, the legislature one more time emphasizes the importance of the party as an organization that is striving for power, in which its members follow its charter and program, and which must be open to the public, including voters. A state official may be a member of the party; however, his or her membership must “not [be] in relation to his or her service activity” (Art. 6).

In order to carry out its goal, according to the Law, a party has the right: freely to disseminate information about its goals and activity, to establish mass media, to conduct in established procedure rallies, demonstrations, meeting and other mass events; to unite into political blocs, unions and associations; to participate in elections of all elected bodies of the state by nomination of its candidates, including president; to conduct pre-election activities and impact decisions of state bodies (Art. 11).

The legislature provides an exhaustive list of rights and obligations of political parties, having stipulated that they have the right “to carry out other functions, provided by the present Law and other legislative acts of the Kyrgyz Republic.”

Thus, the law prescribes that all functions of the party must be exhaustively defined by legislative acts, and parties may not carry out any activity that is not specifically permitted by the law. As parties are close to the state and frequently their members are represented in state bodies, their activity, certainly, should be addressed in the law. On the other hand, parties are public associations, i.e. associations of citizens based on common interests in order to meet spiritual and other nonmaterial needs. For this reason, the state may not anticipate all forms of activity of political parties, having set basic limitations and having permitted a rivalry of political organizations to form a political marketplace.

By decision of its meeting or conference, a party may be reorganized (by merger, accession or splitting off) or liquidated. A party may be also dissolved by decision of a court in the case of undertaking certain prohibited actions that are set out in Part 2 of Article 3 of the Law “On political parties.”

Certain activities are prohibited outright: The foundation and activity of political parties that have the goal and method of actions to overthrow or forcibly change the Constitutional system; to undermine sovereignty or violate the territorial integrity of the Kyrgyz Republic; to propagate war, violence and brutality; to foment social, racial, national or religious strife; or to take other actions that contradict the Constitutional system of the Kyrgyz Republic and do not correspond to universal norms of international law are not admitted (Art. 3). Parties are also prohibited from owning or keeping arms, explosives or other materials that pose a threat to the security of the society and ecology, as well as the life and health of citizens (Art. 18).

Appeals of a decision to dissolve a political party are issued by the Ministry of Justice of the Kyrgyz Republic. In case of dissolution of a political party by decision of its meeting (conference), the material and financial funds of the party may only be used for the goals provided by its charter. And if the party is dissolved by a decision of the court, then its property is transferred free of charge for the benefit of the state, after payment of labor contracts, reparation of any damages caused by the party and payment of fines.

§ 5. Financing of Political Parties

Financing of political parties in the Kyrgyz Republic is regulated by the Law “On political parties,” as well as by the Civil Code, Tax Code, Code on elections and other normative acts.

In contrast to some countries, in Kyrgyzstan, there is no state financing of political parties, except for election campaigns, which may be provided by electoral legislation. As parties by their nature compete for power within the limits of the law, the Law “On political parties,” the Civil Code and the Code on elections directly prohibit financing of election campaigns of the parties by foreign states, foreign parties, as well as by any foreign legal entities or individuals.

According to the Law, parties may be funded by 1) membership fees, 2) voluntary donations, 3) loans, 4) income from the property, activities, dissemination of press publications, as well as other revenues that are not prohibited by law. At the

same time, parties may own movable and immovable property, equipment, inventory, publishing houses, printing houses, as well as other property necessary for carrying out charter goals. Parties have the right to rent buildings and property and to receive loans.

According to a procedure established by the legislation, parties may create enterprises and organizations with the rights of legal entities, but only for carrying out charter goals. Income from the activity of these enterprises and organizations may not be distributed among members of the party and may only be used for achievement of charter goals. Party members have no right over income and property of these enterprises and organizations, and are not liable for their debts. Party income may be used for charitable goals and for acts of charity irrespective of the requirements of the charter.

Parties must prepare financial reports, just as other legal entities, in compliance with the legislation of the Kyrgyz Republic. There are no tax benefits for political parties. Review of the sources of income, donated funds and payment of taxes is carried out by tax authorities.

During elections, the financing of election campaigns is not carried out through parties, but through individual election foundations, which are created by citizens who have been nominated as candidates. It is related to the existence of single member constituencies, where majority of candidates are nominated independently from parties. These foundations may be created at the expense of the following funds:

- personal funds of the candidate;
- funds allocated to the candidate by his or her nominating political party or electoral bloc;⁸⁷
- voluntary donations of citizens and domestic legal entities.

Financing from foreign and international sources, state agencies, institutions and organizations, court and local administrative agencies; military structures; charitable organizations; religious organizations; as well as from anonymous donations is not permitted.

The Code on elections sets maximum limits on the amounts of all types of financing allocated to electoral foundations of the candidates, as well as maximum amounts on spending of funds of electoral foundations. Funds received above and beyond the set amount may not be included in electoral foundation.

⁸⁷ Electoral bloc – a voluntary association of political parties for joint participation in elections to unite efforts and their electorate.

Chapter 16. Religious Organizations

§ 1. Notion of Religious Organizations; their Emergence and Role

Religious communities and churches representing at the present time the biggest world religions as Christianity, Islam, Buddhism, and those less widespread such as Judaism, Shinto, etc. during last centuries of history have had a significant impact on political processes, on the formation of political and legal culture, functioning of the state, status of human beings in society and the state. Their significant impact is continuing in different countries through the present time, in the XXIst century.

The emergence and evolution of religion and religious associations has its roots in the millennial history. The first unit of a religious institution is a religious group. It appears and functions based on collective performances of religious rites, through which particular religious perceptions of this group are formed. Initially, cultic and ritual actions were not an independent type of activity of one person or group of people. Historians think that, at the beginning, a group of participants of cultic actions coincided with group of participants of labor and other social actions. As a result, religious groups and tribes formed a community. The differentiation of functions in administering religious rites was done only by age-related or sexual character.

In the process of development of public life and social-hierarchical structures, certain people gradually emerge who are special or possess other characteristics, and who start to play a leading role in performance of cultic and religious rites: shamans or magicians. Gradually, these people begin to form a special social section of people who was form part of a tribal elite. However, frequently, the head of clans, tribes, or communities who are distinguished from others by their leading role in society played a leading role in the religious life of the community as well. In Ancient Greece, for example, the military leader was at the same time the High Priest.

Along with the process of emergence of the societal elite, the public structure significantly became complex. The need for significant regulation of behavior and thoughts of people emerged. Such regulation was carried out in the interests of the ruling group of people, and served as evidence of their non-ordinary, supernatural origin. At this stage, it is possible to talk about the emergence of relatively independent groups of people who carried out a role in connection with the performance of cultic rites. In different parts of the world, this process occurred in different time frames and forms. In one country, a priestly social estate is formed based on separating a group of people from aristocracy and transfer of their knowledge and social status by inheritance. In other countries, there are quite closed castes that played a significant role in public life, as for example, Brahmins in India.

Priests at this stage started to play a role in the development of the state-legal system on regulation of societal life. It is explained by that priests were the most educated people of their time; in addition, the state-legal system was the most

important part of the cultic system. The impact on the minds and behavior of people resulted from the blending of religious, moral and state-legal impacts.

The further development of public relations leads to complications of religious consciousness and cultic actions, which, in its turn, makes necessary the gradual institutionalization of religious relations. In the historical arena, religious organizations (associations) began to emerge. As a consequence, the all-embracing, systemic qualities of religion began to strengthen. Priests led religious groups, involving major masses of believers, and controlled activity on formation, interpretation and orientation of religious consciousness and the behavior of people.

Today world religions are not characteristic as between different countries and nations, because within these religions, there are different movements and sects. A majority of countries of the world is *polyconfessional*, i.e. their population professes different beliefs. For example, in the USA, a majority of the population is Christian (88%), composed of Protestants (57%) and Catholics (28%). In Germany, Protestantism is embraced in two forms, Lutheranism and reformism (47.3%), as well as Catholicism (44.4%). In multinational, polyconfessional countries, religious problems frequently coincide with national, racial, and ethnic issues.

Churches and mosques are first of all depositories of moral, cultural and historical traditions of the nation. Religious organizations have an ideological impact on their members by encouraging a particular system of values and goals. These organizations are formed to meet the religious needs of the citizens on beliefs and dissemination of faith. This goal is achieved through the performance of a range of important functions that are carried out by all religious organizations:

- development of systemized religious doctrine;
- development of protection system;
- guidance on performance of cultic activity;
- control, and if necessary, sanctions on nonperformance or incorrect performance of religious norms;
- development of norms and links with the state and secular organizations.

Developed religious organizations are a complex social institution. The internal structure of such organizations is divided into ruling and ruled sub-systems. The first, the ruling system, includes a group of people who develop and process religious information, coordinate religious activity, control behavior of followers, and develop and apply sanctions. The second one, the ruled sub-system, includes a mass of believers. The interaction between these sub-systems is carried out through normatively designed, hierarchically stable relations, which ensure the manageability of religious activity as a whole. Relations between two subsystems are ensured based on organizational and institutional norms. These norms may be in charters or regulations of religious organizations.

§ 2. Interaction of Religious Organizations and the State

After the collapse of the Soviet Union and adoption of its own Constitution, the Kyrgyz Republic declared itself a secular state. Article 1 of the Constitution says: “The Kyrgyz Republic (Kyrgyzstan): a sovereign, unitary, democratic republic, built on the principles of a legal, social and secular state.” *Secular* statehood assumes the absence of official, state religion and the refusal to prefer any religion. In a secular state, religion and its dogmas, as well as the religious organizations (associations) professing them, have no right to impact the activity of state bodies and their officials. State formation and other spheres of state activity may not be under the influence of any religious doctrine. Secularity is the important theoretical and methodological category, creating the particular orientation of state policy on the religious issue.

In the contemporary world, the dominant majority of states are secular. However, there are countries in which one religion is officially accepted, whether it is called state, dominant or national religion. For example, in England, Anglican is such a religion, and in Israel, Judaism, etc. There are states in which the equality of all religions is declared (Israel, Germany, and Japan, for example). However, even in such countries, the most traditional religions enjoy privileges and render particular impact on the state life. Sometimes, the state provides financial assistance to religious organizations.

Countries in which state power belongs to a religious association or church are called *theocratic*. The Vatican until today is considered such a state. One more type of state, differentiated in relation to religion, is the *clerical* state. Such a state is not related to a church; however, through institutions and legislative acts, a church is rendered significant, and may have an impact on state policy. Education in such state has an intentional religious character. An example of such a state may be Iran.

The impact of religious organizations on political life depends, first of all, on the level of democratic development in the country, which in its turn, in many aspects is determined by the degree of social and economic development. Usually, state character is given to religion and church by Constitutions of countries with authoritarian and totalitarian regimes. Islam, for example, is accepted as the state religion in more than 30 states (Jordan, United Arab Emirates, Qatar, Morocco). In some Muslim countries (Algeria, Iraq), a declaration of Islam as the state religion means only that the state respects the beliefs held by a majority of the population and, in general, declares its commitment to particular Islamic traditions, which are the cultural heritage of the nation. In other countries (Saudi Arabia, Iran, and Pakistan), Muslim law, Sharia, has more legal force than law and even the constitution. There is a difference of state-legal concept of Sunni and Shiite interpretation of Islam.

In the Kyrgyz Republic, there is a clear differentiation between:

- I. religion and the state;
- II. religion and political activity;

III. religion and education.

I. The Constitution (Part 2 of Article 7) provides that: “religion and all cults are separate from the state.” The content of this norm is articulated by provisions of the Law “On freedom of religion and religious organizations” as of December 31, 2008 (referred to in this Chapter as “Law”). The Law indicates: “The state does not interfere in the activity of religious organizations, if they do not contradict the law; setting any privileges or limitations to one religion or religious faith is not permitted; the activity of religious organizations and activity on dissemination of information about atheism is not [state-]financed.” In other words, the state occupies a neutral position in relation to religious faith, as well as to lack of faith, and these issues must be decided by individuals themselves. The activity of religious organizations, carried out in the framework of national legislation, is guaranteed by the state.

An agency on religious affairs, the State Agency on Religious Affairs, was formed by order of the Government of the Kyrgyz Republic State in order to conduct state policy in the religious sphere. This agency deals with the development and realization of state policy in the religious area, ensuring legal guarantees of freedom of religion and development of measures on non-admission of religious extremism on the territory of the republic. The State Agency on Religious Affairs:

- registers religious organizations, objects of religious purposes (mosques, churches, praying houses), missions of foreign religious organizations and religious educational institutions in the republic;
- controls the compliance of religious organizations with the legislation of the Kyrgyz Republic;
- decides on suspension of activity of religious organizations, foreign missionaries and religious educational institutions, in compliance with the legislation;
- organizes and coordinates the work of the interagency council on religious affairs;
- oversees withdrawal of propaganda on religious superiority, fomenting of religious strife and religious conflicts.

The interagency council on religious affairs is a consultative body on the development and realization of state policy in the religious sphere, which also coordinates the efforts of state bodies and religious organizations directed at the preservation of stability in society, strengthening spirituality and faith and the harmonization of inter-confessional relations.

II. In many countries, the church is not limited to interactions with the state, but also strives to integrate other elements of the political system as well. For example, in several countries, an important role is played by Christian Democratic parties, combining in their political platforms the principles of democracy with the main beliefs of Christianity (Germany, Italy, Poland, Hungary, etc.). The church frequently strives to provide active assistance to other public associations as well.

According to provisions of the Constitution (Part 3 of Article 4) and the Law “On freedom of religion and religious organizations” (Part 1 of Article 5), in the Kyrgyz Republic:

- it is prohibited to create political parties, branches or units on a religious basis;
- religious organizations have no right to pursue political goals and tasks;
- the intervention of priests of religious organizations and cults in the activity of state bodies is prohibited.

Religious organizations have no right to nominate candidates to elective offices, to participate in electoral campaigns through financing, pre-election activities or other support of particular candidates or parties. Religious organizations have no right to participate in the activity of political parties.

Religious organizations are not prohibited from participating in public and political life. The abovementioned law says the following: “Religious organizations have the right to participate in public life, as well as to use, equally with public associations, mass media, in compliance with the legislation of Kyrgyzstan on public associations” (Part 6 of Article 5). Moreover, representatives of the priesthood, as other citizens, have the right to participate in the public and political life of the country on general grounds or even to be elected to elective office, but not as representatives of religious organizations.

In order to provide protection from possible imposition of religion and from religious extremism, the Constitution (Article 4) also prohibits the formation and activity of religious organizations that damage the Constitutional system, state and nationwide security, activity of foreign organizations, their representative offices and branches pursuing political goals.

III. Part I and 2 of Article 6 of the Law says that the “State system of education in Kyrgyzstan is separate from religious organizations. Access to different types and levels of education is granted to citizens irrespective of their attitude to the religion.” Thus, the state guarantees an absence of religious impact in state schools, but at the same time, it does not impose a secular education on private schools.

§ 3. Religious Organizations and Freedom of Conscience

Active formation and development of civil society, efforts to build a law-based state, democratic institutes: these are characteristic features of the contemporary stage of development of Kyrgyzstan. In these conditions, relations between society and the state, between people, development of political and the world-view of pluralism, including religious pluralism, have an extremely important meaning.

Society in Kyrgyzstan is composed of groups differentiated by ethnic, language, property, cultural and religious features. More than 80 percent of the population traditionally identifies itself as Islam, while 17 percent selects Eastern

Orthodoxy.⁸⁸ Differences in faiths and treatment of people of religions do not carry a confrontational character, as in society there is tolerance on this issue. At the same time, in the public life of the country, especially the last years, there are alarming moments when some religious organizations try to preach their extremist views on the public-state setup of the country and how it might change.

Some problems also occur between religious organizations and nonbelievers, when “bellicose atheism,” which was prevalent during the time of the USSR, was replaced by “bellicose clericalism,” which tried to impose particular religious rites and norms of behavior. Such processes, burdened with the problems of economic development, low living standards of the population and regional and clan division, may negatively impact the democratic development of society and the state. The sovereignty and competence of the state also may be infringed by religious associations and their leaders.

Civilized decisionmaking on emerging problems in this area is possible only in the framework of law. The basis for conflict resolution is the principle of freedom of conscience, codified in the Constitution of the Kyrgyz Republic. The Constitution (Article 32) states that: “Everybody is guaranteed the freedom of conscience, religion, religious or atheistic activity. Everybody has the right to freely confess any religion or not to confess any, to choose, and to disseminate religious or atheistic beliefs.” The principle of freedom of conscience means that each person has an independent right to determine and choose his or her beliefs and to act in compliance with them without damaging other members of the society.

The Constitutional norms on the secular character of the state and freedom of conscience are guaranteed by the Law “On freedom of religion and religious organizations.” In the Law (Art. 1), individuals of the Kyrgyz Republic are guaranteed the right to determine and express their treatment of religions, freely to observe their religion and to perform religious rites are guaranteed.

Every citizen has a right freely and independently to determine his or her observance of religion. Parents have the right to educate their children in compliance with their own beliefs (Art. 4 of the Law). In the Law, a principle of equality of citizens, irrespective to their treatments of religions (Articles 4, 5, 6), is declared. Any direct or indirect limitation of rights or privileges of individuals, depending on their treatment of religions, is subject to liability as set out in the law. In the law, the secular character of the state is clearly formulated: the state system of education is separated from religious organizations, and access to different levels and types of education is granted to citizens irrespective to their religious beliefs. In compliance with their choice, individuals may receive religious education as well.

⁸⁸ See Order of the Government of the Kyrgyz Republic as of April 5, 2001 # 155.

§ 4. Procedure for Foundation and Termination of Religious Organizations and their Legal Status

According to the Law “On freedom of religion and religious organizations,” religious organizations in the Kyrgyz Republic are Islamic, Christian and other religious communities, departments and centers and religious educational institutions. Religious organizations are formed to meet the religious needs of citizens and dissemination of faith, and, in compliance with their chosen structure, to choose, appoint and replace their personnel according to their charters (regulations) (Art. 7). Charters (regulations) or other documents determining religious side of the activity, solving internal issues of religious organization, are not subject to registration in state bodies. The state notes and respects the internal nature of religious organizations, if they are submitted to corresponding state bodies and do not contradict the existing legislation (Art.8).

In order to obtain legal entity status, a religious organization or group of founding citizens (not less than 200 persons) must submit an application, with the charter and other necessary documents, to the Ministry of Justice. The Ministry of Justice must decide on the application within a month. As of 2001 in Kyrgyzstan, there are 1338 mosques (885 are registered), 260 Christian organizations (248 registered), including 208 praying houses and 40 temples and parishes. In the Republic, there are 39 religious educational institutions, including 26 mosques, 5 Islamic institutes, 7 Christian educational institutions and 1 Jewish school.⁸⁹

A religious organization charter must contain the following data:

- determination, type, location and area of religious organization’s activity, its religious affiliation;
- procedure for formation, structure and administration;
- property status, sources of funds and property relations inside the organization and with interacting organizations;
- rights to establish enterprises and mass media, to create educational institutions;
- procedure for liquidation of the given organization and its bodies;
- other provisions related to specifics of the given organization’s activity.

Religious organizations, as legal entities, enjoy rights and carry responsibility consistent the civil legislation of the Kyrgyz Republic and with their charters.

A registering body may refuse the registration of a religious organization as a legal entity only if the charter fails to comply with applicable law. Refusal to register or other actions may be appealed in court according to the procedure established by law.

⁸⁹ See Id.

Termination of the activity of a religious organization may occur in the following cases: 1) in compliance with the organization's own decision; 2) because of a violation of provisions of legislative acts of the Kyrgyz Republic. The State Agency on Religious Affairs has the right:

- to suspend the activity of organizations dealing with dissemination of religious extremism and terrorism, aggressive religious groups, damaging or threatening health, morality, rights and legitimate interests of citizens, bases of Constitutional system, the country's defense and security;
- to appeal to a court regarding possible prohibition of activities of religious organizations that have violated the law.

The activity of a religious organization as a legal entity is terminated by reorganization or liquidation. In case of termination of the activity of a religious organization, the disposal of its property is carried out in compliance with its charter and applicable law.

The law regulates the property status of religious organizations. Religious organizations may own property necessary for its activity, such as buildings, construction, cultural buildings, industrial, social and charitable buildings, monetary funds and other property (Part 1 of Article 15). Ownership rights may extend also to property located abroad. Financial and property donations to religious organizations are not taxed. At the same time, profit from the business activity of enterprises of religious organizations is taxed. Religious organizations, as other participants of civil-legal relations, have the right to use for their needs property and buildings granted to them on a contract basis by the state, public organizations or citizens.

The law guarantees citizens and religious organizations the right to perform religious rites and ceremonies. They may establish and maintain freely a place for worship or religious meetings, as well as places held sacred by particular religions (such as pilgrimages) (Part 1 of Art. 21).

Religious organizations, equally with other NCOs, have the right to hire employees. Labor conditions are set in an agreement between the religious organization and the employee, and indicated in a labor contract concluded in writing. A religious organization is obliged to register its labor contracts, including for officiating priests. For those working on the basis of a labor contract in a religious organization, the legislation on labor, social insurance and social welfare of citizens (Art. 24, 25) are all applicable.

The abovementioned norms and principles of regulation of religion and the activity of religious organizations help ensure a democratic basis for development of public life in Kyrgyzstan as a whole. The secular character of the Kyrgyz Republic has a crucial meaning for establishing pluralism and freedom of conscience in the country. Only by separation of religious organizations from the state it is possible to achieve the practical equality of all religions, religious organizations and their followers, as well as to ensure pluralism of opinion and ideology in the society.

Legal regulation of Non-Membership NCOs

Chapter 17. Foundations

§ 1. Introduction

Many people have different understandings of the notion of a “foundation.” For many, a foundation is associated with money; for others, state institutions (pension, social protection), and, for lawyers, it is, first of all, the organizational and legal form of an NCO established in the Civil Code. This chapter is dedicated exclusively to foundations, as the organizational and legal form of an NCO in Kyrgyzstan.

Unfortunately, the study of the legislation of Kyrgyzstan relating to foundations does not give a clear picture of non-membership NCOs, what they are needed for and how they should be regulated. In the former USSR, such organizations did not exist, and the post-Soviet experience is still too early and controversial to understand the problems with the policy and practical regulation of foundations. International practice shows that the number of foundations in countries with a developed economy is usually 50-100 times less than the number of associations (unions). For a better understanding of the legal status and regulation of foundations, it is necessary to refer to international experience, as foundations have existed for more than 500 years.

§ 2. Foundations in International Practice

Foundations are non-membership organizations that are associations of property (*universitas rerum*), in contrast to public associations and associations of legal entities, which are based on membership and are associations of persons (*universitas personarum*). Traditionally, foundations required the presence of particular property intended for a specific goal. In some countries, foundations may serve private goals, but in a majority of countries (including in Kyrgyzstan), foundations may only be created for achievement of public benefit goals. As with a majority of other NCOs, foundations are limited “on distribution,” i.e., they are prohibited from distributing or transferring profit or net income to any persons.

What are foundations needed for, and what role do they play in society?

In a majority of democratic countries of the world, foundations play an important role in financing thousands and thousands of civil society organizations – public associations and unions -- as well as financing different, important social problems and research implemented by noncommercial, non-state organizations. One of the most important tasks of foundations is ensuring charitable activity. Without such institutions that can accumulate significant financial resources intended for the support of activity of civil society organizations, it is unlikely that there will be expanded development of charity in the country.

Why do foundations assist with solving the problem of financing public organizations and how do they differ from membership organizations, for example, public associations?

One idea behind the creation of foundations is quite simple and clear: A person or group of people who are interested in solving what is, in their view, an important problem, are ready to give money or other liquid property for solving this problem. Prior to doing so, it is necessary to know who deals with such problems, what sums are required, how the use of these sums needs to be controlled, etc. In order to address these needs, an administrative staff may be needed, which requires additional expense. Moreover, the situation may change and the donor or group of donors may for example, lose the ability to finance program, having just begun the initiative. So in order to minimize the impact of such unfavorable circumstances, the foundation was invented.

A foundation is financed from property transferred to it by founders during its creation. The organization undertakes an obligation to use this property for the achievement of goals determined by founders. In order to avoid spending funds inefficiently or too quickly, an independent governing body is created. The organization itself receives the right to invest in the equity markets and undertake other investment activity to earn profit, which may then be used toward the goals of the foundation and for management costs, as well as for increasing its assets.

A special goal of the legislation on foundations is to ensure that when a person donates funds for charity, his or her funds are spent for goals determined by him but without having to play a role in management and control over the use of funds. The legislation on registration of foundations, powers of state bodies and members of the foundation management body is, first of all, directed to this end. If this mechanism is ensured, then a foundation may operate for a quite long time. If the management is good, the foundation's assets may become significant, allowing it to increase its financing of civil society organizations and different social projects. Such powerful foundations as the Nobel Foundation, Mott Foundation, Ford Foundation and many others have been operated this way. On the other hand, there are small, local foundations that do not have significant financial resources. Such foundations may be founded on a great number of small donations that are used for the assistance of their specific clientele or programs.

As these examples demonstrate, in developed countries, foundations perform the role of a "public Ministry of Finance" that creates the possibility for a system of public financing of civil initiatives that is independent from the government. This brief overview of the nature of foundation as an instrument of savings and increase of resources in the interest of achievement of particular goals allows for an understanding of their particular differences between the legal status of foundations and other legal entities. What is the major difference between an association of persons and a foundation? An answer to this question may be found in the given table:

Criteria	Association	Public benefit foundation (PBF)
Protection of international right	There is a protection of the right to freedom of association	It is not clear (there are no precedents in the framework of European Court on Human Rights)
Establishment	Individual and legal entities	The same, plus it may be created by will
Number of founders	As a rule, more than one	As a rule, may be more than one
Registration procedure	More simple	More difficult
Requirements for registration	Application, statutory agreement, charter, certificate on payment of registration fee, etc.	The same, plus may be a requirement on the presence of authorized capital (in 3 countries of EU out of 15)
Governing bodies	Meeting (forum) of members, may be Board of Directors (directorate)	Board of Directors (directorate), may be supervisory council
Role of founders	May become members and participate in general meeting	Frequently do not participate in management. May be members of any governing body, but on equal footing with other members, but may not be the only member of governing body
Exemption status from taxes and benefits for public benefit organizations	Usually is granted to registered legal entity	Frequently coincides with registration of legal entity (in 8 EU countries out of 15 may be created only as PBF)
Right to carry out economic activity	Has the right	Has the right (except for Great Britain and Spain, where they can, but not directly)
Who may initiate liquidation?	Members' meeting in compliance with charter, creditors by a court decision, authorized state bodies through the court	Directorate (as a rule, decision shall be approved by authorized body), authorized state bodies a court.

§ 3. Foundations in Kyrgyzstan

In Kyrgyzstan, foundations are regulated by the Civil Code of the Kyrgyz Republic (Civil Code), as well as by Chapters 1 and 3 of the Law of the Kyrgyz Republic “On noncommercial organizations.”

Terminology

In the Civil Code and in the Regulation on the procedure for registration of legal entities, branches and representative offices, the Ministry of Justice uses the term “public foundation.” The definition, codified in Article 162 of the Civil Code, is as follows: A “**public foundation** is a non-membership, noncommercial organization, established by citizens and/or legal entities based on voluntary non-state fees that pursues social, charitable, cultural, educational and other public benefit goals.” The Law of the Kyrgyz Republic “On noncommercial organizations” (further “NCO Law”) uses the term “foundation.” Its definition, codified in Article 2 of the NCO Law, is as follows: A “**foundation** [is a] non-membership organization established by individuals and/or legal entities based on voluntary non-state fees, that pursues social, charitable, cultural, educational and other public benefit goals.”

Despite the fact that the notion “foundation” in the NCO Law significantly coincides with definition of the notion “public foundation” in the Civil Code, the question remains whether we need to consider “foundation” and “public foundation” as the same or different organizational and legal forms. The most rational and consistent answer is that they are the same form. However, in order to exclude disputes in relation to the indicated ambiguity, it is necessary to bring the terminology of these two normative and legal acts into conformity.

In international practice, some foundations are called “public,” as they are created for public benefit goals. There are also foundations created not for public benefit, but for the benefit of a group of people. The use of the notion “public foundation” permits distinctions from other organizations that also are called foundations (pension foundations, investment foundations, insurance foundations, off-budget foundations, etc.). In the text of the present Chapter, we will understand “foundation” and “public foundation” as the same organizational and legal form of noncommercial organization.

The legislation of the Kyrgyz Republic identifies the following dominant features of a foundation, which as a whole allow it to be distinguished from other forms of legal entities in Kyrgyzstan:

- 1) noncommercial organization;
- 2) founders: one or more legally capable individuals and/or legal entities;
- 3) absence of membership;
- 4) funding base: voluntary, non-state donations;
- 5) goal of the activity: social, charitable, cultural, educational or other public benefit goals;
- 6) property transferred to the foundation from founder(s) becomes foundation

- property;
- 7) founders are not liable for foundation obligations, and the foundation is not liable for founders' obligations;
 - 8) use of property and carrying out economic activity only possible in pursuit of charter goals;
 - 9) foundation's charter is approved by its founder(s);
 - 10) decision on liquidation may be adopted only by the court upon application of self-interested persons.

Economic Activity of Foundations

Foundations, as many other NCOs, are allowed to carry out economic activity directly, without the necessity to create subsidiary companies or affiliated structures (Part 2 of Article 162 of the Civil Code, Article 12 of NCO Law). However, the legislature set a limitation on foundations in relation to the choice of specific types of economic activities. Any such activities must be ***necessary for the achievement of public benefit goals*** for which the foundation was created and they must ***correspond to these goals***. At the same time, there are no criteria in relation to how to assess the conformity of the type of activity to foundation goals.

In international practice, such limitations are applied, first of all, because of tax benefits on income that foundations receive from such economic activity. The legislation of the Kyrgyz Republic does not provide benefits in relation to economic income received from foundations.

In international practice, the serious consequence of recognizing the economic activity of foundations as not corresponding to goals is the non-application to such income of the income taxation benefit; i.e., the lack of applicability of tax-exemption on this income. At the same time, it is not clear what the legal consequences apply if the economic activity does not correspond to foundation goals, and, moreover, no authorized body is assigned to regulate this matter. Due to the absence of a special authorized state body in the legislation, it is possible to assume a court would act as such a body. However, it is not clear for what purpose a court would adopt such a decision. Therefore, it seems that this norm is declarative and, in practice, does not limit the opportunities of foundations to carry out economic activity that is not prohibited by law.

Liability

In foundations, as well as in public associations, founders are not liable for obligations of the foundation, and the foundation is not liable for obligations of the founders (Part 1 of Article 162 of the Civil Code).

Reorganization of a Foundation

Reorganization of foundations is not specifically regulated. The importance of such regulation is conditioned by the fact that such types of reorganization as transformation, as well as splitting up and separation, open the door to use of foundation property for unintended purposes. In international practice, such types of reorganization are usually prohibited by law, and mergers and accessions are possible only in the case of significant similarity of goals for which merging foundations are created. This failure to legislate needs to be eliminated, and a corresponding prohibition should be included in the provisions of the legislation that regulate the legal capacity of foundations.

Changing of Foundation Goals

Kyrgyz legislation takes the traditional approach to the issue of changing foundation goals. They may be changed only by the founders themselves. Foundation governing bodies may change foundation goals only if they are authorized to introduce changes to foundation charter (Article 163 of the Civil Code).

In compliance with Article 162 of the Civil Code, among the compulsory data required in the charter is the foundation's place of business. If its place of business changes, then it is necessary to introduce changes to the charter; and if changes are not introduced, then there is a danger of sanction for non-execution of legal requirements. Therefore, foundation governing bodies need to have the right to introduce necessary changes into the foundation charter. However, this power does not extend to changing arbitrarily the goal of the foundation. Therefore, it is important to set out properly the amendment powers of a foundation's governing bodies, so as to guarantee that property endowed for particular goals will not be used for other purposes. The risk is that donors will lose confidence in foundations and will not donate significant assets to them.

At the same time, it is necessary to note that Article 163 of the Civil Code contains a provision that authorizes the court to introduce necessary changes to a foundation charter upon application of foundation's bodies, supervisory council or other body that is authorized to control the foundation's activity. This power may only be exercised if preserving the charter unchanged would lead to consequences that were unforeseeable during the establishment of the foundation, and the charter does not contain an amendment right.

§ 4. Creation of Foundation

Founders

A foundation may be created by one or more individual and/or legal entities (Part 1 of Article 162 of the Civil Code, Article 23 of the NCO Law). Article 25 of the NCO Law sets requirements for the decision on creation of foundation. It should include the following information:

- name, legal address of foundation;
- list of founders – individuals with last name, first name, patronymic, date of birth, address, home and work telephone number, as well as list of founders with name, legal address, place, date and number of state registration and contact telephone numbers;
- total value of property in monetary and/or other form, which founders transfer to the foundation, and procedure for its transfer;
- approval of foundation's charter;
- names and addresses of members of foundation's directorate and foundation's supervisory council.

The decision must be signed by all founders and their signatures must be notarized. The procedure and deadlines for state registration of a foundation are the same as with other NCOs.

Creation of Foundation by Will

The law permits creation of a foundation by will (Article 24 of the NCO Law). In this case, the executor of the will is authorized to assume the powers of the founder. These powers terminate from the moment of registration of foundation or if the impossibility of such registration is established.

Initial Capital

One of the necessary components of a decision to create a foundation is the total value of property transferred to the foundation by its founders. Kyrgyz legislation does not set any requirements in relation to the minimum amount of property, nor in relation to the procedures and terms for its transfer. In practice, it is possible to create a foundation with 1 som of capital, or to set an unlimited term for transfer of a contribution, meaning that a foundation could be created without capital. In this case, the foundation would not differ from a public association.

Practically, this circumstance is not a big problem, as foundations are not granted special tax benefits. And as conditions emerge for the development of the culture and infrastructure of charity, the opportunity to start from point zero and gradually to accumulate capital is a benefit to foundation's founders as well as for society. Over time this problem will likely be solved. For example, in France, the founding capital of a charitable (public benefit) foundation shall not be less than EUR762,000.

§ 5. Foundation Governance

Governing Bodies of Foundations

A foundation has quite a complex structure of governance. The major governing bodies are the directorate and the supervisory council. Management decisions may be adopted by founders, the supervisory council and the directorate.

The ***supervisory council*** is the highest governing body of a foundation. In compliance with Article 28 of the NCO Law, a foundation's supervisory council supervises the foundation's activity, the decisionmaking of its governing bodies and the execution of such decisions, the use of foundation funds, the foundation's compliance with law and the charter, and it exercises the role of internal supervision over the foundation. The law requires that the supervisory council carry out its activity voluntarily. At the same time, the law does not clarify what "voluntarily" means. In common parlance, "voluntarily" means voluntary and gratuitous execution of a particular activity; however, the Kyrgyz legislation does not specify these conditions. In the absence of a legal definition "voluntarily" leads to another declarative norm.

Article 29 of the NCO Law requires that the "[s]upervisory council of a foundation shall be composed of three members, if the charter does not stipulate a greater number of members. Only individuals with legal capacity may be members of the [s]upervisory council." The procedure for appointment and withdrawal of supervisory council members should be articulated in the foundation's charter. The competence of the foundation supervisory council includes:

- supervision over activity and area of activities and policy determination;
- introduction of amendments to the charter;
- decisionmaking on reorganization;
- appointment and withdrawal of directorate members;
- approval of decision by foundation's directorate on concluding transactions with particular types of property determined by the charter;
- approval of transactions involving conflicts of interest;
- approval of annual report on foundation activity, prepared by directorate;
- approval of decision by directorate on participation or termination of participation in commercial enterprises;
- decision of many other issues in compliance with the charter.

The ***directorate*** is the foundation's executive body and it manages the foundation and represents it in its relations with third parties (Part 1 of Article 26 of the NCO Law). The directorate may be composed of one or more members, who must be individuals with legal capacity. Directorate members are appointed by a decision of the foundation's supervisory council. In the process of managing the foundation, the directorate must execute legal orders of the foundation's supervisory council. Directorate members may not delegate their obligation to third parties, unless otherwise permitted by the charter or a decision of the supervisory council.

Founders are not identified by law as a separate governing body. However, Article 28 of the NCO Law provides that a “[d]ecision on any issues related to foundation activity, including that listed in the present article concerning competencies of a foundation’s supervisory council, may be transferred to the competence of the foundation’s founders by the charter.” The given provision permits making founders the highest governing body in the foundation and converting it to a membership organization. Moreover, the NCO Law, in the same Article 28, grants a veto right to founders on any decision of the supervisory council, if not otherwise provided in the charter. In case of several founders, the veto right may only be exercised if there is unanimous agreement of the founders.

Quorum

Even though there is much freedom is given on organization of activity of foundation’s governing bodies, to be set by the charter, the legislator nevertheless strictly determined requirements on quorum of directorate and supervisory council’s sessions. supervisory council’s session *has a quorum*, if half of its members are present in the session, and directorate *has a quorum*, if not less than half of its members are present in the session.

Such imperative regulation of such issues is an example of deviation from the dispositive principle. Usually such norms ends traditional for dispositive regulation phrase – “if otherwise is not provided by the charter.” It means that foundation may not set a requirement on higher quorum or on 100% participation of members of foundation’s governing bodies with the help of charter in decisionmaking on very crucial for foundation issues, for example, such as changing charter or changing foundation’s goals.

Judicial Replacement of Decisions of Governing Bodies

Despite the fact that Article 163 of the Civil Code permits the court to decide upon changes to a foundation charter, the need for judicial decisions relating to decisions of a foundation’s governing bodies is not limited only to the indicated situation. The most widespread case for the need for a court decision is the situation in which the members of a governing body do not carry out their obligations, and all the founders died or the foundation was created according to will. Due to the impossibility to exercise the founders’ rights, it would not be possible to appoint new members to foundation’s highest governing body, in this case, the supervisory council. The absence of the court’s power in relation to the composition of the supervisory council may lead to the impossibility of further activity of the foundation.

Due to this lack, it is desirable to adopt appropriate provisions, according to which a court would have the power to decide upon the formation of the supervisory council if there is not other way to do so.

§ 6. Termination of Foundation

Judicial Procedure for Liquidation

Article 163 of the Civil Code and Article 28 of the NCO Law only permit a court to decide on liquidation of a foundation. This results in the *impossibility of foundation's voluntary liquidation* upon a decision of its founders or governance bodies, as, at the present time in the Civil Procedural Code of the Kyrgyz Republic, there is no procedure for decisionmaking on liquidation of a legal entity. An application by a foundation on voluntary liquidation is impossible as there would be a coincidence of applicant and respondent. Article 163 of the Civil Code permits a foundation to be liquidated upon application of self-interested parties in the following cases:

- if the foundation's property is insufficient for implementation of its goals and there is a low probability of receiving the necessary property;
- if the foundation's goals are not likely to be reached, and it is not possible to make the necessary changes to the foundation's goals;
- if the foundation is deviating from the goals set by the charter;
- in other cases provided by the law.

The third of the indicated grounds for liquidation, the “*foundation's deviation from the goals set by the charter*” is a punitive sanction and does not correspond to the main method of civil law (dispositive) nor to the goals of legislation on foundations, which were considered in § 2 of the present Chapter. This ground for liquidation directly violates the rights of the founders, as, in the indicated case, a violation by specific officials of the foundation is considered a violation by the organization itself and leads to termination of use of founders' property. In case of liquidation, the property left after settlement of creditors' claims should be directed to the goals indicated in its charter (Article 163 of the Civil Code and Article 16 of the NCO Law).

Chapter 18. Institutions

§ 1. The Meaning of the so-called “*Institution*”

An *institution* is a noncommercial organization founded to carry out managerial, social-cultural or other noncommercial functions. Institutions are funded fully or partially by the founder. They typically support purposes unrelated to production, such as the provision of health care or education. They are voluntary, self-administered, and noncommercial, created on the initiative of citizens who have united to promote common interests which they articulate in the institution's charter. A *public institution* is non-membership public association with the goal to provide specific types of services.

§ 2. Legal Status of the Institution

Foundation and Registration of Institutions

Institutions are regulated by the Civil Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic, “On noncommercial organizations,” and other laws. An institution may be created by one or more legally capable individuals or legal entities for an indefinite or a definite term. An institution is created on the initiative of a founder or group of founders. An institution may be created with a founding document containing the following information:

- Name and legal address of the institution;
- List of owners, including first and last names, patronymics, dates of birth, addresses, home and work telephone numbers, as well as list of legal entities, if one of the founders is legal entity, including their names, legal addresses, places, dates and numbers of state registration and contact telephone numbers;
- Total value of property in monetary and other forms that the owner or owners are transferring to the institution, and the procedure for its transfer;
- Notice of approval of the institution's charter;
- Names and addresses of members of institution's directorate and supervisory council.

All the founders must sign the founding documents and notarize their signatures.

The law provides that NCOs, including institutions, have the right to acquire status as a legal entity. To acquire legal entity status, the organization must meet certain statutory requirements for registration. The Ministry of Justice of the Kyrgyz Republic and its territorial bodies handle registration. Registration with the appropriate registering body requires filling out an application for creating an institution and providing the registering body with the institution's governing documents, prepared in triplicate and in the official languages, and a document certifying the location of the legal entity. An institution's statutory documents

include a charter and the founders' original founding document.

The charter must include the principles of the organization and its activities, goals and tasks, as well as regulations governing the organization's:

- Operations;
- Legal status;
- Procedures for formation, reorganization and liquidation;
- Duration, if it has a limit;
- Procedures for decisionmaking;
- Procedures for acquisition, use, disposal of property and financial funds of the institution.

For some types of institutions, the legislation establishes special requirements for the institution's charter. For example, charters of educational institutions must include the following compulsory chapters: name, location, status, founders, organizational and legal form, goals of educational processes, types and kinds of educational programs, language of education, procedures for accepting students, the duration of education at each stage, procedures and grounds for expulsion of students, the assessment system, its forms and procedure, students' course list, the presence of paid educational services and procedures for rendering them, procedures regulating relationships between the educational organization, students, and their parents, a description of the institution's financial and economic activities, procedures for staffing and conditions of labor remuneration, procedures for changing the charter, procedures for reorganization and liquidation, rights and obligations of participants of educational process, a list of types of local acts regulating activity of educational institution and other requirements.

The registration body is obligated to register an organization no later than ten days after the organization has submitted a completed application. The day of submission of the application is the day when the whole package of documents was received. The registration body may reject an organization's application only if the required documents are incomplete or otherwise not in compliance with the law. If the registration body rejects an organization, it must explain its decision in writing.

It is necessary to note that while an institution in a noncommercial organization, it has the right to carry out economic activities to the extent those activities serve its goals.

An Institution's Rights and Obligations

In order to implement its charter goals, an institution has the right:

- To freely distribute information about its activities;
- To participate in decisionmaking by state bodies and bodies of self-administration;
- To establish mass media outlets and carry out publishing activities;
- To present and protect its rights and legal interests in public authorities, bodies of self-administration and public associations;
- To put forward initiatives on different issues of public life;

- To make proposals to public authorities;
- To plan its activities and determine development perspectives;
- To determine and set forms of labor remuneration systems and the employment structure and staff list, in coordination with the institution's governing bodies;
- To purchase or rent fixed and working assets using its own financial resources, credits, loans and other sources of financing.

The law imposes obligations on institutions in addition to providing them with rights. Institutions must comply with the law and their charters as well as monitor and report the results of their programs to the appropriate authorities. They must publish an annual report on the use of their property, inform the appropriate authorities of their continued operations, respond to requests of information from authorities, and pay damages due to irrational land use, pollution, and violations of safety or employment rules.

Institution Property

In compliance with the legislation of the Kyrgyz Republic, an institution's property belongs to it based on a right of "day-to-day management." This right is a special variation on property rights. If the property belongs to the institution based on day-to-day management rights, it may own, use and dispose of it. However, these rights can be enjoyed by the institution as long as it complies with the institution's stated goals and assignments of the ultimate owner and property's target use.

When an institution is exercising day-to-day management rights over property, the ultimate owner of the property has the right to use the excess part of the property, according to his or her own discretion.

An institution has a right to expropriate or otherwise dispose of the property only by consent of the property's ultimate owner. The ultimate owner determines the procedure for distributing any revenue earned from the sale of the property.

An institution has no right to expropriate or otherwise dispose of property over which it only exercises day-to-day management rights and the property which was purchased out at the expense of state budget if the ultimate owner is a state. An institution may be granted the right to carry out income-generating activities. Income received from such activities and property purchased with the income these activities generate is under the independent disposal of the institution and must be accounted for on a separate balance sheet.

Institution Liability

Institutions, including those not registered in the Ministry of Justice, are liable for violations of the law. They are potentially liable from the moment of establishment. From the moment of registration with the state as a legal entity, an institution has the right to enter into legal relationships (to conclude contracts,

transactions, etc.). If the resources of an institution are insufficient to satisfy its liabilities, the owner of the institution is held to subsidiary liability for the institution's liabilities.

The Government and Institutions

The principle of mutual non-intervention guides the relationship between government and institutions. Public authorities and officials are not permitted to interfere in an institution's activities. Public relationships between an institution and the government are regulated by law, and institutions are not subordinate to the government.

The law defines particular interactions between the government and noncommercial organizations like institutions. An institution, for example, has the right to participate in the decisionmaking processes of public authorities and self-administration bodies; to conduct trainings, protests, demonstrations and picketing; to represent and protect its rights, and those of its members; to introduce proposals to public authorities etc. However, institutions may not independently perform lobbying activity, but may participate in this process subject to certain exceptions,. Despite this restriction, the influence of institutions may be significant.

§ 3. Governing Bodies of Institutions

The owners identified in an institution's charter determine the structure, procedures, activities, and powers of the institution's governing bodies. The bodies controlling an institution are those through which the institution acquires its civil rights and carries its civil obligations, according to the Article 88 of the Civil Code. As a rule, the highest body of the institution is the founder, if the institution was created by one person, or the assembly of founders, if the institution was created by several persons. The competences of the institution's highest body include:

- Introducing amendments to the charter;
- Determining the institution's priorities for its programs and the procedures for using its property;
- Accepting new members (if the charter does not state otherwise);
- Procedures for forming governing bodies;
- Approving the annual report on activities and assets;
- Deciding to create branches;
- Participating in the activities of other legal branches;
- Reorganization and liquidation;
- Other issues, except for those that the charter places under the competence of the institution's other bodies.

An institution may create new governing bodies. The powers and procedures of the new governing bodies are defined in the institution's charter. For example, an institution may create a permanent collegial or sole executive body such as a directorate, a director, or a president. An institution's executive bodies may have

authority over all issues not exclusively reserved to the highest body. The founders may also establish a supervisory body (supervisory council, council etc.).

NCOs with Special Legal Status

Chapter 19. Charitable Organizations

§ 1. The History of Charitable Organizations

Every developed culture legalized and encouraged philanthropic activities. Ancient Chinese, Indian, Greek, Roman, and Egyptian cultures all had their own types of charitable foundations. In Islamic cultures, charitable foundations were known as “vakuf,” which translates in English as “property taken from civil turnover and passed from the government to use for religious or charitable goals.” In the Middle Ages in the West the Catholic Church, as well as municipalities and guilds, employed the funds of charitable organizations for the maintenance of monasteries, hospices, orphanages, schools, and hospitals, as well as for repairing bridges, beacons and preserving roads.

Wealthy industrialists and bank magnates in the United States, such as E. Carnegie, G. Rockefeller and H. Ford, established some of the largest charitable foundations, but charitable activities were already well established in the United States before the 20th century. In the 18th century, Benjamin Franklin encouraged wealthy families to transfer their charitable giving from religious organizations to organizations working on behalf of the public benefit. Due to efforts like these, the American government adopted legislation establishing foundations modeled on the English law, “Status of Charitable Practice.”

The first large American foundation was established in 1905 by Andrew Carnegie. Margaret Olivia Sage established the Russell Sage Foundation in 1907, and, in 1913, John D. Rockefeller established the Rockefeller Foundation. In Great Britain, charitable traditions are also deeply engrained. There are currently around 400,000 charitable organizations in Great Britain, and the income of registered charitable organizations in 1990 amounted to around GBP£19 billion.

Early Islamic traditions supported philanthropic practices. Islam demands that wealthy individuals aid the poor, and teaches that unequal distribution of the means of production should be remedied by voluntary donations from the wealthy for the benefit of society as a whole. “Zakaat” is a unique Islamic taxation system that redistributes wealth to serve the needs of society and, in particular, the poor. Islamic doctrine explains that the poor receive “zakaat” not as alms, but as resources that belong to them by law. Islam highly values voluntary donations and often exhorts the wealthy to remember the needs of the poor, infirm, orphaned and disabled. Voluntary efforts to help the needy overcome life’s hardships are considered a prominent virtue that is essential for a person’s spiritual well-being. At the present time in Iran, there are around 20,000 charitable organizations, and some of them have existed for several centuries. In Tehran alone, there are over 2,000 charitable organizations.

Following established international practice, in the Kyrgyz legislature decided to create a legal framework for charitable organizations with the law, “On Philanthropy and Charitable Activity” of October 6, 1999, #119. This law may be considered as the first step toward legal regulation of charitable activity in Kyrgyzstan.

§ 2. Notion of Charitable Organization

In compliance with Article 5 of the Law of the Kyrgyz Republic “On Philanthropy and Charitable Activity” of October 6, 1999, # 119 (the Charity Law), a *charitable organization* is a nongovernmental and noncommercial organization created to implement goals stated in the harity Law by conducting charitable activities for the benefit of society as a whole or for particular classes of persons. Charitable organizations have several important characteristics:

1. Nongovernmental.

First of all, a charitable organization is a *nongovernmental organization*. The government cannot be a founder or member of a charitable organization. However, this does not mean that the government is not involved in the activities of charitable organizations. According to Article 11 of the Charity Law, the government guarantees compliance with the law and protects the rights and interests of participants of a charity’s activities. Moreover, officials hindering the enjoyment of these rights are held liable in compliance with the legislation of the Kyrgyz Republic.

The Charity Law permits public authorities and other self-administering legal entities to support charitable organizations in many ways:

- Grants of tax benefits and relief from customs and other fees;
- Logistical support and subsidies for charitable organizations (including full or partial exemption from payment for services rendered by governmental organizations and from payment for use of state property);
- Financing charitable programs on a competitive basis, based on competitions developed by charitable organizations;
- Passing ownership of state property to charitable organizations through the process of decentralization and privatization.

However, to prevent the misuse of these rights, the government is prohibited from granting tax benefits to particular charitable organizations, their members and other participants in a charitable activity. A charitable organization recieves its tax and other benefits from the moment it is registered.

A very important form of interaction between charitable organizations and state bodies is the ability of charitable organizations to create councils to support charites. These committees allow charitable organizations to carry out their activities more efficiently. It has been proposed that these committees should include representatives of legislative bodies, executive bodies, charitable organizations, public organizations, and public figures. These councils have no administrative

authority over charitable organizations and their statements are only recommendations.

2. Noncommercial

Charitable organizations are NCOs. For these organizations, “profit making is not a major goal,” and any profit an organization receives is not distributed to its members.⁹⁰ Therefore, commercial organizations cannot be charitable organizations. However, a question rises: is a charitable organization an independent organizational and legal form of a noncommercial organization, or does it have the status of a noncommercial organization? The Charity Law says that a charitable organization is not an independent organizational and legal form of noncommercial organization, since Article 6 of the Charity Law allows the possibility of creating a charitable organization in the form of a public association, foundation or other form. Therefore the term “charitable organization” is a status that nongovernmental and NCOs may receive as long as they are carrying out charitable activities.

Consequently, charitable organizations are created in the forms of NCOs. Therefore all provisions of the Civil Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic “On noncommercial organizations” and other special laws apply to them. These laws determine not only the legal status of the organization, but also determine the procedure for creation, reorganization and liquidation of such organizations.

However, it is important to note that not all NCOs may have the status of charitable organization. For example, noncommercial cooperatives cannot have this status because they are not pursuing public goals. Likewise, institutions created by state enterprises or bodies cannot receive the status of a charitable organization.

3. Carrying out a charitable activity

All charitable organizations must achieve their goals by carrying out charitable activities. *Charitable activity* means the voluntary activity of individuals and legal entities gratuitously or on preferential conditions. Such activities might include transferring property, including money, to citizens and legal entities, rendering services or providing other kinds of support. (Art. 1 of the Charity Law). Charitable activities include:

- Promoting social welfare and the protection of citizens, including the improvement of economic conditions of indigent persons, social rehabilitation of unemployed, disabled and other persons, who due to their physical or intellectual peculiarities are not independently able to enjoy their rights and other lawful interests;
- Providing assistance to victims of natural disasters, or political, ecological, economic or other catastrophes;
- Strengthening peace, friendship and harmony among nations, and preventing social, national, religious conflicts;
- Assisting education, science, culture, arts, enlightenment, spiritual

⁹⁰ Chernega, K.A., *Pravovoe polozhenie blagotvoritelnyh organizatsii* [Legal status of charitable organizations], Journal “Noncommercial law”, # 5 (2003), <http://finpress.ru/nko/arhiv/2003/5/1.html>

- development of personality;
- Assisting in protection of maternity, childhood;
- Promoting and improving health;
- Promoting physical activity and sports;
- Protecting the environment and animal welfare;
- Protecting and maintaining buildings, objects or land with historical, religious or environmental significance.

This list is exhaustive and may only be specified in implementation and local normative legal acts.

The Charity Law also describes activities that are not charitable activities, including:

- Transferring cash and other material means, or providing assistance in other forms to commercial organizations;
- Supporting political parties, movements, groups and campaigns.

As Russian legal scholars note, charitable activities have three classical features: they are voluntary, benevolent, and selective character of a benefactor. All these features were identified by prerevolutionary researchers by the end of 19th century and beginning of the 20th century. Today they share a range of specific features.⁹¹ First, the definition of charitable activity permits “benevolence” to include services that are preferentially priced, in addition to services that are completely free. Second, rendering charitable assistance need not be further narrowed to specific organizational goals. For example, the Charity Law permits motivations or moral and ethical standards to be the goals of charitable organizations.⁹² The participants in charitable activities fall into two categories:

- *Benefactors or volunteers* – individuals and legal entities carrying out a charitable activity voluntarily, and
- *Beneficiaries* – individuals or legal entities in the interests of whom the charitable activity is carried out.⁹³

§ 3. Legal Status of Charitable Organization

The legal status of charitable organizations is defined by the following normative legal acts:

1. Constitution of the Kyrgyz Republic as of May 5, 1993.
2. Civil Code of the Kyrgyz Republic, Part I, as of May 8, 1996, #15
3. Law of the Kyrgyz Republic “On noncommercial organizations” as of October 15, 1999, # 111

⁹¹ Chernega K.A., *Osobennosti pravovogo regulirovaniya blagotvoritelnoi deyatel'nosti v Rossiiskoi Federatsii* [Specifics of legal regulation of charitable organizations], Journal “Noncommercial organizations in the Russian Federation”, # 6 (2003), <http://finpress.ru/nko/arhiv/2003/6/2.html>

⁹² See id.

⁹³ Shtaba R.S., *Blagotvoritelnaya deyatel'nost* [Charitable activity], Journal “Rossiskii nalogovyi kur'er”, # 23 (2002), http://rnk.ru/rnk/article_print.phtml?code=979

4. Law of the Kyrgyz Republic “On Philanthropy and Charitable Activity” as of November 6, 1999, # 119
5. Law of the Kyrgyz Republic “On state registration of legal entities, branches (representative offices)” as of February 20, 2009, #57
6. Tax Code of the Kyrgyz Republic as of October 17, 2008, # 230.

The norms of the Constitution of the Kyrgyz Republic comprise the basis of legal regulation of charitable organizations. Part 3 of Article 27 of the Constitution of the Kyrgyz Republic provides that the development of charity in the Kyrgyz Republic is encouraged. The given norm laid a basis for charity development and appropriate legislation.

The norms of civil legislation further articulate the above-mentioned Constitutional provisions. First of all, the Civil Code defines which legal entities are considered NCOs and codifies their rights and obligations and sets out the main organizational and legal forms. Although Part 3 of Article 85 and Article 162 of the Civil Code describe the possibility for creation of a so-called charitable foundation, it does not mean that charitable organizations may be created only in the form of foundations. As it was mentioned earlier, Article 6 of the Law of the Kyrgyz Republic “On Philanthropy and Charitable Activity” stipulates that charitable organizations may be created in any forms of noncommercial, nongovernmental organizations.

The Law of the Kyrgyz Republic “On noncommercial organizations” significantly broadens provisions of the Civil Code. In addition to the Civil Code, the above-mentioned law regulates the activity of such organizational and legal forms as public associations, foundations and institutions.

The Law of the Kyrgyz Republic “On state registration of legal entities, branches (representative offices)” as of February 20, 2009, #57, determines the procedure for registration of legal entities, including charitable organizations. The Law of the Kyrgyz Republic “On Philanthropy and Charitable Activity” (“Charity Law”) articulates the special legal status of charitable organizations. Articles 7 and 9 of the Charity Law stipulate the rights of charitable organizations, which are as follows:

- The right to carry out charitable activity;
- The right to attract resources and to carry out nonoperational activity;
- The right to carry out economic activity;
- The right to establish economic communities;
- The right to own or obtain proprietary rights over buildings, constructions, equipment, monetary funds, securities, information resources and other property;
- The right to carry out international charitable activity.

From the first insight it seems that legal regulation of charitable organizations has no specifics. However, there are some limitations in relation to rights set by the legislature. For example, the right to carry out charitable activity is restricted to the goals of the organization, or the goals of the Charity Law. The right to carry out economic activity, as for all NCOs, is limited. Such activity may be carried out only

for the achievement of the goals of the charitable organization or must correspond to these goals. The right to create economic entities is also restricted by making inadmissible to participate in these economic entities jointly with other entities. Despite the fact that the two rights just mentioned are directed toward the formation of sources of funds for charitable activity and charitable organization property, these limitations do not prevent a charitable organization from seeking other sources of funds. Article 8 of the Charity Law provides a closed list of sources from which charitable organization's property may be formed. They are:

- Founders' contributions;
- Membership fees (for charitable organizations, based on membership);
- Charitable endowments, including targeted charitable grants, granted to citizens and legal entities in monetary or in kind;
- Income from nonoperational activity, including income from securities;
- Revenues from solicitation of funding (conduct of campaigns on attracting benefactors and volunteers, including organization of entertainment, cultural, sports and other mass events, conduct of campaigns on collection of charitable endowments, conduct of lotteries and auctions, wills and endowments received from benefactors in compliance with their wishes);
- Income from economic activity allowed by the law;
- Income from activity of economic communities, established by charitable organization;
- Volunteer labor.

The right to carry out international charitable activity, in contrast to the above-considered rights, has a declarative character and includes participation in international charitable activity (Art. 14 of the Charity Law). Such activity assumes participation in international projects, in the activity of international charitable organizations, interaction with foreign partners, etc., conditioned upon non-contradiction to the legislation of the Kyrgyz Republic, norms and principles of international law. Moreover, the given right includes a right to open an account in banks of other countries, to receive charitable endowments from foreign citizens, stateless persons, foreign and international organizations, as well as to create international charitable organizations.

Charitable organizations have the following obligations:

- Ensuring open access to annual reports, including mass media (Art. 12 of the Charity Law);
- In conducting public campaigns on collection of endowments, a charitable organization is obliged to publish annually a report on amounts of received endowments and on their use in official printing media (Art. 13 of the Charity Law);
- Data on amounts and structure of income of the charitable organization, on property, on expenditures and on attraction of volunteers are not commercial secret (Art. 12 of the Charity Law).

It is necessary to note certain direct prohibitions on the activity of charitable organizations, which are stipulated by the legislature, including:

- Charitable organization has no right to spend its funds and use its property for support of political parties, movements, groups and campaigns (Art. 7 of the Charity Law);
- It is prohibited to finance charitable organizations from republic and local budgets or off-budget foundations of state bodies (Art. 8 of the Charity Law);
- Property of charitable organization may not be transferred (through sale, payment of goods, works, and services and in other forms) to founders (members) of this organization on more favorable conditions than for other persons (Art. 8 of the Charity Law).

If the first two prohibitions are directly linked to the nongovernmental character of charitable organizations, the last is directed to regulation of conflicts of interest, in continuation of provisions of Art. 13 and 14 of the Law of the Kyrgyz Republic “On noncommercial organizations.”

There are many questions in relation to Article 9 of the Charity Law on distribution of financial funds. In the given article, there are limitations on remuneration of administrative and managerial personnel, which cannot exceed 2% of financial funds spent by the organization during one financial year. In many countries’ laws on charitable activity, the limitations are 10%, 15%, 20%, or 25%. It is important to note that all these restrictive rules are unsuccessful. The reason for setting a limit is to avoid abuse in using property. However expenditures may significantly vary and often exceed the 2% limit. The legislator, however, stipulated that the given provision does not apply to payment of persons participating in realization of charitable programs as charitable programs include a separate cost estimation of assumed revenues and planned expenditures, including labor remuneration of participating persons in realization of charitable programs.

There are disputes regarding Articles 9 and 10 of the Charity Law, which set limitations, including temporal as well as financial, on distribution of financial funds of charitable organizations. For example:

1. If a benefactor or charitable program does not specify otherwise, not less than 98% of a charitable donation in the form of money shall be spent for charitable purposes *in the period of a year* from the moment of receipt of the donation.
2. Charitable donations in natural form *are directed for charitable purposes in the period of a year* from the moment of their receipt, if not otherwise provided by the benefactor or charitable program.
3. For financing of charitable programs (including expenses on their material and technical support, organizational and any other support, for labor remuneration of persons, participating in the realization of charitable programs, and other expenses related to realization of charitable programs), not less than 98% of income flows received in a financial year from non-operational economic activities shall be spent. Such funds shall be spent according to the terms provided by the charitable organization’s programs.

All above-mentioned provisions are facultative, as benefactor or charitable program has an opportunity to change conditions of these provisions at their will.

Practice shows that the given provisions have no practical application, as with provisions on limitation of financial funds on labor remuneration. As a rule, the benefactor (donor, grant-giver) him or herself sets limits and procedure for spending financial funds, which significantly differ from the minimums set by the legislation.

The Charity Law in Article 13 also prescribes the liability of charitable organizations. Liability attaches in case of actions of charitable organizations that contradict their goals and the Charity Law, so long as an authorized body has warned such organization in written form. In case of repeated violations, the charitable organization may be liquidated in the procedure provided by the legislation.

The norms of the Tax Code of the Kyrgyz Republic as of October 17, 2008, # 230, stipulate the possibility to grant benefits to charitable organizations, as discussed in detail in Chapter 6 of the present textbook “Taxation of Noncommercial Organizations.”

Chapter 20. Territorial and Public Self-Administration Bodies (TPS)

§1. Notion and History of TPS Bodies

History of Territorial and Public Self-Administration Bodies

Territorial and public self-administration bodies are part of the whole local self-administration system. Due to this, the emergence and development of the given institution is related to the origin and evolution of local self-administration as a whole. Local self-administration developed from the earliest forms of communal self-administration. United by harsh life conditions, people had to survive and at the same time to carry out a range of other obligations jointly. Therefore particular rules on organization of joint life, limiting interests of each human being in the name of common, group interests, emerged. Such organization of people is the first inception of public self-administration. With the development of human life forms of self-organization and hierarchy of interests became complicated. In contemporary meaning, self-organization of people started to form at the beginning of XVIII-XIXth centuries. At that time in European countries, a concept of the limitation of central authorities' intervention into daily life of territorial self-administered organizations, the inadmissibility of intervention into administration of their property and activity by state officials was formed. The first theories of self-administration and the first state legislation regulating activity of territorial and public self-administration appeared at the same time (England, France, and Prussia). For example, in the city charter of Prussia (1808), the citizens' right to form self-administration bodies emerged, i.e. directly to participate in administration of local affairs. The legislative codification of rights of local self-administration, local communities found reflection in the Belgium Constitution of 1831, which played the most important role in spreading an idea of local self-administration in European countries. In a majority of European countries, as well as in some states of America and Asia until the beginning of XXth century, different forms of self-administration have been already

established. In the period of last decades, major changes in the legislation on territorial self-administration were related to democratization of some forms of popular participation in local self-administration affairs. It is about citizens' electoral right on the local level, about preserving and development of the principle of independence in decisionmaking on the local level, about more social orientation of their activity and other forms of direct participation of residents in decisionmaking on economically and socially important issues.

For example, the council of participation on the budget issues of Port Allegro, Brazil, is a body of direct participation of the public in the issues of planning of financing, incomes and expenditures of city budget. The council assesses and expresses its opinion on work plan of the government in the budget and investment issues, has a right partially or fully to introduce changes into financial policy of local government, to request from any local self-administration bodies information, necessary for effective carrying out council powers. Bolivian law on public participation as of April 20, 1994 accepts, facilitates and consolidates the process of public participation, including indigenous and rural communities, city neighborhoods into legal, political and economic life of the country. For implementation of above-mentioned provisions of the law a new type of legal entity is created: the territorial organizations of citizens, representing population of the given territorial entity. These organizations are created by the local population so that to manage and control state services, rendered in the sphere of public health education, sports, sanitary, micro-irrigation, local roads, urban and rural development. All services rendered by municipal and executive bodies should be included in priorities determined by territorial organizations of citizens.⁹⁴

Notion of Territorial and Public Self-Administration

It is necessary to note that one of the forms of popular participation in local self-administration affairs is territorial and public self-administration. *Territorial and public self-administration means self-organization of citizens at the place of their residence on the part of the territory of municipal formation carried out either directly by the population or through territorial and public self-administration bodies independently and under their own responsibility.*

Territorial and public self-administration combines direct individuals' will and self-administration through territorial and public self-administration bodies. The main specifics of territorial and public self-administration is self-organization of citizens at the place of their residence on the part of the territory of municipal formation (territories of settlements, micro-regions, blocks, streets, yards and other territories). In contrast to other local self-administration bodies (representative and executive -administrative), territorial and public self-administration:

- 1) Has no authoritative powers (public self-administration), although is delegated by some administrative powers by decision of municipal bodies;

⁹⁴ Caroline Newman, *Sravnitelnye issledovania i zakony po voprosam socialnogo partnerstva* [Comparative research and laws on the issues of social partnership], Almaty, p. 30-31 (2001).

- 2) Is not compulsory (on particular part of the territory it may exist, and on other part not);
- 3) Has a special procedure for organization;
- 4) Can carry out an economic activity, and may have a legal entity status or not.

A territorial and public self-administration body has the right to demand the status of legal entity. However, the scope of activity of such formation is territorially limited. Therefore, in contrast to other public associations, territorial and public self-administration bodies operate exclusively within the limits of part of the territory of municipal formation, human settlement.

Thus, the role of territorial and public self-administration varies. It may be a public, noncommercial organization, which means an independent economic subject, and a local self-administration body, which in its turn means a particular status with specific powers in local affairs, as well as an intermediary between residents and local authority. As a public organization, a territorial and public self-administration body may render assistance to socially vulnerable citizens, organized charitable events etc. As an economic subject, a territorial and public self-administration body may participate in maintenance and repair of housing facilities, improvement and development of territories, deal with trade and construction activity, give for rent land spots, nonresidential premises, advertising areas, which belong to territorial and public self-administration bodies. As an intermediary between residents and local authority, a territorial and public self-administration body represents and protects citizens' interests, residing on the given territory.

The functions of territorial and public self-administration bodies also may be various:

- information (awareness-raising of the population, survey conduct, collection of suggestions etc.);
- representative (coordination of development plans, formation of collegial governing bodies on behalf of the population);
- executive (organization of direct accomplishment of works on improvement, protection of public order, housing maintenance etc.);
- administrative (determination of orientations over funds spending, provided for social-economic development of the territory);
- control (control over movement of funds, directed for accomplishment of works on improvement etc.)⁹⁵.

Such diversified picture of roles and functions of territorial and public self-administration bodies assumes regulation of status of such bodies by different normative and legal acts. They are: the Law of the Kyrgyz Republic "On local self-administration and local state administration" as of January 12, 2002, the Law of the Kyrgyz Republic "On noncommercial organizations" as of October 15, 1999, the Civil Code of the Kyrgyz Republic as of May 8, 1996, the Regulation "On territorial and public self-administration bodies" as of October 10, 2001 and other acts.

⁹⁵ Babun R. V., *Organizatsia mestnogo samoupravleniia* [Organization of local self-administration: Textbook], Saint-Petersburg, p. 100 (2005).

§ 2. Legal Status of TPS Bodies

As territorial and public self-administration is the self-organization of individuals into associations and communities, which are of a public character, it is possible to fairly state that such organizations are self-administered, noncommercial formations, created based on common interests and for realization of common goals. The legislature also determined that the system of local self-administration includes local representative bodies (local councils or “kenesh”), their executive-administrative bodies (ayil okmotu, or rural and urban departments and mayors’ offices), *territorial and public self-administration bodies*, other bodies formed by the population, as well as meetings and gatherings of individuals.

Thus territorial and public self-administration bodies are part of a system of local self-administration bodies. In contrast to representative and executive-administrative bodies of local self-administration, the organization of territorial and public self-administration bodies is not compulsory. However, the legislature gave a special meaning to such kind of participation of individuals in administration of local affairs and places these bodies on the same footing with local self-administration bodies by including these bodies into single system of local self-administration.

Creation of Territorial and Public Self-Administration Bodies

Territorial and public self-administration bodies are created by the initiative of residents of a particular territory voluntarily. Elections may be conducted during general meetings or conferences of residents at the place of their residence or based on universal equal and direct electoral right by secret voting. Preparation and conduct of elections of territorial and public self-administration bodies are carried out openly and transparently. Expenses related to preparation and conduct of elections are paid by local budget funds with the consent of the appropriate local self-administration bodies. Individuals who receive simple majority of votes are considered as elected to the public self-administration body.

An initial group identified during the creation of territorial and public self-administration body should inform residents of a particular territory on the terms, place for the general meeting of the local community, the minimum number of required participants for general meetings and conferences, as set by the representative body of local self-administration, considering the size of the territory and other local conditions.

Registration of Territorial and Public Self-Administration Bodies

The status of a territorial and public self-administration body is acquired from the moment of registration with the representative body of local self-administration. For this purpose, it is necessary to submit the decisions of the general meeting and conferences of members of local community to representative bodies of local self-administration of the corresponding territorial level. The representative body of local

self-administration is obliged to set territorial limits on the activity of the public self-administration body. The legislation requires that territorial and public self-administration bodies have the right to obtain the status of a legal entity. Registration of the given legal entity is conducted with the Ministry of Justice. This right requires fulfillment of some requirements.

First of all, it is necessary to develop a charter of future organization. The charter is a document that contains the principles of organization and activity of a public association, goals and tasks, as well as major directions of activity of the given legal entity; legal status and procedure for formation, reorganization and liquidation of its bodies; duration of powers, procedure for decisionmaking; as well as procedure for purchase, use, disposal of the property and financial funds etc. As a rule, the charter of a territorial and public self-administration body is discussed and adopted at a general meetings or conference of the local community. The charter should correspond to the requirements set for statutory documents of NCOs. In the charter may be codified the following: obligations and functions on maintenance of housing facilities; housekeeping on the given territory; protection of plantation and water reservoirs; creation of playgrounds, recreational facilities, health-improving complexes, construction; maintenance of roads and sidewalks, wells, other objects of communal facilities and improvement; organization of clubs according to interests, societies and clubs of technical and artistic creativity, sports clubs; conduct of tutorial work among children and teenagers; rendering assistance to the disabled, people of advanced age, families of military personnel and perished soldiers, low-income and large families, children left without parents; strengthening public order; protection of consumer rights; rendering assistance to schools, kindergartens, hospitals and health clinics, charitable foundations and organizations; protection of historical and cultural monuments; and other activities.⁹⁶

Secondly, the charter will be registered if the following documents are submitted to the Ministry of Justice:

- an application signed by the manager of the territorial and public self-administration body or a person authorized by the general meeting or the conferences;
- the charter in three copies;
- a copy of the decision of the meeting or conference on adoption of the charter, signed by the manager of the territorial and public self-administration body or person authorized by the meeting or conference;
- a copy of decisions of the local representative body on establishment of limits to the activity of the territorial and public self-administration body.

Thirdly, the whole package of documents should be submitted to the body that registers legal entities. The Ministry of Justice has such powers. State registration of the legal entity must be completed no later than 10 days from the receipt of an application with all the necessary documents. The day of submission of an application is considered the day of receipt of the whole package of documents. The registration of the territorial and public self-administration body as a legal entity may

⁹⁶ Vydrin I. V., Kokotov A. V., *Munisipalnoe pravo Rossii* [Municipal law of Russia], Moscow, p. 314 (2003).

only be rejected if the charter contradicts current legislation. And the registering body has the legal obligation to issue a rejection within 10 days in written form, containing a reference to the violation of specific law. Once a territorial and public self-administration body is registered as a legal entity, it has no right to change its organizational and legal form, as it has the status of a self-administration body.

Rights and Powers of Territorial and Public Self-Administration Bodies

Territorial and public self-administration bodies have the right to:

- represent and protect public interests, their own rights, the legal interests of citizens residing on the given territory, in relation to public authorities and local self-administration bodies, the courts and other governmental and nongovernmental organizations;
- participate with advisory capacity in the work of representative bodies of local self-administration during discussion of issues concerning the interests of residents of the given territory.
- develop plans and development programs of a particular territory, and present them for consideration by local self-administration bodies and their officials;
- create cooperatives, enterprises and organizations to meet the needs of the population for goods and services;
- participate in the receipt of social facilities, accomplishment of works on improvement, repair, sanitary cleaning of the territory;
- facilitate the implementation of decisions of local self-administration bodies and local state administration;
- organize implementation of decisions of meetings or conferences of members of local community;
- prepare recommendations and make requests of corresponding representative bodies of local self-administration bodies, their executive-administrative bodies and local state administration, as well as government bodies, enterprises, organizations, institutions on the issues related to the competence of territorial and public self-administration bodies;
- facilitate local self-administration bodies on the issues of granting land of the territory of the given territorial and public self-administration body for construction and expansion of enterprises and other projects of production and social-cultural purposes on the given territory; allocation of sales enterprises, catering, domestic services, and other social-cultural institutions, their work regime;
- exercise public control over compliance with rules on development, use of residential premises, maintenance of residential houses and adjacent territories, fire safety and sanitary norms, over rational use of land, water and other natural resources, protection of historical and cultural monuments, submit proposals to the corresponding bodies on elimination of identified shortcomings;

- facilitate corresponding governmental organizations and organizations on the territory of local community in carrying out measures on sanitary, epidemiological, ecological and fire control and safety;
- facilitate law-enforcement bodies in maintenance of public order;
- initiate different issues of public life, introduce proposals to the public authorities and local self-administration bodies;
- inform population on decisions of local self-administration bodies adopted by proposal or with the participation of territorial and public self-administration.

As an economic subject, a territorial and public self-administration body has the right to: create enterprises and organizations, meeting the needs of the population in goods and services; be customers on the accomplishment of works on improvement of the territory and communal service of the population, construction, exploitation and repair of housing facilities, objects of social infrastructure with the use of local budget's funds provided for these purposes and their own financial resources; cooperate on voluntary basis funds of the population, enterprises, institutions and organizations for financing target social programs; participate by their own resources in creation and activity of financial and credit institutions on joint-stock or share basis; organize other economic activity, not prohibited by the legislation, with the goal to meet the social-economic needs of the population; determine in compliance with its regulation (charter) its staff and procedure for labor remuneration of workers.

It is necessary to note that the authority and competence of territorial and public self-administration bodies are determined by the current legislation, their charters, as well as delegated powers by representative bodies and local administration.

Liability of Territorial and Public Self-Administration Bodies

Along with particular rights and powers, there is also a potential for liability of territorial and public self-administration bodies set by the legislation. *Liability means occurrence of unfavorable legal consequences for these bodies and persons for their illegal decisions, non-execution or improper execution of their own obligations and functions.* There are three liabilities of territorial and public self-administration bodies:

- responsibility to the population;
- responsibility to the government (state-legal);
- responsibility to individuals and legal entities (civil).

Responsibility to the population occurs as the result of actions or inactions of territorial and public self-administration bodies and persons that hold governing positions in these bodies, which led to loss of population's trust. The result may be reorganization or liquidation of territorial and public self-administration bodies by representative bodies of local self-administration or by bodies of local public authority.

State-legal responsibility occurs in case of violation of the current legislation (Constitution of the Kyrgyz Republic, laws of the Kyrgyz Republic, regulations on TPS, TPS charter).

Civil responsibility occurs in cases of violation of somebody's legal rights and interests, causing property or moral damage, non-execution of conditions of economic agreements and contracts by territorial and public self-administration bodies.

Interaction of Territorial and Public Self-Administration Bodies and Local Self-Administration Bodies

Representative bodies of local self-administration and local state administration may determine spheres of joint competence with territorial and public self-administration bodies, as well as list of issues which may be decided only after coordination with territorial and public self-administration bodies. Local self-administration bodies and deputies of public authority and local self-administration in their electoral districts may facilitate territorial and public self-administration bodies in carrying out their powers. Territorial and public self-administration bodies have the right to participate in the work sessions of local representative self-administration bodies in consideration of the issues concerning their interests.

In compliance with the charter of municipal formation, local self-administration bodies may facilitate territorial and public self-administration bodies carrying out their powers. This does not imply supervision by territorial and public self-administration bodies over local self-administration bodies; instead, it refers to their cooperation and interaction.

At the same time, many charters of municipal formations provide the possibility for local self-administration bodies to transfer some issues for resolution to territorial and public self-administration bodies. Also, it is possible to set spheres of joint activity of local self-administration with territorial and public self-administration bodies of the population with the consent of the former, as well as to establish a list of decisions which may be possible only after coordination with territorial and public self-administration bodies.

Local self-administration bodies may delegate some of their powers to territorial and public self-administration bodies with their consent. Such action, certainly, assumes transfer of financial resources necessary for ensuring realization of transferred powers. Territorial and public self-administration bodies through their bodies have the right to carry out legislative initiatives in representative bodies of local self-administration. Drafts of normative and legal acts, introduced by territorial and public self-administration bodies, are subject to compulsory consideration by representative bodies of local self-administration, and the results of consideration are notified to territorial and public self-administration bodies.

Financial Resources and Property of Territorial and Public Self-Administration Bodies

The financial and economic resources of a territorial and public self-administration body allow it to realize the major principle of the organization and activity of such bodies: independence. The financial and economic resources of citizens who have united into a local territorial organization ensure the desired independence. It is the necessary instrument for development of local communities. Territorial and public self-administration bodies' financial resources consist of funds, loan proceeds, as well as funds transferred to them by representative bodies and local administration. Financial resources are sourced from the economic activity of territorial and public self-administration bodies, voluntary fees, donations of enterprises, institutions, organizations and citizens, as well as other proceeds.

The regulation "On territorial and public self-administration bodies" as of October 10, 2001, lists the sources for property and financial resources of territorial and public self-administration bodies: the economic initiatives of the territorial and public self-administration body or the labor participation of citizens; acquired funds or funds transferred by local self-administration or other legal entities; financial funds, received at the expense of economic activity of territorial and public self-administration body; funds received as voluntary fees and endowments from citizens, legal entities, public associations; proceeds from land tax.

It is necessary to note that local self-administration bodies, in the name of their representative and executive-administrative bodies and based on contract, may delegate to territorial and public self-administration bodies the execution of some functions on implementation of social-economic development of territories, as well as the right to transfer to territorial and public self-administration bodies:

- economic objects, residential and nonresidential premises;
- part of its financial, material and other resources, together with a request for a report on their use.

The procedure for owning, use and disposal of property owned by territorial and public self-administration bodies is determined directly by the general meeting (gathering) or conference of citizens.

§ 3. TPS Governing Bodies

Territorial and public self-administration bodies are councils or committees of micro-regions, residential complexes, as well as settlements, rural human settlements, councils or committees of streets, blocks of houses, houses, etc. The territory on which public self-administration bodies operate is determined by the corresponding administration and by proposal of residents and approved by representative bodies of local self-administration. The system of governing bodies of territorial and public self-administration includes: general meetings, conferences of residents and other forms of citizens' direct participation in public self-administration.

The highest governing bodies of territorial and public self-administration bodies are the general meeting or gathering or the conference of members of local

community. General meetings or conferences of residents are considered as forms of joint public discussion and decisionmaking of residents of particular territory on publicly important issues.

Meetings and gatherings are identical by their legal forms. These terms in fact mean the same thing. Therefore the legislature unites these two expressions of the will of citizens into one institution of local self-administration. However, a possible difference in meaning is that a meeting is a form of people's gathering, organized by somebody, while a gathering is a spontaneous gathering of residents who have a common problem. Conferences are meetings of representatives of residents. They are conducted when the conduct of ordinary meetings or gatherings is difficult.⁹⁷

General meetings or gatherings and conferences of members of local community may be called by territorial and public self-administration bodies, by initiative groups of residents or by a proposal of the representative body of local self-administration as needed, but not less than once a year. In case of necessity, territorial and public self-administration bodies have the right to inform the representative body of local self-administration and deputies of public authority elected by corresponding district and executive bodies on conducted events and adopted decisions.

Members of local community who are 16 years old and older and permanently residing on the particular territory, and representatives of particular representative bodies of local self-administration with advisory capacity may participate in the work of general meetings, gatherings and conferences. Individuals who are not residing on the particular territory, but who own real estate there, and the public self-administration body connected to the ownership right and paying taxes to the local budget may participate in the work of general meetings, gatherings and conferences with advisory capacity.

During meetings, gatherings or conferences of residents, any issues may be considered concerning residents' interests, as well as those which are within the competence of this group by charter. General meetings, gatherings and conferences of members of local community of particular territory have a right to decide upon the following issues:

- adoption and change of charters of territorial and public self-administration bodies;
- election of executive bodies of territorial and public self-administration bodies;
- pre-term termination of territorial and public self-administration bodies' powers;
- approval of territorial and public self-administration bodies' activity programs;
- approval of financial plan and changes into it;
- assessment of territorial and public self-administration bodies' activity according to their reports;

⁹⁷ Kokotov A. N., Salomatkin A.S., *Munisipalnoe pravo Rossii* [Municipal law of Russia], Moscow, p. 384 (2005).

- approval of annual balance sheet;
- approval of property formation and use principles;
- election of territorial and public self-administration bodies' revision or audit commission;
- liquidation and reorganization of territorial and public self-administration bodies.

Decisions of general meetings, gatherings and conferences of citizens are generally adopted by open voting and by a majority vote of citizens who are present and recorded in the minutes. The minutes must include the date and place, the total number of members of local community present who have the right to participate in decisions, the number of members of local community or their representatives who participated in the work of general meetings, gatherings or conferences, and decisions adopted by them. The minutes should be signed by Chief and Secretary of the meeting, gathering or conference. Decisions of meetings, gatherings and conferences may be provided to local self-administration bodies, its executive-administrative body, as well as to public authorities.

Such decisions, if adopted within the limits of authority, must be implemented by bodies and officials of local self-administration, institutions and citizens on the territory of activity of territorial and public self-administration bodies. Adopted decisions may be annulled or changed only by general meeting, gathering or conference of citizens. If an adopted decision does not comply with current legislation, it may be adjudged as void.

Therefore, it may be said that the legal basis for activity of territorial and public self-administration bodies creates the possibility for the population of cities and villages to act and provide benefits. The right to acquire the status of legal entity opens the opportunity to improve the local situation.

In practice, territorial and public self-administration bodies are created only in cities and villages. They are almost absent from rural localities. In addition, territorial and public self-administration bodies elected by the population have not become empowered to deal with local affairs, as intended by the law. There have been few cases in which local self-administration bodies were delegated powers.

The proximity of territorial and public self-administration bodies to the population, the simplicity of the procedure for their formation, and the close link of their activity with daily life of citizens ensures the prevalence of these bodies, and determines the necessity for an increase of their role in the system of local self-administration.