

Overview of Legislation Regulating the Exercise of

THE RIGHT OF ASSOCIATION IN CENTRAL ASIAN COUNTRIES



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INTRODUCTION

This review covers applicable legislation of three Central Asian countries: Kazakhstan, Kyrgyzstan and Tajikistan.

Country reviews are presented in alphabetical order.

Different states in Central Asia use different terminology to define non-governmental non-profit organizations. For convenience and unity of terminology, in cases where they are not discussing legislation specific to a particular form of non-profit organizations in a particular country, the authors use the commonly used term “non-commercial organization” and its acronym “NCO,” assuming that it has the same meaning in the national legislations of Central Asian states.

This publication analyzes primarily the legal status of organizations based on membership – public associations with the status of a legal entity. Public associations are the most common legal form for NCOs in all Central Asian states and the main form through which citizens express their right to association. This publication also discusses the legal regulation of such organizational and legal forms of NCOs as foundations (public foundations), institutions, and associations (unions) of legal entities. This publication does not address the specifics of the legal regulation of trade unions, associations of employers, political parties, cooperatives, religious organizations, local and regional self-government bodies, and a number of other entities, the particularities of which are governed by special laws.¹

In addition to the status of NCOs – legal entities, we will consider legal issues of the implementation of the right to association without creating a legal entity. For the purposes of this analysis, such initiative groups are also regarded as NCOs.

The authors understand that the state of civil society is influenced by many factors such as an independent judiciary, corruption, the media, access to information about the work of the government, and the right to freedom of assembly and freedom of speech. The presented review deals only with those few aspects of applicable legislation which are immediately related to NCOs.

¹ For example, non-profit joint-stock companies, autonomous educational organizations, the autonomous cluster fund, notarial chambers, bar associations, law firms, the National Chamber of Entrepreneurs of the RK, the Chamber of Judicial Experts of the RK, the Republican Chamber of Private Bailiffs, the Arbitration Chamber of Kazakhstan, professional audit organizations, cooperatives of apartment owners and others, depending on the legislation of a particular country.

The analysis of the legislation of each of the three countries is based on a single scheme as shown in the following table:

REPORT STRUCTURE

1. FREEDOM OF ASSOCIATION	
1.1. Freedom of association in the light of the country's international obligations and Constitution	
1.2. NCOs without legal entity status	
1.3. Restrictions on freedom of association	
Analysis	
2. LEGAL STATUS OF NCOs	
2.1 State registration of NCOs	2.1.1. Founders
	2.1.2. Territorial status
	2.1.3. Rules of the creation and registration of NCOs
	2.1.4. Approval of the name and the registration of symbols
	2.1.5. Registration of changes in constituent documents
	2.1.6. Rules for registration of structural units (branches and representative offices) of NCOs
	2.1.7. Specific features of registration procedure for certain types of NCOs
	2.1.8. Branches and representative offices of foreign NCOs
	2.1.9. Grounds for refusal of registration
	2.1.10. Appeal procedure
	Analysis
2.2 Termination and liquidation of NCOs	2.2.1. Voluntary liquidation and suspension
	2.2.2. Forced liquidation
	Analysis

REPORT STRUCTURE (CON'T)

3. STRUCTURE AND INTERNAL GOVERNANCE	
3.1 Provisions of constituent documents	
3.2 Internal governance structure	3.2.1. Governing bodies of public associations
	3.2.2. Governing bodies of foundations
3.3 Distribution of income and other revenue	
Analysis	
4. NCO ACTIVITIES	
4.1. General legal capacity	
Analysis	
4.2. Advocacy and political activities	
Analysis	
5. FINANCIAL SUSTAINABILITY	
5.1. Business income	
Analysis	
5.2. State financing	
Analysis	
5.3 Foreign financing	
Analysis	
5.4. Other revenue from local sources	
6. STATE MONITORING	
6.1. Monitoring and reporting requirements	
Analysis	
6.2. Sanctions	
Analysis	
7. TRANSPARENCY AND OPENNESS	
7.1. Transparency and openness	

In parts entitled “Analysis,” an assessment is made of the basic norms of legislation for compliance with international law and international good practice. The analysis makes extensive use of references and quotes from the Joint Guidelines on Freedom of Association,² prepared by the Venice Commission of the Council of Europe and the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in 2016 (hereinafter referred to as the “Guidelines”), in which many provisions similar to those of Kazakhstan, Kyrgyzstan and Tajikistan are analyzed for their compliance with international law.

The authors of the publication hope that this information will be useful to NCOs and help them improve their understanding of national legislation, compare their national legislation with that of neighboring states, find solutions to existing legislation problems, and more effectively promote reforms to improve NCO legislation in their countries. The authors also hope that their work will be useful to government officials, political figures, college faculty and students, as well as researchers and other persons interested in not-for-profit law.

The International Center for Non-Profit Law (ICNL) is ready to provide technical assistance in further improving NCO legislation to all interested parties. For additional information, please contact the ICNL representative office in Almaty, Kazakhstan, as well as our head office in Washington, DC.

² <https://www.osce.org/ru/odihr/160961?download=true>

OVERVIEW OF NCO LAW IN CENTRAL ASIAN COUNTRIES

The right to freedom of association is one of the fundamental human rights, which is protected by many international treaties and other documents of international human rights law. This right not only provides citizens with a legitimate opportunity to participate in the public and political life of their country but also contributes to a more effective implementation of other constitutional rights and freedoms, such as freedom of assembly, freedom of speech, etc. Freedom of association is an indispensable element of the political system of any democratic state, and its exercise is protected by the state. This review focuses on analyzing the legislative regulation of public associations and other forms of NCOs, as they are an important form of realization of the right to freedom of association.

NCOs play an important role in the economic and social life of many democracies. NCOs may organize public dialogue on the most sensitive political issues and help to express the most diverse opinions and interests peacefully and within the framework of the legislative system, ensuring political and social stability. Non-governmental organizations also help to solve many problems of an economic nature, such as unemployment, low living standards, and poor quality of social services to the population. While such problems cannot be resolved by the government alone, the private sector often lacks economic motivation to actively participate in addressing them.

According to a global study of 35 countries by the Johns Hopkins University Center for Civil Society Studies,³ the NCO sector in the countries under discussion is:

An industry worth \$1.3 trillion. The total amount of funds disposed of by the civil society sector, including religious congregations, amounted to \$1.3 trillion by the end of the 1990s, which was equal to 5.1% of the gross national product of those countries.

The seventh largest economy in the world. To consider these numbers in a specific context, we might note that if the civil society sector in these countries were considered as a separate economy, the total amount of funds that go through it would correspond to the seventh largest economy in the world, ahead of Italy, Brazil, Russia, Spain and Canada and only slightly behind France and the UK.

³ Global Civil Society. An Overview, by Lester M. Salamon, S. Wojciech Sokolowski, Regina List. The Johns Hopkins University Center for Civil Society Studies, 2003. Pp.13-15; http://www.wingsweb.org/download/global_civil_society.pdf.

One of the leading employers. The civil society sector in the 35 countries under discussion is also one of the leading employers, providing employment equivalent to 39.5 million jobs, including workers in religious congregations. This means that civil society organizations (CSOs):

- unite an average of 4.4% of the total economically active population, in other words, employ almost every 20th economically active individual; and therefore
- employ overall ten times more people than the communal and textile sectors in these countries, or five times more than the food industry, or 20 percent more than the transport sector.

At the same time, viable and stable NCOs that are ready to make a significant contribution to the development of the economy could not be created without government support. A favorable legal regime for NCOs is vital to the strengthening of the NCO sector.

Legislation is an important factor in the development of NCOs. Legislation for NCOs has come a long way in Kazakhstan, Kyrgyzstan and Tajikistan since their establishment as independent states. These three countries have adopted numerous laws regarding NCOs, which replaced the only law on public associations then in existence, and introduced the possibility of creating NCOs in various legal forms. Their laws provided guarantees for the exercise of the right to freedom of association and created the legal basis for obtaining income from various sources. Also, they created the legal basis for the participation of NCOs in government decisions.

As a result of these legislative reforms, several hundred public associations that existed under the USSR and were financed from the state budget were replaced by thousands of new organizations. At present, 22,763 NCOs are registered in Kazakhstan, of which 15,954 are active.⁴ There are 17,391 registered NCOs in Kyrgyzstan, of which approximately 5,700 are operating, providing services and promoting the interests of their

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⁴ Source: Ministry of Information and Social Development of the RK (according to the Ministry of Justice of the RK as of January 2019 and according to the State Revenue Committee of the Ministry of Finance of the RK as of April 5, 2019).

members and the public as a whole.⁵ In Tajikistan, the total number of registered NCOs amounts to approximately 3,000.⁶

Legislation has played and continues to play an important role in the development of NCOs, as it can both contribute to this development and hamper it. At the moment, NCOs play a limited role in solving economic and social problems. None of the countries has perfect legislation and there is always a need to improve it. In all the countries under consideration, both governments and NCOs would greatly benefit from improved legislation to encourage NCO activities. Below we highlight the most important aspects of the legislation of the countries in question, where reforms may be appropriate.

Kazakhstan, Kyrgyzstan and Tajikistan have ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), guaranteeing the right to freedom of association. The constitutions of all three states recognize the right to freedom of association. NCOs in all the three countries are important participants in public and political life, and governments are taking measures to support NCOs. However, there are significant differences between NCO regulatory frameworks in each of the countries under consideration.

On the whole, the legislation of Kyrgyzstan is the most favorable for the realization of the right to freedom of association and for NCO activities. It allows for operation without registering a legal entity, as well as for registration of a NCO through a simple procedure. State bodies have the authority to supervise the activities of NCOs similar to the authority to supervise commercial organizations. NCOs do not face any obstacles to receiving funds from foreign sources, such as additional reporting requirements for recipients of foreign financing. The state provides mechanisms to support the activity of NCOs and allocates resources for that purpose.

Although the legislation of Kazakhstan guarantees the right to freedom of association at the constitutional level, it prohibits the creation and operation of unregistered public associations and provides for administrative responsibility for managing, participating in and financing of the activity of unregistered public associations. A number of legislative norms establish additional reporting for NCOs that is not required of commercial organizations, in particular the requirement that NCOs submit extensive information to the NCO database of the RK Ministry of Information and Social Development. Public associations are limited in their activity by territorial status, which is determined by their registration as legal entities. For example, a local public association has the right to operate only in the region in which it was created. Such requirements do not apply to commercial organizations or other forms of NCOs. Moreover, certain provisions of the Tax Code stipulate requirements to notify state authorities of the forthcoming receipt

5 Source: Civic Freedom Monitor: Kyrgyz Republic <https://www.icnl.org/resources/civic-freedom-monitor/kyrgyz>.

6 Source: Civic Freedom Monitor: Republic of Tajikistan <https://www.icnl.org/resources/civic-freedom-monitor/tajikistan>.

of funds from foreign sources, as well as to submit reports on the receipt and expenditure of such funds. Significant administrative fines are provided for violating reporting requirements. Such additional reporting is burdensome for NCOs and is contrary to international standards in the sphere of freedom of association.

The Criminal Code of Kazakhstan contains the concept of “leader of a public association,” which is used as an aggravating circumstance in a number of crimes. Appropriate authorities may see the “leader” not only in the director proper but also in any member or participant of the public association who is “capable of, through his/her influence and authority, to singlehandedly exert controlling influence on the activity of that public association.” Special penalties for “leaders” of public associations are contrary to international law that guarantees the right to freedom of association.

At the same time, Kazakhstan is improving legislation aimed at state support of NCOs. It allocates significant funds from the budget to support NCOs. About 20 billion tenge (approximately \$52 million) is allocated annually for state funding of NCOs, with which NCOs implement about 2,200 projects throughout the country.

The legislation of Tajikistan guarantees the right to association both with and without creating a legal entity. The process of registering an NCO as a legal entity in the form of a public association (the most popular form of NCOs in Tajikistan) is more complicated than that of commercial organizations. Individuals who are not citizens of Tajikistan can be founders, members or participants only if Tajikistan is their permanent place of residence or they have a residence permit. The Ministry of Justice has broad powers to supervise the activities of NCOs, including sending its representatives to participate in their events, checking the activities of NCOs for compliance not only with national legislation but also with their own charters. In addition, NCOs are required to notify the Ministry of Justice of the receipt of grants and donations. These norms do not comply with international standards and, depending on their application in practice, may unreasonably restrict the right to freedom of association and the activities of NCOs.

We hope that the information presented in this review will help government officials and NCO staff to go forward with reforms and improve NCO legislation so that it complies with international standards and further strengthens civil society in the countries under consideration.

The following sections will provide a more detailed overview and analysis of the provisions of the legislation of each of the states under discussion.



1. Freedom of Association

1.1. FREEDOM OF ASSOCIATION IN THE LIGHT OF THE COUNTRY'S INTERNATIONAL OBLIGATIONS AND CONSTITUTION

The Republic of Kazakhstan has acceded to the following international treaties containing provisions on the right to freedom of association:

1. The Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations (UN) on December 10, 1948 (recognized);
2. The International Covenant on Civil and Political Rights of December 16, 1966 (ratified on November 28, 2005) (ICCPR) and its Optional Protocol (ratified on February 11, 2009);
3. The International Covenant on Economic, Social and Cultural Rights of December 16, 1966 (ratified November 21, 2005) (ICESCR);
4. Convention of the International Labor Organization (ILO) # 87 “On Freedom of Association and the Protection of the Right to Organize” dated July 9, 1948 (ratified on December 13, 2000);
5. ILO Convention # 98 “On the Application of the Principles of the Right to Organize and to Collective Bargaining” of July 1, 1949 (ratified May 18, 2001);
6. The UN Convention on the Status of Refugees on July 28, 1951 and the Protocol Relating to the Status of Refugees, 1967 (which Kazakhstan acceded to on December 15, 1998 but did not ratify);
7. UN Convention on the Rights of the Child of November 20, 1989 (ratified June 8, 1994); and
8. The UN Convention on the Rights of Persons with Disabilities of December 13, 2006 and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (ratified on February 20, 2015).

The main regulatory acts governing the exercise of the right to freedom of association in Kazakhstan include the following:

1. The Constitution of the RK of August 30, 1995;
2. The Civil Code of the RK (General Part), or CC RK, was adopted by the Supreme Council of the RK on December 27, 1994. Entered into force on March 1, 1995 (Chapter 2 “Subjects of Civil Rights” and Chapter 12 “Agreement on Joint Activities (Simple Partnership)” directly regulate freedom of association);



3. The Criminal Code of the RK dated July 3, 2014 (articles on public and religious associations) (CrC RK);
4. The Code of the RK on Administrative Offenses of July 5, 2014 (articles on public and religious associations) (CoAO RK);
5. The Code of the RK On Taxes and Other Mandatory Payments to the Budget dated December 25, 2017 (Tax Code, or TC);
6. The Law of the RK “On Public Associations” of May 31, 1996;
7. The Law of the RK “On Non-Profit Organizations” of January 16, 2001;
8. The Law of the RK “On Political Parties” of July 15, 2002;
9. The Law of the RK “On Trade Unions” dated June 27, 2014;
10. The Law of the RK “On Religious Activities and Religious Associations” dated October 11, 2011;
11. The Law of the RK “On State Registration of Legal Entities and the Registration of Branches and Representative Offices” dated April 17, 1995 (The RK Law “On State Registration of Legal Entities”);
12. The Law of the RK “On State Social Contracts, Grants and Awards for Non-Governmental Organizations in the RK” dated April 12, 2005 (SSC Law); and
13. Other regulatory acts regulating various aspects of NCO operation.

In accordance with the provision of Article 4 of the Constitution of the RK: *“1. The applicable law in the RK comprises the norms of the Constitution, relevant laws, other regulatory legal acts, international treaties and other obligations of the Republic, as well as regulatory decrees of the Constitutional Council and the Highest Court of the Republic.”*

In order to take precedence over the laws of the RK, an international treaty needs to be ratified.

In the system of legislation of the RK, freedom of association is guaranteed by Articles 5 and 23 of the Constitution:

According to Para. 2, Article 5 of the Constitution, *“Public associations are equal before the law. Unlawful interference of the state in the affairs of public associations and of public associations in the affairs of the state, and assignment of the functions of state bodies to public associations is not allowed.”*⁷

⁷ It should be pointed out that RK Law # 254-III of May 21, 2007 introduced a number of amendments to the national Constitution, the most significant of which was the abrogation of the ban on state financing of public associations in Para. 2, Article 5.



The right of citizens to freedom of association is enshrined in Para. 1 of Article 23 of the Constitution: *“Citizens of the RK have the right to freedom of association. The activities of public associations are regulated by law.”*

1.2. NCOS WITHOUT LEGAL ENTITY STATUS

The legislation of the RK does not directly prohibit the activities of most organizational and legal forms of NCOs without registration (without obtaining legal entity status). Such a ban is established only for public associations – a separate legal form of NCO in the RK according to part 5 of Article 5 of the Law on Public Associations:

“The creation and activities of public associations that infringe on the health and the moral principles of citizens, as well as the activities of unregistered public associations, are not allowed.”

Therefore, any activity of an unregistered public association is illegal. The legal conflict lies in the fact that a public association is one of the legal forms of NCOs, and prior to official registration it is impossible to identify whether this initiative group of people is an unregistered public association or, for example, an unregistered public foundation. Such uncertainty has led to a situation in which this prohibition can apply to all unregistered NCOs.

For violation of this prohibition on activities without registration, significant administrative liability is provided for.⁸ See Section 1.3 below for more details.

At the same time, in accordance with CC RK, citizens can carry out joint activities, including those not aimed at making profit, on the basis of a joint activity agreement⁹ in the framework of civil law relations on the basis of the CC RK provisions on freedom of contract. However, due to the prohibition on the activities of unregistered associations, sanctions may apply to citizens operating under a joint activities agreement.

In practice, sanctions are applied rarely against unregistered public associations. As a rule, they are used to punish unregistered political parties or unregistered religious associations.

1.3. RESTRICTIONS ON FREEDOM OF ASSOCIATION

The Republic of Kazakhstan imposes certain restrictions on freedom of association.

In Para. 3 of Article 23 of the Constitution of the RK, it is established that: *“The creation and activity of public associations, the goals or actions of which are aimed at forcibly changing the constitutional system, violating the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, estate and tribal hatred, as well as the creation of militias not envisaged by law, shall be prohibited.”*

According to Article 5 of the Law of the RK “On Public Associations”:

“The creation and activities of public associations that pursue extremist goals, as well as

⁸ Article 489 CoAO RK.

⁹ Chapter 12 CC RK.



the creation of militias not provided for by the legislation of the RK, shall be prohibited.

On the territory of the RK, the creation of public associations of the type of paramilitary groups having a paramilitary structure, uniform, special insignia, hymns, flags, pennants, special regimens of internal discipline and control, and weapons, including replicas, shall be prohibited.

Activities of political parties and trade unions of other states, parties on a religious basis, as well as financing of political parties and trade unions by foreign legal entities and citizens, foreign states and international organizations shall not be allowed.

The creation and activity of public associations that infringe on the health and moral principles of citizens, as well as the activities of unregistered public associations, shall not be allowed.”

The Constitution of the RK in its Article 23 guarantees the right to freedom of association only to its citizens. In accordance with the Law on Public Associations, foreigners and stateless persons cannot become initiators of public associations.¹⁰ They can only be members or participants of public associations, if that is provided for by the charters of those organizations.

Article 5 of the Law on Public Associations prohibits the activities of unregistered public associations.

Article 489 of the Code of Administrative Offenses (CoAO) establishes administrative responsibility for leaders and members of public associations for violations of legislation on public associations:

“Article 489. Violation of the legislation of the RK on public associations, as well as management of or participation in the activities of public and religious associations not registered in the procedure established by the legislation of the RK, financing of their activities.

1. The commitment by leaders or members of a public association or by the public association itself of acts that go beyond the goals and objectives defined by the charters of those public associations -

entails a warning or a fine for legal entities in the amount of one hundred monthly calculation indexes.

¹⁰ Article 10 of the RK Law “On Public Associations.”

In accordance
with the Law
on Public
Associations,
foreigners
and stateless
persons
cannot
become
initiators
of public
associations.
They can
only be
members or
participants.



2. The commitment by leaders or members of a public association or the public association itself of acts that violate the legislation of the RK -

entails a warning or a fine for legal entities in the amount of one hundred monthly calculation indexes with suspension of the public association for a period of three to six months.

3. The action provided for in the first part of this article, committed repeatedly within a year after imposing an administrative penalty, -

entails a fine for legal entities in the amount of one hundred and fifty monthly calculation indexes with the suspension of the activities of the public association for a period of three to six months.

4. The action provided for in part two of this article, committed repeatedly within a year after the imposition of an administrative penalty, as well as the non-elimination of violations provided for in part three of this article, -

entails a fine for legal entities in the amount of two hundred monthly calculation indexes with the prohibition of the activities of the public association.

5. Financing of political parties by foreign legal entities and international organizations, legal entities with foreign participation, state bodies and organizations, charitable organizations -

entails a fine for officials in the amount of four hundred, on legal entities - in the amount of two thousand monthly calculation indexes, with confiscation of illegal donations.

6. Acceptance of illegal donations by a political party -

entails a fine in the amount of four hundred monthly calculation indexes with confiscation of illegal donations and prohibition of the activities of a political party.

7. Failure to publish annual reports on the financial activities of a political party within the time and amount established by the legislation of the RK -

entails a fine in the amount of two hundred monthly calculation indexes with the suspension of the activities of a political party for up to six months.

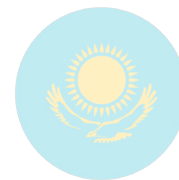
8. The implementation of the activities of a political party, its structural units (branches and representative offices) without re-registration in cases provided for by the legislation of the RK -

entails a fine of two hundred monthly calculation indexes with the prohibition of the activities of the political party.

9. The management of activities of public or religious associations that are not registered in the procedure established by the RK legislation, as well as the activities of which are suspended or prohibited, -

entails a fine of one hundred monthly calculation indexes.

10. Participation in the activity of public, religious associations that are not registered in the procedure established by the RK legislation, as well as the activities of which are suspended or prohibited, -



entails a fine of fifty monthly calculation indexes.

II. Financing the activities of non-registered public and religious associations in the manner established by the RK legislation, as well as the activities of which are suspended or prohibited, entails a fine of two hundred monthly calculation indexes.”

In addition, RK law provides for criminal liability for members of public associations. Also, a special new concept has been introduced in Article 3, Para. 21 of the Criminal Code,¹¹ formulated as follows: “*The leader of a public association is the head of the public association, as well as any other member of the public association capable of singlehandedly exerting controlling influence on the activity of that public association through his/her influence and authority.*” This concept is used as an aggravating circumstance in the following criminal offenses and crimes:

- violation of the equal rights of man and citizen (Article 145);
- incitement to social, national, tribal, racial, class or religious hatred (Article 174);
- propaganda or public calls for the seizure or retention of power, as well as the seizure or retention of power or the forcible change of the constitutional order of the RK (Article 179);
- separatist activities (Article 180);
- creation, leadership of, or participation in an extremist group (Article 182);
- propaganda of terrorism or public calls for an act of terrorism (Article 256);
- creation, leadership of and participation in a terrorist group (Article 257);
- financing of terrorist or extremist activities and other complicity in terrorism or extremism (Article 258);
- financing the activities of a criminal group, as well as storage, distribution of property, development of financing channels (Article 266).

Currently, the Government of the RK is working on a conceptual improvement of the legislation on NCOs. Due to the fact that this work is carried out jointly with the civil sector of the RK, there is reason to hope that the legislation for NCOs will be improved, including by removing restrictions on the freedom of association.

Analysis

There are legitimate restrictions on individual rights and freedoms that were first formulated in the Universal Declaration of Human Rights. For example, Article 29 of the declaration reads that “in the exercise of his rights and freedoms, everyone should be subject only to such restrictions as are established by law solely to ensure due recognition and

¹¹ CrC RK of July 3, 2014.



respect for the rights and freedoms of others and to satisfy the fair requirements of morality, public order and general welfare in a democratic society.”

In respect of the right to freedom of association, Article 22 of the ICCPR provides: “2. The use of this right is not subject to any restrictions, except those prescribed by law and which are necessary in a democratic society in the interests of state or public security, public order, protecting the health and morals of the population, or protecting the rights and freedoms of others.”

The RK imposes certain restrictions on freedom of association in accordance with international law. For example, the provisions of paragraph 3 of Article 23 of the Constitution of the RK and Article 5 of the Law of the RK “On Public Associations” are in line with international law and are aimed at protecting state or public security, public order, etc.

However, a number of legislative restrictions do not comply with the Universal Declaration of Human Rights, ICCPR and ICESCR. In particular, the provision of Article 23 of the Constitution of the RK, which guarantees the right to freedom of association only for its citizens, is contrary to international law, which establishes that every person should have this right, regardless of his or her citizenship or other status.

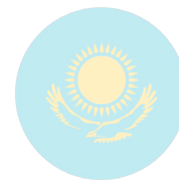
The ban on the activities of unregistered public associations established by Article 5 of the Law on Public Associations does not comply with international law. It violates the norms of the Universal Declaration of Human Rights (Article 20), ICESCR (Article 8), and ICCPR (Article 22). The right to freedom of association may be exercised by a person through informal association with others or through the formation of a legal entity of his/her own choosing.

In accordance with the Guidelines, “Legislation must recognize both informal and formal associations or, at a minimum, permit the former to operate without this being considered unlawful.”¹²

The Code of Administrative Offenses of the RK establishes strict liability for leaders and members of public associations in the form of heavy fines and even suspends the activities of public associations for committing actions that go beyond the goals and objectives defined by the charters of these public associations, as well as any, even minor, violations of the law. The Guidelines emphasize the importance of proportionality of sanctions to the seriousness of the offense. A stiff fine or suspension of the activity of a public association for a petty offense will not be considered proportionate and will be contrary to international law.

Whereas CoAO RK imposes fines on individuals participating in, managing, or financing the activity of unregistered associations, such activity is recognized as legal in international practice. Penalty for actions that constitute the exercise of the right to association or contribute to the realization of this right, which in accordance with international law should be recognized as legal, also contradicts international law.

¹² Para. 48 of the Guidelines.



The concept of “leader of a public association” in the CrC RK is formulated in such a way that not only the leader proper, but also any member or participant of a public association “capable of singlehandedly exerting controlling influence on the activity of that public association” can be regarded as the leader. Such a wide interpretation threatens significant fines, arrest, restriction of liberty and even imprisonment to an unlimited circle of people, since the legislation does not define participation in the activities of a public association. Moreover, this concept allows for wide discretion, as it proposes to determine the leader of a public association on the basis of whether they are capable of “singlehandedly exerting controlling influence on the activity of that public association.” This is unspecific and evaluative language, which may cause any person who has influenced the decisions of an organization without any formal connection with it to be regarded as its leader. If applied, the CrC RK provisions containing the term “leader of a public association” may lead to violation of the right to association for a wide range of individuals and therefore, violation of international law.

2. Legal Status of NCOs

CC RK defines NCO as an organization that does not have revenue generation as the main goal of its activity and does not distribute the net income received among participants. CC RK defines a commercial organization as an organization for which extraction of income is the main goal of its activity.¹³

Therefore, the main differences between NCOs and commercial organizations are as follows: (1) NCOs have goals other than the extraction of income; (2) revenue generation cannot be the main goal of an NCO's activity; (3) the ban on the distribution of net income to NCO participants.

It should be mentioned that in practice and in the Kazakhstani legislation, the term “non-governmental organization” (NGO) is also used. In accordance with the definition given in the Law “On the State Social Order, Grants and Bonuses for Non-Governmental Organizations in the Republic of Kazakhstan,”¹⁴ NGOs include NCOs (with the exception of political parties, trade unions and religious associations) created by citizens and/or non-state legal entities on a voluntary basis to achieve their common goals in accordance with the legislation of the RK. Despite the fact that the term NGO does not cover all forms of NCOs, in practice it is often erroneously used as a synonym for all NCOs in Kazakhstan.

Under Kazakhstani NCO legislation, legal entities can only be created in certain organizational and legal forms. As such, the Law “On NCOs” lists institutions, public associations, foundations, religious associations, associations (unions) of legal entities, consumer cooperatives, non-profit joint-stock companies, and a number of other or-

¹³ Article 34 CC RK.

¹⁴ Para. 7, Article 1 of the RK Law “On State Social Contracts, Grants and Awards for Nongovernmental Organizations in the Republic of Kazakhstan.”



ganizational and legal forms of NCOs, such as autonomous educational organizations, the autonomous cluster fund, notary chambers, bar associations, law firms, the National Chamber of Entrepreneurs of the RK, the Chamber of Forensic Experts of the RK, the National Chamber of Private Enforcement Agents, the Arbitration Chamber of Kazakhstan, professional audit organizations, cooperatives of apartment owners, and other NCOs.¹⁵

In addition, CC RK provides for such an organizational and legal form of NCOs as “an association of individual entrepreneurs and/or legal entities in the form of an association (union),”¹⁶ the union of legal entities being a subspecies of that legal form of NCO. In addition, other organizational and legal forms of NCOs may be introduced by legislative acts.¹⁷ Since the organizational and legal forms of NCOs differ among themselves in their goals and nature of activity, the composition of participants, the presence or absence of membership, the procedure for the formation and disposal of property, the management and control system and some other criteria, a different legal regulation applies to them. To address some of the organizational and legal forms of NCOs (for example, public and religious associations and consumer cooperatives), separate laws have been adopted and are currently in force.

According to the Ministry of Justice of the RK as of January 2019,¹⁸ 22,763 NCOs were registered in Kazakhstan, including 11,175 public associations, 1,585 associations of legal entities, 6,659 foundations and 3,473 institutions. Of these, 15,954 were active as at April 5, 2019, according to the State Revenue Committee of the Ministry of Finance (SRC MF) of the RK.¹⁹ Only 4,624 NCOs were registered in the NGO Database,²⁰ administered by the authorized body for coordination with NGOs (the Ministry of Information and Social Development), as at January 2019.

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¹⁵ Chapter 2 of the RK Law “On NCOs.”

¹⁶ Article 110 CC RK.

¹⁷ Para. 3, Article 34 CC RK, and Para. 3, Article 17 of the RK Law “On NCOs.”

¹⁸ Data provided by the Ministry of Information and Social Development of the Republic of Kazakhstan.

¹⁹ Data provided by the Ministry of Information and Social Development of the Republic of Kazakhstan.

²⁰ Source: <https://infonpo.kz/ru/>



2.1. STATE REGISTRATION OF NCOS

2.1.1. Founders

Requirements for the composition and number of founders differ depending on the specifics of the organizational and legal form of NCO. According to the Law “On NCOs,” the founders of an NCO, depending on its legal form, can be individuals and/or legal entities, unless otherwise provided by legislative acts. An NCO may be established by one person, with the exception of consumer cooperatives, associations (unions), and other categories provided for by legislative acts on certain types of NCOs.²¹

For example, foreign individuals and legal entities cannot be initiators (founders) of public and religious associations. In other legal forms of NCOs, foreign citizens and/or legal entities may be founders, unless otherwise indicated.

Below are the requirements for the minimum number of founders of some organizational and legal forms of NCOs:

- A public association may be created at the initiative of a group of RK citizens consisting of at least ten persons.²² The founders /members of a public association, in addition to individuals, may be legal entities – public associations, with the exception of political parties.
- Foundations. The number and composition vary depending on the type of foundation: a private foundation (at least one individual or two if members of the same family); corporate foundation (at least one legal entity); public foundation (at least two individuals or at least one individual and one legal entity (a public association); state foundation (one state body or more);
- An association of individual entrepreneurs and/or legal entities in the form of an association (union) – at least two legal entities / individual entrepreneurs or one legal entity and one individual entrepreneur;
- An institution may be created by decision of one or more founders who are individuals or legal entities;
- A religious association may be created at the initiative of at least 50 citizens of the RK (local status); 500 citizens of the RK (regional status); and 5,000 citizens of the RK (nationwide status).

2.1.2. Territorial status

The legislation of the RK does not provide for the assignment of any territorial status when registering most of the organizational and legal forms of NCOs. However, the laws “On Public Associations” and “On Religious Activities and Religious Associations”²³ pro-

²¹ Article 20 of the RK Law “On NCOs.”

²² Para. 2, Article 19 of the RK Law “On NCOs.”

²³ Law #483-IV of the RK “On Religious Activity and Religious Associations” of October 11, 2011.



vide for territorial registration for public and religious associations. Territorial status means that the legislation sets restrictions on the territory in which a public or religious association can operate (it can have a nationwide, regional or local status depending on the territory of its activity). In the case of public associations, in order to obtain nationwide status, a public association must register branches (representative offices) in more than a half of the RK regions, and regional status – less than a half of the regions.²⁴ Having registered in one region only, a public association receives local status, and the territorial scope of its activity is limited only to the territory of that region.

2.1.3. Rules of the creation and registration of NCOs

Generally speaking, the creation of an NCO is no different from that of any other legal entity, since the RK has a unified procedure for registering legal entities regardless of their legal form. In order to create a legal entity, the founder should make a decision to establish it (the founders have to sign the memorandum of association, and the creation of a public association requires a constituent meeting of initiating individuals), approve the charter, pay the fee for state registration and submit the set of constituent documents prescribed by the law for registration to appropriate justice authorities.

The RK has a licensing procedure for registering legal entities. This procedure in the RK provides for the obligation of the state to register an organization if its founders have fulfilled all relevant legal requirements for the creation of such an organization.

The issues of registration of NCOs are regulated by the Law of the RK “On State Registration of Legal Entities”, CC RK, the Law of the RK “On NCOs” and other regulatory legal acts governing the creation and operation of individual legal forms of NCOs.

The procedure itself and the requirements for acquiring the legal entity status are established in the Instructions for the State Registration of Legal Entities and the Registration of Branches and Representative Offices for Record Purposes, approved by Order #112 of the Minister of Justice of the RK of April 12, 2007 (hereinafter referred to as the Instructions for Registration):

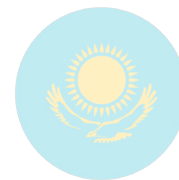
“2. State registration (registration for record purposes) of legal entities (branches and representative offices) includes:

verification of compliance of documents submitted for state registration (registration for record purposes) with the legislation of the RK;

issuing a certificate of state registration (registration for record purposes) with the assigned business identification number (hereinafter, BIN);

entering information on legal entities (branches and representative offices) in the National Register of

²⁴ Article 7 of the RK Law “On Public Associations.”



Business Identification Numbers (hereinafter, the National Register).

When registering, the issues of expediency of forming a legal entity or opening a branch or representative office are not taken into account. The process does not aim to exercise control and intervene in its manufacturing, business and financial activities.”

In Kazakhstan, the state registration of legal entities and the registration of branches and representative offices for record purposes are carried out by the justice authorities (referred to as registration authority).

State registration (or registration for record purposes), re-registration and liquidation registration of banks, public and religious associations with nationwide and regional statuses, including political parties, branches and representative offices of foreign and international noncommercial non-governmental associations, are the responsibility of the Ministry of Justice of the RK.

State registration, re-registration, liquidation of public and religious associations with local status, foundations and associations of legal entities, registration for record purposes, re-registration, deregistration of branches and representative offices of public and religious associations in the respective region and the cities of Astana, Almaty and Shymkent are the responsibility of the departments of justice of the regions and the cities of Astana, Almaty and Shymkent.

In accordance with paragraph 6 of the Instructions for Registration, the list of documents for the registration of a legal entity is as follows:

“6. To register a legal entity – a medium or large business, as well as an NCO, the following are provided to the registration authority:

1) a statement in the form provided for by Appendix 1 to this Instruction, and for medium and large enterprises operating on the basis of the Model Charter – applications in accordance with Appendices 2, 3 and 4k to this Instruction;

2) a list of constituent and other documents in accordance with Appendix 5 to this Instruction.

An application for registration of a legal entity shall be signed and submitted to the registration authority in the manner prescribed by Article 6 of the Law of the RK “On State Registration of Legal Entities and the Registration of Branches and Representative Offices” (hereinafter, the Law).

Registration of legal entities with foreign participation is carried out in the manner established for the registration of legal entities of the RK. In addition to the documents provided for by the Law, unless otherwise provided by international treaties ratified by the RK, the following shall be additionally submitted:

1) a legalized extract from the trade register or another legalized document certifying that the founder



– a foreign legal entity – is a legal entity under the laws of the said foreign country, with a notarized translation into the Kazakh and Russian languages; and

2) a copy of the passport or other identity document of the foreign founder, with a notarized translation into the Kazakh and Russian languages.”

The documents are submitted to the justice authorities through the Public Service Centers, which provide services to the public under the single window (“one-stop-shop”) system.

According to the Instructions for Registration, the procedure for paying the state registration fee by legal entities, branches and representative offices is regulated by the tax legislation of the RK.

For example, Article 553 of the TC RK defines the following rates of the state tax.

The rates of the state fee for state registration of the establishment of legal entities, their branches and representative offices (with the exception of legal entities that are small businesses, their branches and representative offices, and political parties, their branches and representative offices) are 6.5 monthly calculation indexes effective on the day the fee is paid (which is \$44 for 2019).²⁵

For children’s and youth public associations, as well as public associations of disabled people, their branches and representative offices, and the branches of nationwide and regional national-cultural public associations, a preferential fee is established, which is a double monthly calculation index effective on the day the fee is paid (which is \$13 for 2019).

State registration (re-registration) of NCOs must be made within ten business days from the date of application with necessary documents attached.²⁶

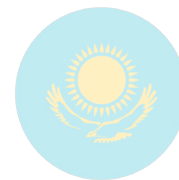
In case of violation of the procedure for the creation, re-registration and reorganization of a legal entity and in other cases specified by the Instructions, registration may be refused.²⁷ In

In case of violation of the procedure for the creation, re-registration and reorganization of a legal entity and in other cases specified by the Instructions, registration may be refused.

²⁵ The monthly calculation index (MCI) is established by the Law on the National Budget for each year. Beginning January 1, 2019, MCI is equal to 2,525 tenge, which is approximately \$7.

²⁶ Article 9 of the RK Law “On the State Registration of Legal Entities.”

²⁷ Para. 78 of the Instructions for Registration.



cases of the submission of an incomplete set of documents, the presence of inconsistencies in them, the need to obtain an expert (specialist) opinion on the constituent documents, as well as on other grounds provided for by the legislative acts of the RK, the registration period may be interrupted until the deficiencies are eliminated or an appropriate expert opinion is obtained.²⁸

An NCO is considered registered from the moment the order is issued by the relevant registration authority and the information about it is entered into the National Register. As a result of registration, a certificate of state registration of a legal entity is issued.

2.1.4. Approval of the name and the registration of symbols

The name of an NCO includes its name and an indication of the legal form. It may include additional information required by law.

When choosing the name of an NCO, it is necessary to remember the following requirements and restrictions provided for in the legislation of the RK:

1. It is not allowed to use names that contradict the requirements of the law or the norms of public morality;
2. it is not allowed to use the personal names of persons if they do not coincide with the name of the participants or if the participants have not received permission from those persons (their heirs) to use their own name;
3. the name of the legal entity shall not duplicate, either completely or in substantial part, any of those already registered in the RK;
4. The name of the association (union) should contain an indication of the main subject of activity of the members of this association (union) with the inclusion of the words “association” or “union”.

According to Article 5 of the Law “On NCOs,” NCOs are entitled to have their own emblem (symbols), provided they are registered in the prescribed manner.

2.1.5. Registration of changes in constituent documents

NCOs have the right to amend their constituent documents. Some changes require re-registration of the organization with the justice authorities; others do not.

The legislation of Kazakhstan does not provide for any special requirements regarding the re-registration of NCOs. Any legal entity (including NCOs) is subject to re-registration in cases established by Para. 6 of Article 42 CC RK:

1. reduction of the size of the authorized capital;
2. change of name;
3. changes in the composition of participants in business partnerships (with

²⁸ Para. 82 of the Instructions for Registration.



the exception of business partnerships in which the register of participants is maintained by a professional participant in the securities market, licensed to maintain a system of registers of securities holders).

Therefore, the most applicable case for NCOs involving re-registration is a change of name, as well as the reduction of the authorized capital (if any).

Changes made to the constituent documents on the above grounds are invalid without re-registration of the legal entity.

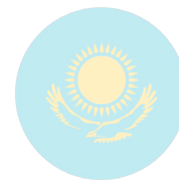
In cases involving re-registration, an NCO should, within a month from the date of the decision by the authorized body of the organization, submit its application for re-registration to the registration authority, attaching the necessary documents.

According to Para. 43 of the Instructions for Registration, the list of documents required for re-registration of NCOs is as follows:

1. application for state re-registration (re-registration for record purposes) of a legal entity or branch (representative office) in accordance with Appendix 12 to this Instruction;
2. the decision or an extract from the decision of the authorized body of the legal entity on its state re-registration (re-registration for record purposes), providing for amendments and additions to the constituent documents of the legal entity or the regulations of its branch (representative office), sealed with its corporate seal (with the exception of private business entities);
3. three copies of constituent documents (regulations) with amendments and additions for a legal entity (if not a private business entity), as well as a joint-stock company, or their branches (representative offices);
4. originals of the previous constituent documents of the legal entity (if not a private business entity), as well as a joint-stock company, the regulations of their branches (representative offices); if the NCO has a charter and a certificate of state registration (re-registration), the registration authority shall withdraw the originals of the previous documents; and
5. a receipt or other document confirming payment of the registration fee to the budget for the state re-registration of a legal entity or the re-registration of a branch (representative office) for record purposes.

In so doing, changes and additions are made by:

1. editing the old version;
2. attaching changes and additions as addenda to the old version of the constituent documents.



If the constituent documents are subject to notarization, the changes and additions shall be notarized.

After submitting documents for state re-registration, the registration authority:

1. checks the completeness and accuracy of the documents submitted, as per the current legislation of the RK;
2. issues an order on state re-registration of the legal entity (in the absence of violations of applicable law);
3. enters information on the state re-registration of the legal entity into the National Register;
4. within one business day from the date of registration, sends a notification of the state re-registration of the legal entity with the assigned BIN to the state revenue authorities;²⁹
5. issues a certificate of state re-registration of the legal entity; and
6. supplements the file with new constituent documents or a copy of changes and additions drawn up as an appendix to the old ones (with the exception of private business entities), and other documents of the legal entity.

Furthermore, legal entities of certain organizational and legal form may undergo re-registration in connection with a significant change in the legislation governing their creation and operation.

The term for the consideration of documents for re-registration shall not exceed ten business days following the day of application.

Like other legal entities, NCOs are obliged to report changes in other data, the introduction of which into the constituent documents does not entail re-registration and is carried out without paying a fee (such as change of location, opening of a branch or representative office, etc.). If such changes and additions are made to the constituent documents, the NCO shall inform the registration authority about them within one month.

2.1.6. Rules for registration of structural units (branches and representative offices) of NCOs

Like other legal entities, NCOs have the right to open branches and representative offices. As they are not legal entities, branches and representative offices must first be registered with appropriate justice authorities.

In some cases, the opening of a certain number of branches is a prerequisite for confirming the NCO's territorial status. For example, in the case of a public association with a regional or nationwide status, it is necessary, before the expiration of a year from the date of registration, to provide the body which registered the public association proper

²⁹ Business Identification Number (BIN) – a unique number generated for a legal entity (branch and representative office) or an individual entrepreneur operating as a joint venture.



with evidence of the process of registration of a qualifying number of branches and representative offices with territorial departments of the Ministry of Justice.

The procedure for registration of branches and representative offices of legal entities for record purposes is dealt with in Chapter 5. “Instructions for Registration.”

Under the said procedure, an application to register a branch (representative office) shall be submitted to the relevant registration authority. The application shall be in the form established by the Ministry of Justice. It shall be signed by a person authorized by the legal entity creating the branch (representative office) and sealed with the legal entity’s seal, if available.

Appended to the application shall be a receipt or other document confirming payment of a state fee established for the registration of the branch (representative office).

In the case of branches (representative offices) of legal entities that are not private business organizations, as well as joint-stock companies, the following documents shall also be attached: the provision on the branch (representative office) approved by the legal entity (in the Kazakh and Russian languages, in triplicate), copies of the legal entity’s charter (by-laws), and the power of attorney issued by the legal entity (with the exception of public and religious associations) to the head of the branch (representative office).

The term for consideration of the documents for the registration of a branch or representative office shall not exceed ten business days following the day of submission.

2.1.7. Specific aspects of the registration procedure for certain types of NCOs

In the legislation of Kazakhstan, there are a number of special requirements for the procedure for registering individual legal forms of NCOs.

In the case of public associations, these special requirements are as follows:

1. the requirement to submit documents for the registration of the public association within two months from the date of the decision on its formation;
2. the requirement to open the required number of branches and representative offices within a year from the registration of a public association with a regional or nationwide status to confirm the territorial status;
3. only Kazakhstani nationals can initiate the creation of a public association; and
4. the documents required for registration include a list of initiating individuals with their full names, dates of birth, ITNs,³⁰ place of residence, home and office telephone numbers, and personal signatures.

³⁰ Individual Identification Number (IIN) – the digital code assigned to citizens of the RK for life.



In addition, there are some differences in the procedure of registration of different forms of NCOs, including but not limited to:

1. registration deadlines: for example, the registration of a political party shall be carried out within one month from the day the applicant submits all necessary documents to the registration authority, while for the other forms of NCOs, a total period of ten calendar days applies;
2. the list of documents required: depending on the organizational and legal form of the NCO, the Instructions for Registration provide for different lists of documents. When registering a public foundation, for example, it is necessary to submit, among other things, the decision of the board of trustees to appoint the executive body of the foundation. In registering a NCO of a different organizational and legal form, the decision to appoint the executive body is not required; and
3. the registration authority. While the registration of nationwide and regional public associations and the branches and representative offices of foreign and international non-profit non-governmental associations is the responsibility of the Ministry of Justice of the RK, all other NCOs are registered with the relevant territorial departments of the ministry.

2.1.8. Branches and representative offices of foreign NCOs

Under Article 24 of the Law of the RK “On NCOs,” non-profit legal entities, including foreign ones, shall be entitled to create their branches and representative offices on the territory of the RK in accordance with Kazakhstani legislation.

The registration of branches (representative offices) of foreign legal entities for record purposes is carried out in accordance with the procedure established for the branches (representative offices) of Kazakhstani legal entities. In addition to the documents stipulated by that procedure, and unless otherwise provided by international treaties ratified by the RK, a legalized extract from the trade register and the constituent documents or another legalized document of the foreign legal entity shall be submitted to confirm that the foreign legal entity

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accordance
with
Kazakhstani
legislation.**



creating its branch (representative office) is duly incorporated in its country, as well as a document confirming its tax registration in the country of incorporation indicating the tax registration number (or its equivalent). The documents of a foreign legal entity creating a branch (representative office) shall be submitted together with their notarized translations into the Kazakh and Russian languages.

2.1.9. Grounds for refusal of registration

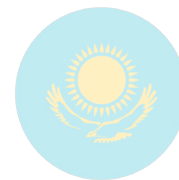
In accordance with the legislation on the state registration of legal entities and the registration of branches and representative offices for record purposes, the state registration (re-registration) of legal entities may be refused in the following cases:

- “1) violation of the procedure for the creation, re-registration or reorganization of a legal entity as established by the legislative acts of the RK; non-compliance of its constituent documents with the law of the RK;*
- 2) failure to submit a deed of transfer or separation balance sheet, or the absence of provisions on the legal succession of the reorganized legal entity;*
- 3) the fact that the legal entity or its sole founder (participant) is an inactive legal entity;*
- 4) the individual who is the founder (participant) and/or the head of the legal entity is the sole founder (participant) and/or the head of inactive legal entities and/or is recognized as legally incapable or partially capable, and/or is recognized as missing, and/or was declared dead, and/or has an outstanding or unexpunged criminal record for crimes under Articles 215, 237, 238 or 240 of the CrC of the RK, as well as in the event that the founder (an individual and/or a legal entity) or head of the legal entity, or the founder and/or head of the legal entity that established such legal entity, are debtors under an executive notice (with the exception of a person who is a debtor under enforcement proceedings for the collection of periodic payments and is in arrears on them for more than three months;*
- 5) the individual who is the founder (participant) and/or head of a legal entity are on the list of organizations and persons associated with the financing of terrorism and extremism, in accordance with the legislation of the RK;*
- 6) submission of lost and/or invalid identity documents; and*
- 7) availability of judicial rulings and decisions (prohibitions, arrests) of bailiffs and law enforcement agencies.”³¹*

Registration or re-registration of a branch (representative office) for record purposes may be refused in cases of violation of the procedure established by legislative acts of the RK for the creation of a branch (representative office) or non-compliance of submitted documents with the laws of the RK.

If the state registration or re-registration of a legal entity or the registration or re-registration of a branch (representative office) for record purposes is refused, the registration authority shall issue a motivated refusal in writing, indicating where the submitted documents do not comply with the requirements of applicable legislation.

³¹ Para. 78 of the Instructions for Registration.



The fee paid for the state registration or re-registration of legal entities or the registration or re-registration of their branches (representative offices) for record purposes shall be refunded in cases stipulated by TC RK.

2.1.10. Appeal Procedure

According to Article 17 of the Law of the RK “On the State Registration of Legal Entities,” “Refusal or evasion of state registration of a legal entity or the registration of its branch (representative office) for record purposes, as well as other disputes between the founders of a legal entity and the registration authority, may be appealed to a court.”

Furthermore, any decision of an administrative authority in the RK can also be appealed to a higher authority or official, as well as the prosecutor’s office. There are no preconditions for appealing to court, either.

Analysis

The procedure for registering NCOs as a legal entity, amending constituent documents, the list of grounds for refusing registration, and the procedure for appealing against decisions to refuse registration are similar to requirements for commercial legal entities and, on the whole, comply with good international practice.

It seems possible, however, to improve the registration procedure. “Legislation should make the process of notification or registration as simple as possible and, in any case, not more cumbersome than the process created for other entities, such as businesses.”³² In the RK, the procedure for registering NCOs is more complicated and expensive than that of registering small businesses. While the official registration deadline for NCOs is ten business days, a small business must be registered in one business day or – by filling out an application on the e-government web portal – within 10 to 15 minutes. In addition, the fee charged for registering an NCO remains high compared with that charged for registering a small business. While the small business registration fee is two monthly calculation indexes (about \$14),³³ that for an NCO is 6.5 MCI (approximately \$45). More, the same amount is charged for the registration of a branch or representative office of an NCO.

Furthermore, the territorial status of public associations and the restriction of their area of activity depending on that status constitute a restriction of the right to freedom of association and do not comply with international standards. The requirement to register associations by territorial status does not comply with Paragraph 159 of the Guidelines, which states that “Legislation should also refrain from placing territorial restrictions on the operations of associations, and should maintain the same procedures for registration throughout the whole country.” Every public association should have the right to carry out activities throughout Kazakhstan, as is the case with other legal entities.

³² Para. 156 of the Guidelines.

³³ One monthly calculation index (MCI) was set at 2,525 tenge for 2019. MCI is used in the RK to calculate benefits and other social payments, as well as penalties, taxes, and the like.



2.2 TERMINATION AND LIQUIDATION OF NCOS

According to Article 26 of the Law “On NCOs”:

“1. An NCO may be liquidated voluntarily (by decision of the owner of its property or the body authorized by the owner, as well as by decision of the body of a legal entity authorized to do so by the constituent documents) and forcibly (by decision of the court) on the basis and in the manner prescribed by CC RK, this Law, and other legislative acts.

2. The founders (participants) of the NCO or the body that made the decision to liquidate the NCO must immediately inform the justice authority registering legal entities in writing.

The founders or the body that made the decision to liquidate the NCO appoints a liquidation commission and establishes the procedure and terms for the liquidation in accordance with CC RK and this Law.

3. From the moment of appointing the liquidation commission, it acquires the powers to manage the NCO's property and affairs. The liquidation commission shall act on behalf of the liquidated NCO in court.”

Summing up, NCOs can be liquidated either voluntarily, i.e. by an independent decision of the owner or the authorized body of the organization, or forcibly – by a court decision on legitimate grounds.

2.2.1. Voluntary liquidation and suspension

VOLUNTARY LIQUIDATION

The voluntary liquidation of NCOs is governed by relevant provisions of CC RK,³⁴ the Law “On NCOs,” legislation on state registration of legal entities, the TC, and other regulatory legal acts of the RK.

A voluntary decision to liquidate, for example, a public association is the prerogative of the general meeting of its members or delegated persons, if the latter is provided for by its constituent documents. The decision on liquidation is made in writing in the form of a protocol, which is signed by all persons authorized to make such a decision, and is also sealed by the seal of the NCO. The decision shall also consider the appointment and composition of the liquidation commission and determine the procedure and time limits for liquidation.

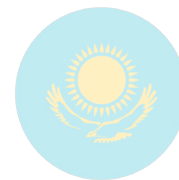
From the moment of appointing of the liquidation commission, it acquires powers to manage the NCO's property and affairs.

After the decision to liquidate is made, the NCO shall notify in writing or through an online resource using an electronic digital signature:

- the justice authority registering legal entities,³⁵ without delay, and also

³⁴ Articles 50-51 CC RK (General Part).

³⁵ Para. 1, Article 50 CC RK (General Part).



- the state revenue authority at the place of registration (within three business days after the decision on liquidation).³⁶

The liquidation commission:

1. publishes information on the liquidation of a legal entity, as well as on the procedure and deadlines for filing creditor claims;
2. uses its best efforts to identify creditors and collect debts, deregister branches and representative offices, and notify creditors in writing about the liquidation of the NCO;
3. draws up, after the expiration of the deadline for creditor claims, an interim liquidation balance sheet, which is approved by the owner of the property of the NCO or the body that made the decision on liquidation and contains information on the structure of the property and a list of submitted creditor claims and the results of their review;
4. within three business days from the date of approval of the interim liquidation balance sheet, the legal entity to be liquidated shall submit a tax statement on conducting a documentary audit and a liquidation tax report to the local tax authority;³⁷
5. then, not later than 20 business days after receiving the application of the liquidated NCO, the tax authority shall begin a documentary tax audit;
6. the liquidation commission makes payments to creditors:
 - in order of priority (Article 51 CC RK);
 - in accordance with the interim liquidation balance sheet, starting from the day of its approval; and,
7. after all settlements with creditors are completed, draws up a liquidation balance sheet, which is approved by the owner of the NCO property or by the body that made the liquidation decision.

After these steps and the completion of a documentary tax audit, the NCO:

- submits the documents to the archives;
- transfers its remaining property for uses specified in its constituent documents or to another NCO pursuing the same or similar goals;
- closes its bank account; and
- destroys its corporate seal.

³⁶ Para. 1, Article 58 TC RK.

³⁷ Para. 2, Article 58 TC RK.



At the final stage, the NCO shall apply to the appropriate justice authority for the state registration of its termination, providing the following documents:

- “1) a statement in accordance with Appendix 20 to this Instruction;*
- 2) the decision of the owner of the property of the legal entity or the body authorized by the owner or the body of a legal entity authorized by the legal entity’s constituent documents, sealed with the seal of the legal entity (with the exception of private business entities);*
- 3) a document confirming the appearance in an official publication of the Ministry of Justice of information on the liquidation of the legal entity, and the procedure and deadlines for creditor claims;*
- 4) a certificate of cancellation of bonds and/or shares and/or a report on the results of the redemption of bonds or a letter from the authorized body responsible for the state regulation of the securities market stating that there are no issues at authorized body has no securities or bonds of that legal entity;*
- 5) a document on the destruction of the legal entity’s seal (if any);*
- 6) a receipt or other document confirming payment of the fee for the state registration of the termination to the budget, with the exception of legal entities that are small or medium-sized enterprises; and*
- 7) constituent documents (if any).”³⁸*

The term for review of the documents is five business days, during which the justice authority:

1. verifies compliance with the liquidation procedure established by applicable legislation of the RK;
2. enters information on the liquidation of the legal entity in the National Register;
3. issues an order to register the termination of the legal entity, annul its certificate of state registration (re-registration), and remove it from the National Register; and
4. enters information on the termination of the legal entity in the National Register.

Liquidation may be denied if violations of the established liquidation procedure are found or if the legal entity has not deregistered its branches and representative offices.

The liquidation of a non-governmental organization is considered completed, and the non-governmental organization terminated, after entering that information in the National Register of Business Identification Numbers.

Voluntary liquidation of NCOs is a complex, expensive and lengthy process. Perhaps for this reason, the country has a large number of inactive NCOs and other legal entities.

³⁸ Para. 64 of the Instructions for Registration.

SUSPENSION

In the RK, the suspension of a NCO's activities can be either voluntary or compulsory.

Article 23 of the law “On Public Associations” establishes the following procedure for compulsory suspension:

“The activities of a public association may be suspended for a period of three to six months by a court decision based on a request from the prosecutor's office or the internal affairs bodies or citizens' petitions in the event of violation of the Constitution and legislation of the RK or repeated actions by the public association that go beyond goals and objectives defined by its charter.

In the event of suspension of the activities of a public association, it is forbidden to use all the media, to conduct agitation and propaganda, to hold rallies, demonstrations and other mass events, and to participate in elections. Its right to use bank deposits is also suspended, with the exception of settlements under labor contracts, compensation for losses incurred as a result of its activities, and payment of fines.

If during a specified period of suspension of activity a public association eliminates violations that served as grounds for the suspension of its activities, then after the specified period the public association may resume its activities. In case of non-elimination of such violations or a repeated violation of the legislation of the RK, the prosecutor's office, the internal affairs bodies or citizens have the right to apply to the court with a request for its liquidation.”

The procedure for voluntary suspension of activities is regulated by Para. 1 of Article 213 TC RK, in accordance with which the taxpayer, in the event of a decision to suspend or resume operations, or extend the suspension of submission of tax reports, submits to the tax authority at its location:

1. a tax application – in the event of a decision to suspend or resume operations, or to extend the suspension of the submission of tax reports;
2. tax reporting from the beginning of the tax period until the date of suspension of activity specified in the tax application – in the event of a decision to suspend activities;



In the event of suspension of the activities of a public association, it is forbidden to use all the media, to conduct agitation and propaganda, to hold rallies ... and other mass events, and to participate in elections.



3. a tax application for de-registration as value-added tax payer – in the event of a decision to suspend activities by a taxpayer (tax agent) who is a payer of value added tax.

The general period of suspension of the submission of tax reporting, taking the extension into account, shall not exceed the limitation period of five years established by Article 48 of the TC. The extension is granted for the period specified in the tax application, but not exceeding a total of five years.

2.2.2. Forced liquidation

The decision on the forced liquidation of an NCO in the RK can only be made by a court on grounds established by law for cases including but not limited to:³⁹

1. systematic and gross violation of applicable law;
2. activities contrary to the statutory goals;
3. invalid state registration;
4. the NCO is recognized as bankrupt; and
5. in other cases established by law.

In accordance with Paragraph 2 of Article 49 CC RK, a legal entity may be liquidated by a court decision in the following cases:

1. bankruptcy;
2. invalidation of its registration owing to violations of the law that were committed during its creation and are irreparable;
3. the absence of the legal entity at its location or actual address, as well as of founders (participants) and officers without which it cannot function for one year;
4. carrying out activities in gross violation of the law:
 - the systematic implementation of activities contrary to its statutory goals;
 - carrying out activities without a proper license or activities prohibited by legislative acts; and
5. in cases provided for by other legislative acts.

A request for the liquidation of a legal entity on above grounds may be submitted to court by a state body which is granted the right to submit such a request by legislative acts, and, in cases of bankruptcy, also by a creditor.

In addition, the tax authorities, in accordance with Article 93 TC RK, apply to the ju-

³⁹ Para. 2, Article 49 CC RK (General Part).



ditional authorities to terminate activities forcibly against resident legal entities, their structural units, the structural units of a non-resident legal entity, non-resident legal entities operating through a permanent establishment without opening a structural unit, and individual entrepreneurs if they meet all of the following conditions:

“1) until January 1 of the calendar year, but not less than the limitation period established by Article 48 of this Code:

- they did not submit their tax reports;*
- did not conduct any export-import operations;*
- did not make payments and/or money transfers to bank accounts, unless the amount of the payment and/or money transfer for a calendar year did not exceed 12 times the minimum wage established by the law on the national budget and valid on January 1 of the corresponding financial year, and excepting the receipt of pensions and/or social payments; and*
- were not registered as a payer of value added tax;*

2) as of January 1 of the calendar year:

- were not registered as a payer of value added tax;*
- did not have its tax reporting suspended in the manner specified by Articles 213 and 214 of this Code;*
- did not own assets eligible for tax on property, vehicles, land tax, unified land tax, with the exception of assets eligible for indicated taxes from individuals;*
- were not in arrears for social payments;*
- had no tax debts on taxes and payments to the budget, and customs payments and taxes in the amount of more than six times the monthly calculation index established by the law on the national budget and effective on January 1 of the corresponding financial year.”*

Having received a decision on the liquidation of a legal entity, the registration authority verifies compliance with the liquidation procedure established by the legislative acts of the RK, and enters information on the liquidation of the legal entity in the National Register of Business Identification Numbers in accordance with the Law of the RK “On State Registration of Legal Entities.”

For the state registration of the termination of activities of a legal entity liquidated by a court decision, court decisions and determinations on the completion of liquidation proceedings shall be submitted to the registration authority.

A legal entity is deemed to have ceased operation once information on this is entered into the National Register of Business Identification Numbers.



Analysis

The regulation of the termination of NCO activities in the RK is generally consistent with international standards and best practices. Legislation provides for voluntary and compulsory termination procedures for NCOs. Moreover, in accordance with international standards⁴⁰ the decision to forcibly terminate the activities of an NCOs can only be made by the court. Bankruptcy, gross violation of the law, and violations committed during the creation of the organization and which are irreparable, as grounds for the forced liquidation of NCOs, also comply with international standards.⁴¹

However, the grounds for suspending the activities of a public association as a separate legal form of an NCO, do not comply with international standards and international best practices. According to the Law of the RK “On Public Associations,” the activities of a public association may be suspended by a court decision on the basis of requests from the prosecutor’s office and internal affairs bodies, or citizens’ petitions in cases of violation of the Constitution and legislation of the RK or repeated actions by the public association that go beyond the goals and objectives defined by its charter. This means that the activities of public associations can be suspended even for insignificant deviations from the statutory goals and objectives or minor offenses. The principle of proportionality, used to assess compliance of any restrictions on the right of association with international law, becomes essential “in the assessment of whether an association may be prohibited or dissolved. The ECHR has repeatedly stated that any prohibition or dissolution of an association shall always be a measure of last resort, such as when the association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law. Furthermore, the principle of proportionality dictates that “prohibition or dissolution of an association should never be used to address minor infractions.”⁴²

3. Structure and Internal Governance

3.1 PROVISIONS OF CONSTITUENT DOCUMENTS

An NCO’s constituent documents include the following:

1. for an institution, a provision (charter) approved by the owner(s) and the decision of the owner(s) to establish the institution;
2. for a foundation, a consumer cooperative, a non-profit joint-stock company, an association of legal entities in the form of an association (union), and other organizational and legal forms – a charter approved by the founders and a memorandum of association; and
3. for a public association or a religious association, the charter.⁴³

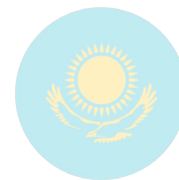
Should the NCO’s memorandum of association and charter conflict, applicable are the

⁴⁰ Para. 244 of the Guidelines.

⁴¹ Para. 245 of the Guidelines.

⁴² Para. 114 of the Guidelines.

⁴³ Para. 1, Article 21 of the RK Law “On NCOs.”



terms and conditions of:

1. the memorandum of association, if they relate to the relationship of the founders; or
2. the charter, if their application may be significant for relations between the legal entity and third parties.⁴⁴

The NCO charter shall provide for:⁴⁵

1. the name, including the organizational and legal form, and the subject and purpose of the NCO's activities;
2. location of the NCO;
3. the structure, the procedure for the formation and competence of the NCO's governing bodies;
4. the rights and obligations of members (participants) of the NCO;
5. the conditions and procedure for admission and disaffiliation (if the NCO has a membership);
6. sources of property formation;
7. the procedure for making amendments and additions to the NCO's constituent documents;
8. conditions for the reorganization of the NCO and the termination of its activities;
9. the procedure for using the NCO's property in the event of its liquidation; and
10. information about its branches and representative offices.

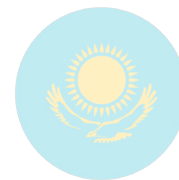
In addition, the charter of an NCO may provide for other provisions that do not contradict the legislation of the RK. For example, NCOs may, at their discretion, include provisions in their charters that establish the procedure for financing, the conditions for paying entry fees, as well as introduce additional governing bodies (the board, committees, and supervisory commissions) and other provisions, provided that they do not contradict the legislation of the RK. Membership organizations may provide for different categories of membership (simple, privileged, honorary, etc.) in their charters.

If an NCO is established by one person, its charter shall also determine the procedure for the formation of property and the use of income.⁴⁶

44 Para. 3, Article 21 of the RK Law "On NCOs."

45 Para. 1, Article 22 of the RK Law "On NCOs."

46 Para. 3, Article 22 of the RK Law "On NCOs."



Since foundations are not membership-based organizations, the rights and obligations of members and the procedure for their admission or disaffiliation are not indicated in the charters of foundations. In addition to the information listed above, the charter of a foundation should also contain instructions on the bodies of the foundation, on the procedure for appointing officials of the foundation and their release, and the fate of its property in the event of liquidation.

The specific features of the charter of an institution are accounted for by the fact that the institution is created and financed by its founder for the implementation of managerial, socio-cultural or other functions of a non-commercial nature. In this regard, the highest body of the institution is the founder, who makes all key decisions on the activities of the institution and provides the institution with necessary funds and property to carry out its activities. Unlike other forms of NCOs, the founder of an institution is liable for the obligations of the institution if the institution does not have enough funds to repay them.

The charter of a public association should include, among other things, the organizational structure of the public association, the legal status of its structural units (branches and representative offices) and the territory within which they operate⁴⁷(problems associated with this status are discussed in Section 2.1.2 “Territorial status” of Chapter “2. Kazakhstan”).

Changes and additions may be made to the charter of an NCO, but only by decision of its highest body (general meeting, congress, conference, founder). The only exception is made for foundations, where changes to the charter can be made by the governing body, if such a right is granted to it by the charter. The “governing body” may be the Board of Trustees, among other things.

In addition to the charter, the constituent documents of an NCO include the memorandum of association, as was mentioned above.

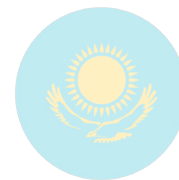
The Memorandum of Association is an agreement of the founders to create an NCO. It defines the procedure for their joint activities relating to its creation, and the terms and conditions of transferring their property to the NCO (operational management) and participation in its activities. It also establishes the terms and conditions and procedure for managing the operation of the NCO and the founders’ withdrawal from the organization, unless otherwise provided by legislative acts on certain types of NCOs. By agreement of the founders, other terms and conditions that do not contradict the legislation of the RK may be included in the memorandum of association.⁴⁸

The memorandum of association is signed by all founders or persons authorized by them.⁴⁹

⁴⁷ Article 12 of the RK Law “On Public Associations.”

⁴⁸ Para. 1, Article 23 of the RK Law “On NCOs.”

⁴⁹ Para. 2, Article 23 of the RK Law “On NCOs.”



If the foundation or private institution is formed by one person, the memorandum of association is not concluded.⁵⁰

Analysis

Founders and members of an association should have the right to freely determine their association's goals and activities. This includes the adoption of its own charter and rules that determine the internal governance structure and the procedure for the election of executive bodies and representatives of the association.⁵¹

Kazakhstani legislation is generally consistent with good international practice, but it can be improved. Kazakhstani legislation contains too detailed requirements relating to the content of the constituent documents of NCOs, requiring, for example, the inclusion of a specific governance structure and establishing powers for governing bodies in excessive detail. For violation of any such requirement, administrative liability is provided (up to the suspension / prohibition of the activities of NCOs). In most European countries, increased content requirements, including the structure of internal governance, are imposed the statutory documents of only some types of NCOs such as foundations and socially useful (charitable) organizations that receive special rights and privileges from the state. The rest of NCOs do not have such detailed requirements. In the RK, all NCOs, regardless of the field of activity, legal form and size, have to comply with detailed requirements relating to statutory documents.

3.2. STRUCTURE OF INTERNAL GOVERNANCE

3.2.1. Governing bodies of public associations

A public association is an organization created as a result of voluntary association of citizens in order to achieve common goals that do not contradict the legislation of the RK.⁵²

The highest governing body of a public association is the general meeting (congress, conference) of members of the organization. All members have equal rights and obligations; all have one vote and take part in the most important decisions of the association. The general meeting (congress) of the members of the association is usually convened one or two times a year or less, depending on the number of members of the association. If the number of members of the association is significant and there are branches /representative offices, then, in addition to the governing bodies provided for in Article 39 of the Law "On NCOs," an additional collegial governing body is created that meets between sittings of the General Meeting. More often than not it is called "the board" and normally includes the more active members. As necessary, other governing bodies may be created on a permanent or temporary basis.

According to Article 39 of the Law of the RK "On Non-Profit Organizations," the gov-

⁵⁰ Para. 3, Article 23 of the RK Law "On NCOs."

⁵¹ Para. 86 of the Guidelines.

⁵² Para. 1, Article 11 of the RK Law "On NCOs."



governing bodies of any NCO (with the exception of state institutions), as stated in their constituent documents, are:

1. The highest governing body (general meeting, congress, conference, founder) has the right to make decisions on any issues of NCO activity;
2. The executive governing body (collective or one-person) carries out current management of the activities of NCOs, with the exception of issues referred by the constituent documents to the exclusive competence of the highest governing body, and is accountable to this body;
3. control body (auditing committee, auditor), elected or appointed by the NCO's governing bodies of NCOs; and
4. other bodies in accordance with applicable law and the constituent documents of the NCO.⁵³

Matters within the exclusive competence of an NCO's highest body include the following:

1. the adoption and entering amendments and additions to the constituent documents;
2. voluntary reorganization and liquidation of the NCO;
3. determination of competence, organizational structure, procedure for the formation and termination of powers of the NCO's governing bodies;
4. determining the procedure and frequency for the submission of financial statements of the executive bodies, as well as the procedure for verification by the control body and approval of their results; and
5. adoption, within the limits established by legislative acts, of a decision on the participation of the NCO in the establishment or activities of other legal entities, their branches and representative offices.

According to its constituent documents, the exclusive competence of the NCO's highest governing body may include other issues related to the organization's activities in accordance with applicable law.⁵⁴

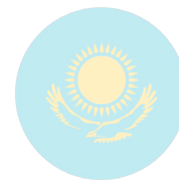
The above requirements regarding governing bodies and their powers extend to public associations in full measure.

3.2.2. Governing bodies of foundations

A foundation is recognized as a non-membership NCO established by citizens and/or legal entities on the basis of voluntary property contributions and pursuing social,

⁵³ Para. 1, Article 39 of the RK Law "On NCOs."

⁵⁴ Para. 2, Article 39 of the RK Law "On NCOs."



charitable, cultural, educational and other socially useful goals.⁵⁵

In addition to the governing bodies provided for by Article 39 of the Law of the RK “On NCOs,” a foundation shall form another additional body: *“When the foundation is established by decision of the founders (founder), a permanent collective governing body is formed. The board of trustees appoints the foundation’s executive body, monitors compliance of the foundation’s activities with its statutory goals, and has other powers provided for by the charter of the foundation.”*

The executive body of a foundation acts on the basis and in accordance with the decisions of the highest governing body and the permanent collective governing body (the board of trustees) and reports to them.

Analysis

Associations should be free to determine their internal governance structure and create their own highest governing bodies. In addition, they should have the right to freely create their own branches (including representative offices, branches and subsidiaries) and delegate certain managerial functions to such branches and their management.⁵⁶

In general, Kazakhstani legislation regarding the regulation of the internal structure of NCOs meets international standards. For example, NCOs have the right to freely determine their internal governance structure and create their highest governing bodies (however, a certain minimum of such bodies and their competencies are provided for by the Law “On NCOs”). NCOs in Kazakhstan have the right to freely create their own branches (including representative offices, branches and subsidiaries) and delegate certain managerial functions to such branches and their management. In a membership NCO (a public association or association of legal entities), its highest governing body is the membership (i.e., the general meeting of all its members), and any changes to the charter require a decision of the general meeting of members. Also, in accordance with international standards, the leaders of a membership NCO are elected or appointed by its highest body or the body to which the former delegated this task. In order to change its internal structure or rules, an NCO must not receive permission from any public authority. The appointment, election or change of officers, as well as the admission and expulsion of members are the responsibility of the NCO itself. NCOs have the right to independently determine measures needed to achieve their goals.

3.3. DISTRIBUTION OF INCOME AND OTHER REVENUE

NCOs in the RK do not seek to create revenue as their primary goal and do not distribute net income to participants.⁵⁷

Income from entrepreneurial activities of NCOs cannot be distributed to members (participants) and is allocated for statutory purposes. Public and religious associations

⁵⁵ Para. 1, Article 12 of the RK Law “On NCOs.”

⁵⁶ Para. 175 of the Guidelines.

⁵⁷ Article 2 of the RK Law “On NCOs.”



and foundations may use their funds for charitable aid.⁵⁸

Members (participants) of public associations do not have rights to property transferred by them to these associations, including membership fees, unless otherwise provided by the legislation of the RK on self-regulation. They are not liable for the obligations of public associations in which they participate as members (participants), and these associations are not liable for the obligations of their members (participants), unless otherwise provided by the legislation of the RK on self-regulation.⁵⁹

The property transferred to the foundation by its founders is the property of the foundation. The founders of the foundation do not have property rights to the property of the foundation and may be expelled from the foundation by the founders' general meeting, in the manner prescribed by the charter,⁶⁰ for failing to fulfill their obligations. The head and members of the executive governing body are obliged to jointly compensate the foundation for losses incurred as a result of their decisions in violation of the constituent documents of the foundation, this Law and other legislative acts of the RK. Persons who voted against, abstained or did not participate in the meeting when making such a decision are exempted from the obligation to compensate for losses.⁶¹

During the liquidation of an NCO, the property remaining after satisfying the demands of the creditors is used for purposes specified in the constituent documents, unless otherwise provided by legislative acts.⁶²

The property remaining from the liquidation after settlements with creditors cannot be redistributed among members, founders, officials or employees of the organization, but must be used for its statutory purposes in accordance with the charter. If the organization's charter does not provide for such a procedure, the remaining property may be transferred, by decision of the body that made the decision on liquidation, to an

Property transferred to the foundation by its founders is the property of the foundation. The founders of the foundation do not have property rights to the property of the foundation.

58 Para. 5, Article 33 of the RK Law "On NCOs."

59 Para. 2, Article 11 of the RK Law "On NCOs."

60 Para. 5, Article 12 of the RK Law "On NCOs."

61 Para. 3, Article 12 of the RK Law "On NCOs."

62 Para. 1, Article 28 of the RK Law "On NCOs."



NCO that pursues the same or similar goals.⁶³

Analysis

Kazakhstani legislation generally complies with international standards with regard to the distribution of income and other revenue. For example, NCOs do not distribute their profits among their members or founders; the procedure for distributing property after the liquidation of NCOs also complies with international practice.

4. NCO Activities

4.1. GENERAL LEGAL CAPACITY

Like all legal entities, NCOs have general legal capacity and may have civil rights and bear responsibilities related to their activities in accordance with the Civil Code.⁶⁴

Unlike commercial organizations, NCOs in the RK cannot have making a profit for their primary goal and must have other specific goals of their activity that are different from the goal of generating income. Article 4 of the Law of the RK “On NCOs” indicates some of the possible statutory goals of NCOs: “Social, cultural, scientific, educational, charitable, managerial goals; protection of the rights, legitimate interests of citizens and organizations; dispute and conflict resolution; satisfaction of spiritual and other needs of citizens; public health, environmental protection, the development of physical education and sports; provision of legal assistance.” In practice, NCOs should indicate an exhaustive list of objectives of their activity when registering as a legal entity.⁶⁵ An NCO operates within the framework of the goals of its activity, as they are identified by the constituent documents. The goals of an NCO may impact on its rights and obligations. For example, although Article 14 of the Environmental Code of the RK sets forth a number of special rights in the field of environmental protection for public associations, many of these rights can be exercised only by those PAs whose statutory goals include environmentalist issues.

Another fundamental difference between NCOs and commercial organizations is the legislative prohibition on the distribution of net income to its participants. Net income means income in monetary terms, after paying all taxes and non-tax payments to the state, including income exempted from taxes. The prohibition to distribute net income means that an NCO’s constituent documents cannot provide for the payment of money or the provision of material benefits from net income to its participants. The net income from the NCO’s activities goes to cover the costs associated with the implementation of its statutory goals. It should be noted that this prohibition does not apply to the provision of services and other benefits to participants, within the framework of the charter goals of NCOs, if that is provided for by law. Non-governmental organizations, such as a consumer cooperative, a pri-

⁶³ Para. 2, Article 28 of the RK Law “On NCOs.”

⁶⁴ Article 35 CC RK.

⁶⁵ Para. 3, Article 41 CC RK.



vate institution or a non-profit joint-stock company, distribute economic benefits among their participants within the framework of their statutory goals enshrined in law. The term “participant” (in an NCO) is defined in applicable legislation, but it is often used in the Law of the RK “On NCOs” interchangeably with “member” and “founder.” The term “participant” is applicable to those legal forms of NCOs in which there is no membership. In practice, participants are often understood as founders, members and other persons participating in the activities of the NCO, whose relations with the NCO are formalized in one way or another.

That an NCO does not seek generating income as its “main goal” does not mean a complete prohibition of entrepreneurial activity. NCOs may carry out entrepreneurial activities, but “only insofar as that is consistent with their statutory goals.”⁶⁶ There is no clear regulation in the legislation as to what is understood by “consistent with statutory activities.” In practice, this often means that NCOs may not engage in activities that are contrary to their statutory goals. For example, a children’s public association may not sell alcoholic beverages and tobacco products.

Legislation of the RK differentiates between non-governmental and governmental NCOs. Non-governmental NCOs are created by individuals and non-governmental legal entities. These include all public and religious associations, cooperatives of apartment owners, consumer cooperatives, bar associations, chambers of auditors, public foundations, and private institutions. Certain types of NCOs can only be governmental – for example, state-run foundations.

NCOs with the status of a legal entity have the ability to independently manage their income and property, receive any revenues not prohibited by law from individuals and legal entities, and use them through their bank accounts. Like other legal entities, NCOs have the opportunity to defend all their property interests in court.

Analysis

In accordance with the Guidelines, “Founders and members shall be free in the determination of the objectives and activities of their associations,”⁶⁷ as well as “... associations should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities.”⁶⁸

Regarding the main objective of activities and the distribution of net income to participants, the restriction of legal capacity of NCOs in comparison with commercial organizations in RK legislation is consistent with international standards. In the RK, the founders and members of NCOs are free to determine the goals and activities of their organization, which also complies with international standards.

66 Para. 3, Article 34 CC RK.

67 Para. 86 of the Guidelines.

68 Para. 102 of the Guidelines.



4.2. ADVOCACY AND POLITICAL ACTIVITIES

There is no definition of “political activity” in the legislation of the RK. However, the definition of “political party”⁶⁹ in the Law of the RK “On Political Parties” makes it clear that a political party is the only form of expression of the political will of citizens. The law also states that citizens of the RK have the right to freedom of association in political parties. Given the above, it seems that NCOs – other than political parties – may not engage in activities that constitute an expression of the political will of citizens, although it is not quite clear what is included in these activities and what should not be done. In practice, NCOs can engage in activities specified in their charter, as such charter is registered by an authorized state body. Despite the fact that there is no direct prohibition, it seems unlikely that, for example, activities will be registered to nominate candidates to run for the President of the RK and deputies to the Mazhilis of the Parliament and *maslikhats* of the Republic, etc.

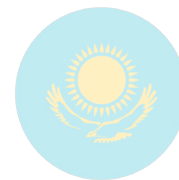
At the same time, the legislation of the RK provides for fairly broad opportunities for public participation of individuals and NCOs in making government decisions. The legal basis for public participation in government decisions is laid down in the Constitution of the RK. Paragraph 1 of Article 33, for example, reads: “Citizens of the RK have the right to participate in the management of state affairs directly and through their representatives, to apply in person, and also to send individual and collective appeals to state bodies and local governments.”

The prohibition of unlawful interference by public associations in state affairs⁷⁰ poses a potential threat to the exercise by public associations of their right to participate in government decisions and engage in advocacy aimed at changing legislation or state policy in a particular sphere, and also en-

It seems that NCOs – other than political parties – may not engage in activities that constitute an expression of the political will of citizens, although it is not quite clear what is included in these activities and what should not be done.

⁶⁹ “A political party shall mean a voluntary association of citizens of the Republic of Kazakhstan, which expresses the political will of citizens and various social groups with a view to representing their interests at representative and executive governmental authorities, local authorities and to participating in the foundation thereof.” (Para. 1, Article 1 of the RK Law “On Political Parties”).

⁷⁰ Article 4 of the RK Law “On Public Associations.”



tails serious sanctions for violation of this prohibition.⁷¹

In practice, NCOs in the RK can engage in advocacy activities with the aim of changing legislation on various issues, as well as attracting the attention of society or politicians to a specific problem in the legislation or the problem of their beneficiaries.

The practice of involving NCOs in the development and discussion of draft legislation is becoming increasingly common in the RK. Today, there are a number of regulations governing the participation of NCOs in such activities. At the same time, there is no unity and consistency in the regulation of such participation. The main regulatory act establishing the right of NCOs to participate in lawmaking activity is the Law of the RK “On Legal Acts” of April 6, 2016.

“Article 17. Developers of draft regulatory legal acts

4. Other bodies, organizations and individuals shall have the right to make proposals on the development of regulatory legal acts or to submit public initiative drafts of such acts for consideration by drafting bodies. Drafting bodies may accept them as the basis for the drafts of normative legal acts that they are developing or recognize their further development and adoption inexpedient.”

“Article 18. The procedure for developing a draft regulatory legal act

3. The preparation of draft laws, regulatory legal decrees of the President of the RK, regulatory legal decrees of the Government of the RK, and draft regulatory legal acts of other authorized bodies may involve specialists of various fields of knowledge, scientific institutions and researchers, and representatives of public associations.”

Therefore, NCOs not only may participate in the development of regulatory acts but also can propose the development of a specific regulatory act and submit the public initiative draft of such an act to the appropriate government body.

It should also be noted that separate regulatory acts grant additional rights to certain specialized categories of NCOs.

For example, Article 36 of RK Law #39-III “On the Social Protection of Persons with Disabilities in the RK” of April 13, 2005 establishes the right of public associations of persons with disabilities to participate in solving problems related to the social protection of persons with disabilities, and in developing a state policy on the social protection of persons with disabilities. Furthermore, the article provides for the obligation of state executive bodies to interact with representatives of such associations in the process of preparing and adopting decisions that affect the interests of persons with disabilities.

⁷¹ Article 403 CrC RK provides for punishment for illegal interference of members of public associations in the activity of state bodies: fines ranging from 160 MCI (\$1,120) to 200 MCI (\$1,400), or correctional labor in the same amount, or public works for a total of 160 to 200 hours, or arrest for up to 40 to 50 days, with the deprivation of the right to occupy certain positions or engage in certain activities for one to three years.



The rules of the Mazhilis and Senate of the Parliament of the RK also provide for the possibility of engaging representatives of NCOs and other experts in the work of work groups considering draft laws, as well as in public hearings with the participation of citizens, NCOs, and other civil society institutions.

A relatively new mechanism for public participation in the RK is public councils, which are advisory, advisory, and supervisory bodies whose goal is to express the views of civil society on socially significant issues.⁷²

Furthermore, thanks to the development of e-government and the introduction of mandatory public discussion of draft standard acts in the RK, there is now an opportunity for public discussion of all draft regulatory acts on the Open Government website (see subsection “Open Standard Acts”).⁷³

Analysis

In accordance with international standards, the RK legislation provides legal opportunities for NCOs to participate in government decision-making and advocacy activities. The government provides an opportunity for associations to freely pursue their goals and solve their problems without undue interference from the state or third parties.

The legislation establishes sanctions for the violation of the prohibition of unlawful interference of public associations in the affairs of the state. This poses a threat to the exercise of the right of public associations to participate in government decision-making and advocacy, especially given the absence in the legislation of a definition of what is meant by “interference in state affairs.” The disposition of this norm allows state bodies to interpret any just demand of the public in the person of members of public associations as unlawful interference in their activities and thereby creates a potential threat of punishment for fully legitimate NCO activities aimed at changing the law or a particular state policy. In addition, the punishment provided for by this norm does not differentiate between different types of intervention, which creates the threat of applying equally severe types of punishment for any intervention.

In practice, the interaction of state bodies and NCOs on legislative issues is not yet systemic and is rather an act of good will on the part of certain government bodies. One of the possible reasons for this situation may be that the legislation provides an opportunity rather than an obligation for government bodies to attract representatives of NCOs and other civil society institutions to develop legislation and make government decisions.

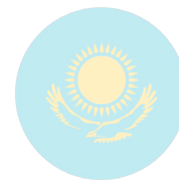
5. Financial Sustainability

5.1. BUSINESS INCOME

Entrepreneurship is an independent, initiative-driven activity of citizens, repatriates, and legal entities aimed at obtaining net income through the use of property, produc-

⁷² Law of the Republic of Kazakhstan “On Public Councils” of November 2, 2015.

⁷³ <https://legalacts.egov.kz/>



tion, sale of goods, performance of work and rendering of services, based on the right of private ownership (private enterprise) or the right of economic or operational management of a state-owned company (state-run enterprise).⁷⁴

The entrepreneurial activity of an NCO includes any NCO activity aimed at generating income, regardless of what the profit will be spent on, even if all of it goes to charity or for the organization's statutory goals. At the same time, there is a condition in the legislation that NCOs may carry out entrepreneurial activities, but "only insofar as that is consistent with their statutory goals."⁷⁵ These restrictive requirements are meant to put a barrier in the way of business activities that deviate from the goals a NCO is established for and which are not the generation of profit.

Since the legislation does not have a clear definition of what is meant by "consistent with their statutory activities," this often means that in practice NCOs can only engage in those types of entrepreneurship that do not contradict its statutory goals. Such activities, as a rule, are recognized as profit-making production of goods and rendering of services that meet the goals of the establishment of the organization, as well as the acquisition and sale of securities, property and non-property rights, and the role as an investor in business companies and partnerships. At the same time, income from entrepreneurial activity should not go to the payment of dividend to participants, but to the implementation of the goals set forth in the NCO's charter.

The business income received by an NCO is usually taxed in accordance with the generally established procedure, while all its gratuitous revenue (such as charity, sponsorship, grants, etc.) is exempt from corporate income tax. Therefore, in the case of entrepreneurial activities, NCOs are required to keep separate records on income exempted from corporate income tax (CIT) and income taxed in the generally established manner.

Analysis

The legal regulation of NCOs' entrepreneurial activity generally complies with international standards, which establish that "Associations should thus be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities, without any special authorization being required ... In addition, due to the not-for-profit nature of associations, any profits obtained through such activities should not be distributed among their members or founders, but should instead be used for the pursuit of their objectives."⁷⁶

5.2. STATE FINANCING

State financing of NCO projects in the RK has been carried out since 2003 through the main funding mechanism – the state social contract. In 2015, two more funding mechanisms for NCOs were introduced – the state grant and the state award.

⁷⁴ Para. 1, Article 2 of the Entrepreneurial Code of the RK.

⁷⁵ Para. 3, Article 34 CC RK.

⁷⁶ Para. 191 of the Guidelines.

STATE SOCIAL CONTRACT

The State Social Contract (SSC) is regulated by the SSC Law, which defines the specifics of NGO participation⁷⁷ in public procurement of social services, and general legislation on public procurement of goods, works and services.

SSC suppliers can only be those NGOs which operate in accordance with their statutory goals (barring political parties, trade unions and religious associations).⁷⁸

SSC services are procured in accordance with the RK Law on Public Procurement⁷⁹ by open competitive process. The Rules of Public Procurement⁸⁰ contain necessary instructions on the procedure for public procurement of goods, works and services, contain special conditions for the procurement of certain goods, establish qualification requirements,⁸¹ and also regulate the procedures and timing of public procurement.⁸² Special SSC procurement conditions have been introduced in order to mitigate some of the requirements of public procurement law in relation to NCOs. For example, NCOs are exempted from the obligation to confirm their solvency as well as the availability of sufficient material and financial resources required to perform the contract (except for long-term projects). In addition, NCOs are exempted from the obligation to provide tender security when they apply for participation in a tender and any security for the performance of a public procurement contract.

In addition to the Ministry of Information and Social Development, which coordinates the activities of state bodies for the implementation of SSC and is the authorized state body for coordination with NCOs, more than 20 state bodies of the RK currently place SSCs at the national and local levels. The state pays great attention to the development of this mechanism and the amount of funding under SSCs is constantly growing. Since 2003, the total financing of projects has increased from

77 The term "NGO", introduced in the SSC Law, includes all nongovernmental organizations with the exception of political parties, religious associations and trade unions.

78 Paras. 5 and 7, Article 1, and Para. 3, Article 6 of the RK Law "On Public Procurement."

79 Law of the RK "On Public Procurement" of December 4, 2015.

80 Order #648 of the Minister of Finance of the RK "On Approving the Rules of Public Procurement" (hereinafter, the Rules of Public Procurement) of December 11, 2015.

81 Para. 17 of the Rules of Public Procurement.

82 Para. 17, Clause 222 of the Rules of Public Procurement.





11 billion to 20 billion tenge (2018).⁸³ According to the Ministry of Information and Social Development, 865 NCOs implemented 2,200 projects all over the country in 2018.

THE STATE GRANT

In 2015, the SSC Law was amended several times, including the introduction of a new grant-making mechanism. The SSC Law stipulates that grants are provided for the implementation of social programs and social projects developed by NGOs, by the “operator in the field of grant financing of NGOs” (hereinafter, the operator) under a grant agreement. The state provides grants in order to support citizens’ initiatives and attract the potential of civil society institutions to address some pressing issues of social development.⁸⁴

Grants are awarded based on a competitive selection process. The procedure for providing grants is regulated by the Rules of the Provision of Grants to NGOs and Monitoring Their Use (hereinafter, the Grant Rules),⁸⁵ which we will discuss below.

The sole operator for the distribution of state grants was the not-for-profit joint-stock company Center for the Support of Civil Initiatives with 100% state participation in its authorized capital.

The grant process consists of the following steps:

- approving a grant-making plan;
- publication of a competition announcement and the receipt of documents;
- consideration and independent examination of submitted documents;
- decision-making by the operator; and
- signing a contract.

Unlike SSC, the grant process follows separate competitive procedures established by the Grant Rules rather than public procurement procedures. Accordingly, the selection criteria also differ: whereas the bid price is of great importance at the SSC competition, projects in the grant competition are assessed solely according to quality criteria. The volume of financing under the state grants program increased from 194 million tenge in 2016 (approximately \$0.5 million) to 965 million tenge in 2018 (\$2.5).⁸⁶

THE STATE AWARD

In 2015, the RK introduced a new mechanism of rewarding NGOs for their achieve-

⁸³ Data provided by the Ministry of Information and Social Development of the Republic of Kazakhstan to ICNL.

⁸⁴ Para. 7-1, Article 1 of the Law “On the State Social Order.”

⁸⁵ Order #413 of the Minister of Culture and Sports of the Republic of Kazakhstan of December 25, 2015 “On Approving Rules of the Provision of Grants to Nongovernmental Organizations and Monitoring of Their Use” (in the text of Order #123 of the Acting Minister for the Affairs of Religions and Civil Society of the Republic of Kazakhstan of August 18, 2017).

⁸⁶ Data provided by the Ministry of Information and Social Development of the Republic of Kazakhstan to ICNL.



ments. The state award to an NGO is a monetary bonus paid from budgetary funds for the organization's contribution to solving social problems at the nationwide, sector or regional level.⁸⁷ Awards are granted by a state body authorized to deal with NGOs, i.e. the Ministry of Information and Social Development of the RK, on a competitive basis in the 15 areas of endeavor provided for by the SSC Law. Applications are evaluated by experts from among representatives of government bodies and international organizations, and authoritative public figures.

In practice, the RK has awarded such bonuses since 2017. A total of 59 organizations received them in 2017, and 63 organizations in 2018.⁸⁸ The size of one such bonus is 4.5 million tenge (\$12,000).

Analysis

In general, the RK has created fairly effective mechanisms for state funding of NCOs. In accordance with international standards, the legal regulation of mechanisms of state financing of NCOs is quite transparent, easy to understand, and based on open competitive procedures. However, there are some disadvantages. First, government funding is not accessible to all types of NCOs. For example, it is not accessible to those organizations which for one reason or another have not provided annual reports (information about their activities) for registration in the NGO Electronic Database. Another drawback is that all the three mechanisms of state support to NCOs focus mainly on social projects and do little to support human rights organizations with a broader scope of action.

Although based on competitive selection by quality criteria, the grant mechanism does not yet correspond to international best practice. Grants are provided only for those topics and areas of endeavor that are defined in the annual Grant Plan, which is developed without the participation of NCOs and approved by the Ministry of Information and Social Development. As a result, NCOs are deprived of the right to submit their project to the competition if it does not comply with the approved plan.

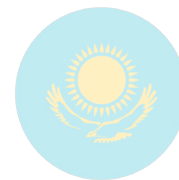
The main disadvantage of NCO awards is that they can only be awarded to NCOs that have successfully implemented their projects under a state social contract. This mechanism does not provide for the encouragement of independent NCOs that have successfully implemented their projects at their own cost or with funds from other donors.

5.3 FOREIGN FINANCING

In the RK, international and foreign organizations, as well as foreign states and individuals (collectively referred to as foreign sources), are entitled to provide financial and other assistance to Kazakhstani organizations and individuals in the form of grants, humanitarian aid, technical assistance, donations, charitable aid, and sponsorship. Despite the increasing role of government funding, foreign aid remains an important factor of financial sustainability for many NCOs.

⁸⁷ Para. 7-3, Article 1 of the Law "On the State Social Order."

⁸⁸ Data provided by the Ministry of Information and Social Development of the Republic of Kazakhstan to ICNL.



NCOs should reflect the receipt of funds from foreign sources in their tax reports.

Beginning 2016, the RK introduced additional reporting for recipients of foreign funding. In accordance with Article 29 TC RK for individuals and legal entities, including NCOs, as well as their structural units, reporting shall cover the receipt and expenditure of money and/or other property from foreign sources.

These statements are provided in cases where the activities of the recipient of money and/or other property had as their objective:

- the provision of legal assistance, including raising legal awareness, protection and representation of the interests of citizens and organizations, as well as consulting;
- the study of public opinion and the conduct of surveys and opinion polls, with the exception of those conducted for commercial purposes, as well as the dissemination and posting of their results; and
- the collection, analysis and dissemination of information, unless the specified activity is carried out for commercial purposes.

NCOs must submit two reporting forms: Form 017 (notification of the forthcoming receipt of funds and/or other property from foreign sources) and Form 018 (quarterly reporting on the receipt and expenditure of funds and/or other property from foreign sources). Significant administrative fines are provided for in the event of failure to provide these reports, as well as for the provision of incomplete or inaccurate information. (For more information on these reports, see Section 6.1 of Chapter “2. Kazakhstan.”)

Analysis

In the RK, there is no registration procedure and no permission is required for the provision and receipt of funds from foreign sources, which is in line with good international practice.

However, the requirements of additional reporting for recipients of foreign financing do not meet international standards. The language of Article 29 of the Tax Code makes it clear that this requirement applies primarily to NCOs and individuals collaborating with NCOs, since the description of qualified activities excludes “activities carried out for commercial purposes.” The introduction of special reporting for NCO recipients of foreign financing (which does not apply to most commercial legal entities) is discriminatory and does not meet international standards. In addition, NCOs face a number of problems in preparing these reports, as there is no clear language in the legislation, reporting forms are very detailed and complex, and disproportionately high fines are provided for in the event of non-compliance.



5.4. OTHER REVENUE FROM LOCAL SOURCES

In addition to state and foreign financing, NCOs can receive the following income for the implementation of their statutory activities: interest on deposits; entry and membership fees; contributions from condominium participants; income in the form of gratuitously received property, including charity, grant, sponsorship, money and other property received on a gratuitous basis. For NCOs, these types of income are recognized exempt from CIT. The above revenues from local sources are of great importance for the financial stability of many Kazakhstani NCOs. Sources of income vary depending on the NCO's activity and legal form: some organizations obtain the best part of their income from membership fees, others rely on charity or sponsorship.

Analysis

Kazakhstan's position on exempting NCOs from all types of income tax⁸⁹ is in keeping with international standards and best practice.

6. State Monitoring

6.1. MONITORING AND REPORTING REQUIREMENTS

Like all other legal entities in the RK, NCOs are required to keep the following types of records on a par with commercial organizations:

- Accounting;
- Statistical records; and
- Tax accounting.

In addition to submitting reports to the statistics and tax authorities, NCOs are obliged to provide information to the justice authorities in cases specified by law (change of name, location, director, etc.).

There is also additional reporting for branches and representative offices of foreign NCOs in the form of an obligation to publish information on their activities, founders and sources

⁸⁹ At the same time, it should be noted that TC RK has excluded certain types of NGOs such as non-profit joint-stock companies, institutions and consumer cooperatives from its category "NGOs for taxation purposes". This means that benefits granted by the TC RK to NGOs (such as exempting all kinds of gratuitous revenue from tax) do not extend to those NGOs.

Sources of income vary depending on the NCO's activity and legal form: some organizations obtain the best part of their income from membership fees, others rely on charity or sponsorship.



of property formation in periodicals, as well as additional reporting for foundations in the form of an obligation to publish reports on their use of their property in Internet resources.⁹⁰

Since 2016, two more types of reporting have appeared:

- Providing information to the NGO Database
- Reporting by recipients of foreign financing

SUBMISSION OF INFORMATION TO THE NGO DATABASE

Beginning 2016, Kazakhstani NGOs must submit information on their activities (including their founders, property structure, sources and uses of funds) to the Ministry of Information and Social Development on an annual basis not later than March 31. This information is entered into the NGO Database, which is supposed to ensure transparency of NGO activities and inform the public about them. Also, the NGO Database is used for the purposes of placing SSC orders and awarding grants and bonuses.⁹¹ This reporting is mandatory for all NGOs, regardless of participation in competitions for the state social contracts, grants and awards. Administrative liability was introduced for failure to submit, late delivery, and provision of inaccurate or knowingly false information.⁹²

This reporting requirement applies to the following forms of NGOs: private institutions, public associations, non-profit joint-stock companies, public, corporate and private foundations, associations of legal entities in the form of an association (union), as well as branches and representative offices (separate subdivisions) of foreign and international non-profit organizations operating in the RK.

The following NGOs do not submit reports: non-profit joint-stock companies whose founder or shareholder is the state; their subsidiaries, dependent and other legal entities affiliated with them in accordance with the laws of the RK; public associations established in the form of political parties, religious associations and trade unions; and non-profit organizations provided for in Article 17⁹³ of the NCO Law.⁹⁴

90 Para. 3, Article 41 of the RK Law "On NCOs."

91 The RK Law "On State Social Contracts, Grants and Awards for Nongovernmental Organizations in the Republic of Kazakhstan."

92 For more information on the liability of NGOs, see Section 6.1 of Chapter "2. Kazakhstan."

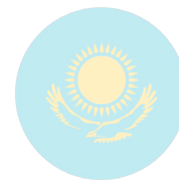
93 "Article 17. Other Organizational and Legal Forms of NCOs."

1. NCOs may be founded in a different organizational and legal form.

2. Autonomous educational organizations, the autonomous cluster fund, notary chambers, bar associations, law firms, the National Chamber of Entrepreneurs of the RK, the Chamber of Forensic Experts of the RK, the National Chamber of Private Enforcement Agents, the Arbitration Chamber of Kazakhstan, professional audit organizations, cooperatives of apartment owners, and other NCOs may be organized in a different organizational and legal form.

3. Specific features of the legal status of other organizational and legal forms are regulated by applicable legislation.

94 Para. 5, Article 41 of the RK Law "On NCOs."



REPORTING BY FOREIGN FINANCING RECIPIENTS

According to the Tax Code, legal entities (including NCOs) and individuals⁹⁵ receiving money and/or other property from foreign sources (persons subject to reporting) must comply with the new requirements for notification and reporting if their activities are aimed at the following:

- the provision of legal assistance, including raising legal awareness, protection and representation of the interests of citizens and organizations, as well as consulting;
- the study of public opinion and the conduct of surveys and opinion polls, with the exception of those conducted for commercial purposes, as well as the dissemination and posting of their results; and
- the collection, analysis and dissemination of information, unless the specified activity is carried out for commercial purposes.⁹⁶

A notice on the receipt of money and/or other property from foreign sources must be provided if the sum in question exceeds 1 tenge.⁹⁷

Persons required to report shall:

- notify tax authorities of the receipt of money and/or other property from foreign sources (foreign states, international and foreign organizations, foreign nationals and stateless persons), in the manner, terms and in the form established by the authorized state body;
- submit to the tax authorities information on the receipt and expenditure of money and/or other property received from foreign sources in the manner, terms and in the form established by the authorized state body; and
- mark all information and materials that are published, distributed, and/or placed using funds from foreign sources by stating information about foreign donors, and clearly indicate that the production, distribution and/or placement of information and materials was carried out at the expense of foreign sources.

All information on the receipt and expenditure of foreign money or property is entered into a new open database maintained by the State Revenue Committee under the Ministry of Finance of the RK.

⁹⁵ Note: This law does not apply to state bodies, deputies and other senior officials, banks, certain large enterprises, educational organizations, lawyers and notaries, diplomatic and equivalent missions of foreign states, consular offices of foreign states accredited in the RK, and their employees; funds and/or property received under international treaties, contracts and investments; and in some other cases determined by the Government.

⁹⁶ Article 29 TC RK.

⁹⁷ Order #241 of the RK Minister of Finance of February 20, 2018 "On Approval of the Rules, Form and Terms of Notification of State Revenue Authorities about the Receipt of Money and/or Other Property from Foreign States, International and Foreign Organizations, Foreign Nationals and Stateless Persons."



The Code of Administrative Offenses (CoAO) provides for administrative liability for violation of requirements for this type of reporting (for more details see Section 6.2 of this Review).

From 2018, the Government of the RK is working to synchronize the information contained in the main state information systems of the justice, statistics and tax authorities and the Ministry of Information and Social Development, which may facilitate NCO reporting.

Analysis

Kazakhstani legislation regarding reporting requirements of NCOs does not comply with international standards. For example, Paragraph 225 of the Guidelines reads: “Reporting requirements, where these exist, should not be burdensome, should be appropriate to the size of the association... Associations should not be required to submit more reports and information than other legal entities, such as businesses.” In Kazakhstani legislation, there are several types of reports that were developed exclusively for NCOs (commercial organizations do not submit such reports). Moreover, reporting requirements do not depend on the size of NCOs and the scale of their activities and are sometimes formulated so ambiguously and vaguely that they create additional problems for NCOs.

According to international standards, to facilitate reporting, the state authorities should seek to share reports with other departments of the state if necessary.⁹⁸ In Kazakhstan, however, NCOs must submit the same information to multiple government bodies. For example, information on the annual income and expenses should be sent to both the Ministry of Information and Social Development and the tax authorities. Information on registration of the NCO, its founders, director, location, etc. should be provided both to the Ministry of Information and Social Development and the justice authorities.

**Kazakhstan’s
Code of
Administrative
Offenses
provides for
administrative
liability for
violation
of certain
reporting
requirements.**

⁹⁸ Para. 227 of the Guidelines.



6.2. SANCTIONS

The responsibility of NCOs for violations of the law is set forth in the Code of Administrative Offenses and the Criminal Code.

NCOS' ADMINISTRATIVE RESPONSIBILITY

According to Article 489 of the CoAO, administrative offenses are:

1. Commitment by managers, members of a public association or the public association itself of actions that go beyond the goals and objectives defined by the charter of that public association (warning or fine for legal entities in the amount of 100 MCI⁹⁹), and the repeated commission of this offense during the year, in addition to a fine (150 MCI), may lead to the suspension of the public association's activity for a period of three to six months.
2. Commitment by leaders, members of a public association or the public association itself of actions that violate the laws of the RK (warning or fine for legal entities in the amount of 100 MCI with suspension of the public association's activity for a period of three to six months), and the repeated commission of this offense during the year, in addition to a fine (200 MCI), may lead to a prohibition of the public association's activity.

In accordance with Article 489, administrative offenses also include:

1. management of the activities of public and religious associations which are not registered in the manner established by the RK legislation, as well as those which are suspended or prohibited, entails a fine of 100 MCI;
2. participation in the activities of public and religious associations which are not registered in the manner established by the RK legislation, as well as those which are suspended or prohibited, entails a fine of 50 monthly projections;
3. financing the activities of public and religious associations which are not registered in the manner established by the RK legislation, as well as those which are suspended or prohibited, entails a fine of 200 MCI.

Article 489-1 of the CoAO establishes liability for NCOs for failure to provide or provision of incomplete or inaccurate data to the body authorized to deal with NCOs (the Ministry of Information and Social Development) about their activities. In accordance with this article, administrative offenses include:

“1. Failure to submit, late submission, as well as submission to the body authorized to deal with NCOs of inaccurate or knowingly false information about their activities, including about their founders (participants), property structure, sources and uses of funds, by NCOs created in the form of private institutions, public, corporate or private

⁹⁹ The monthly calculation index (MCI) is set at 2,525 tenge for 2019. MCI is used in the RK to calculate benefits and other social payments, as well as penalties, taxes, and the like.



foundations, unions of legal entities in the form of an amalgamation (association), public associations, non-profit joint-stock companies (with the exception of political parties, religious associations and trade unions, non-profit joint-stock companies whose founder or shareholder is the state, their subsidiaries, dependent and other legal entities affiliated with them in accordance with the laws of the RK), as well as branches and representative offices (separate subdivisions) of foreign and international NCOs operating in the territory of the RK, entail a warning.

2. Actions (inaction), provided for by the first part of this article, committed repeatedly within a year after imposing an administrative penalty,

entail a fine in the amount of 25 monthly calculation indexes or suspension of activity for a period of three months.”

Articles 460-1 and 460-2 of the CoAO establish liability for non-compliance with reporting requirements for recipients of funds from foreign sources:

1. Failure to notify, within the time limits and in cases provided for by the tax legislation of the RK, of state revenue authorities about the receipt of money and/or other property from foreign states, international and foreign organizations, foreign nationals, stateless persons, as well as failure to submit or late submission of information on their receipt and expenditure (a fine on NCOs in the amount of 100 MCI);
2. Submission of inaccurate or knowingly false information specified in the first part of this article (a fine on NCOs in the amount of 200 MCI with suspension of activity).

Furthermore, if the above actions (inaction) are repeated, a fine is imposed on NCOs in the amount of 250 MCI, with the prohibition of activities.

Under Article 460-2 of the CoAO, administrative offenses include:

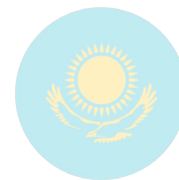
“The publication, distribution or posting, under contracts on the provision of services or the performance of work concluded with foreign states, international and foreign organizations, foreign nationals and stateless persons, of materials which do not contain information about the persons who placed the order and what funds were used to pay for the publication, distribution and/or posting of those materials.”

This administrative offense entails a warning, and in case of repetition, a fine of 25 MCI.

NCO CRIMINAL LIABILITY

The CrC of the RK contains a number of articles that provide for responsibility for acts committed by public associations, their directors, participants and leaders:

1. aggravating circumstances for leaders of public associations (Articles 3, 145,



174, 180, 182, 256, 257, 258, 266 of the CrC RK);

2. unlawful interference of members of public associations in the activities of state bodies (Article 403 CrC RK);
3. creation, management and participation in the activities of illegal public and other associations (Article 404 CrC RK);
4. special responsibility for a public or religious association in connection with its practicing extremism or terrorism (Article 405 CrC RK).

AGGRAVATING CIRCUMSTANCES FOR LEADERS OF PUBLIC ASSOCIATIONS

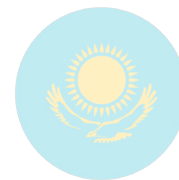
The term “leader of a public association” is introduced in the Criminal Code to denote “the head of a public association, as well as another member of a public association, capable, through his/her influence and authority, to singlehandedly exert controlling influence on the activity of that public association.”¹⁰⁰

Throughout the text, the term is used as an aggravating circumstance of a crime, by analogy with “the leader of a criminal group”. Furthermore, the new concept of “leader of a public association” is so formulated that not only the actual leader but also any member “capable, through his/her influence and authority, to singlehandedly exert controlling influence” will be regarded as leader of that public association.

Qualifying as a “leader of public associations” is deemed an aggravating circumstance in the following crimes:

- direct or indirect restriction of the rights and freedoms of a person (citizen) on the grounds of origin, social, official or property status, gender, race, nationality, language, religion, convictions, place of residence, membership in public associations or on any other grounds (Article 145);
- incitement to social, national, tribal, racial, estate or religious hatred (Article 174);
- propaganda or public calls for violation of the unitarity and integrity of the RK, the inviolability and inalienability of its territory or for the disintegration of the state, or the manufacture, storage for the purpose of distribution, or the distribution of materials of such content (Article 180);
- creation, leadership, or participation in an extremist group (Article 182);
- propaganda of terrorism or public calls for committing an act of terrorism (Article 256);
- creation, leadership and participation in a terrorist group (Article 257);

¹⁰⁰ Para. 21, Article 3 CrC RK.



- financing of terrorist or extremist activities and other complicity in terrorism or extremism (Article 258);
- financing the activities of a criminal group, as well as storage, distribution of property, development of financing channels (Article 266); and
- unlawful interference by members of public associations in the activities of state bodies (Article 403).

UNLAWFUL INTERFERENCE BY MEMBERS OF PUBLIC ASSOCIATIONS IN THE ACTIVITIES OF STATE BODIES

Article 403 of the CrC of the RK defines as a crime the obstruction of the legitimate activities of state bodies or the appropriation of the functions of state bodies or their officials by members of public associations, as well as the creation of organizations and political parties in state bodies if these acts have caused substantial harm to the rights and the legitimate interests of citizens or organizations or the interests of society or the state that are protected by law.

CREATION, LEADERSHIP AND PARTICIPATION IN THE ACTIVITIES OF ILLEGAL PUBLIC AND OTHER ASSOCIATIONS

Article 404 of the CrC of the RK defines as a crime the creation and leadership of a religious or public association, the activity of which is associated with violence against citizens or other harm to their health, or with the incitement of citizens to refuse to perform civil duties or commit other illegal acts, as well as the creation or leadership of a party on religious grounds or a political party or trade union that are financed from sources prohibited by the laws of the RK. The same article also defines as a crime the creation of a public association proclaiming or practicing racial, national, tribal, social, estate or religious intolerance or exclusivity, calling for the violent overthrow of the constitutional order, undermining the security of the state or encroaching on the territorial integrity of the RK, as well as the leadership of such an association. In addition, the article provides for strict punishment (imprisonment for up to six years) for members of such associations for active participation in the activities of such associations.

SPECIAL RESPONSIBILITY FOR A PUBLIC OR RELIGIOUS ASSOCIATION FOR PRACTICING EXTREMISM OR TERRORISM

The CrC of the RK establishes special liability for a public or religious association in connection with their practicing terrorism and extremism, in addition to liability of all persons for similar crimes:

- organizing the activities of a public or religious association or other organization in respect of which there is a court decision that has entered into legal force to prohibit their activities or to liquidate them in connection with their practicing extremism or terrorism (Paragraph 1, Article 405); and
- participation in the activities of a public or religious association or other organi-



zation in respect of which there is a court decision that has entered into legal force to prohibit their activities or to liquidate them in connection with their practicing extremism or terrorism (Paragraph 2, Article 405).

In accordance with the note to Article 405 CrC RK, a person who voluntarily terminated participation in the activities of a public or religious association or other organization in respect of which there is a court decision that has entered into legal force to prohibit their activities or liquidate them in connection with their practicing extremism or terrorism, shall be exempted from criminal liability, unless his/her actions contain a different corpus delicti.

Analysis

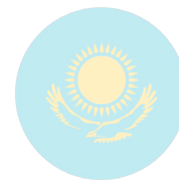
In Kazakhstan, NCOs (in particular, leaders and participants in public associations) are a special subject of criminal and administrative legislation. The legislation contains articles directed exclusively against public associations, their leaders (directors and members) and participants.

Many definitions of crimes and offenses related to the activities of NCOs conflict with international law and practice. For example, the creation, participation in, and financing of unregistered public associations is considered an offense, according to the Code of Administrative Offenses. This provision directly contradicts international law, since private individuals should be allowed to unite without registering a legal entity. See also Analysis of Section 1.2. “NCO without legal entity status” of Chapter “2. Kazakhstan.”

Furthermore, responsibility provided for by the legislation of the RK and applicable to NCOs also does not comply with international standards and best international practice due to its disproportionate nature. For example, in case of failure to comply with the requirements for reporting on foreign financing it provides for the immediate imposition of large-scale administrative fines and the suspension /prohibition of activity without a note of warning as a preliminary stage. The same applies to other articles of the CoAO, where the penalty is heavy fines and suspension /prohibition of activity for leaders and members of a public association or the public association itself in the event of actions that go beyond statutory goals and objectives or violate the laws of the RK.¹⁰¹ The latter can be interpreted

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¹⁰¹ Article 489 CoAO RK.



especially broadly, holding the association liable for violation of any requirement provided for by any legal act of the RK.

According to international standards, the laws, policies and practices of a country should provide for reasonable time for associations to eliminate any omissions or errors. Sanctions should be applied only in cases where an association has committed serious violations and should always be proportionate to them.¹⁰² Sanctions constituting an actual suspension, prohibition or dissolution of an association are exceptional. They should be used only in cases where the violation entails a serious threat to the security of the state or certain groups or undermines fundamental democratic principles.¹⁰³

With regard to criminal liability, the motives that make leaders of public associations more dangerous than other people in organizing extremist or terrorist groups, or disseminating information, inciting social or national hatred, or committing any other crimes mentioned above, are not clear. Public associations and their leaders do not have any special powers or resources to become more potent in comparison with, for example, wealthy individuals, businessmen or politicians. Therefore, this approach undoubtedly does not comply with international best practice, which calls for non-discrimination against leaders and members of NCOs, and also violates the principle of proportionality of punishment for NCOs and other legal entities for the same offenses.

7. Transparency and Openness

7.1. TRANSPARENCY AND OPENNESS

In the previous section of this Review, all types of NCO reporting to government bodies were discussed in detail. However, transparency is not limited only to reporting to the state. This also means the internal accountability of NCOs to their founders, members and other authorized bodies of NCOs indicated in their charters, as well as NCOs' voluntary reporting to their target audiences, their donors, and the public.

The legislation of the RK contains a number of requirements for NCOs' constituent documents in terms of internal self-monitoring.

For example, the Law of the RK "On NCOs" sets forth the fundamentals of internal reporting that can be elaborated on in an NCO's charter and other internal documents but should not contradict the basic requirements established by the Law. For instance, the executive governing body (collective or one-man) conducts day-to-day management, with the exception of issues referred by the constituent documents to the exclusive competence of the highest governing body, and is accountable to that body¹⁰⁴; every NCO must elect an inspection body such as an audit committee or an inspector general¹⁰⁵; the exclusive competence of the NCO's highest governing body includes issues such as the

¹⁰² Para. 234 of the Guidelines.

¹⁰³ Para. 239 of the Guidelines.

¹⁰⁴ Para. 1.2, Article 39 of the RK Law "On NCOs."

¹⁰⁵ Para. 1.3, Article 39 of the RK Law "On NCOs."



order and frequency of submission of financial statements of executive bodies, as well as the procedure for audits by the inspection body and the approval of their results;¹⁰⁶ a foundation is obliged to have audits of its financial activities as often as is established by the charter, such audits being conducted by an auditor or audit organization,¹⁰⁷ etc.

Furthermore, under the second paragraph of Article 41 of the Law on NCOs, an NCO shall submit information about its activities not only to authorized bodies, but also to its founders and other persons in accordance with the legislation of the RK and its constituent documents. According to paragraph 4 of the same article, “The size and structure of the NCO’s income, as well as information on the size and structure of its property, its costs, the number and composition of its staff, their remuneration, and the use of gratuitous labor in its activities cannot be a commercial secret.”

The procedure for reporting to members is also dealt with in Article 19 of the Law of the RK “On Public Associations,” which stipulates that “A public association is obliged:

- to provide its members with the opportunity to familiarize themselves with documents and decisions affecting their rights and interests; and
- to inform its members about the receipt and expenditure of funds.”

NCO reporting to donors is not regulated by law. This reporting is civil or contractual in nature, as it arises from and pursuant to grant agreements, charitable or sponsorship assistance, or other similar documents. For example, a grant agreement usually provides for the terms and conditions of reporting, including the submission of a financial and program report, which should be consistent with the approved work plan and budget of the project or program. Information on the results of the project is sometimes posted by the donor and the NCO on their websites for public viewing.

As a rule, NCOs inform the public about their activities on their websites, if available. Much less often do they post their financial data, which may be due to limited resources or a lack of understanding of the benefits of posting such data. As a result, this information is partly available to the public from open resources (the NCO Database and the websites of government agencies).

Issues relating to openness and transparency are the subject of discussion in the non-profit sector of Kazakhstan. In what way and to what extent should NCOs report to their beneficiaries and the public? Which information on NCO activity is the most important to the beneficiaries and the community? At present, Kazakhstani civil society is in search of answers to these and many other questions.

As more and more Kazakhstani NCOs see the advantages of open play, they try to make their activities more transparent and understandable to the public.

¹⁰⁶ Para. 2.4, Article 39 of the RK Law “On NCOs.”

¹⁰⁷ Para. 6, Article 12 of the RK Law “On NCOs.”



Analysis

Openness and transparency are fundamental for establishing accountability and public trust in CSOs. The state shall not require but shall encourage and facilitate associations to be accountable and transparent.¹⁰⁸

Openness and transparency result in:

- greater trust on the part of the state (increase in state financing, delegation of state functions; decrease in the requirements of legislation to restrict activities);
- greater trust on the part of the population (grassroots support of NCO activities, which helps to achieve statutory goals and objectives faster); and
- additional financial opportunities thanks to potential donors' increased interest in NCOs' work.

We hope that Kazakhstani NCOs will further their efforts to increase openness and transparency.

¹⁰⁸ Para. 224 of the Guidelines.



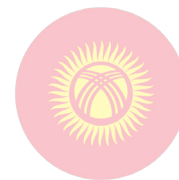
1. Freedom of Association

1.1. FREEDOM OF ASSOCIATION IN THE LIGHT OF THE COUNTRY'S INTERNATIONAL OBLIGATIONS AND CONSTITUTION

Citizens and their organizations unite using one of the fundamental human rights – the right to association. The right to association has been included among the fundamental human rights enshrined in the Universal Declaration of Human Rights. The Kyrgyz Republic (hereinafter, the KR or Kyrgyzstan) has joined many international treaties containing provisions on the right to freedom of association and has also enshrined this right in its constitution.

Kyrgyzstan has acceded to/ratified the following international treaties containing provisions on the right to freedom of association:

1. The Universal Declaration of Human Rights (adopted and proclaimed by the UN General Assembly on December 10, 1948);
2. The International Covenant on Civil and Political Rights (ICCPR) of December 16, 1966 (acceded to on January 12, 1994);
3. Optional Protocol to the ICCPR (the Kyrgyz Republic acceded on January 12, 1994);
4. The International Covenant on Economic, Social and Cultural Rights (ICESCR) of December 16, 1966 (acceded to on January 12, 1994);
5. ILO Convention #87 “On Freedom of Association and the Protection of the Right to Organize” of July 9, 1948 (ratified on March 31, 1992);
6. ILO Convention #98 “On the Application of the Principles of the Right to Organize and to Collective Bargaining” of July 1, 1949 (ratified March 31, 1992);
7. UN Convention on the Status of Refugees on July 28, 1951 and the Protocol Relating to the Status of Refugees, 1967 (acceded to on October 8, 1996);
8. The UN Convention on the Rights of the Child of November 20, 1989 (ratified on October 8, 1996);
9. The UN Convention on the Rights of Persons with Disabilities of December 13, 2006 and the Optional Protocol (ratified on March 13, 2019); and
10. others.



According to Article 6 of the Constitution of the Kyrgyz Republic (hereinafter, the Constitution):¹⁰⁹

“1. The Constitution has highest legal force and direct effect in the Kyrgyz Republic.

Constitutional laws, laws and other normative legal acts are adopted on the basis of the Constitution.

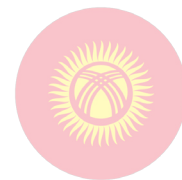
International treaties that have entered into force in the manner prescribed by law, to which the Kyrgyz Republic is a party, as well as generally recognized principles and norms of international law are an integral part of the Kyrgyz Republic legal system.”

The right to freedom of association is enshrined in Article 35 of the Constitution, which contains the following provision: “Everyone has the right to freedom of association.” Thus, the Constitution guarantees the right to freedom of association not only to its citizens, but also to foreign nationals and stateless persons.

The main laws governing the exercise of the right to freedom of association in the Kyrgyz Republic include the following:

1. The Constitution;
2. The Kyrgyz Republic Civil Code of May 8, 1996 (Civil Code);
3. The Tax Code of the Kyrgyz Republic of October 17, 2008 (Tax Code, or TC).
4. The Law of the Kyrgyz Republic “On Non-Profit Organizations” of October 15, 1999 (Law on NCOs);
5. The Law of the Kyrgyz Republic “On Patronage and Charitable Activities” of November 6, 1999 (Law on Charity);
6. The Law of the Kyrgyz Republic “On the State Social Contract” of April 28, 2017 (SSC Law);
7. The Law of the Kyrgyz Republic “On State Registration of Legal Entities, Branches (Representative Offices)” dated February 20, 2009 (Law on State Registration);
8. The Law of the Kyrgyz Republic “On Zhamaats (Communities) and Their Associations” dated February 21, 2005;
9. The Law of the Kyrgyz Republic “On Home Owners Associations” of October 28, 1997;
10. The Law of the Kyrgyz Republic “On Water Users Amalgamations (Associations)” of March 15, 2002;

¹⁰⁹ The Constitution was adopted at a general referendum on June 27, 2010. In December 2016, some amendments were made to the Constitution through a referendum, which entered into force on December 1, 2017.



11. The Law of the Kyrgyz Republic “On Cooperatives” of June 11, 2004;
12. The Law of the Kyrgyz Republic “On Employers’ Associations” of May 22, 2004;
13. The Law of the Kyrgyz Republic “On Trade Unions” of October 16, 1998;
14. The Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations” of December 31, 2008;
15. The Law of the Kyrgyz Republic “On Political Parties” of June 12, 1999; and
16. others.

1.2. NCOs WITHOUT THE LEGAL ENTITY STATUS

NCOs in Kyrgyzstan can be created with or without the legal entity status.¹¹⁰ This means that the Kyrgyz Republic legislation allows, alongside registered NCOs, for the creation of NCOs that may not be registered as a legal entity.

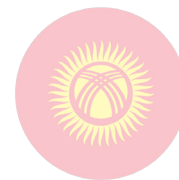
An unregistered NCO is not necessarily an organization created in accordance with this or that legal form of a legal entity, but without registration. It is logical that the Law on NCOs does not determine the procedure for the creation, operation and the legal status of an unregistered NCO. NCOs can be created, for example, by concluding an oral or written agreement between the initiators, and its manner of operation can be determined on the basis of general norms of civil law.

The legal status of an unregistered NCO is significantly different from that of a registered NCO:

1. unlike a registered one, an unregistered NCO does not have the following powers of a legal entity:
 - the right to own segregated property or use it on the principles of economic or operational management;
 - the right to acquire and exercise other property and personal non-property rights and obligations (for example, to acquire registrable prop-

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¹¹⁰ Article 6 of the KR Law on NCOs.



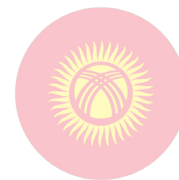
- erty, conclude contracts, register a patent on behalf of the organization, etc.);
- the right to have its own seal and open settlement and other bank accounts; and
 - the right to appear in court on its own behalf as a plaintiff or defendant;
2. the property of an unregistered NCO is not its own but rather that of its founders or members (participants), or other persons (shared, joint or other, depending on the terms of agreement between the founders);
 3. the bank account of an unregistered NCO can be opened by one or several persons in their name under an agreement signed with the founders or members (participants) of the organization (depending on the terms of the agreement for the creation of the unregistered NCO);
 4. an unregistered NCO may enter into transactions with third parties through an individual(s) authorized to conduct such transactions under a commission agreement (or by proxy) signed by the founders or members (participants) of the unregistered NCO;
 5. an unregistered NCO may, but is not required to, have constituent documents (charter, memorandum of association and the like);
 6. an unregistered NCO may, but is not required to have, a name (however, the name must not violate the rights of other persons, and it will not be protected by law and may be used by other organizations);
 7. an unregistered NCO and its donors are not provided with tax benefits established by law;
 8. an unregistered NCO does not have the right to engage in entrepreneurial activity on its own behalf; and
 9. the legislation does not provide for the issuance by unregistered NCOs of licenses for special types of activities subject to licensing.

1.3. RESTRICTIONS ON FREEDOM OF ASSOCIATION

The Constitution provides for certain restrictions on the right to association. In accordance with part 4 of Article 4 of the Constitution: *“The Kyrgyz Republic prohibits:*

1. mergers of state, municipal and party institutions; formation and activity of party organizations in state and municipal institutions and organizations; the performance by state and municipal servants of party work, with the exception of cases when such work is carried out outside of official activity;

2. membership of military personnel, law enforcement officers and judges in political parties, their



statements in support of any political party;

3. the creation of political parties on a religious or ethnic basis, the pursuit of political goals by religious associations;

4. the creation of paramilitary groups by citizens' associations; and

5. the activity of political parties, public and religious associations, their representations and branches pursuing political goals, the actions of which are aimed at forcibly changing the constitutional system, undermining national security, and inciting social, racial, interethnic, interethnic and religious hatred.”

According to part 2 of Article 20 of the Constitution: *“The rights and freedoms of man and citizen may be restricted by the Constitution and laws in order to protect national security, public order, the health and morality of the population, and the rights and freedoms of other persons. Such restrictions may also be introduced taking into account the particularities of military or other public service. The restrictions imposed should be proportionate to the stated goals. It is forbidden to adopt by-laws and regulations that limit the rights and freedoms of man and citizen.”*

Analysis

The legislation of the KR provides guarantees for the exercise of the right to freedom of association in accordance with international standards. For example, the Constitution guarantees the right to freedom of association not only to KR citizens, but also to foreign nationals and stateless persons. The legislation of the KR complies with international law and does not contain any rules prohibiting the activities of unregistered NCOs. In addition, restrictions on freedom of association, which are contained in some legislative acts of the KR, are introduced only in order to protect national security, public order, public health and morality, and the rights and freedoms of other persons. This approach is consistent with the provisions of Article 22 of the ICCPR on permissible restrictions on freedom of association, which states that “the exercise of this right is not subject to any restrictions other than those prescribed by law and which are necessary in a democratic society in the interests of state or public security, public order, health protection and the morals of the population or the protection of the rights and freedoms of others.”

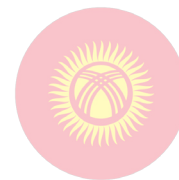
2. Legal Status of NCOs

2.1. STATE REGISTRATION OF NCOS

The Law on NCOs thus defines a “non-profit organization”:

“Non-profit organization – a voluntary, self-governing organization created by individuals and/or legal entities on the basis of a commonality of their interests for the realization of spiritual or other non-material needs in the interests of its members and/or the whole society, for which profit-making is not the main goal of the activity, and the profit received is not distributed among members, founders and officials.”¹¹¹

¹¹¹ Article 2 of the KR Law on NCOs.



The procedure for the creation, operation and the legal status of unregistered NCOs is regulated by civil law. The legal status of unregistered NCOs is discussed in detail in Section 1.2 above.

The procedure for registration and operation of registered NCOs is regulated by the Law on State Registration, the Civil Code of the KR (CC KR), the Law on NCOs, and other regulatory legal acts governing the creation and operation of individual legal forms of NCOs.

Registered NCOs have all the powers that are granted to legal entities:

1. the right to own segregated property or use it on the principles of economic or operational management;
2. the right to acquire and exercise property and personal non-property rights and obligations (to conclude agreements);
3. to have their own seal, open settlement and other bank accounts; and
4. to appear in court on its own behalf as a plaintiff or defendant.

According to the Ministry of Justice of the KR,¹¹² as of May 1, 2019 there were 18,420 NCOs of various organizational and legal forms in Kyrgyzstan, including 9,148 public associations, 6,113 foundations, 2,041 private institutions, 1,093 associations of legal entities and 25 community organizations (*zhamaats*). However, only 1/3 of them are active. The remaining 2/3 have ceased operation¹¹³ but were not liquidated due to a complex de-registration procedure.

2.1.1. Territorial status

Kyrgyz law does not differentiate NCOs by territorial status.

It should be noted that in Kyrgyzstan there are certain NCOs that are initially created to address issues of local importance, such as community organizations (*zhamaat*) and /or bodies of territorial public self-government (TOS), which too can be registered with an indication of the territory of their activities: village, part of a village, quarter, etc., at the choice of the founders.

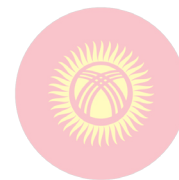
2.1.2. Founders

NCOs can be created by legally capable individuals regardless of citizenship and place of residence and/or legal entities regardless of place of registration. In Kyrgyzstan, the legal capacity of individuals comes from the moment of adulthood, that is, from the age of 18.¹¹⁴

112 Reply from the Ministry of Justice of the KR (reg. # 03-6/5849 of April 26, 2019) to a query from the ICNL, LLC Representative Office in Kyrgyzstan.

113 The Status and Prospects of the Nongovernmental Sector of Kyrgyzstan. Study Report. Association of Civil Society Support Centers. 2013

114 Article 56 CC KR.



Members of NCOs can be individuals regardless of citizenship and place of residence and legal entities regardless of country of registration. However, there are some exceptions with respect to founders /members of political parties: foreign nationals, as well as foreign legal entities, are not allowed to be found or join political parties.¹¹⁵

Below are the requirements for the minimum number of founders needed to create an NCO of this or that organizational and legal form:

- public association – at least three individuals;¹¹⁶
- foundation – one or more individuals and/or legal entities or may be established by a will;¹¹⁷
- institution – one or more individuals and/or legal entities;¹¹⁸
- amalgamation (association) of legal entities (ALE) – at least two legal entities;¹¹⁹
- cooperative (non-profit) – at least seven individuals and/or legal entities;¹²⁰
- partnership of home owners (condominium) – the owners of more than a half of the residential and non-residential premises of a multi-apartment building;¹²¹
- zhamaat (community organization) – at least ten households that join efforts on a voluntary basis;¹²²
- trade union – may be established in enterprises, institutions and organizations with a staff of at least three persons;¹²³
- water users association (WUA) – legal entities and/or individuals who own or have the right to use agricultural land plots that can form a constituent committee consisting of no more than 10 potential members of the WUA;¹²⁴
- political party – may be created on the initiative of at least ten KR citizens;¹²⁵ and
- religious organization – may be created on the initiative of at least 200 KR

115 Article 6 of the Law “On Political Parties.”

116 Article 19 of the Law on NCOs.

117 Article 23 of the Law on NCOs.

118 Article 31 of the Law on NCOs.

119 Article 7 of the Law on NCOs.

120 Article 4 of the KR Law “On Cooperative Societies.”

121 Article 4 of the KR Law “On Home Owners Associations.”

122 Article 6 of the KR Law “On Zhamaats (Communities) and Their Associations.”

123 Article 2 of the KR Law “On Trade Unions.”

124 Part 2 of Article 5 of the KR Law “On the Water Users Amalgamations (Associations) and Their Unions.”

125 Article 5 of the KR Law “On Political Parties.”



citizens permanently residing in the KR.¹²⁶

2.1.3. Rules of the creation and registration of NCOs

In Kyrgyzstan, a licensing procedure has been established for the registration of legal entities. This procedure provides for the obligation of the state to register an organization if its founders have complied with all relevant legislative requirements for the creation of such an organization.

An application for registration from the applicant (the founder or a person authorized by him/her) is accepted by the registration authority (the KR Ministry of Justice) if a complete package of necessary documents for registration is available. However, it is necessary to personally bring the application and necessary documents to the registration authority or submit them through a third party on the basis of a notarized power of attorney. Sending the documents by mail is not allowed.

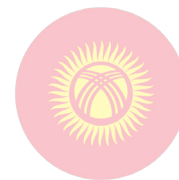
Since March 1, 2019, electronic registration of legal entities has also begun through the official website of the KR Ministry of Justice in a pilot mode. The online registration of legal entities is introduced in order to provide public services in electronic format. The procedure for state registration of legal entities using the information system “Online Registration of Legal Entities” is determined by the Kyrgyz Government. Under an adopted interim procedure,¹²⁷ in order to access the online registration system, applicants must have the following: (a) an ID card of the 2017 model with an electronic chip; (b) an electronic signature; (c) a special application for accessing information from an ID-card chip; (d) a reader (smart card) that makes it possible to authenticate users in the system by chip passport. For registration, all necessary registration documents must be prepared in accordance with the legislation on registration of legal entities. Scanned documents are uploaded to the online registration system. It is worth noting that the applicant is personally responsible for the authenticity of the documents and the accuracy of the information provided. Work on this system has not yet been fully completed. As debugging continues, it is expected to operate in pilot mode until 2020.

REGISTRATION AUTHORITY

¹²⁶ Article 8 of the KR Law “On Freedom of Religion and Religious Organizations.”

¹²⁷ Resolution #94 of the KR Government of February 26, 2019.

“Since March 1, 2019, electronic registration of legal entities has also begun through the official website of the Ministry of Justice in a pilot mode.”



In Kyrgyzstan, the authorized state body for the registration of legal entities, including NCOs, is the Ministry of Justice of the KR and its regional offices:

- NCOs with foreign participation are registered in the Ministry of Justice; and
- other NCOs are registered by relevant regional territorial authorities of the Ministry of Justice.

SINGLE WINDOW REGISTRATION

Registration of NCOs is carried out under the single window system, which means the following:

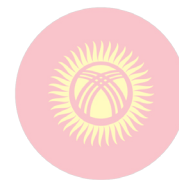
- Parallel to the registration of a NCO by the Ministry, it is registered with the tax authority, statistics agency and the Social Fund; and
- the registration authority issues the NCO with a certificate of state registration with the assigned registration number, tax identification number (TIN) and code of the nationwide classifier of enterprises and organizations (known by its Russian acronym OKPO).

It is assumed that after state registration (re-registration) under the single window system, no additional registration with the tax authorities, statistical agencies and the Social Fund is required, but in practice this system does not work. After registering with the registration authority, all legal entities must undergo additional registration for record purposes with the aforementioned authorities.

SELECTION OF THE ORGANIZATIONAL AND LEGAL FORM

In Kyrgyzstan, you can only create NCOs of such legal forms as are provided for by the CC KR or other laws. The choice of a particular organizational and legal form directly depends on the objectives it is created for and how they will be achieved. It is very important to choose from the many organizational and legal forms of NCOs the one that will be the most convenient for the implementation of the planned activity. At present, at least 15 organizational and legal forms of NCOs are provided for by the legislation of the KR:

1. Public association;
2. Foundation;
3. Institution;
4. The amalgamation (association) of legal entities (ALE);
5. Cooperative (non-profit);
6. Partnership of home owners (condominium);
7. *Zhamaat* (community organization);



8. Bodies of territorial self-government (TOS);
9. Water users association;
10. Self-regulatory organization of professional securities market participants;
11. Non-state pension foundation;
12. Trade union;
13. Association of employers;
14. Political party; and
15. Religious organization.

The Law on NCOs regulates the creation and operation of four legal forms of NCOs: public associations, foundations, institutions, and associations of legal entities (ALE). The remaining forms of NCOs are governed by separate laws.

DOCUMENTS REQUIRED FOR THE REGISTRATION OF NCOS

According to part 4 of Article 11 of the Registration Law, the following documents must be submitted to the registration authority:

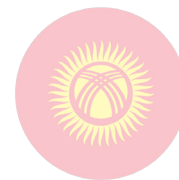
1. a registration application in the form approved by the registration authority;
2. the decision to create an NCO, approve its charter and form its governing bodies;
3. the charter in duplicate, signed by the head of the NCO;
4. a list of members of the governing bodies of the NCO indicating their full name, year of birth, and elected position; and
5. a list of founders of the NCO indicating their full name, year of birth, and address.

The legislation may establish additional requirements for certain forms of NCOs. For example, during state registration of ALEs, two copies of the memorandum of association are attached to the registration application, signed by representatives of all its founders. Furthermore, signatures of the representatives of legal entities must be sealed with the seal of the legal entity or authenticated by a notary.

At the same time, any additional requirements shall be provided for by law, and the list of documents submitted for registration is an exclusive one, the registration authorities having no right to demand any additional documents.

TIME FRAME OF REGISTRATION

Under the law, state registration of NCOs (or their branches and representative offices)



shall be carried out within ten calendar days from the date of submission of all necessary documents. The registration period for NCOs cannot be discontinued. In other words, the registration authority may not interrupt the registration process for a certain period of time without issuing a refusal order so that errors in the submitted documents could be eliminated.

An NCO is considered registered from the moment the order is issued by the relevant registration authority.¹²⁸ The state registration data are entered in the unified state register of legal entities, which is open for public viewing on the website of the Ministry of Justice.

REGISTRATION FEE

A fee is charged for the state registration (re-registration) of an NCO or its branch (representative office) and the registration of their termination. By decree of the KR Government¹²⁹, this fee amounts to:

1. 100 soms (\$1.40) for state registration and registration of the termination of activities of legal entities and their branches (representative offices); and
2. 50 soms (\$ 0.70) for state re-registration of legal entities and their branches (representative offices).

PROOF OF STATE REGISTRATION

Based on the results of checking the submitted documents for compliance with the list provided for by law, the registration authority issues a certificate of state registration. The certificate of state registration is a document proving the fact of state registration of an NCO or its branch (representative office). The certificate of state registration gives you the right to order a seal made and open a bank account.

2.1.4. Approval of the name and the registration of symbols

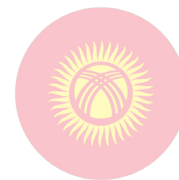
Any NCO has its corporate name. There are certain rules for registration of the name during registration: the corporate name must include the official full or abbreviated name of the NCO and also indicate its organizational and legal form, for example, The Public Association “Freedom” (abbr., PA Freedom). The corporate name has to be in the state (Kyrgyz) and the official (Russian) languages.¹³⁰ With the exception of religious organizations, an NCO may include in its name the official full or abbreviated name of the Kyrgyz Republic if the organization unites or created by individuals and/or legal entities residing (located) in more than a half of the KR’s provinces (there are seven provinces in Kyrgyzstan).¹³¹

¹²⁸ Article 11 of the Law on Registration.

¹²⁹ Decree #18 of the KR Government “On the Size of Duty for the State Registration (Re-registration) of Legal Entities and Their Branches (Representative Offices) and Their Termination” of January 28, 2019.

¹³⁰ Article 86 CC KR (Part I).

¹³¹ Decree #318 of the KR Government of December 8, 2010.



Before registering an organization, it is necessary to have its name approved by the registration authority. The procedure for approving the names of legal entities for their subsequent state registration is determined by the KR Government in accordance with the Procedure for the Preliminary Verification of Names of Legal Entities and Their Branches (Representative Offices).¹³² Although there is a procedure for online verification of the name, in practice the applicant often has to go to the registration authority and check the registered name at the registration authority itself. This method is inconvenient and difficult for citizens, especially those who live in outlying areas.

In Kyrgyzstan, the corporate name of an NCO after its registration with the judiciary is referred to intellectual property and, accordingly, the NCO in question has the exclusive right to legally use it at its discretion in any form and by any means.¹³³

In addition, an NCO may have a flag, emblem, pennant and other symbols. They must not coincide with the state symbols of the KR, those of foreign states, as well as those of previously registered legal entities.¹³⁴

2.1.5. Registration of changes in constituent documents

For one or more of the reasons listed below, an NCO is obliged to submit the necessary documents to the registration authority for the state re-registration procedure within 30 calendar days from the date of the relevant decision. In accordance with the Law on Registration, the following cases are grounds for a re-registration of the NCO:¹³⁵

1. reorganization (transformation, separation, accession);
2. change of name;
3. introduction of amendments and additions to constituent documents or approval of constituent documents in a new edition;
4. changing the composition of the founders (participants) of public foundations, institutions;
5. change of the NCO's location (from one province to another or from a province to the city of Bishkek or Osh, and vice versa), except for NCOs with the participation of foreign persons, which are registered with the Ministry of Justice, regardless of location, and
6. adoption by an NCO body or court of a decision on re-registration.

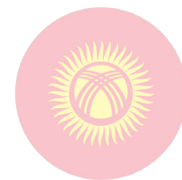
The re-registration procedure is similar to that of registration. During state re-regis-

¹³² Procedure #442 for the Preliminary Verification of Names of Legal Entities and Their Branches (Representative Offices) of August 3, 2011, approved by Decree #442 of the KR Government of August 3, 2011.

¹³³ Article 1037 CC KR (Part II).

¹³⁴ Article 86 CC KR (Part I).

¹³⁵ Para. 1, Article 12 Law on Registration.



tration of an NCO, the applicant submits to the registration authority:¹³⁶

1. registration application in the form approved by the registration authority;
2. decision to re-register the NCO;
3. original certificate of state registration (re-registration);
4. if the TIN is not indicated in the certificate of state registration (re-registration), a copy of the taxpayer's registration card or, in case of its loss (damage), a certificate from the tax authority indicating the TIN of the NCO being re-registered;
5. originals of constituent documents;
6. constituent documents in duplicate as revised or amended.

As with registration, the re-registration period is ten calendar days from the date of submission of required documents. The fee for re-registration of NCOs in bodies of the judiciary is 50 soms (\$0.70). An NCO is deemed re-registered after the issuance of the re-registration order by the relevant registration authority. Upon completion of the formalities, the NCO is issued a re-registration certificate.

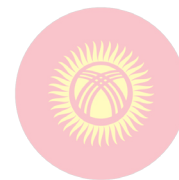
2.1.6. Rules for registration of structural units (branches and representative offices) of NCOs

In Kyrgyzstan, NCOs have the right to create branches and representative offices throughout the country. It is worth noting that, according to the legislation of the KR, branches and representative offices are not legal entities but are recognized as structural units of a legal entity. The legal entity that has created them provides them with property and approves the provisions on the basis of which they operate. Heads of representative offices and branches are appointed by the legal entity and act on the basis of its power of attorney. In order for an NCO to establish its representative offices and branches, they must be mentioned in its constituent documents.¹³⁷

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¹³⁶ Para. 3 Article 12 Law on Registration.

¹³⁷ Part 3 of Article 90 CC KR (Part I).



During state registration of a branch or representative office, the applicant shall submit to the registration authority:¹³⁸

1. registration application in the form approved by the registration authority;
2. decision of the body of the legal entity to establish a branch or representative office.

A decision to create a branch or representative office shall contain:¹³⁹

1. the name of the branch or representative office in the state and official languages;
2. location of the branch or representative office;
3. the decision of the body of the legal entity to appoint the head of the branch or representative office;
4. the full name, legal address, and registration data of the legal entity creating the branch or representative office.

Furthermore, in creating its branch or representative office, a legal entity registered under the legislation of the KR additionally provides a copy of the certificate of state registration. The individual acting as the head of a branch or representative office additionally submits to the registration authority a copy of his/her passport or other document recognized in accordance with the legislation of the KR as an identity document.

Apart from the list of necessary documents, the registration procedure is similar to that of a regular NCO. The registration period for an NCO branch or representative office is also ten calendar days from the date of submission of the necessary documents, and a state duty of 100 soms (\$1.40) is charged for registration.

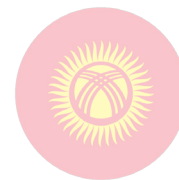
2.1.7. Specific features of registration procedure for certain types of NCOs

A uniform registration procedure applies to all forms of NCOs. Exceptions may include some minor differences in:

1. the registration period: for example, the registration of political parties is carried out within one month from the date of submission of all necessary documents, and the general term of ten calendar days applies to all other forms of NCOs;
2. the list of necessary documents: for example, during the state registration of an ALE, the memorandum of association in duplicate, signed by the representatives of all its founders, is attached to the application; in registering other organizational and legal forms of NCOs, there is no such document in the list;

¹³⁸ Part 1 of Article 15 Law on Registration.

¹³⁹ Para. 2, Article 15 Law on Registration.



3. the registration authority: for example, NCOs with foreign participation are registered with the Ministry of Justice, and all other NCOs – with the relevant territorial (regional) department of the ministry; and
4. religious organizations, in addition to registration as a public association, foundation, or institution in the appropriate judiciary body, are additionally registered with the State Committee for Religious Affairs under the KR Government.

2.1.8. Branches and representative offices of foreign NCOs

Foreign legal entities wishing to operate in Kyrgyzstan may open their branches and/or representative offices in accordance with Kyrgyz legislation. As far as registration is concerned, branches and representative offices of foreign NCOs are subject to general rules and procedures. The documents required may be different, however. In the process of state registration of a branch and representative office of a foreign legal entity or international organization, the applicant shall submit to the registration authority:¹⁴⁰

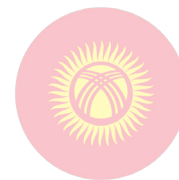
1. the registration application in the form approved by the registration authority;
2. the decision of the appropriate body of the legal entity to establish a branch or representative office;
3. the provision on the branch or representative office in duplicate, approved by the body of the foreign legal entity authorized to do so by its charter; and
4. copies of the constituent documents of the foreign or international organization that has decided to create a branch or representative office.

A foreign legal entity establishing a branch or representative office or acting as the founder of another legal entity additionally submits a legalized extract from the state register or another document certifying that it is a current legal entity under the laws of its country.¹⁴¹ In countries where extracts from the state register are not issued, documents certifying that the organization is a valid legal entity may, for example, be a copy of the certificate of state registration or a certificate or extract from the register of the authorized state body. It should be noted that the period for submitting an extract from the state register or another document certifying that the legal entity is valid under the laws of its country should not exceed six months from the date of issuance of those documents.

The said documents have to be legalized by the consular service of the KR in the country where the legal entity establishing the branch or representative office in the KR is located. The consular service affixes its stamp and the responsible employee puts his signa-

¹⁴⁰ Article 15 Law on Registration.

¹⁴¹ Para. 5, Article 10 of the Law on Registration.



ture. Legalization is not required for legal entities of countries participating in relevant international treaties and agreements to which Kyrgyzstan is a party.¹⁴² In 2009, the KR joined the Hague Convention on the Apostille (October 5, 1961, The Hague), which abolishes the requirement to legalize foreign official documents, except by affixing the apostille. Therefore, the apostille is used for legal entities of countries that are party to that Convention. The apostille requires no other certification or legalization of the document and is recognized by the official bodies of all states parties to the Hague Convention.

As mentioned above, documents drawn up in a foreign language are submitted to the registration authority along with a notarized translation into the state or official language (Kyrgyz or Russian respectively).

The list of documents provided for registration is an exclusive one, the registration authority having no right to require any additional documents. In practice, however, the registration authority sometimes asks for extra documents not required by law, saying that that is necessary to determine the foreign legal entity officer authorized to sign necessary registration documents. This is due to the fact that the constituent documents of some foreign legal entities do not provide for the competence of governing bodies or governor. Unfortunately, such cases are not uncommon.

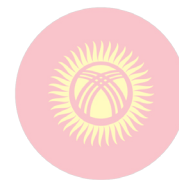
2.1.9. Grounds for refusal of registration

Refusal to register a legal entity or its branch (representative office) will be lawful in the event of:¹⁴³

1. failure to submit the documents required by the Law on Registration;
2. the presence in the state register of a registered legal entity or branch (representative office) with the same name;
3. inaccuracies or inconsistencies in the information contained in the submitted documents;
4. submission of documents to the wrong registration authority;
5. inconsistency between the submitted documents of the NCO or the branch (representative office) of a foreign or international organization and the KR legislation;
6. the absence in the decision of any information required under the Law on Registration; and
7. violation of the procedure for registration of NCO termination established by the Law on Registration.

¹⁴² Para. 5, Article 10 of the Law on Registration.

¹⁴³ Article 21 of the Law on Registration.



The decision to refuse registration must indicate grounds for the refusal and an obligatory reference to relevant provision of the law.

2.1.10. Appeal procedure

In case of refusal to register an NCO, the applicant may re-apply to the registration authority after eliminating the reasons that served as grounds for the refusal. Refusal of registration on the grounds of inexpediency of creating a legal entity or its branch (representative office) is not allowed. Disputes related to the registration of a legal entity or its branch (representative office), may be resolved, among other things, by appealing the refusal in court.¹⁴⁴

2.2. TERMINATION AND LIQUIDATION OF NCOS

An NCO may cease operation as a result of reorganization (unless it is separated from another legal entity organization or another legal entity joins it), liquidation or bankruptcy.

Liquidation of an NCO differs from its reorganization in that liquidation is the termination of the existence of an NCO as a legal entity that occurs without transferring the rights and obligations of the liquidated legal entity to other entities.

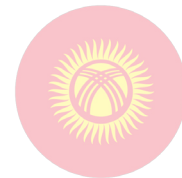
CC KR regulates in detail the grounds and procedure for liquidation, describing the content and sequence of actions in its implementation. According to Article 96 CC KR, a legal entity, including an NCO, may be liquidated:

1. by decision of its founders (participants) or body authorized to do so by its constituent documents, including in connection with the expiration of the period for which the legal entity was created, the attainment of the goals for which it was created, or recognition by the court of the invalidity of its registration owing to violations of the law that were committed during its creation and are irreparable;
2. by a court decision – in the case of operation without proper permission (license) or the conduct of activity prohibited by law, or with other repeated or gross violations of the law, or in the event of systematic conduct of activity contrary to the statutory goals of the legal entity ..., as well as in other cases provided for by law.

A request to liquidate a legal entity on above grounds may be made to the court by a state body or the body of local self-government to which the right to present such a claim is granted by law.

The court decision to liquidate the legal entity may impose this obligation on its founders (participants) or a body authorized to liquidate the legal entity.

¹⁴⁴ Article 21 of the Law on Registration.



2.2.1. Voluntary liquidation and suspension

The grounds for voluntary liquidation of an NCO are:¹⁴⁵

1. the inexpediency of the continued existence of the organization;
2. expiration of the period for which it was created;
3. the attainment or, on the contrary, the unattainability of its statutory goals;
and
4. recognition by the court of the invalidity of the registration of the legal entity owing to violations of the law that were committed during its creation and are irreparable.

The NCO body that made the decision on liquidation is required to notify the registration authority about that decision in writing within three business days, attaching a copy of the decision to liquidate the NCO and elect (appoint) a liquidation committee (liquidator).¹⁴⁶

Upon receiving a notice on the liquidation of an NCO, the registration authority is obliged to make an entry in the state register that the NCO is in the process of liquidation, and notify the tax authorities, statistical agencies and the Social Fund.

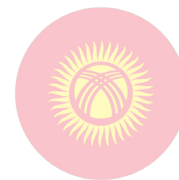
When registering the termination of an NCO with the registration authority, the applicant submits:¹⁴⁷

1. a registration application in the form approved by the registration authority;
2. the decision of the NCO body to liquidate the NCO and elect (appoint) a liquidation committee (liquidator);
3. the NCO's original certificate of state registration (re-registration);
4. its original charter;
5. a certificate from the tax authority on the absence of arrears on insurance payments to the Social Fund;
6. a certificate of the tax authority about the absence of tax arrears;
7. a certificate from the bank (banks) about the closure of the NCO's account(s);
8. a certificate from the internal affairs body to the effect that the NCO has turned in its seal and stamp (if any);
9. decision on approval of the liquidation balance sheet;

¹⁴⁵ Article 96 CC KR.

¹⁴⁶ Article 13 of the Law on Registration.

¹⁴⁷ Article 13 of the Law on Registration.



10. the liquidation balance sheet with a note of acceptance by the tax authority;
11. a letter from the state archival fund regarding the place of storage of the liquidated NCO's documents;
12. receipt of a fee for the registration of termination of a legal entity; and
13. other documents specified by the Law on Registration.

In the cases indicated below, an NCO terminating its operation shall additionally provide the following documents:

1. in the event of loss or damage to constituent documents of NCOs or branches (representative offices) of foreign and international organizations, an appropriate notice published in the mass media indicated by the registration authority;¹⁴⁸ and
2. in case of loss or damage to the certificate of state registration (re-registration) or the seals and/or stamps of an NCO or its branch (representative office), an appropriate notice published in the mass media indicated by the registration authority.¹⁴⁹

The appropriate body of the NCO may decide to approve the liquidation balance sheet only if the NCO does not have any obligations, including guarantees, to third parties.

Before submitting required documents, the NCO shall liquidate all its branches, representative offices, and mass media in the established manner.

In accordance with the decree of the KR Government, a fee of 100 soms (1.4 US dollars) will be charged in the process of liquidation.

The liquidation of NCOs is carried out within seven working days. The date of registration of the termination of an NCO's activity is the date of publication by the registration authority of an appropriate order.

There are no special provisions in the legislation of Kyrgyzstan on the procedure for suspending the activity of an NCO.

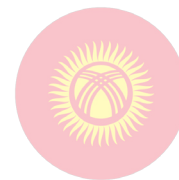
2.2.2. Forced liquidation

The tax authority has the right to apply to the court for the forced liquidation of an NCO if the latter fails to submit monthly reports to the tax authorities and/or the Social Fund bodies for a continuous two years.

The liquidation of legal entities, including NCOs, in the event of bankruptcy is carried out in accordance with the Civil Code and the special legislation on bankruptcy of the KR. Forced liquidation of NCOs is carried out only by court order.

¹⁴⁸ Article 10 of the Law on Registration.

¹⁴⁹ Article 10 of the Law on Registration.



Clause 2 of Article 96 of the Civil Code defines but a few of the grounds for forced liquidation:

1. the implementation of licensed activities without proper permission (license);
2. carrying out activities prohibited by law;
3. carrying out activities in repeated or gross violation of the law; and
4. systematic implementation of activities contrary to statutory goals.

The list of grounds for forced liquidation is not exhaustive; there are other cases of liquidation of an organization by a court decision under circumstances provided for by the CC.¹⁵⁰

Analysis

The legal regulation of the registration of NCOs in Kyrgyzstan is generally consistent with international standards. For example, NCOs can be created with or without a legal entity status. In addition, there are no territorial restrictions on the activities of NCOs in Kyrgyzstan. The KR legislation does not contain any restrictions for foreign citizens and foreign legal entities regarding the creation of NCOs. Establishing a public association does not require many initiators: three are sufficient. The licensing procedure for registration, which is neither burdensome nor expensive in comparison with other legal entities, also complies with international law. An online mechanism is being introduced for the registration of legal entities, including NCOs, to further facilitate the registration process in the future, which also corresponds to international best practice.

As with other legal entities, however, the process of voluntary liquidation in Kyrgyzstan remains complex and lengthy. One of the reasons is the need to obtain a number of certificates from the tax authority (on the absence of arrears on tax and insurance payments) and commercial banks (on account closure). Obtaining these documents may take months, because prior to issuing them the tax authorities have to conduct a tax audit. As there is no statutory time limit for the review of a legal entity's financial records for this purpose, the state bodies may procrastinate.

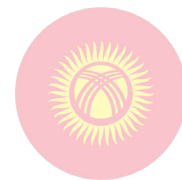
Forced liquidation of NCOs in Kyrgyzstan is carried out only by court order, which also complies with international law and international best practice.

3. Structure and Internal Governance

3.1. PROVISIONS OF CONSTITUENT DOCUMENTS

The list of constituent documents differs for different legal forms of NCOs. Some organizations operate on the basis of the charter, others – the memorandum of association and the charter, and still others – on the basis of a general provision on that type of organization. The general rule is that public associations, foundations, and non-profit

¹⁵⁰ Article 96 CC KR (Part I).



cooperatives should have only one constituent document – the charter. At the same time, non-profit cooperatives may operate on the basis of two constituent documents – the charter and the memorandum of association, which they are entitled to conclude if the founders so wish. An ALE conducts its activity in accordance with its charter and memorandum of association.

The memorandum of association regulates relations between founders in the process of creation and operation of a legal entity.

The charter is a local document that defines the legal status of the organization and regulates relations between participants and the organization itself.

Constituent documents have a different procedure for their adoption:

1. the memorandum of association is signed, and the charter is approved by the founders; and
2. the memorandum of association enters into force from the moment of its signing, and the charter from the registration of the organization.

In cases where an NCO operates on the basis of a general provision on that type of organization, an individual charter is not required. This applies, in particular, to primary trade union organizations, which, according to the Law on Trade Unions, may act on the basis of the general provision.

The Law on NCOs provides that an institution shall have its own charter, as well as the owner's decision to establish the institution.

The requirements of an NCO's constituent documents are binding on the organization itself and its founders (participants).

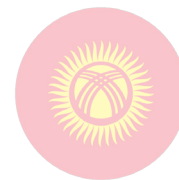
CONTENT OF CONSTITUENT DOCUMENTS

Mandatory requirements for constituent documents of NCOs are determined in accordance with Article 87 of the Civil Code, Article 10 of the Law on NCOs, and the laws on individual legal forms of NCOs.

Under the Civil Code, an NCO's constituent documents shall contain:¹⁵¹

¹⁵¹ Article 87 CC KR.

The charter
is a local
document
that defines
the legal
status of the
organization
and regulates
relations
between
participants
and the
organization
itself.



1. the name of the NCO, indicating its type, legal form and nature of activity;
2. its location;
3. its governance procedure; and
4. the subject and goals of its activity.

Under the NCO Law, the charter of an NCO shall provide for:¹⁵²

1. governing and supervisory bodies, audit bodies, their competence, the procedure for election and recall, as well as the responsibilities of officials;
2. rights and obligations, conditions and procedure for admission and withdrawal (for public associations);
3. the procedure for amending the constituent documents;
4. reorganization and liquidation procedure;
5. procedure for the distribution of property in the event of liquidation;
6. for foundations and institutions – the circle of persons who receive assistance from the organization, unless such a circle of persons is not limited;
7. the term of operation, if provided for; and
8. other provisions not contradicting the law.

The information listed in Article 87 of the CC and Article 10 of the Law on NCOs shall be indicated in the constituent documents without fail. The absence of any of the information referred to in these articles is grounds for declaring constituent documents inadequate.

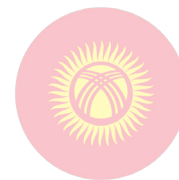
Along with the above mandatory information, an NCO may include other provisions that do not contradict the legislation, for example, the procedure for financing the organization's activities, trade secrets, accounting and reporting procedures, personnel, local documents of the organization, etc.

Of practical importance is the question of the distribution of relevant information between the charter and the memorandum of association in cases where the founders are required or entitled to have the latter. Practice indicates that duplication and confusion of information is often the case in the constituent documents of legal entities.

Article 87 of the CC defines the minimum of information that should be contained in the memorandum of association. In the memorandum of association, the founders undertake to create an NCO and determine:

1. the procedure for joint activities for its creation;

¹⁵² Article 10 of the Law on NCOs.



2. the terms of transferring their property to the organization;
3. the terms of participation in the organization;
4. NCO governance; and
5. the conditions and procedure for the withdrawal of founders (participants) from membership.

Other matters may be included in the memorandum of association as agreed by the founders.

Laws on individual organizational and legal forms of NCOs elaborate on the general rules of the Civil Code in specific details and in some cases establish additional requirements for the constituent documents of relevant organizations.

Changes to the charter of an NCO are made by decision of its highest governing body.

3.2. INTERNAL GOVERNANCE STRUCTURE

3.2.1. Governing bodies of public associations

A public association is a voluntary association of citizens who have united on the basis of a commonality of their interests to satisfy their spiritual and other nonmaterial needs. A public association is a membership organization. A distinctive feature of a public association is that the goals of its creation are mainly achieved through the active work of its members.

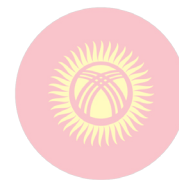
THE HIGHEST BODY

The highest body of a public association is the general meeting, which consists of all its members. The general meeting has a quorum if at least one third of its members participate in the decision.

The competence of the general meeting includes the most important issues of the public association's activity, which shall be reflected in the charter. In this case, the exclusive competence of the general meeting consists of the following issues:¹⁵³

1. introduction of amendments and additions to the charter;
2. determination of priority areas of the public association's activity, the procedure for using its property;
3. admission to and expulsion from membership (unless otherwise specified by the charter);
4. the procedure for the formation of governing bodies;
5. approval of the annual activity report and annual balance sheet;
6. the decision to create branches and representative offices;

¹⁵³ Article 20 of the Law on NCOs.



7. participation in the activities of other legal entities;
8. reorganization and liquidation;
9. other issues, unless the charter refers them to the competence of other bodies of the public association.

A public association may make decisions by holding meetings of the general meeting and by polling its members in writing. Both procedures are regulated by the charter.

A public association may also create other governing bodies. In this matter, the legislator gives its members complete freedom. The powers and the procedure for the establishment and activities of such governing bodies are regulated by the charter of the public association.

EXECUTIVE AGENCY

In a public association, a permanent executive body (board, directorate, etc.) may be created, the head of which is the sole executive body of the organization. The competence of the executive bodies of a public association includes the resolution of all issues not falling within the exclusive competence of its highest body.

At the request of the members, a supervisory body (supervisory board, coordinating council, etc.) may also be created and vested by the highest body with some monitoring and supervisory functions.

3.2.2. Governing bodies of foundations

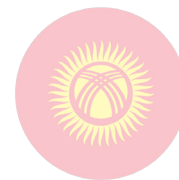
A foundation is a non-membership organization founded by individuals and/or legal entities on the basis of voluntary property contributions and pursuing social, charitable, cultural, educational or other socially useful goals. A foundation can also be created by a will. A distinctive feature of a foundation as opposed to a public association is that it does not have a membership; the basis for its creation is voluntary contributions of property (including money), which the founders pass to the foundation for certain uses. Basically, a foundation achieves its goals by financing activities needed to achieve them.

The foundation has a rather complex management structure. Management decisions can be made by the founders, the Supervisory Board and the Management Board. The main governing bodies are the Supervisory Board and the Management Board.

GOVERNING BODY

The Supervisory Board is essentially the highest governing body of a foundation. In accordance with Article 28 of the Law on NCOs, the Supervisory Board oversees the activities of the foundation, the way its governing bodies make decisions and enforce them, the use of the foundation's resources and compliance with applicable legislation and the charter, and also exercises internal oversight of the foundation's activity.

In accordance with Article 29 of the Law on NCOs, the procedure for appointing and



recalling members of the Supervisory Board should be established in the charter of the foundation.

The competence of the Supervisory Board of a foundation includes:

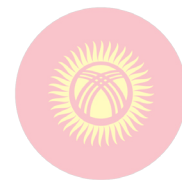
1. supervision of activities and determination of the directions of activity and policies of the foundation;
2. introduction of amendments and additions to the charter;
3. making decisions on the reorganization of the foundation;
4. the appointment and recall of members of the Management Board;
5. approval of decisions of the Management Board on transactions worth more than specified in the charter, as well as transactions with certain types of property defined by the charter;
6. approval of transactions in which a conflict of interest is assumed;
7. approval of the annual report on the activities of the foundation prepared by the Management Board;
8. approval of decisions of the Management Board on participation or termination of participation in commercial enterprises; and
9. other issues in accordance with the charter.

EXECUTIVE BODY

The Management Board acts as the executive body, managing the foundation and representing it in relations with third parties. The Management Board may consist of one or more members, who must be legally capable individuals. Members of the Management Board are appointed by decision of the Supervisory Board. In the process of managing the foundation, the Management Board must comply with the lawful orders of the Supervisory Board. Members of the Management Board cannot delegate their responsibilities to third parties, unless this is provided for by the charter or by decision of the Supervisory Board.

FOUNDER

The law does not refer to founders as a separate governing body. However, Article 28 of the Law on NCOs contains the following norm: “The solution of any issues of the foundation’s activities, including that of the competencies of the foundation’s Supervisory Board listed in this article, may be referred by the charter to the competency of the founders of the foundation.” In addition, the Law on NCOs in the same Article 28 provides the founder with the right to veto decisions of the Supervisory Board, unless otherwise provided for by the charter (in the case of several founders, their unanimi-



ty is required for a veto). These norms make it possible to include the founder(s) as a governing body of the foundation in its charter:

1. as the sole highest governing body of the foundation; or
2. as one of the highest governing bodies of the foundation, alongside the Supervisory Board, while dividing powers between them or leaving the founder only the right to veto decisions of the Supervisory Board.

3.3. DISTRIBUTION OF INCOME AND OTHER REVENUE

Making a profit should not be the main goal of an NCO's activity, and profit should not be distributed among its members, founders and officers.¹⁵⁴

The profit should be used to achieve the NCO's statutory objectives *"for the realization of spiritual or other non-material needs in the interest of its members and/or the whole society."*¹⁵⁵ At the same time, NCOs are allowed to direct a certain part of their income to administrative expenses (utility bills, employee salaries, office rent, etc.).

Analysis

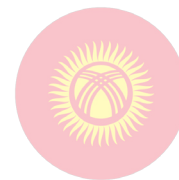
In accordance with international standards in the field of freedom of association, associations and other NCOs in Kyrgyzstan have the right to freely determine their internal governance structure, create their own governing bodies and independently determine measures to achieve their goals. The Law on NCOs has minimum requirements for the presence of certain governing bodies. In a public association, for example, the general meeting is the only obligatory body, and the public association can create other governing bodies as necessary at its discretion. In general, the legislation of Kyrgyzstan does not impose any unreasonable restrictions on NCOs regarding the organization of internal management, giving them the right to independently decide on the management of their activities.

The regulation of the distribution of NCO income is also consistent with international practice and standards.

¹⁵⁴ Article 2 of the Law on NCOs.

¹⁵⁵ Article 2 of the Law on NCOs.

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4. NCO Activities

4.1. GENERAL LEGAL CAPACITY

NCOs established with the status of a legal entity enjoy the rights provided by civil law for legal entities. For example, they can create branches and representative offices, participate in the creation of other legal entities, and act as plaintiffs and defendants in court.

NCOs have the right to engage in any activities not prohibited by law, which do not contradict the goals and objectives of the organization, as defined in its charter, policy documents, and other acts.¹⁵⁶

NCOs independently determine the goals of their activities. Interference of state bodies or officials in the activities of NCOs is not allowed.

An NCO's legal capacity differs from that of a commercial legal entity in that it has a number of limitations. Whereas a commercial legal entity may engage in any activity not prohibited by law,

1. for a NCOs, making a profit cannot be the main goal of its activity;
2. NCO activities should be aimed at the realization of spiritual or other non-material needs in the interests of its members and/or the whole society;
3. their entrepreneurial (economic) activity, including production, should not contradict the goals and objectives of NCOs; and
4. income from entrepreneurial activity should not be distributed among members, founders, officials of the organization and should be used only to achieve its statutory objectives.

Restrictions on certain NCO activities can only be established by law. For certain types of activity, NCOs (as well as commercial organizations and government agencies) must have a license or special permission.

In Kyrgyzstan, NCOs are divided into two groups according to the procedure for regulating their activities:

1. ordinary NCOs such as public associations, foundations, private institutions, associations of legal entities, community organizations and the like; and
2. NCOs that have received the status of a charitable organization.

The activity of ordinary NCOs is regulated similarly to that of commercial organizations: by registration procedure, reporting to state bodies, inspections by state bodies, liquidation, and other legal relations.

¹⁵⁶ Article 12 of the Law on NCOs.



Regarding the regulation of charitable organizations, the state

1. on the one hand, grants them privileges such as:
 - tax incentives so that they can earn from doing business and finance their public benefit activities; and
 - encourages the business sector to provide them with financial assistance by providing tax breaks to entrepreneurs on the amount of assistance provided;
2. on the other, it imposes stricter requirements on their transparency and openness:
 - submitting an additional report;
 - passing an independent annual financial audit; and
 - publication of reports on specialized websites.

Under the KR Law on Charity, NCOs created in the legal form of public associations, foundations and institutions have the right to voluntarily acquire the status of a charitable organization. Under TC KR, charities are exempt from paying three significant taxes: VAT, income tax, and sales tax.¹⁵⁷ In practice, however, not a single charitable organization in the country enjoys those tax benefits. The reason is that the Law on Charity provides too strict criteria for recognizing an ordinary NCO as a “charitable organization.” To qualify as a charitable organization, an NCO must allocate 98% of its income to charitable purposes and spend no more than 2% on administrative needs (office rent, utility bills, employees’ salaries, office supplies, etc.). This is next to impossible, as no organization can survive using only 2% of its income on its administrative expenses.

Analysis

In Kyrgyzstan, NCOs can engage in any activity not prohibited by law. In addition, NCOs themselves can determine the goals of their activity and engage in any legitimate activity to fulfill their statutory objectives as long as it is not profit. Such regulation is consistent with international standards.

The possibility of obtaining the status of a charitable organization for additional benefits is also consistent with international best practice. However, it is important to eliminate the deficiencies in the law to make this status applicable in practice. The NCO’s right to engage in entrepreneurial activity and its restriction also comply with international standards.

The founders and members of NCOs have the right to freely determine their organizations’ goals and activities without any interference from the state in their internal affairs, which also complies with international standards. Registered NCOs in Kyrgyzstan have

¹⁵⁷ Articles 212, 251 and 315 TC KR.

the same legal capacity as other legal entities and enjoy the same requirements and obligations as apply to other legal entities, in full compliance with international standards.



4.2. ADVOCACY AND POLITICAL ACTIVITIES

The KR legislation provides broad opportunities for NCOs to participate in the decision-making process and conduct public campaigns to influence decisions of government bodies in the following forms:

1. peaceful assembly;
2. appeals to government bodies;
3. access to information held by government bodies;
4. participation in public discussions on draft laws and decisions;
5. public councils of state bodies;
6. intersectoral bodies;
7. participation in the budget process; and
8. others.

Below is a brief description of each of these forms.

PEACEFUL ASSEMBLY

Article 35 of the Constitution contains the following norm:

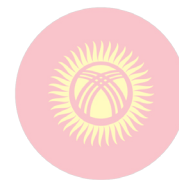
“1. Everyone shall have the right to freedom of peaceful assembly. No one may be forced to participate in the assembly.

2. In order to ensure the conduct of a peaceful assembly everyone shall have the right to submit notice to state authorities.

Prohibition and limitation on conduct of a peaceful assembly shall not be allowed; the same applies to refusal to duly ensure it failing to submit notice on conduct of free assembly, non-compliance with the form of notice, its contents and submission deadlines.

3. The organizers and participants in peaceful assemblies shall not be liable for the absence of notice on the conduct of a peaceful assembly, non-compliance with the form of notice, its contents and submission deadline.”

These provisions of the Constitution were further developed in the Law of the KR “On Peaceful Assemblies” of May 23, 2012. There are some with its enforcement practice. Online news agencies often publish information about the detention by the police of participants in this or that peaceful assembly for having no permission to hold the rally or holding an “unauthorized” peaceful assembly.



THE RIGHT OF CITIZENS TO APPEAL TO STATE BODIES AND TO ACCESS INFORMATION AVAILABLE TO THEM

Part 1 of Article 41 of the Constitution contains the following norm: *“Everyone shall have the right to appeal to state authorities, local self governance bodies as well as officials thereof; these officials should provide a substantiated answer within the deadlines envisaged in the law.”* In order to ensure the implementation of this constitutional right, the KR Law on the Procedure for Considering Citizens’ Appeals was adopted May 4, 2007. It provides for the procedure for considering citizens’ petitions by state bodies and local self-government. According to this Law, citizens’ petitions must be considered within 14 business days from the date of registration of a written (including electronic) petition.

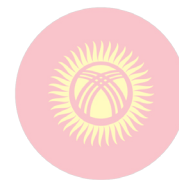
Part 4 of Article 33 of the Constitution contains the following rule: *“Everyone shall be guaranteed access to information in the possession of state authorities, local self-government bodies as well as officials thereof. The regulations of providing information shall be envisaged in the law.”* In order to ensure the implementation of this constitutional right, the KR Law “On Access to Information Held by State Bodies and Local Self-government Bodies of the KR” was adopted on December 28, 2006. According to this Law, state bodies and local self-government bodies are obliged to provide information under their jurisdiction to individuals and legal entities upon their request within two weeks from the date of receipt of the request.

In practice, government bodies and local self-government bodies often violate the requirements of the Constitution and the above laws, responding to requests and requests later than the time set for the response, leaving them unanswered or giving irrelevant replies.

In accordance with the legislation of the KR, draft regulations affecting the most important public relations must undergo a public discussion. In practice, this mechanism does not work very effectively. Drafts legislation may be placed on the Parliament’s website, but citizens and civil society organizations (CSO) are not able to post their suggestions and comments there. Public hearings on draft legislation and policy are very rare, and even when they are held, all interested parties cannot participate in them because of a lack of information about the place and time of their holding, as well as inadequate legislative procedures for conducting public discussions. As a consequence, state bodies adopt low-quality legislation and policies which were adopted without a thorough discussion in society so that the opinions of all interested parties could be taken into account. The public discussion procedure requires improvement to give them the opportunity to participate.

PUBLIC COUNCILS

Public councils of state bodies (hereinafter, public councils) are one of the more effective mechanisms for civic participation in Kyrgyzstan. They are advisory and supervisory bodies created on a voluntary basis from representatives of civil society for interaction and cooperation with ministries, state committees and administrative departments. Public councils are created and function on the basis of the KR Law “On Public Councils



of State Bodies”¹⁵⁸ of May 24, 2014. Public councils are formed by the Commission for the Selection of Members of Public Councils on a competitive basis from members of the public, including NCOs, academia, business associations, professional and industry unions, and the expert community. Currently, public councils have been set up in 36 ministries and administrative departments. They include from seven to 15 representatives of NCOs, the business sector, academia, and the expert community. Public councils are endowed with two main functions:

1. Advisory: (1) to give recommendations to the state body on improving the work, (2) to offer alternative ways of solving problems and achieving socially useful goals, and (3) to conduct public hearings on draft rules and regulations and policies, and
2. Supervisory: to monitor (1) the target use by the state body of the budget as well as grants, loans and other funds, (2) the holding of tenders, competitions and other events, and (3) all activity of the state body for compliance with the law.

More information about the activity of public councils may be obtained on their website www.osgo.kg.

INTERSECTORAL BODIES

In recent years, intersectoral bodies have been created in various spheres in Kyrgyzstan. They include representatives of state bodies, business, and NCOs. Their legal status, structure and powers are established by separate laws, such as the Law on the Public Television and Radio Company,¹⁵⁹ the Law on SSC,¹⁶⁰ the Law on Public Councils, and the like.¹⁶¹

For example, the State Television and Radio Company was transformed into the Public Television and Radio Company (Russ. abbr. OTRK), the highest body of which is the Supervisory Board consisting of 15 representatives of civil society. While all the 15 members are approved by Parliament, five of them are proposed by the President, five by Parliament, and five by civil society.

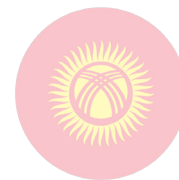
Regrettably, genuine representatives of civil society can currently be seen only in the Commission for the Selection of Members of Public Councils and in the grant commissions of state bodies and on the SSC boards of local self-government bodies, where they are elected according to a special rating procedure (CSO representatives themselves choose the most worthy from their own circle by voting). In all other cases, CSO representatives propose candidates and state bodies select members of intersectoral

¹⁵⁸ In Kyrgyzstan, public councils were first established pursuant to Presidential Decree #212 of September 29, 2010.

¹⁵⁹ KR Law “On the Public Television and Radio Company of the Kyrgyz Republic” of December 21, 2011.

¹⁶⁰ KR Law “On the State Social Contract” of April 28, 2017.

¹⁶¹ KR Law “On Public Councils of State Bodies” of May 24, 2014.



bodies from among the proposed candidates. Under this procedure, government agencies choose representatives of “pocket” CSOs. In this regard, reforms in some areas of endeavor could be more effective.

BUDGET PROCESS

The openness of the budget process and the involvement of all interested parties help both civil society and government agencies in their joint work. Article 126 of the KR Budget Code provides for the formation of a “citizen budget” and its placement on the website of the KR Ministry of Finance. The citizen budget is a statement in an accessible and simplified form of information (on budget parameters, priorities and policies for a specific financial period) contained in the law on the nationwide budget and other legislative acts. The citizen budget provides an opportunity for citizens, including those who do not have specialized financial education, to receive information on public finances.

In addition, the Budget Code obliges government bodies to hold public budget hearings – open discussions of budget formation and execution – to study public opinion, receive proposals and recommendations, and make informed decisions in the best interests of the population. Materials for public budget hearings have to be published on the official website of the state body (ministry, department) ten days before the public budget hearings. The state body summarizes proposals received by participants in public budget hearings and sends them its replies about decisions made based on the consideration of their proposals.

OTHER PLATFORMS FOR CIVIC PARTICIPATION

A positive trend in Kyrgyzstan is that mechanisms for civic participation are continuously improving thanks to modern technology. For example, the web portal www.kattar.kg was recently created, through which any citizen can contact any government official from the Prime Minister to the head of any *aiyl okmotu* (village council) on a particular issue and receive a written reply within 14 days. The Ministry of Finance has launched and is improving a portal for electronic public procurement. The Ministry of the Economy opened a portal for inspections of business entities (commercial and non-profit organizations) by state regulatory authorities <http://www.proverka.kg>. The KR Government has introduced a public services portal, e- government is in the process of being created, and other institutions of civic engagement are being improved.

POLITICAL ACTIVITY

Kyrgyz law does not define the terms “political activity” or “political objectives.” Since there is no definition and no prohibition of political activity for NCOs, it can be assumed that they may engage in political activity, except where it is expressly prohibited by law. Political activities in the KR may be carried out (in accordance with established procedure) by political parties, which are a form of a public association and are regulated by KR Law #50 “On Political Parties” of June 12, 1999 and other regulatory legal acts.



The KR legislation “does not allow any financing of political parties, public associations pursuing political goals, and trade unions by foreign legal entities and citizens, foreign states, and international organizations.”¹⁶²

As the law does not define the concept of “political objectives,” it can be interpreted in different ways, including the NCO’s traditional activity of promoting the interests of its members or the public interest. In practice, this rule is not applied to restrict NCO activity.

One restrictive norm can be found in Article 7 of the Law on Charity: “A *charitable organization shall not have the right to spend its funds and use its property to support political parties, movements, groups and campaigns.*”

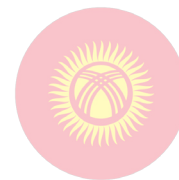
Analysis

In accordance with international standards, the legislation of Kyrgyzstan provides legal opportunities for NCOs to participate in the adoption of state decisions and engage in advocacy activities. The state provides an opportunity for associations to freely achieve their goals and objectives without undue interference from the state or third parties.

A review of law enforcement practice shows that there is a need and opportunity for further improvement of Kyrgyz legislation promoting advocacy. In particular, this concerns the introduction of legal norms to establish the procedure for setting up public councils with local self-government bodies; further improvement of the mechanism of public consultations on draft legislation and executive policies; the enforcement of Constitutional guarantees of freedom of peaceful assembly; providing citizens with access to information (through raising the responsibility of state bodies for the violation of appropriate lawful rights); and streamlining the procedure for working with citizens’ petitions. These measures would further improve the legislation of the KR.

As the law does not define the concept of “political objectives,” it can be interpreted in different ways ... (but) in practice, this rule is not applied to restrict NCO activity.

¹⁶² Part 2 of Article 161 CC KR.



5. Financial Sustainability

5.1. BUSINESS INCOME

NCOs in Kyrgyzstan are allowed to sell goods and services and profit from this activity. The Law on NCOs sets forth the basic principles of entrepreneurial activity by NCOs: “NCOs have the right to engage in economic activity, including production, without distribution of profit between founders, members, officials, other employees and members of governing bodies. Such activities may include the production and sale of goods, the performance of work, the provision of services with remuneration and other types of entrepreneurial activity, if they do not contradict the goals and objectives of the organization.”¹⁶³ An NCO may engage in entrepreneurial activity insofar as making a profit is not the main purpose of its activity.¹⁶⁴ CC KR defines entrepreneurial activity as “*independent activity conducted at one’s own risk and directed at making profit.*”¹⁶⁵ TC KR contains a definition of a broader concept – “economic activity”,¹⁶⁶ which includes “*entrepreneurial and other activity.*” “Other activity,” in turn, includes:

1. activity in accordance with labor legislation;
2. investing money in banks;
3. acquisition, transfer or sale of securities or shares of an individual or legal entity in authorized capital;
4. receipt of any payments in accordance with the share of an individual or legal entity in authorized capital;
5. receipt of penalties, fines, compensation of moral damage;
6. receipt of the insurance amount (reimbursement) under insurance contracts; and
7. other activity that is not entrepreneurial activity.

NCO business activity can be carried out directly by the organization itself or through the creation of commercial subsidiaries. In the latter case, the commercial subsidiary transfers the profit to the founder, i.e., NCO, which, in turn, uses the funds to achieve the objectives of its creation.

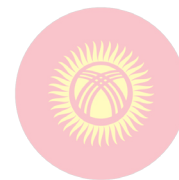
The Law on Charity contains a restriction on the right of charitable organizations to carry out entrepreneurial activity: the entrepreneurial activity of a charitable organization should be consistent with the goals the organization was created for. For example, a charity supporting disabled people has the right to open a store where special

¹⁶³ Article 12 of the Law on NGOs.

¹⁶⁴ Article 2 of the Law on NGOs.

¹⁶⁵ CC KR (Part I).

¹⁶⁶ Article 21 TC KR.



goods intended for people with disabilities (wheelchairs, crutches, prostheses, etc.) will be sold. However, if a charity is engaged in other types of entrepreneurial activity (runs a sewing workshop or an audit company or sells other goods), this will not meet the goals of its creation. The organization will be deprived of the status of a charity and, therefore, will not be able to enjoy tax benefits for charities under TC KR.

Currently, NCOs receive a small part of their income from entrepreneurial activity, and most NCOs do not engage in entrepreneurial activity at all, as the country has not yet created favorable conditions for NCO business activity.

Analysis

In accordance with good international practice, NCOs in Kyrgyzstan have the right to engage in entrepreneurial activity. Restrictions on such activities are also largely consistent with international standards.

5.2. STATE FINANCING

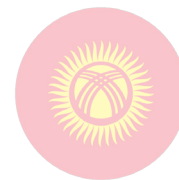
The need for state support of NCOs is recognized in Kyrgyzstan, given the importance of their activities to society. The main mechanism of state financing of NCOs is the state social order (SSC), which allows the state to solve social problems through the provision of budget funds to NCOs and other private organizations on a competitive basis. SSC can be provided in three forms in 17 different areas of endeavor provided for by the SSC Law. Financing is provided on a competitive basis according to pre-established criteria, among which the effectiveness of the proposed methods plays the key role.

The state also provides other forms of material support – for example, in the form of tax benefits to NCOs, charitable organizations, their donors, as well as recipients of charitable aid.

Next, we will take a closer look at the SSC.

STATE SOCIAL ORDER (SSC)

In Kyrgyzstan, SSC is a new approach to social problems. If previously the state tried to address them the traditional way – only by creating state institutions with salaried personnel, appropriate facilities, and constant funding from the state budget (for example, orphanages, nursing homes, etc.), the introduction of the SSC mechanism has made it possible to do without permanent institutions but rather channel budget funds for the same purposes to NCOs and other private organizations on a competitive basis. Within the framework of the SSC, the state identifies the more pressing social problems and socially useful goals, allocates funds to address them, and announces a competition among NCOs, which, in turn, draw up their project proposals and send them to the tender committee. In determining the winners, a decisive role is played by the effectiveness of the proposed ways to achieve the goals of the program, the ability of an NCO to implement its proposed project, and other factors. The tender committee considers the proposals and determines the winners of the tender. The state body and the winners



enter into agreements on the implementation of social projects. The contract describes the terms and conditions of the project to be implemented by the NCO and the terms and conditions of funding by the state body.

Under the SSC, the state retains the functions of financing, having control over the expenditure of funds and monitoring the quality of services. The services are rendered by private organizations, including NCOs. The SSC is one of the effective mechanisms for mutually advantageous cooperation between the government and CSOs for the benefit of the people.

The SSC Law provides for three forms of SSC implementation:

1. state procurement;
2. state financing of socially useful projects; and
3. the provision of social services through so-called social coupons.

The SSC Law lists areas of endeavor in which the SSC can be implemented, for example: youth support; education and awareness-raising; health and physical wellness; other.

In Kyrgyzstan, the state annually allocates funds from the state budget to finance social services and socially useful projects through the SSC mechanism. Currently, the SSC is implemented by several ministries and departments, as well as local self-government bodies, among them: the Ministry of Labor and Social Development, the State Agency for Youth, Physical Culture and Sports, the Ministry of Health, the State Agency for Local Government and Interethnic Relations, the city councils of Bishkek, Osh, Karakol and Jalal-Abad. In 2019, the state allocated more than 40 million soms (more than \$575,000) for the implementation of SSC programs.¹⁶⁷ The amounts allocated from the state budget and the budgets of local self-government bodies for the implementation of SSC are increasing year after year, and so is the number of state bodies and local self-government bodies engaged in the SSC.

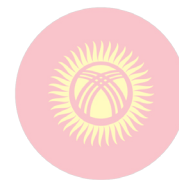
Analysis

The KR legislation and practice in the field of NCO financing are in line with international standards.

5.3. FOREIGN FINANCING

Kyrgyz law does not require NCOs to obtain special permission from government agencies to receive foreign assistance. Also, Kyrgyzstan does not provide for registration of received foreign financing. Reporting requirements for NCOs receiving foreign funding do not have any distinctions from those for NCOs funded from sources within the country.

¹⁶⁷ State Social Contract Program of the State Agency for Youth, Physical Culture and Sports under the KR Government for 2018–2020; State Social Contract Program of the KR Ministry of Labor and Social Development for 2019–2021.



The KR legislation provides for the prohibition of foreign financing of political parties. The KR legislation “does not allow any financing of political parties, public associations pursuing political goals, and trade unions by foreign legal entities and citizens, foreign states, and international organizations.”¹⁶⁸

Analysis

Kyrgyz legislation regarding the regulation of foreign aid is in line with international best practice and does not create any obstacles to their receipt by NCOs.

5.4. OTHER REVENUE FROM LOCAL SOURCES

Other NCO income from local sources includes donations from individuals and legal entities, entry and membership fees. Funds from these sources account for a small fraction of the income of Kyrgyz NCOs.

DONATIONS FROM LEGAL ENTITIES AND INDIVIDUALS

Assistance from local legal entities and individuals comes, as a rule, in the form of donations and less often, gifts. A donation differs from a gift in that it is a separate act performed for the achievement of a certain socially useful goal.¹⁶⁹ A gift involves the complete transfer of property rights to a third party at no cost, and the giver does not have the right to demand anything from the donee in return.¹⁷⁰ A donation and a gift can be made by an individual or legal entity, regardless of citizenship or country of registration, location or place of transfer. CC KR stipulates that a donation may be made “to citizens, social protection institutions, medical, educational, scientific, academic, charitable and other similar institutions, museums and other cultural institutions, foundations, public and religious organizations, as well as to the state and administrative-territorial units.”¹⁷¹

“Fundraising may be carried out by:

- 1. contributing cash to the NCO’s cash box;*
- 2. installing cash boxes in public places;*
- 3. via SMS from mobile phones;*
- 4. via quick payment terminals; and*
- 5. via the Internet using a credit card or any other means not prohibited by law.”¹⁷²*

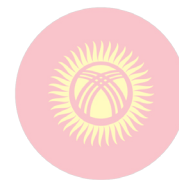
¹⁶⁸ Part 2 of Article 161 CC KR (Part I).

¹⁶⁹ Article 518 CC KR (Part II).

¹⁷⁰ Article 509 CC KR (Part).

¹⁷¹ Part 1 of Article 518 CC KR (Part II).

¹⁷² *Some Issues of Legal Regulation of NCOs’ Activity in Countries of Central Asia* (Russian-language edition), ICNL, 2017, pp. 43-44.



ENTRY AND MEMBERSHIP FEES

Membership NCOs receive a part of their income in the form of entry and membership fees. Non-membership NCOs include foundations and institutions; all other NCOs in Kyrgyzstan are membership organizations (public associations, associations of legal entities, religious organizations, home owners associations, water user associations, trade unions, and others).

Membership fees are assets transferred by an NCO member in the amount and manner provided for in the NCO's constituent documents, provided that such a transfer will not be conditional on the reciprocal provision of goods, work or services to a member of this organization free of charge or at a price below cost.¹⁷³

Entry fees are assets transferred by a person joining an NCO based on membership in the amount and manner provided for in the constituent documents of that organization, provided that such transfer will not be conditional on the reciprocal provision of services to a member of the organization free of charge or at a price below cost.¹⁷⁴

Analysis

Although so far local sources account for a small part of the income of Kyrgyz NCOs, they play an important role, together with income from other sources, in the strengthening of the NCOs' financial stability.

6. State Monitoring

6.1. MONITORING AND REPORTING REQUIREMENTS

6.1.1. Powers of state bodies (inspections, attending events, suspension of activity)

STATE CONTROL OVER THE ACTIVITIES OF NCOS

In Kyrgyzstan, the interference of state bodies or officials in the activities of NCOs is not allowed, unless otherwise provided by law.¹⁷⁵ State bodies have the right to carry out certain inspections of NCOs only in accordance with the procedures established by the law for inspections of all legal entities (business entities), as well as in case of violation of the legislation and only in relation to those NCOs which have violated the law.

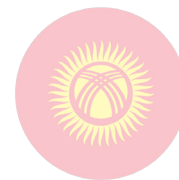
Currently, the legislation of Kyrgyzstan provides for a set of mechanisms for state monitoring of the financing and activity of all legal entities, including NCOs:

1. As noted above, all legal entities (including NCOs) regularly submit reports on taxes, insurance contributions to the Social Fund, and statistics.
2. Tax authorities have the right to conduct scheduled and unscheduled inspections of all financial documents of NCOs.

¹⁷³ Para. 29, Article 153 TC KR.

¹⁷⁴ Para. 4, Article 153 TC KR.

¹⁷⁵ Article 5 of the Law on NGOs.



3. Other government bodies also have the right to conduct inspections of legal entities, including NCOs, for compliance with the requirements of their industry laws.
4. The State Financial Intelligence Service under the KR Government constantly receives information from commercial banks on the financing of individuals and legal entities, including NCOs, and at the same time pays special attention to prevention of the financing of terrorism.
5. The prosecution authorities carry out general oversight of compliance with legislation by all organizations, including NCOs.
6. The Code of Violations, the Code of Misconduct and the Criminal Code of the KR establish liability for all offenses and socially dangerous acts, including by NCOs and its employees.

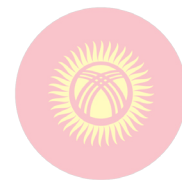
INSPECTIONS OF NCO OPERATION

Kyrgyz legislation provides a unified procedure for conducting inspections of commercial organizations and NCOs. The procedure for conducting inspections of NCOs and other entities by state bodies is regulated by the following regulatory legal acts:

1. TC KR;
2. The KR Law “On the Procedure for Conducting Inspections of Business Entities” of May 25, 2007 (the Law on Inspections);
3. Regulation on the procedure for conducting inspections of business entities (approved by Decree # 56 of the KR Government of January 29, 2018) (Regulation on inspections);
4. Resolution #1057-VI of the Zhogorku Kenesh of the KR “On approval of the List of authorized bodies authorized to conduct inspections of business entities” of November 10, 2016.

The KR legislation on inspections establishes the procedure for conducting inspections of business entities (including NCOs) by state bodies, determines the rights and obligations of state bodies and business entities during inspections, and also provides measures to protect business entities from unlawful interference in their activities. In accordance with the Law on Audits, NCOs are subject to audits by state bodies, but much less frequently than commercial organizations. The legislation on inspections applies a mechanism for assessing the risks of violation of the law by business entities. A high risk of violation of the law is identified in areas such as manufacturing and services.¹⁷⁶ NCOs are classified as low-risk organizations. This means that NCOs are checked only in certain cases when there are facts confirming a violation of the law.

¹⁷⁶ Decree #108 of the Government of the KR “On Approving Risk Assessment Criteria in Entrepreneurial Activity” of February 18, 2012.

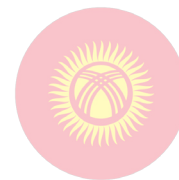


To eliminate unreasonable and excessive interference of state regulatory bodies in the activities of commercial and non-profit organizations and eliminate duplicate functions of regulatory bodies, the KR legislation provides an exhaustive list of government bodies authorized to conduct inspections. In accordance with the legislation of the KR, NCO inspections can only be carried out by the State Tax Service of the KR (the STS) and ten other state bodies indicated in the Resolution of the Zhogorku Kenesh of the KR “On Approval of the List of Authorized Bodies Entitled to Conduct Inspections of Business Entities.” The list includes the following government bodies:¹⁷⁷

1. An authorized state body in the field of administration of insurance premiums (the Social Fund of the KR, however, since 2019 its functions of collecting insurance premiums have been transferred to the State Tax Service);
2. State Agency for Antimonopoly Regulation;
3. State Agency for Regulation of the Fuel and Energy Complex;
4. State Service for Regulation and Supervision of the Financial Market;
5. State Inspectorate for Veterinary and Phytosanitary Safety;
6. State Inspectorate for Environmental and Technological Safety;
7. Department of Precious Metals under the Ministry of Finance of the KR;
8. Department of Pharmaceutical and Medical Equipment Supply under the Ministry of Health of the KR;
9. Department of Disease Prevention and State Sanitary and Epidemiological Surveillance of the Ministry of Health of the KR;
10. Department for Regulation and Supervision of the Production and Turnover of Ethyl Alcohol, Alcohol

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Resolution.**

¹⁷⁷ Decree #1057-VI of the Zhogorku Kenesh of the KR “On Approval of the List of Authorized Bodies Entitled to Conduct Inspections of Business Entities” of November 10, 2016.



and Alcohol-Containing Products of the KR Ministry of Agriculture, Food Industry and Land Reclamation.

Accordingly, only the above bodies may conduct inspections of business entities, including NCOs, on the condition that they comply with the provisions of applicable legislation.

As noted above, in addition to the Law on Inspections, NCOs can also be checked on the basis of TC KR. TC KR defines the procedure for conducting inspections by the STS of all business entities, including NCOs. The norms of TC KR are similar to those of the Law on Inspections; accordingly, protective measures for NCOs are also present in TC KR. The STS examines only those aspects which relate to taxation: the correctness of the calculation of taxes payable, insurance premiums, and accounting.

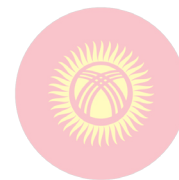
ADMINISTRATIVE PROCEDURES FOR AUDITS

The Law on Inspections sets forth the administrative procedures for conducting audits. Based on the Law, an inspector may ask questions, obtain documents and conduct an audit only on the issue that is specified in the inspection order. He or she may not go beyond the scope of the issues specified in the prescription. If the leadership of the NCO does not agree with the results of the audit, it may appeal them to a higher state body or court. The Law on Inspections provides that the purpose of an audit is not to impose an administrative fine or other punitive measures; the inspector's main goal is to help the organization avoid violations of the law and prevent them. In other words, inspectors must help identify weaknesses in the auditee's operation and explain the essence of the violation. The Law on Inspections stipulates time for the auditee organization to correct its error. If the error is not corrected before the next audit, only then are liability measures applied.

The tax inspector has the right to demand to see documents on the calculation, withholding and payment of taxes; to hear explanations on the filling out of the documents on the calculation, withholding and payment of taxes; and to see documents confirming the correctness of the calculation and timeliness of withholding and payment of taxes.

The rest of the inspection bodies conduct inspections strictly in accordance with their checklists. The checklist is another defense mechanism to protect organizations from illegal and unreasonable checks. It includes the relevant requirements contained in the law. Checklists should not contain questions relating to requirements compliance with which is not obligatory under the law. Each regulatory body in the sphere of its competence generates its own checklists. Each checklist is approved by a joint order of the Ministry of Economy and the relevant regulatory body. The conduct of scheduled inspections without the use of checklists is not allowed. Various inspection bodies may not inspect an organization on the same subject.

In accordance with the Law on Inspections, inspections shall be scheduled and coordi-



nated with the Ministry of the Economy in advance, at least one quarter (three months) before the start of the inspection.¹⁷⁸ Also, the inspection plan with a list of organizations to be checked should be posted on the inspections website of the KR Ministry of the Economy www.proverka.kg.

FULFILLMENT BY THE NCOS OF FATF REQUIREMENTS

Article 16 of the KR Law “On Combating the Financing of Terrorist Activities and the Legalization (Laundering) of Criminal Income” of August 6, 2018 contains a norm on regular risk assessment in the NCO sector and, based on its results, on identifying a group of NCOs at high risk of being used in the financing of terrorist activities (high-risk NCOs). According to this Law, prevention and control will be focused on “high-risk” NCOs. In addition, the Law provides for the following requirements for NCOs:

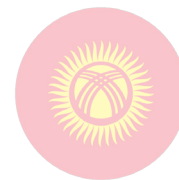
1. to use the FATF Sanctions List in their work on a continuous basis;
2. to generate and store for at least five years all information about the goals and objectives of their declared activities, their founders, the persons owning, controlling or managing the NCO, and people who have received funds from that NCO;
3. to maintain financial reports on their income, expenses, and operations (transactions) with funds, and keep them for at least five years; and
4. to ensure that all funds are accounted for and spent in accordance with the declared activities of the NCO.

In 2019, the state financial monitoring service created a joint working group consisting of representatives of various government agencies and NCOs. The working group is developing a draft methodology for identifying NCOs with a high risk of terrorist financing. It is expected that this draft methodology will be approved by the Intersectoral Commission of the KR Government on the Prevention of Money Laundering and the Financing of Terrorism, after which a risk assessment campaign will be conducted in the NCO sector on its basis every three years. The campaign will include a thorough analysis of the NCO sector, the identification of high-risk NCOs, and the development of recommendations to address shortcomings and reduce risk. Further, appropriate state bodies together with NCOs will implement recommendations and take measures to reduce the risk of terrorist financing through high-risk NCOs.

6.1.2. NCO reporting requirements

The reporting requirements for NCOs do not have any specific features in comparison with commercial organizations. All legal entities in the KR, both commercial and non-profit organizations, shall submit reports to three state bodies: the State Tax Service, the Social Fund and the National Statistical Committee. The KR legislation does

¹⁷⁸ Article 6 of the Law “On Inspections,” Scheduled Inspections: “Scheduled inspections are conducted in accordance with a quarterly plan which is approved by the authorized body at least 30 calendar days before the beginning of the planning period.”



not require NCOs to submit their program reports. Receiving foreign assistance may not serve as grounds for additional NCO reporting.

Like all other legal entities, Kyrgyz NCOs are required to submit the following reports to appropriate state bodies on a regular basis:

1. tax reports – to the tax authorities (once a quarter);
2. reports on the payment of insurance contributions to the Social Fund – to the tax authorities (monthly); and
3. statistical reports – to the statistical authorities (once every six months).

More stringent reporting requirements are established only for NCOs that have declared themselves charitable organizations. Article 12 of the Law “On Charitable Organizations” has the following provision:

“A charitable organization provides open access, including media access, to its annual reports.

Information about the size and structure of the income of a charitable organization, as well as the size of its property, its expenses, the number of its employees, their remuneration, and the involvement of volunteers may not be deemed proprietary.”

Analysis

At present, Kyrgyz legislation governing reporting requirements for NCOs is in line with international standards.

In full compliance with international standards in the field of freedom of association, the Kyrgyz Government has not created a special oversight body to monitor the activities of NCOs. The grounds and procedures of inspections of NCOs are the same as for all legal entities. Receiving foreign assistance does not entail the submission of any additional reports.

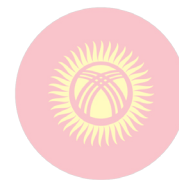
6.2. SANCTIONS

On January 1, 2019, the new editions of the Criminal Code, the Code of Criminal Procedure, the Code of Criminal Execution, the Code of Violations (previously called the Administrative Code), as well as the new Code of Misconduct, entered into force in Kyrgyzstan.

The above codes contain no rules that provide for special liability for NCOs. Responsibility for unlawful acts provided for by the codes applies to all persons, regardless of whether they work for an NCO, a government agency or a private business, or are unemployed.

RESPONSIBILITY FOR NCOS UNDER ADMINISTRATIVE LAW

The Code of Violations contains numerous articles that describe administrative offenses and establish liability of legal entities and/or their officials. All entities share the



same responsibility for similar offenses. NCOs and their employees are not referred to a separate group.

RESPONSIBILITY FOR NCOS UNDER CRIMINAL LAW

Whereas previously only individuals could be held criminally liable in Kyrgyzstan, the new version of the Criminal Code of the KR also institutes liability for legal entities. According to part 3 of Article 26 of the Criminal Code of the KR, a legal entity is not the subject of a crime, criminal liability and punishment. Only enforcement measures of criminal law may be applied to a legal entity if “the act was committed by an individual on behalf of or through a legal entity in the interest of that legal entity, regardless of whether such an individual was brought to criminal responsibility.”¹⁷⁹ The application of coercive measures of criminal law to the legal entity does not rule out the individual’s criminal liability for the same act.¹⁸⁰

According to Article 124 of the Criminal Code of the KR, the court may apply the following types of coercive measures of criminal law to a legal entity:

1. a penalty (fine);
2. restriction of rights; and
3. liquidation of the legal entity.

A penalty may be applied concurrently with restriction of rights and liquidation.

The court imposes penalties on a legal entity in cash. Expressed in calculated indexes, they are divided by size into three categories:

Category I – for an act with signs of a less serious crime – from 2,000 to 5,000 calculated indexes;¹⁸¹

Category II – for an act with signs of a serious crime – from 5,000 to 10,000 calculated indexes;

Category III – for an act with signs of a particularly serious crime – from 10,000 to 15,000 calculated indexes.

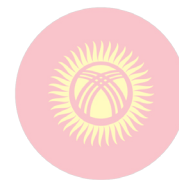
If the penalty is not paid within one month, its size is doubled. In case of further evasion, for longer than three months, the legal entity is subject to liquidation by a court decision. In the event of material damages, the penalty shall be recovered after the compensation of the damages.¹⁸²

¹⁷⁹ Part 2 of Article 123 CrC KR.

¹⁸⁰ Part 3 of Article 123 CrC KR.

¹⁸¹ As at May 1, 2019, one calculation index was equal to 100 soms, or approximately \$1.43.

¹⁸² Article 125 CrC KR.



Restriction of rights of a legal entity¹⁸³ amounts to the prohibition:

1. to carry out certain types of activity;
2. to participate in tenders or auctions; and
3. to receive loans, tax benefits, subsidies or subventions from the national or local budgets.

Furthermore, the court may institute one or more of the above restrictions for a term of one to three years.

The liquidation of the legal entity¹⁸⁴ consists in forced termination of its activity by a court decision. Liquidation is decided only in the event of commission of an act with signs of a serious or particularly serious crime, when the court recognizes that the gravity of the committed act makes it impossible to preserve the legal entity and allow it to function further, as well as in case of evasion of paying a fine for longer than three months.

Confiscation¹⁸⁵ of property may be used as an additional measure of criminal law influence.¹⁸⁶ Full confiscation of property of a legal entity is allowed only in case of its liquidation.

Some articles of the Criminal Code of the KR mention a subject such as public associations and religious organizations, but further in the text this language is supplemented by “or other organization.” For example, paragraph 2 of Article 315 CrC KR states that “the production, distribution, transportation or transfer of extremist materials or their purchase or storage for the purpose of distribution, the use of symbols or attributes of extremist organizations, including via the Internet, using financial or other material assistance received from foreign public associations, religious or other organizations, or foreign nationals, shall be punishable by deprivation of liberty of Category III with or without the deprivation of the right to hold certain positions or engage in certain activities for up to three years.” However, the “other” organization may include commercial organizations in this case.

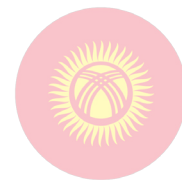
Summing up, the new codes of the KR have a minimum of special rules that are exclusively relevant to NCOs. Administrative and criminal legislation does not discriminate against NCOs and their representatives.

¹⁸³ Article 126 CrC KR.

¹⁸⁴ Article 127 CrC KR.

¹⁸⁵ Articles 96, 97, 128 CrC KR.

¹⁸⁶ Part 3 of Article 124 CrC KR.



Analysis

The legislation of Kyrgyzstan does not contain any special rules that provide for liability measures for NCOs only. The leaders and employees of NCOs are not referred to any special group in the criminal or administrative legislation of Kyrgyzstan and bear the same responsibility for their wrongful acts as any other person. This approach is fully consistent with international standards and best practices in the field of freedom of association, which urge governments not to discriminate against NCOs in comparison with other legal entities and not to impose any special sanctions on them.

7. Transparency and Openness

7.1. TRANSPARENCY AND OPENNESS

Kyrgyz law does not require NCOs to provide information about their activities to the public in addition to reports submitted to government bodies in accordance with the law.

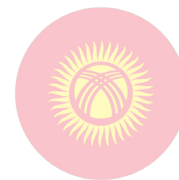
Many NCOs have an internal reporting system, which they determine independently. As a rule, the executive body or bodies annually submit a detailed report on the organization's activity, including financial operations, to its highest governing body.

Many NCOs commission an external independent financial audit on an annual basis. These audits are carried out by specialized organizations that have a state license for such activity. The results of the audit are published voluntarily in the media or posted on the NCO's website.

The most active NCOs annually draw up a report on their activities and projects accomplished and voluntarily post this information on the Internet in the public domain. Also, they are planning to create an online portal for posting program and financial reports of those NCOs which do not have the status of a charitable organization but are nevertheless ready to post their reporting on a common portal on a voluntary basis.

As regards NCO reporting to grantmakers and donors, the law does not regulate it directly. Being civil or contractual in nature, this reporting arises from and pursuant to grant agreements, charitable or sponsorship assistance, and other similar documents. For example, a grant agreement usually provides for the terms and conditions of reporting, including the submission of

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financial and program reports, which must be consistent with the approved work plan and budget of the project or program. Information about the results of a project is often posted by both the donor and the NCO on their websites for public viewing.

Analysis

International instruments on freedom of association recognize that openness and transparency are fundamental for establishing accountability and public trust. However, it is noted that the state shall not require but shall encourage and facilitate associations to be accountable and transparent.¹⁸⁷ Nonetheless, governments may have specific reporting and transparency requirements as regards resources they provide to NCOs. At the same time, such requirements should not be burdensome and disproportionate.

In Kyrgyzstan, the state does not require NCOs to submit or publish any reports that are not required from other organizations. Only with regard to charitable organizations does the law provide additional requirements for transparency and accountability, and these requirements are not overly burdensome and comply with democratic standards. We can therefore conclude that in relation to the requirements for transparency and accountability of NCOs, Kyrgyz legislation complies with international standards.

¹⁸⁷ Para. 224 of the Guidelines.



1. Freedom of Association

1.1. FREEDOM OF ASSOCIATION IN THE LIGHT OF THE COUNTRY'S INTERNATIONAL OBLIGATIONS AND CONSTITUTION

Like all other UN member states, the Republic of Tajikistan (hereinafter, the RT or Tajikistan) undertakes obligations arising from the Universal Declaration of Human Rights.¹⁸⁸ Despite the fact that the Declaration is more declarative than mandatory, its importance in determining the scope of freedom of association is essential for Tajikistan. In particular, Article 20 of the Declaration provides for the right of every citizen to freedom of peaceful assembly and association, and the principle of voluntariness should be at the heart of this decision.

In the relatively short period of independence, Tajikistan has joined and ratified all major international human rights agreements governing its right to freedom of association.

In the system of legislative acts regulating the right to freedom of association, the following international legal acts recognized by Tajikistan occupy an important place:

1. The Universal Declaration of Human Rights, adopted and proclaimed by the UN General Assembly on December 10, 1948;
2. International Covenant on Civil and Political Rights (ICCPR) of December 16, 1966 and the Optional Protocol (ratified in 1999);
3. International Covenant on Economic, Social and Cultural Rights (ICESC)¹⁸⁹ of December 16, 1966 (ratified on January 4, 1999);
4. ILO Convention # 87 "On Freedom of Association and the Protection of the Right to Organize" of July 9, 1948 (ratified on November 26, 1993);
5. ILO Convention # 98 "On the Application of the Principles of the Right to Organize and Collective Bargaining" of July 1, 1949 (ratified on November 26, 1993);
6. UN Convention on the Status of Refugees on July 28, 1951 and the Protocol Relating to the Status of Refugees, 1967 (acceded to on December 7, 1993);
7. UN Convention on the Rights of Persons with Disabilities of December 13, 2006 and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (ratified on January 11, 1995); and
8. others.

¹⁸⁸ Adopted and proclaimed by the United Nations General Assembly on December 10, 1948.

¹⁸⁹ Effective for the RT since April 4, 1999.



The main laws governing the exercise of the right to freedom of association in the Republic of Tajikistan include:

1. The Constitution of the Republic of Tajikistan of November 6, 1994;
2. The Civil Code of the Republic of Tajikistan of June 30, 1999 (CC RT);
3. The Tax Code of the Republic of Tajikistan dated September 17, 2012 (TC RT);
4. The Criminal Code of the Republic of Tajikistan of May 21, 1998 (CrC RT);
5. The Code of the Republic of Tajikistan on Administrative Offenses of December 31, 2008 (CoAO RT);
6. The Law of the Republic of Tajikistan “On State Registration of Legal Entities and Individual Entrepreneurs” of May 19, 2009 (Registration Law);
7. The Law of the Republic of Tajikistan “On Public Associations” of May 12, 2007 (Law on Public Associations);
8. The Law of the Republic of Tajikistan “On Political Parties” of November 13, 1998 (Law on Political Parties);
9. The Law of the Republic of Tajikistan “On Bodies of Public Initiative” of January 5, 2008 (the Law on BPIs);
10. The Law of the Republic of Tajikistan “On Freedom of Conscience and Religious Associations” of January 2, 2018;
11. The Law of the Republic of Tajikistan “On Charitable Activities” of January 2, 2018;
12. The Law of the Republic of Tajikistan “On Employers’ Associations” of May 17, 2004;
13. The Law of the Republic of Tajikistan “On Audits of the Activities of Business Entities in the Republic of Tajikistan” of December 25, 2015
14. The Law of the Republic of Tajikistan “On the State Social Contract” of December 31, 2008 (SSC Law);
15. The Law of the Republic of Tajikistan “On Arbitration Courts” of January 5, 2008; and
16. others.

The Constitution of the Republic of Tajikistan has the highest legal force. Its norms have a direct effect. Laws and other legal acts contrary to the Constitution do not have legal force. The state and all its bodies, officials, citizens and their associations are obliged to



observe and implement the Constitution and laws of the Republic of Tajikistan.¹⁹⁰

International legal acts recognized by Tajikistan are an integral part of the legal system of the republic. In case of inconsistency of the laws of the RT with recognized international legal acts, the norms of international legal acts apply.

The rights and freedoms of man and citizen in Tajikistan are regulated and protected by the Constitution, laws of the RT, and international legal acts recognized by Tajikistan.¹⁹¹

The right to freedom of association is enshrined in Article 28 of the Constitution: “Citizens shall have the right to unite. A citizen has the right to participate in the creation of political parties, trade unions and other public associations (PAs), to voluntarily join and leave them.” Note that the Constitution guarantees the right to freedom of association only to its citizens.

The Constitution of the Republic of Tajikistan gives foreign nationals and stateless persons the right to enjoy the established rights and freedoms and to have equal duties and responsibilities with Tajikistan’s citizens, except as otherwise provided by law.

1.2. NCOS WITHOUT THE LEGAL ENTITY STATUS

The legislation of the Republic of Tajikistan does not prohibit associations of citizens without the status of a registered legal entity, called “informal organizations.” However, Article 477 of the CoAO establishes responsibility for the leadership and participation in the activity of unregistered public and religious associations and organizations, as well as for their financing. To the best of our knowledge, this article has not yet been applied in practice.

In accordance with the Law on Public Associations,¹⁹² the right of association includes “the right to establish voluntary public associations for the purpose of protection of their common interests and attainment of common goals, to join existing public associations or refrain from joining them, and to withdraw from such organizations without any hindrance. 2. Citizens are entitled to forming public associations independently, without any prior permission from any government agency, and joining such public associations on the basis of compliance with their rules and charters.”¹⁹³

In accordance with the Law on Public Associations, a public association is deemed created after a decision has been made to establish and approve its charter and form its governing body at a congress, conference, general or constituent assembly.¹⁹⁴

Bodies of public initiative are a special case of unregistered public associations. Accord-

¹⁹⁰ Article 10 of the Constitution of the RT.

¹⁹¹ Article 14 of the Constitution of the RT.

¹⁹² Article 4 of the Law on PAs.

¹⁹³ Article 4 of the Law on PAs.

¹⁹⁴ Article 16 of the Law on PAs.

ing to the Law Bodies of Public Initiative,¹⁹⁵ a body of public initiative is a voluntary public association of citizens, not membership-based, pursuing the goal of jointly addressing various social issues facing citizens at their place of residence. A BPI is registered for record purposes in the local village or settlement (*jamoat*), which is recorded in its charter. A BPI may function without state registration (without the status of a legal entity). A BPI may have its own bank account, seal and letterhead, and it can cooperate with state, non-state and international organizations operating in Tajikistan in the interest of solving social issues.¹⁹⁶

1.3. RESTRICTIONS ON FREEDOM OF ASSOCIATION

In accordance with the legislation of the RT, restrictions on the rights and freedoms of citizens are allowed only with the aim of ensuring the rights and freedoms of other citizens, public order, protection of the constitutional order, state security, national defense, public morality, public health, and the territorial integrity of the republic.¹⁹⁷

The Constitution of the Republic of Tajikistan prohibits the creation and activities of public associations and political parties that promote racial, national, social and religious hatred or call for the violent overthrow of the constitutional system and the organization of armed groups. The activities of political parties of other states, the creation of parties of a national and religious nature, as well as the financing of political parties by foreign states and organizations, foreign legal entities and citizens are also prohibited.¹⁹⁸

The law on public associations prohibits the creation and activities of public associations that infringe on the rights and legitimate interests of citizens, people's health, and public morality.¹⁹⁹

The Constitution allows foreign nationals and stateless persons to enjoy the established rights and freedoms and to have equal duties and responsibilities with Tajik citizens, but allows for restrictions that are established by law.

¹⁹⁵ Law on Bodies of Public Initiative.

¹⁹⁶ Article 3 of the Law on Bodies of Public Initiative.

¹⁹⁷ Article 14 of the Constitution of the RT.

¹⁹⁸ Article 8 of the Constitution of the RT.

¹⁹⁹ Article 14 of the Law on PAs.



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According to the Law on Public Associations, foreign nationals and stateless persons on a par with citizens of the Republic of Tajikistan can be founders, members and participants of public associations, provided that their permanent place of residence is Tajikistan or that they have a residence permit in Tajikistan.²⁰⁰

The creation and activity of public associations promoting racial, nationalist, social and religious hatred or calling for the violent overthrow of the constitutional system and the organization of armed groups are prohibited. So are the creation and activity of public associations that infringe on the rights and legitimate interests of citizens, people's health, and public morality.²⁰¹

The legislation of the RT provides a wide range of grounds for refusing to register an NCO.²⁰² The grounds for refusal of state registration are cases, for example, when documents submitted for state registration do not comply with the Constitution and other regulatory legal acts of the Republic of Tajikistan or if another NCO is registered under the same name (name) in the Republic of Tajikistan.

For public associations, additional grounds for refusing registration are indicated, for example:

1. if it is established that the constituent documents submitted contain false information; and
2. if the name of a public association offends morality and the national and religious feelings of citizens.

For more details on the grounds for refusal to register NCOs and public associations, see section 2.1.9.

The legislation of the Republic of Tajikistan contains a wide range of grounds for the forced liquidation and suspension of NCOs. In particular, the activity of a public association may be suspended²⁰³ by court if it is sued by the registration authority (the Ministry of Justice) or the prosecutor in case for the violation of provisions of the Republic of Tajikistan legislation or actions contrary to its statutory goals and does not eliminate the violation within the time period established by the state body.

The grounds for the forced liquidation of a public association and the prohibition of its activities are as follows:²⁰⁴

1. the PA has violated rights and freedoms of the human being and the citizen;
2. the PA has violated the Constitution of the Republic of Tajikistan, constitu-

200 Article 8 of the Law on PAs.

201 Article 15 of the Law on PAs.

202 See the Law on PAs (Article 22) and the Law of the RT on State Registration (Article 34).

203 Article 36 of the Law on PAs.

204 Article 37 of the Law on PAs.



tional laws, laws or other regulations,

3. the PA carries out systematic activities inconsistent with its statutory goals;
or
4. the PA has failed to remedy violations specified in the written notification or warning from authorized state bodies.

The decision on the liquidation or prohibition of the activities of a public association shall be made by a court on the basis of a statement from the registration authority or the prosecutor. The activities of a public association that is not a legal entity may be prohibited by a court decision in the manner and on the grounds provided by this Law for the liquidation of a public association that is a legal entity.

The Law on Public Associations establishes territorial restrictions on the activities of a public association.²⁰⁵ Depending on their territorial sphere of activity, the Republic of Tajikistan creates international, nationwide and local public associations. See paragraph 2.1.2.

The activities of foreign NCOs or their branches and representative offices that have not passed state registration or registration for record purposes in the Republic of Tajikistan are prohibited.²⁰⁶

Article 477 of the Code of Administrative Offenses establishes responsibility for the leadership and participation in the activities of unregistered public and religious associations and organizations, as well as their financing. To the best of our knowledge, this article has not yet been applied into practice.

Analysis

The laws of the Republic of Tajikistan recognize the right of citizens to create NCOs without the status of a legal entity, which complies with international standards for freedom of association.

At the same time, the legislation of the Republic of Tajikistan contains norms that do not comply with international standards on freedom of association. In particular, a number of provisions of the Law on Public Associations do not fully comply with international standards. For example, this law establishes territorial restrictions on the activities of PAs that do not allow them to carry out activities throughout the republic without acquiring nationwide status, while such a restriction does not apply to other types of NCOs and commercial legal entities. The requirement to register associations by territorial status does not comply with Paragraph 159 of the Guidelines, which reads: *“Legislation should also refrain from placing territorial restrictions on the operations of associations, and should maintain the same procedures for registration throughout the whole country.”* All public associations should have the right to operate throughout Tajikistan, as other legal entities do.

²⁰⁵ Article 12 of the Law on PAs.

²⁰⁶ Article 39(7) of the Law on PAs.



The provisions of the Law on Public Associations restrict the right of foreign nationals to unite by creating and participating in public associations, providing it only to those who have a permanent residence in the RT or have a Tajikistani residence permit. Such a restriction does not comply with international law. This provision of the Law on Public Associations is contrary to the international obligations of the Republic of Tajikistan, as Article 2 of the ICESCR states: “The states participating in this Covenant undertake to guarantee that the rights enshrined in this Covenant will be exercised without any discrimination with respect to race, color of skin, gender, language, religion, political or other beliefs, national or social origin, property status, birth or other circumstances.” The right to association, including the right to be a founder or a member of an association, is protected for all persons in accordance with Article 22 of the ICCPR; therefore, it shall be granted to everyone under the jurisdiction of the member states.

While the list of grounds for refusal to register NCOs is mainly consistent with international standards and usual practice, individual grounds may violate them depending on how they are applied in practice. For example, state registration may be denied²⁰⁷ on grounds of any violation, however small, of requirements regarding the content or form of the registration documents. It would be good practice instead to start a negotiation process, when the registration authority proposes to persons registering the NCO to correct the minor violation in due process, without refusing to register. In accordance with Paragraph 160 of the Guidelines, “the law should not deny registration based solely on technical omissions, such as a missing document or signature, but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required. The time period provided for rectification should be reasonable, and the association should be able to continue to function as an informal body.” Another reason for refusal to register an NCO, and one that is worrisome, is the situation where the founder (with the exception of the founders of a public association) is in arrears on taxes and other obligatory payments to the budget or is an officer of another organization identified as an irresponsible taxpayer. It should be borne in mind that the right to association realized through the creation of an NCO is unconditional and must not depend on the fiscal obligations of one person.

Also, individual grounds for the suspension and forced liquidation of NCOs do not meet international standards. For example, the activities of the NCO may be suspended and the NCO liquidated for acts contrary to their statutory goals. Such a broad wording creates an opportunity to suspend the activities of NCOs for deviations from the statutory goals that do not violate the rights and legitimate interests of others.

A ban on the activities of foreign NCOs or their branches and representative offices that have not passed state registration or registration for record purposes in the Republic of Tajikistan also contradicts international standards. Obviously, such a ban imposes restrictions on the activities of foreign NCOs in Tajikistan. The right to form NCOs for the implementation of common tasks is recognized by international law as part of the right

207 Article 22 of the Law on PAs.



to association. The only possible restrictions are those provided for by law and necessary in a democratic society in the interests of state or public security, public order, protecting the health and morality of the population, or protecting the rights and freedoms of others. Only “convincing and compelling” reasons can serve as a basis for restricting the right to association, and those restrictions are subject to a “narrow interpretation.” The same rules should apply to local and foreign NCOs.

Article 477 of the Code of Administrative Offenses establishes responsibility for the leadership and participation in the activities of unregistered public and religious associations and organizations, as well as for their financing. Such a rule violates the right to freedom of association. The positive thing is that it is not applied in practice, but still it would be advisable to exclude such a norm from the CoAO.

The Republic of Tajikistan has opportunities to further improve the legislation governing the activities of NCOs in order to bring them in line with international law and international standards.

2. Legal Status of NCOs

The Civil Code of the RT defines an NCO (a legal entity) as an organization that does not have profit as the main goal of its activity and does not distribute the it to participants.²⁰⁸

Legal entities that are NCOs can be created in the form of consumer cooperatives, public or religious organizations (associations), institutions sponsored by their owners, charitable and other foundations, and in other forms provided for by law. It is also allowed to create unions of commercial and non-profit organizations in the form of amalgamations and associations.

The most common form of the NCO is public organizations. Public organizations (associations) are voluntary associations of citizens, united in the manner established by law on the basis of a commonality of their interests to satisfy spiritual or other non-material needs.²⁰⁹

Another popular form of the NCO is public foundations. A public foundation is a non-membership NCO established by citizens or legal entities on the basis of voluntary property contributions and pursuing charitable, social, cultural, educational or other generally useful purposes.²¹⁰

The next legal form of the NCO is a union of legal entities (an amalgamation or association). According to civil law, the union of legal entities in the form of amalgamation or association means a non-profit organization that is created by legal entities (both commercial and non-commercial) uniting to coordinate their business activities and represent and protect the common property interests of their participants.

²⁰⁸ Article 51 CC RT.

²⁰⁹ Article 129 CC RT.

²¹⁰ Article 130 CC RT.



The institution is an organization created by the owner to carry out managerial, socio-cultural or other functions of a non-commercial nature and financed by him/her in whole or in part.²¹¹

The legal capacity of an NCO as a legal entity arises from the moment of its state registration following the submission of the constituent documents for registration to registration bodies of the Republic of Tajikistan in the manner established by law. The NCO registration is carried out by different registration authorities, depending on the type of the organization.

2.1. STATE REGISTRATION OF NCOs

The legislation of Tajikistan makes it possible to create NCOs by registering them as legal entities with appropriate state bodies.

Public associations and the branches and representative offices of foreign NCOs are registered with the Ministry of Justice in accordance with the Law on Public Associations. Other types of NCOs such as public foundations, amalgamations (associations) of legal entities, institutions and consumer cooperatives, are registered with tax authorities under the single window system in accordance with the Law of the Republic of Tajikistan “On State Registration.” See 2.1.7 below.

2.1.1. Founders

Public associations are established at the initiative of their founders (at least three individuals).²¹² Along with individuals, the founders of a public association may be legal entities, provided they are registered as public associations.

The founders of a public association may be citizens who have reached the age of 18, unless otherwise provided by the Law on Public Associations. Foreign nationals and stateless persons, along with the nationals of the Republic of Tajikistan, may be founders of a public association provided that their permanent place of residence is the Republic of Tajikistan or they have a residence permit in the RT.

The founders of a public association may not include:

- government bodies;

The legal capacity of an NCO as a legal entity arises from the moment of its state registration following the submission of the constituent documents for registration.

²¹¹ Article 132 CC RT.

²¹² Article 16 of the Law on PAs.



- legal entities (with the exception of PAs); and
- persons whose ties to terrorist, extremist and separatist organizations are established by court.

According to the Law on Public Associations, the founders of a public association shall convene a congress, conference, general or constituent assembly, at which the charter of the public association is adopted and its governing and audit bodies are formed.²¹³

When creating a public association in the form of a public organization, the founders of the organization automatically become its members, acquiring the corresponding rights and obligations. When creating a public association in a different form (social movement; body of public initiative), the rights and obligations of the founders are indicated in their charters.

Public foundations, unions (associations), institutions and consumer cooperatives may be established by one or more founders. The founders of these NCOs can be both individuals (with the exception of amalgamations or associations of legal entities) and legal entities. Unlike a public association, the founders of other types of NCOs may be foreign nationals and stateless persons without limitations set for a public association.

2.1.2. Territorial status

The Civil Code of the Republic of Tajikistan does not directly refer to the territorial scope of NCO activities. All NCOs that are registered with tax authorities under the law “On State Registration,” i.e. unions, foundations, associations, institutions, etc., are not limited by territory and have the right to carry out their activities throughout Tajikistan and beyond. Only public associations are classified by territorial status in Tajikistan.

According to the Law on Public Associations, international, nationwide and local public associations may be established and operate in Tajikistan.

An international association is a PA operating throughout Tajikistan and in one or more foreign countries and which has its representative offices and branches in the RT and one or more foreign countries or intends to have such structures in accordance with its charter.

A nationwide public association may operate, in accordance with its statutory goals, throughout Tajikistan and have branches and representative offices.

A local PA may operate, in accordance with its statutory goals, within the administrative-territorial limits of a region, city, or city district.

2.1.3. Rules of the creation and registration of NCOs

Decisions to establish a PA, approve its charter, and form its governing and audit bodies are made by a congress, conference, general or constituent assembly. From the adop-

²¹³ Article 16 of the Law on PAs.



tion of those decisions, the public association is considered established.

Founders establishing a PA as a legal entity are required to submit constituent documents to the registration authority (Ministry of Justice) for state registration within a month. A PA acquires the rights of a legal entity from the moment of its state registration.

Depending on their type, NCOs operate on the basis of the charter or the memorandum of association and the charter. The memorandum of association of a legal entity is concluded, and its charter is approved by its founders (participants). A legal entity established by a single founder operates on the basis of the charter approved by that founder.

The charter and other constituent documents of an NCO should determine the name of the legal entity, its location, the procedure for managing its activities, and also contain other information required by the law on legal entities of its type. An NCO's constituent documents should also define the subject and purpose of its activity.

According to the Law on PAs, the state registration of PAs on the territory of Tajikistan is the responsibility of the Ministry of Justice of the RT and the justice departments of the Gorno-Badakhshan Autonomous Province and the provinces.²¹⁴

In registering a PA, the registration authority checks the documents by the PA, its branch or representative office for compliance with the legislation of the RT, issues them with a certificate of state registration or registration for record purposes with the assignment of a registration number, and enters that information in the Register.

State registration of international and nationwide PAs, as well as local PAs whose activities in accordance with their charters extend to the city of Dushanbe and areas of nationwide subordination is the exclusive responsibility of the Ministry of Justice.

Pursuant to the Law on PAs, the state registration of a PA requires the submission to the appropriate registration authority of the following documents:

1. an application signed by members of the governing body of the PA, indicating their full names, place of residence and contact numbers;
2. the PA's charter in duplicate in the state (Tajik) language;
3. an extract from the minutes of the congress, conference, general or constituent assembly, containing information on the establishment of the PA, the approval of its charter and the formation of its governing and audit bodies;
4. information about the founders: for individuals: full name, year of birth, place of residence, nationality (certified by personal signature) and a copy passport or other identification document; for public associations, a copy of the certificate of state registration of the charters of those associations;

²¹⁴ Article 21 Law on PAs.



5. receipt or payment order for the payment of state fee in accordance with the legislation of the RT;
6. a document certifying the address (location) of the permanent governing body of the PA; and
7. the protocols of congresses, conferences, general or constituent meetings of its structural units – in the case of a nationwide or international public association.

According to the Law on PAs, a public association shall be registered within one month from the date of submission of the necessary constituent documents, after it is issued with a certificate of state registration.²¹⁵ The indicated period may be interrupted for the time during which the applicant eliminates the shortcomings of the constituent documents identified during their review. Obtaining a certificate of state registration confirms the fact that the PA has acquired the status of a legal entity and appropriate data was entered in the Unified State Register of PAs.

The state registration of other forms of NCOs such as public foundations, amalgamations (associations), institutions and consumer cooperatives is regulated by the Law of the RT “On State Registration.” See 2.1.7 below.

In accordance with that law, the registration authority shall register other organizational and legal forms of NCOs as legal entities within five days from the date of submission of documents. Furthermore, it shall notify the state statistical body at the location of the legal entity about the action taken.

2.1.4. Approval of the name and the registration of symbols

A legal entity shall have its name containing an indication of its legal form and the nature of its activity.

The indication in the legal entity’s name of the official name of the state, full or abbreviated, and the use of such a name or elements of state symbols in the legal entity’s corporate details or advertising materials may be allowed in the manner determined by the Government of the RT. The name of the legal entity shall be indicated in its constituent documents.²¹⁶

The name of a public association and its flag, emblem, ensigns and other symbols, if available, shall be different from names and symbols of other legal entities, including those which were liquidated by a decision of a court or which discontinued their operation.

The symbols of a PA must not coincide with the state symbols of the Republic of Tajikistan, as well as symbols of foreign states and violate the right to intellectual property.

²¹⁵ Article 14 Law on PAs.

²¹⁶ Article 55 CC RT.



It is not allowed to use the image of the state emblem on the PA's seals and corporate letterhead.²¹⁷

The name and symbols of a PA shall not promote racial, national, social and religious enmity or incite a violent overthrow of the constitutional order or organization of military groups.

2.1.5. Registration of changes in constituent documents

Changes and additions to the constituent documents of a PA or its branch or representative office are subject to re-registration in the same manner and within the same deadlines as the state registration of the PA and the registration of its separate units for record purposes, and have legal effect from the date of such re-registration.

Changes made to the constituent documents of political parties, PAs, charitable and other foundations, as well as religious organizations, have legal effect for third parties after state registration. Changes in information in the constituent documents of other NCOs, registered with the tax authorities under the single window system, have legal effect for third parties after they are entered in the Unified State Register of PAs.

2.1.6. Rules of registration of structural units (branches and representative offices) of NCOs

Representative offices and branches of an NCO are not legal entities and are created by the decision of its authorized body of the NCO in accordance with its charter.

A representative office is a separate division of a legal entity. It is located outside the legal entity and protects and represents the interests of a legal entity, making transactions and other legal actions on its behalf.

A branch is a separate division of a legal entity. It is located outside the legal entity and performs all or parts of its functions, including those of a representative office.²¹⁸

Heads of representative offices and branches are appointed by the NCO and act on the basis of its power of attorney. Representative offices and branches should be indicated in the charter of the NCO that creates them.

According to the Law on PAs, representative offices and branches of PAs are subject to registration for record purposes.²¹⁹ Representative offices and branches of PAs are registered for record purposes by the Ministry of Justice of the RT and its local offices.

Registration of for record purposes requires the following documents:

1. an application from the PA for the registration of its representative office or branch for record purposes;
2. copies of its constituent documents certified by a public notary;

²¹⁷ Article 19 Law on PAs.

²¹⁸ Article 53 CC RT.

²¹⁹ Article 22 Law on PAs.



3. the decision of its authorized body:
 - to establish a representative office or branch;
 - to approve the relevant provision; and
 - to appoint the head of the representative office or branch;
4. the provision on the representative office or branch of the PA;
5. a power of attorney issued to the head of the representative office or branch;
6. a document proving the indicated address of the representative office or branch; and
7. a receipt or payment order proving that appropriate tax duty has been paid in compliance with the legislation of the RT.

Information on the representative offices and branches of a PA shall be entered in the Unified State Register of Representative Offices and Branches of PAs.

The registration of the representative office or branch of a PA is carried out within ten days from the date of submission of the documents specified in the legislation. The representative office or branch of the PA is issued an extract from its record on its registration for record purposes.

Changes to the documents of representative offices or branches of a PA are made in the same manner and within the same deadlines as is stipulated by the legislation of the Republic of Tajikistan for registration of a representative office and a branch. Changes take legal effect only after their official registration for record purposes.

It should be noted that in accordance with the Law on State Registration, the branches and representative offices of local NCOs, which are registered with the tax authority, are not subject to registration for record purposes. In their case, this information is entered into the Unified Register of Legal Entities.

**The
registration
of the
representative
office or
branch of a
PA is carried
out within
ten days from
the date of
submission
of the
documents
specified in
the legislation.**



2.1.7. Specific features of registration procedure for certain types of NCOs

According to the Law on State Registration, registration of other forms of NCOs (other than PAs) is carried out by tax authorities under the single window system without a review of the documents submitted. State registration under the single window system means the following:

1. the applicant provides the documents required by the Law only to the tax authority at the location (address) of the newly formed NCO (or the place of residence of the director of the legal entity). The applicant is fully responsible for the completeness and accuracy of the documents and the information contained in them in accordance applicable legislation;
2. the tax authority enters information on the NCO into the Unified State Register and issues a document confirming state registration. State registration in the Unified State Register provides for simultaneous registration with the tax authority and appropriate state bodies of statistics and state social insurance; and
3. by registering in the Unified State Register, all legal entities, including NCOs, are assigned a single identification number that is unique to each NCO.

For state registration with tax authorities, it is necessary to provide the following:

1. an application for state registration of the NCO in approved form. The following information shall be indicated in the application:
 - the organizational and legal form of the NCO;
 - its full and abbreviated name in the state language; its location (address);
 - the method of its formation (creation or reorganization);
 - information about its founder(s) (name of the NCO or the full name of the individual, location of the legal entity or individual, contact details);
 - the main goals and objectives of the NCO, the (main types of) activity it intends to perform – for the purpose of obtaining appropriate statistical codes; and
 - the date of application and the applicant's signature;
2. the decision of the founder (or the minutes of the meeting of the founders) on establishing the NCO. The decision is signed by the founder(s) of the organization;
3. a copy of the identity document of the director of the created NCO; where documents for state registration are submitted by a person authorized by the



founders, then a copy of the passport and a power of attorney in the name of the authorized person;

4. a copy of the identity document of each founder (a physical person) of the NCO;
5. a copy of the document evidencing the founder's state registration as a legal entity or an extract from the register of legal entities of the foreign state (or another document of equal legal force proving the status as foreign legal entity) if the founder is a foreign legal entity; and
6. a receipt for state duty payment.

State registration is carried out on the basis of the documents provided above. The list is exhaustive, and the tax authority is not allowed to request any additional documents. The applicant submits the documents in person and is issued a receipt listing the documents and indicating the date.

After successful state registration of a PA or registration of its branch or representative office for record purposes, it is necessary:

1. to register with the tax authorities and get a TIN;
2. to register with the Social Security Agency to obtain a Social Identification Number (SIN); and
3. to register with state statistics authorities to obtain statistical codes.

2.1.8. Branches and representative offices of foreign NCOs

Public (non-profit and non-governmental) organizations of foreign states (foreign NCOs) or their branches and representative offices operate in Tajikistan in accordance with the laws of the Republic of Tajikistan.

The state registration of all foreign NCOs (regardless of type) or the registration of their representative offices and branches for record purposes is carried out in the Ministry of Justice of the RT and only after that do they get the right to operate in the territory of the RT.

In addition to documents specified for branches and representative offices of local PAs established by law,²²⁰ the state registration of foreign NCOs or the registration of their representative offices and branches for record purposes requires documents from authorized bodies of a foreign state confirming the legal status of these foreign NCOs. Such documents should be legalized or apostilled in accordance with the legislation of the RT, unless otherwise provided by international legal acts recognized by Tajikistan. Documents in a foreign language shall be translated into the state language (Tajik) and

²²⁰ Articles 21-22 of the Law on PAs.



the language of interethnic communication (Russian)²²¹ and notarized.

After the state registration of foreign NCOs or the registration of their representative offices and branches for record purposes, their personnel shall be accredited with the Ministry of Foreign Affairs of the RT.²²²

The activity of foreign NCOs or their branches and representative offices that have not passed state registration or registration for record purposes in the Republic of Tajikistan shall be prohibited.²²³

2.1.9. Grounds for refusal of registration

The grounds for refusing state registration of NCOs are specified in the Law on PAs²²⁴ and the Law on State Registration.²²⁵ Registration may not be refused for reasons of impracticability of establishing the legal entity.²²⁶

There are several general reasons for refusing registration, which apply to all NCOs, regardless of the registration authority:

1. if the documents submitted do not comply with the Constitution and other regulatory legal acts of the RT;
2. if another NCO is registered under the same name in the RT; and
3. if the list of documents submitted is not complete.

For PAs and their branches and representative offices, additional reasons are indicated:

1. if the constituent documents are found to contain false information;
2. if the name of the PA offends morality and the national and religious feelings of citizens.

Additional grounds for refusal are established for other forms of NCOs (those registered with tax authorities). These include the following:

1. if the founder of the newly created NCO has arrears on taxes and other obligatory payments to the budget;
2. if the founder of the NCO is a legal entity in the process of liquidation; and
3. if the taxpayer and/or the responsible person of the taxpayer is the founder and/or head of another legal entity, which is on the list of irresponsible taxpayers.

²²¹ Russian is the language of interethnic communication in the RT.

²²² Article 39(5) of the Law on PAs.

²²³ Article 39(7) of the Law on PAs.

²²⁴ Article 22 of the Law on PAs.

²²⁵ Article 34 of the Law on State Registration.

²²⁶ Article 51 CC RT (Part 1) and Article 22 of the Law on PAs.



The registration of representative offices or branches of PAs, including foreign NCOs, for record purposes may be refused for the following reasons:

1. if the provision on the representative office or branch conflicts with the Constitution and other regulatory legal acts of the RT;
2. if the list of documents submitted is not complete, or the documents are drawn up in an inappropriate manner or submitted to an inappropriate body;
3. if the constituent documents submitted are found to contain false information.

2.1.10. Appeal procedure

If state registration is denied, the applicant shall be sent (handed) a written notice of refusal indicating the reasons for the refusal and all documents submitted shall be returned to the applicant for the elimination of identified inconsistencies.

Refusal of state registration of an NCO (or the registration of its branch or representative office for record purposes), as well as evasion of such registration may be appealed in court.

Before applying to the court, the applicant may complain to the head of the unit of the registration authority responsible for the registration if there are reasons to believe that the actions or inaction of some authorized officers violate the registration procedure or constitute an abuse of office.

The refusal of state registration of an NCO or the registration of its representative office or branch for record purposes is not an obstacle to re-submitting documents for registration for record purposes, provided that the grounds that caused the refusal are eliminated.

Analysis

Tajikistani legislation contains an excessively broad list of grounds for refusal of registration. In particular, the documents submitted for registration may not comply with the Constitution and other regulatory acts of the Republic of Tajikistan. It is good practice, however, to resolve non-compliance issues through negotiations between the NCO initiators and the registration authority. In accordance with Paragraph 160 of the Guidelines: "Furthermore, the law should not deny registration based solely on technical omissions, such as a missing document or signature, but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required. The time period provided for rectification should be reasonable, and the association should be able to continue to function as an informal body." Denial of registration should be a measure of last resort.

Furthermore, an NCOs may be denied registration if one of its founders is in tax arrears.



The right to association, as a human right, is unconditional. It cannot be granted or taken away because the person exercising his or her human right has a tax debt or not. Such a rule in Tajikistani law directly contradicts the ICESCR (Article 8) and the ICCPR (Article 22).

The ban on the activity of foreign organizations which have not registered their branch or representative office in the Republic of Tajikistan is contrary to international standards.

2.2. TERMINATION AND LIQUIDATION OF NCOS

The termination of the operation of an NCO follows a liquidation procedure established by applicable legislation: part one of the CC RT,²²⁷ the Law on PAs, the Law on State Registration, TC RT, the Law of the RT “On State Duty”²²⁸ and other regulatory acts that establish the procedure for state registration of the liquidation of NCOs in the Republic of Tajikistan.

Liquidation of a legal entity entails its termination without the transfer of rights and obligations in successors. Tajikistani legislation provides for two ways of liquidating a NCO as a legal entity: voluntary and forced. In addition, legislation provides for the suspension of the operation of an NCO.

2.2.1. Voluntary liquidation and suspension

An NCO may be liquidated by decision of the founders (participants) or a body authorized by its constituent documents, including in connection with the expiration of the period or the attainment of the objective for which the legal entity was created.

An appropriate decision of the highest body of a PA (general meeting, congress or conference) may serve as grounds for its voluntary liquidation.

The authorized person of the NCO or the body that made the decision on the liquidation shall promptly send a written notice about it to the body in charge of registering legal entities, which shall make a note in the Unified State Register of Legal Entities to the effect that the legal entity is in the process of liquidation. While the Law on State Registration determines this period to be “within three business days,” the Law on PAs does not establish any specific period in respect of PAs.

²²⁷ Articles 62-68 CC RT.

²²⁸ Law of the RT “On State Duty” of February 28, 2014 (hereinafter, the State Duty Law).

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2.2.2. Forced liquidation

Forced liquidation of NCOs is carried out by a court decision on the basis of petitions from state bodies and other interested parties in cases and for reasons stipulated by the legislation of the RT.

The grounds for the forced liquidation of an NCO by a court decision may be:²²⁹

1. gross violations of the law committed in the process of establishing the NCO, if these violations are irreparable;
2. carrying out activities without proper permission (license);
3. carrying out activities prohibited by law;
4. carrying out activities with other repeated or gross violations of the law;
5. the systematic implementation by the PA, the religious organization or the public foundation of activity contrary to their statutory goals;
6. in case of revocation of a license, if the activity specified in the license is the only one authorized for that NCO; and
7. in other cases provided for by the law of the RT.

The Law on PAs specifies the following grounds for the forced liquidation of a PA and the prohibition of its activity:²³⁰

1. violation by the PA of human and civil rights and freedoms;
2. violations by the PA of the laws of the RT;
3. the systematic implementation by the PA of activity contrary to its statutory goals;
4. failure to eliminate the actions that served as grounds for the issue of a precept or written warning by authorized state bodies.

The decision on the liquidation or prohibition of the activity of a PA is made by the court on the basis of a petition from the registration authority or the prosecutor.

The court decision to liquidate an NCO may impose the obligation to implement the liquidation on its founders (members) or authorized body. The liquidation of NCOs by a court decision is carried out in the same manner as voluntary liquidation, the only difference being that the first stage of the process – making a decision on liquidation – is carried out by the highest NCO governing body in case of voluntary liquidation, and by the court in the event of a forced one. Only the court has the right to make decisions on the suspension or forced termination of the activity of NCOs.

²²⁹ Article 62 CC RT.

²³⁰ Article 37 of the Law on PAs.



A petition (request) for the liquidation of a legal entity may be presented to court by state authorities or local government bodies entitled to presenting such petitions by law.

GENERAL LIQUIDATION PROVISIONS

Regardless of whether the liquidation decision is made by a court or the NCO's authorized body, the bodies that made the decision shall appoint a liquidation commission (liquidator) and establish the procedure and terms for liquidation in accordance with the legislation. From the moment the liquidation commission is appointed, it shall have the authority to control all actions of the legal entity's bodies in respect of property disposal. In particular, all actions of the bodies of a legal entity aimed at selling property or paying debts can be made only with the consent of the liquidation commission.²³¹

Before the liquidation commission (created concurrently with the decision on liquidation) submits necessary documents to the registration authority to register the liquidation of the legal entity, the following actions must be performed:

1. publication in the media of a notice on the liquidation of the legal entity;
2. identification and satisfaction of creditor claims;
3. compilation and approval by the founders of an interim liquidation balance sheet;
4. notification of the tax authority on the liquidation;
5. obtaining a certificate of absence of tax arrears;
6. obtaining a certificate of absence of arrears on payments and social contributions from the Social Insurance and Pension Agency under the Government of the RT;
7. obtaining a certificate of absence of arrears on reports to the state statistics committee;
8. closing the legal entity's current/foreign currency bank accounts;
9. compilation and approval by the founders or the body that made the decision on liquidation of a final liquidation balance sheet;
10. the drawing up and approval of a liquidation act of comprehensive audit by the tax authority; and
11. destruction of the corporate seal and stamp in an internal affairs department and the receipt of a certificate of their destruction.

After completing these procedures, a representative of the liquidation commission

²³¹ Article 63 CC RT.



shall submit the following documents to the registration authority:

1. application;
2. copy of the decision on the liquidation of a legal entity;
3. originals of the legal entity's constituent documents and certificates of state registration;
4. the act of liquidation of the legal entity approved by the owner or an authorized body;
5. the certificate of tax audit or a certificate of absence of tax arrears issued by from the tax authority;
6. certificate from the statistical authorities;
7. certificate from banks on the closure of the NCO's accounts; and
8. certificate of destruction of the corporate seal.

After the end of the liquidation process, the registration authority shall verify compliance with the liquidation procedure within the time provided for by law. If all procedures are followed and all necessary documents are submitted, it shall issue an extract from the Unified State Register on the liquidation of a legal entity.

An NCO is considered liquidated from the moment it receives a certificate of liquidation and a record on its liquidation is made in the Unified State Register of Legal Entities.

The Tajikistani legislation contains some specific features when it comes to the liquidation of public foundations. In contrast to other types of NCOs, the founders of a public foundation do not have the right to make an independent decision on its liquidation. The decision on the liquidation of a public foundation can only be made by a court at the request of interested parties.²³² The latter may include the founders.

SUSPENSION OF OPERATION

See 6.2. of Chapter “4. Tajikistan.”

Analysis

The procedure for voluntary liquidation of NCOs in Tajikistan is largely consistent with generally accepted international practice: the highest body of the PA has broad powers to decide on self-dissolution. The general rule is that PAs and other forms of NCOs can cease their activities/go into liquidation at any time by decision of the authorized body.

As with the Republic of Tajikistan, most countries allow forced liquidation if the organization has violated the law and the violation was extremely serious.

²³² Article 131 CC RT.



However, certain grounds for judicial liquidation provided for in Tajikistani law do not comply with international standards. For example, the activity of an NCOs may be suspended and the NCO may even be liquidated for acts contrary to their statutory goals. The law provides for the liquidation of an NCOs for minor deviations from their statutory goals that do not even violate the rights and legitimate interests of others. It is also worth noting that the procedure for closing a branch or representative office is as complicated as the procedure for liquidating a legal entity. Given that branches and representative offices are not legal entities and do not require state registration but only registration for record purposes, their closure should also take place in a simplified manner, not like the liquidation of a legal entity.

Forced liquidation of NCOs in Tajikistan is carried out only by court order, which is consistent with international law and international best practice.

3. Structure and Internal Governance

3.1 PROVISIONS OF CONSTITUENT DOCUMENTS

An NCO operates on the basis of its charter, or the memorandum of association and the charter, or the memorandum of association alone. While a memorandum of association is concluded, a charter is approved by the founders (participants). An NCO created by one founder (for example, an institution or a public foundation) operates on the basis of the charter approved by that founder. The charter and other constituent documents of NCOs must determine the name of the NCO, its location, the procedure for managing the activities of NCOs, and also contain other information required by the law on legal entities (NCOs) of this or that type.²³³

A NCO's constituent documents shall set forth its subject and goals of activity. The charter and other constituent documents of a legal entity, including NCOs, shall determine the name of the legal entity, its location, and the procedure for managing its activities. The constituent documents of NCOs and unitary enterprises should determine the subject and objectives of their activity.²³⁴

In a memorandum of association, the parties (founders) undertake to create a non-governmental organization (other than a PA), determine the procedure for joint activity for its creation, the terms and conditions on which they transfer property to it and participate in its activities. The contract also defines the terms and conditions and procedure for the distribution of profit and loss between participants, management of the legal entity, and the withdrawal of founders (participants) from its composition. By agreement of the founders, other conditions may be included in the memorandum of association.

Representative offices and branches should also be indicated in the charter of the NCO that has created them.²³⁵

²³³ Article 53 CC RT.

²³⁴ Article 53(2) CC RT.

²³⁵ Article 56 CC RT.



In addition to the above information (as set forth in the CC RT²³⁶), the charter of a public foundation shall provide for the name of the foundation, which must include the word “foundation”; information about its purpose; instructions on the bodies of the foundation, including the board of trustees supervising the activities of the foundation; the procedure for the appointment of foundation officials and their discharge; the location of the foundation; the fate of the foundation’s property in the event of its liquidation.²³⁷

The charter of a public association shall provide for:²³⁸

- the name and goals of the PA, and its legal form;
- the structure of the PA, its governing and audit bodies, the territory in which it operates;
- conditions and procedure for the acquisition and loss of membership, the rights and obligations of members of the PA;
- competence and procedure for the formation of the governing bodies of the PA, and the terms, powers, and location of its permanent governing body;
- the procedure for amending and supplementing the charter the PA;
- sources of formation of funds and other property, the rights of the PA and its branches, and representative offices in respect of property management; and
- the procedure for reorganization and liquidation.

The charter of a PA may contain a description of the symbols of this organization. The statute may also provide for other provisions related to the PA’s activity that do not contradict the laws.

3.2. INTERNAL GOVERNANCE STRUCTURE

3.2.1. Governing bodies of public associations

A public organization is established, as a rule, on the basis of membership, for joint activities of individuals united to protect their common interests and achieve the statutory goals.

The charter of a PA is adopted at the constituent assembly (congress, general meeting) and determines the structure and the governing and audit bodies of the PA.

The highest governing body of a PA is a congress, conference or general meeting. The governing body of the public movement (the form of PAs) is an elected collegial body consisting of at least ten persons, accountable to the congress, conference or general meeting. In the case of state registration of a social movement, its governing body ex-

²³⁶ Article 53 (2) CC RT.

²³⁷ Article 130 CC RT.

²³⁸ Article 18 of the Law on PAs.



ercises the rights of a legal entity on behalf of the social movement and performs its duties in accordance with the charter.

The governing body of a public organization is an elected collegial body – a board that reports to a congress, conference or general meeting.²³⁹

3.2.2. Governing bodies of foundations

The governing body of a foundation is understood as a person or a group of persons authorized to manage its activity pursuant to applicable law or the constituent documents.

In Tajikistan, there is no special law that would regulate the activities of foundations in great detail, as does the Law on PAs. As with other types of NCOs (with the exception of PAs), the activity of foundations in the RT is regulated by a few articles of the Civil Code. The Civil Code of the Republic of Tajikistan admits the possibility for the governing bodies of a foundation to be defined by its charter, which is approved by the founders. The Civil Code only establishes that one of the governing bodies should be the board of trustees, its function being to oversee the activity of the foundation.²⁴⁰

In practice, if a foundation has several founders, they establish the highest governing body in the form of a board of directors (board of founders) or a management board and are members of that body.

3.3. DISTRIBUTION OF INCOME AND OTHER REVENUE

A PA that is a legal entity may own buildings, structures, structures, housing, transport, equipment, inventory, cultural, educational and recreational property, cash, shares, securities and other property necessary for the provision of its statutory activity. A PA may also own institutions, publishing houses, and mass media established or purchased with its funds in accordance with the legislation of the RT and its charter.²⁴¹

The property of NCOs may be formed on the basis of entry and membership fees (if their payment is provided for in the charter), voluntary contributions and donations, grants, proceeds from lectures, exhibitions, lotteries, auctions, sports and other events, as well as income from entrepreneurial activity and

The governing body of a foundation is understood as a person or a group of persons authorized to manage its activity pursuant to applicable law or the constituent documents.

²³⁹ Article 8(2) of the Law on PAs.

²⁴⁰ Article 130 CC RT.

²⁴¹ Article 26 of the Law on PAs.



other types of activity not prohibited by law.

Revenue from entrepreneurial activity, including for the benefit of the PA, may not be redistributed between members or participants of that association and should be used only for the attainment of its statutory goals. A PAs may use its funds for charitable purposes even if that is not indicated in the charter.

After satisfying creditor claims, all property remaining as a result of liquidation shall be directed for purposes stipulated by the PA's charter. The decision on the use of the remaining property shall be sent to the Ministry of Justice.²⁴² In the liquidation of a public foundation, the property remaining after satisfying creditor claims shall be conveyed to persons specified in the charter.²⁴³ The fate of property after liquidation should also be indicated in the charters of other types of NCOs. If the charter of an NCO in liquidation does not resolve the issue of how to dispose of its property, such a decision shall be made by the authorized body at a congress, conference or general meeting concurrently with the decision to liquidate the NCO. In the event of a dispute, the decision is made by the court.

Analysis

On the whole, the Tajikistani legislation complies with international standards on freedom of association. Founders can independently determine the goals and activities of their NCOs. However, some of the provisions on the content of constituent documents of PAs are too detailed. For example, they insist on the establishment of a specific governance structure and spell out in detail which powers the governing bodies must have. Furthermore, administrative liability up to the suspension/prohibition of activity is instituted for violation of any such requirement. And on the contrary, the foundation as a legal form needs more detailed regulation.

4. NCO Activities

4.1. GENERAL LEGAL CAPACITY

An NCO as a legal entity may have all the rights provided for legal entities. Its legal capacity is limited in comparison with that of a commercial legal entity in that an NCO may not have profit as the main goal of its activity and does not distribute profit to its participants, while commercial legal entities may have any legitimate business goals and distribute profit at their discretion. In addition, NCOs can conduct entrepreneurial activity only insofar as it serves to achieve the goals for which they were created.²⁴⁴

The legal capacity of an NCO as a legal entity arises at the time of its state registration

²⁴² Article 33 of the Law on PAs.

²⁴³ Article 162 CC RT.

²⁴⁴ Article 50 CC RT.



²⁴⁵ and terminates at the time of completion of its liquidation.²⁴⁶

The right of an NCO to carry out activities for which it is necessary to obtain a license arises from the moment such a license is received or at the time specified therein and terminates upon expiration of the license validity period, unless otherwise provided by law.

As a rule, informal (unregistered) NCOs conduct their activity through individuals and/or legal entities. In one case, however, the legislation of the Republic of Tajikistan gives such NCOs certain powers. Bodies of public initiative are not legal entities but may have their own bank account, seal and letterhead. In accordance with Tajikistani legislation, bodies of public initiative may solve social issues in cooperation with state, non-state and international organizations operating in Tajikistan.

Analysis

In Tajikistan, the legal capacity of an NCO is in line with international standards. The legislation of the RT does not prohibit the activities of NCOs without registration, which also complies with international standards.

4.2. ADVOCACY AND POLITICAL ACTIVITIES

In Tajikistan, public life is developing on the basis of political and ideological pluralism.²⁴⁷ The ideology of no party, PA, religious organization, movement or group cannot be recognized as a state ideology.

Citizens have the right to participate in political life and governance directly or through their representatives. The Constitution of the Republic of Tajikistan guarantees everyone freedom of speech, the press, and the right to use the media.²⁴⁸

Individuals and NCOs are allowed to engage in advocacy and campaigning for public-serving purposes, including the promotion and protection of human and civil rights and freedoms. However, the Constitution prohibits propaganda and campaigning that incite social, racial, national, religious and linguistic enmity and hatred.

According to the Law of the RT on PAs, for the implementation of its statutory goals a PA shall have the following rights:

- to freely disseminate information on its activity;
- to participate in the drafting of decisions by government and regulatory authorities in the manner and within the scope established by this Law and other laws;

²⁴⁵ Article 51(2) CC RT.

²⁴⁶ Article 64(8) CC RT.

²⁴⁷ Article 8 of the Constitution of the RT.

²⁴⁸ Article 30 of the Constitution of the RT.



- to hold meetings, rallies, demonstrations, processions and other public events in compliance with the procedure established by the legislation of the Republic of Tajikistan;
- to establish mass media and undertake publishing activities in compliance with the legislation of the Republic of Tajikistan;
- to represent and protect its rights and the legal interests of its members and participants or other citizens before government and regulatory authorities and public associations;
- to put forward initiatives on various aspects of community life and submit proposals to government and regulatory authorities; and
- to obtain information from government and regulatory authorities as may be necessary for the implementation of statutory goals.

The legislation of the Republic of Tajikistan does not prohibit other types of NCOs (public foundations, amalgamations or associations unions of legal entities, institutions) from using the same rights as are established for PAs.

All of the above rights entitle NCOs to engaging in advocacy activity and campaigning.

According to the legislation of the RT, NCOs do not have the right of legislative initiative to develop laws and by-laws. At the same time, they use the constitutional norm that citizens have the right to participate in political life and governance directly or through representatives and apply to state bodies personally or jointly with others.

There is no definition of political activity in the legislation of the Republic of Tajikistan, including the Law of the RT “On Political Parties.” The role of NCOs in the electoral process is not indicated. The Constitution and other laws do not entitle NCOs to participating in elections in the role of observers. Also, NCOs may not nominate their candidates, like political parties do. Only representatives of political parties have the right to attend elections as observers from their parties, among other persons.

Unlike other NCOs, only representatives of political parties have the right:

- to nominate candidates for the election of the President of the RT and to elected government bodies; and
- to participate in the preparation and conduct of referenda and elections to public authorities.

NCOs, with the exception of charitable and religious organizations, have the right to provide material assistance in the form of cash and property to political parties on the condition that such material assistance is documented and its source indicated.²⁴⁹ In

²⁴⁹ Article 13 of the Law “On Political Parties.”



addition, the total amount of annual material assistance provided by one individual to political parties may not exceed 300 “indicators for settlements,” and by one legal entity, 1,500²⁵⁰ indicators for settlements.

Only charitable organizations are not entitled to use their funds and property to support political parties, movements, groups and campaigns.²⁵¹

The activity of PAs is limited to the prohibition of activities promoting racial, nationalist, social and religious enmity or calling for the violent overthrow of the constitutional order and organization of armed groups. Any activity of PAs that infringes on the rights and legitimate interests of citizens, on people’s health and public morality is also prohibited.²⁵²

Furthermore, the interference of public authorities and their officials in the activities of PAs, as well as the interference of PAs in the activities of public authorities and their officials, is also prohibited.²⁵³ Although the law does not define what may be understood as “interference,” in practice NCOs have no problem with the application of this prohibition.

Analysis

In the Republic of Tajikistan, PAs are endowed with sufficiently broad powers to participate in state decision-making. The restriction on financing political parties also complies with international standards.

Restrictions on the activity of other PAs discussed in this section may comply with international standards if in practice they are applicable in accordance with international law, without unduly restricting the operation of NCOs.

5. Financial Sustainability

5.1. BUSINESS INCOME

NCOs may engage in entrepreneurial activity only insofar as this is necessary for their statutory purposes.²⁵⁴

In accordance with the procedure established by the legislation of the RT, PAs may engage in entrepreneurial activity directly or create business partnerships, societies and other business organizations, as well as acquire property intended for doing business.²⁵⁵

A foundation has the right to engage in entrepreneurial activity necessary to achieve the generally useful goals for which it was created, and such activity must correspond to those goals. To carry out entrepreneurial activity, foundations are entitled to creating

²⁵⁰ Since January 1, 2019, one indicator for settlements has been 55 somoni (approximately \$5.80).

²⁵¹ Article 14 of the Law of the RT “On Charitable Activity.”

²⁵² Article 14 of the Law on PAs.

²⁵³ Article 15 of the Law on PAs.

²⁵⁴ Article 50 CC RT.

²⁵⁵ Article 31 of the Law on PAs.



business entities or taking part in them.²⁵⁶

NCOs may not distribute profits to their participants. PAs may not redistribute income from their entrepreneurial activity to their members or participants and should use it only to achieve their statutory goals. PAs may use their funds for charitable purposes even if this is not specified in their charters.

Amalgamations (associations) of legal entities may engage in entrepreneurial activity only by creating business entities or participating in them.²⁵⁷

Certain types of entrepreneurial activity require obtaining licenses from authorized bodies. NCOs can engage in licensed activities only after obtaining special licenses from authorized state bodies.

Analysis

On the whole, the legislation of the RT complies with international standards, allowing NCOs to engage in entrepreneurial activity and imposing certain restrictions on such activities. However, the undefined requirement that the permitted entrepreneurial activity is necessary for the NCO's statutory goals (except for PAs)²⁵⁸ is a concern. At the same time, NCOs cannot have a profit as its main goal and cannot distribute the profit between the participants.

The absence of a definition or at least an official interpretation of which activity will be considered "necessary" to achieve statutory goals and, for PAs, which activity "contributes to the achievement of the statutory goals," creates a risk, at least in theory, that the entrepreneurial activity of a NCO may be recognized as illegal. In practice, however, we are not aware of any such case.

5.2. STATE FINANCING

The legislation of the RT does not prohibit the financing of NCOs from the state budget. PAs have the right to participate in national and international competitions in order to receive social orders, grants, scholarships and other financing not prohibited by the Republic of Tajikistan legislation for the implementation of its statutory activity.²⁵⁹

²⁵⁶ Article 130 CC RT.

²⁵⁷ Article 133 CC RT.

²⁵⁸ Article 50 CC RT.

²⁵⁹ Article 25 of the Law on PAs.

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State funding is provided in various forms and through various mechanisms but amounts to an insignificant part of the revenue of Tajikistani NCOs. Basically, state funding of NCOs comes in the form of state social orders (SSC) and state grants.

The practice of providing state grants began in 2007 with NCOs working for youth or women. To implement grant support activities, the Women's Committee²⁶⁰ and the Youth Matters Committee²⁶¹ established special commissions to distribute grants among NCOs and determine quotas depending on areas of activity and regions.

On December 31, 2008, the Parliament of Tajikistan passed the SSC Law. Later, Government Decree # 230 of May 3, 2010 approved the "Model Provisions on the Competition for the Performance of the State Social Contract."

The Regulation sets forth the rules of the SSC competition and the selection of contractors. It establishes the legal basis, principles, procedure for the formation, placement, financing and implementation of SSC by individuals and legal entities regardless of ownership and legal forms. The legislation provides equal conditions for all legal entities (both commercial and non-commercial) willing to participate in the SSC program.

Practice shows that most SSC contractors are NCOs. Furthermore, the Model Provision indicates only NCOs as by SSC contractors.

Analysis

The policy of the government and its position regarding the financing of NCOs are determined mainly by its perception of the role of NCOs in the development of society and in realizing the goals of the government. Financial support to NCOs can be part of government policy, reflecting the attitude of the state towards NCOs as partners in solving important political and social problems. As in other countries, the difficult situation in the social sphere led to an understanding of the importance of involving NCOs in social projects and, accordingly, to providing state support to NCOs, including through the SSC mechanism.

5.3. FOREIGN FINANCING

The possibility for Tajikistani NCOs to obtain financial support is provided for by the civil and tax codes. Notably, there are no restrictions on financing NCO activities, with the sole exception of the requirement to use funds for their intended purpose.

According to the Law on PAs, voluntary and charitable contributions, grants, property received by PAs from foreign governments, foreign legal entities, legal entities established with the participation of foreign entities, international organizations and international public movements (collectively, foreign sources), as well as through other individuals and legal entities, are subject to registration by the registration authorities in the Register of humanitarian assistance to PAs of the RT. The procedure for main-

²⁶⁰ Committee for Women's and Family Affairs under the RT Government.

²⁶¹ Committee for Youth Matters, Sports and Tourism under the RT Government.



taining the Register is determined by the Government.²⁶² PAs do not begin to carry out projects financed from foreign sources before they notify the registration authorities.

Under the aforementioned procedure, any assistance received by a PA must be entered in the Register by providing notice to the Ministry of Justice within ten days from the date it was received.

Notification is all that is needed in this case, i.e., the receipt and use of assistance do not require permission from the Ministry of Justice.

The requirements for registering funds from foreign sources do not apply to other forms of NCOs (other than PAs).

5.4. OTHER REVENUE FROM LOCAL SOURCES

Other NCO revenues from local sources in the Republic of Tajikistan include donations from individuals and legal entities, entry and membership fees, and other income.

DONATIONS

The definition of “donation” is contained in the Civil Code of the Republic of Tajikistan, as well as in the Law of the RT “On Charity.” A donation is recognized as giving for generally useful purposes. Donations can be made to individuals, medical, educational institutions and social protection institutions and other similar establishments, charitable, research and educational institutions, foundations, museums and other cultural establishments, public and religious organizations, as well as the State. No permission or consent is required to accept the donation.

MEMBERSHIP AND ENTRY FEES

The Tajikistani legislation does not define voluntary, membership, or entry fees.

From law enforcement practice, membership fees are usually understood as means transferred to an NCO by its members, and entry fees, by persons who are joining the NCO, in the amount and manner provided for in the constituent documents or in decisions of the highest body of that organization. It should be borne in mind that only those NCOs that are based on membership (for example, public and religious associations, amalgamations or associations of legal entities, but not public foundations and institutions) may have membership or entry fees as a source of income.

The right to receive membership (entry) fees should be fixed in the charter of the NCO, and the payment procedure and amount may be regulated by the organization’s internal documents (for example, a provision on entry and membership fees), if they have not been regulated in the charter.

²⁶² The procedure was signed in by Governmental Decree #149 of March 31, 2016.



Analysis

Foreign aid is an important source of funding for Tajikistani NCOs. The requirement to obtain prior permission to use resources from foreign sources may seem excessive, but we must pay tribute to the government of the Republic of Tajikistan for the fact that at present, as far as we know, this requirement is not an obstacle for PAs to receive foreign funding and has not led to a decrease in volumes of foreign financial assistance available to NCOs.

6. State Monitoring

6.1. MONITORING AND REPORTING REQUIREMENTS

According to the PAs Law,²⁶³ the Ministry of Justice of the RT monitors compliance with statutory provisions regarding the goals of PAs.

In this regard, the Ministry has the right:

- to require the governing body of a PA to submit the decisions taken;
- to send its representatives to attend events held by the PA; and
- to obtain explanations from members of the PA and other persons on issues of compliance with the charter of the PA.

If a PA is found to have violated the legislation on PAs or performed actions contrary to its statutory goals, the Ministry of Justice may issue a written warning to its governing body indicating specific violations and demanding their elimination. The Ministry's warning is subject to review by the PA within one month. In addition, for committing actions that go beyond the statutory goals and objectives, the Ministry of Justice has the right to apply penalties.²⁶⁴ In case of non-elimination of violations within the specified time period, the Ministry of Justice has the right to request the court to suspend the activity and liquidate the PA.

In addition to the Ministry of Justice, supervision over the accurate and uniform execution of laws by all persons (including all NCOs) in the RT is the responsibility of the Prosecutor General and, within their powers, the prosecutors subordinate to him/her.

Supervision and monitoring of the implementation by all persons (including NCOs) of existing norms and standards in specialized areas is carried out by environmental and fire protection, sanitary and epidemiological control, and other state supervision and monitoring bodies.

The financial and tax authorities respectively monitor sources of income of all persons (including NCOs), the amount of funds received by them, and the payment of taxes in accordance with the legislation of the RT.

²⁶³ Article 34 of the Law on PAs.

²⁶⁴ Article 475 CoAO RT.



According to the legislation of the Republic of Tajikistan, NCOs are required to submit reports to the following state bodies on a monthly, quarterly and annual basis:

- Ministry of Justice: to provide information on the continuation of their activity annually, until April 1, and also notify the Ministry about the receipt of assistance from a foreign source every time after receiving a grant and other types of such assistance;
- tax authorities: in accordance with the TC RT, NCOs (like all other taxpayers) are required to submit monthly, quarterly and annual reports, depending on the types of taxes. Tax reporting shall include statements, calculations and declarations by taxable regime, type of tax or income paid, as well as attachments to calculations and tax declarations, drawn up in the prescribed manner;
- statistical authorities: NCOs submit monthly, quarterly and annual reports, depending on the types of the reports;
- Social Security Fund: NCOs submit quarterly reports on social taxes.

Analysis

International standards on freedom of association state that the reporting requirements of NCOs should not be burdensome and should be consistent with the size of the association and the scale of its activities. The state should not require additional reports from associations in comparison with other commercial organizations, as well as the provision of duplicate reports. A state may require additional reports from NCOs only if it provides those NCOs with certain additional benefits. Given all of the above, it can be concluded that the legislative requirements for monitoring the activities and reporting of NCOs in the Republic of Tajikistan do not yet comply with international standards on freedom of association, as they provide for the provision of additional reports by PAs in comparison with other legal entities and also create broad opportunities for state control over the activities of PAs.

Legislative requirements for monitoring the activities and of NCOs in Tajikistan do not yet comply with international standards on freedom of association, as they ... create broad opportunities for state control over the activities of PAs.



6.2. SANCTIONS

Like other legal entities, NCOs shall bear responsibility for violating the Constitution and other laws and by-laws of Tajikistan. Unlike commercial organizations, however, NCOs can be held responsible for violating the goals and objectives established by their constituent documents.

Depending on the offenses committed, various liability measures may be applied, such as:

- written warning;
- administrative liability (fines);
- suspension of activity;
- liquidation; and
- criminal liability.

WRITTEN WARNING

If a PA violates the Constitution and legislation of the Republic of Tajikistan or commits actions inconsistent with its statutory goals, the Prosecutor General of the Republic of Tajikistan or prosecutors subordinate to him shall contact the governing body of the public association in writing, demanding immediate rectification, issue a warning to the Ministry of Justice, and set the deadline for the said rectification to be effectuated.

ADMINISTRATIVE RESPONSIBILITY

Administrative responsibility for committing an offense is imposed on all persons (including NCOs) in accordance with the CoAO RT, which defines all offenses and sanctions for them.

Article 477 of the CoAO RT establishes responsibility for the leadership and/or participation in the activity of unregistered public and religious associations and organizations, as well as their financing:

“I. Management of the activity of public and religious associations and organizations unregistered, or suspended, or prohibited in accordance with the legislation of the Republic of Tajikistan shall entail a fine of thirty to fifty indicators for settlements.

Participation in the activity of public and religious associations and organizations unregistered, or suspended, or prohibited in accordance with the legislation of the Republic of Tajikistan shall entail a fine of three to seven indicators for settlements.

Financing the activity of public and religious associations and organizations unregistered, or suspended, or prohibited in accordance with the legislation of the Republic of Tajikistan shall entail a fine on private individuals in the amount of from ten to twenty, on officials – from forty to fifty and on legal entities – from two hundred to three hundred indicators for settlements.”

It should be noted that we are not aware of the law enforcement practice under Article



477 CoAO RT. It may well be that this article has not been applied in practice in relation to unregistered PAs, their leaders and participants.

CoAO RT also contains a special Article 475, “Violation of the Law on Public Organizations.” Pursuant to Article 475,

“1. Performing actions that go beyond the goals and objectives defined by the charters of public organizations- shall entail a fine on private individuals in the amount of three to five, on officials – from twenty to thirty and on legal entities – from one hundred to two hundred indicators for settlements.

The same action provided for in the first part of this Article, if committed repeatedly within one year after applying administrative penalties, shall entail a fine on private individuals in the amount of twelve to fifteen, on officials – from fifty to sixty, and on legal entities – from three hundred to three hundred and fifty indicators for settlements.”

CoAO RT also establishes special administrative responsibility for religious associations and political parties.

SUSPENSION OF THE ACTIVITY OF PAS

A punishment such as “suspension of activity” applies only to PAs, but not to other forms of NCOs.

If, within the prescribed time limit, the violations that served as the basis for making the corresponding written order or written warning are not eliminated, the Prosecutor General or prosecutors subordinate to him, or the Ministry of Justice have the right to file a lawsuit in court with a request to suspend the activity of the PA,²⁶⁵ in which case, the court may suspend the PA for up to three months.

In the event of suspension, the PA’s rights as the founder of media, and the activity of the media established by the PA, are suspended, the PA is prohibited from organizing and conducting meetings, rallies, demonstrations, processions and other public events, using bank deposits, with the exception of settlements on business activity and employment contracts, compensation for losses caused by its actions, payment of taxes, and fees and fines.²⁶⁶

NCO LIQUIDATION

See 2.2.2. “Forced liquidation” of Chapter “4. Tajikistan.”

CRIMINAL LIABILITY

The Criminal Code of the Republic of Tajikistan (CrC RT) provides for only one article where the corpus delicti is specific to a public organization. Article 159 provides for liability for “the organization of political parties, PAs and religious organizations whose activities involve harm to the health of citizens or other attacks on the personality and

²⁶⁵ Article 35 Law on PAs.

²⁶⁶ Article 36 Law on PAs.



rights of citizens, as well as the management of such an association, punishable by a fine in the amount of one thousand to one thousand five hundred indicators for settlements, either by restriction of liberty for a term of up to three years or by arrest for a term of up to four months, or by deprivation of liberty for a term of up to three years.”

The CrC RT also penalizes crimes such as intentional direct or indirect violation or restriction of rights and freedoms, or the establishment of direct or indirect advantages for individuals depending on gender, race, nationality, language, social origin, personal, property or official position, place of residence, religion, beliefs, or affiliation with political parties or public associations, PAs that inflicted harm on the rights and legitimate interests of an individual (Article 143), and impeding legitimate activity of political parties and PAs, as well as interference with their legitimate activity, which caused a substantial violation of their rights and legitimate interests (Article 158).

Analysis

A number of sanctions in the legislation do not comply with international standards and violate the right to freedom of association.

1. Administrative responsibility for the leadership, participation in and financing of public and religious associations and organizations (hereinafter – PAs), unregistered, or suspended, or prohibited by law.

While there is an understanding of why administrative responsibility arises in the case of leadership, participation in and/or financing of PAs suspended or prohibited by law (the law provides for the wrongfulness of such activities),²⁶⁷ the question remains with respect to unregistered PAs. This question has to do with the fact that administrative liability can be established only for an unlawful act.

The status and activity of a PA are regulated by the Constitution and a number of laws. However, none of these laws provides for a ban on the activities of unregistered PAs, nor does it consider their activity as a violation of the ban or established rules or failure to fulfill an obligation. An exception is the activity of unregistered foreign public (non-profit and non-governmental) organizations.²⁶⁸ Moreover, laws directly indicate the legitimacy of the activity of such associations. Accordingly, leadership and participation in legitimate organizations cannot be considered an offense. Thus, there is a conflict between Section 477 of the CoAO RT and other laws. It seems appropriate to exclude responsibility for the participation and financing of the activities of unregistered PAs from the CoAO, all the more so that to the best of our knowledge, this article is not applied in practice.

The ban on sanctions for participation in and financing of unregistered PAs is directly against international law. This prohibition violates the norms of the Universal Declaration of Human Rights (Article 20), ICESCR (Article 8), and ICCPR (Article 22). The right to freedom of association may be exercised by a person through informal association

²⁶⁷ Article 8 of the Constitution of the RT, Article 14 of the Law on PAs.

²⁶⁸ Article 39 of the Law on PAs.



with others or through the formation of a legal entity of his/her own choosing. In accordance with the Guiding Principles: *“Legislation must recognize both informal and formal associations or, at a minimum, permit the former to operate without this being considered unlawful.”*²⁶⁹

2. Suspension of activities on a wide list of grounds. In accordance with the Guiding Principles, Paragraph 239: *“Sanctions amounting to the effective suspension of activities, or to the prohibition or dissolution of the association, are of an exceptional nature. They should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles.”*

3. Penalties for PAs for committing actions that go beyond the goals and objectives defined by the charters of PAs. Unfortunately, this approach does not comply with good international practice and standards in the field of freedom of association, as it provides for serious sanctions for any violations of the charter, no matter how insignificant.

7. Transparency and Openness

7.1. TRANSPARENCY AND OPENNESS

Transparency and openness are ensured both at the level of legislation and through self-regulation mechanisms in the non-profit sector.

Openness is ensured by the NCO reporting requirements discussed in Section 6 “Monitoring and reporting requirements” of Chapter “4. Tajikistan.”

In addition, the legislation establishes requirements for statutory documents of NCOs. These documents determine the rights of the founders and members (participants) of NCOs, how they form their governing and audit bodies, the frequency and scope of management reporting, etc. The current legislation has formulated a number of mandatory requirements for such documents to ensure internal controls.

According to the Law on PAs, public associations shall operate openly, and any information regarding their founding documents and policy statements shall be publicly accessible.²⁷⁰

²⁶⁹ Para. 48 of the Guidelines.

²⁷⁰ Article 13(2) of the Law on PAs.

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Also, in order to ensure transparency, the legislation of the Republic of Tajikistan obliges PAs:

- to annually post financial reports containing detailed information on income and expenses on their websites or that of the registration authority;
- to store data on completed domestic and international operations for at least five years after the completion of business relations; and
- to store identification data of persons controlling or managing the activities of the PA, including founders, members of governing and auditing bodies, and submit such information to the registration authority.²⁷¹

In addition, NCOs report to grantors and donors, and such reporting is contractual in nature, as it arises from and in the process of the implementation of grant agreements, sponsorship agreements, or other similar documents. A grant agreement stipulates the conditions and procedure for reporting, including the provision of a financial report on the spending of allocated funds strictly on purposes specified in the same agreement, consistency of the expenses with the agreed budget and of the program report with the plan, etc.

Some PAs post information on their activities on their websites, although it is not common practice.

Analysis

Since NCOs should have the right to freedom from government interference in their internal affairs, international standards on freedom of association do not directly establish the requirement for transparency of their activity. However, it is recognized all over the world that openness and transparency are of great importance to NCOs. The best approach is when the state does not require NCOs to be transparent and accountable but encourages and stimulates them to be more transparent in their activity.

²⁷¹ Article 5 of the Law on PAs.

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