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## **Comparative Study of Laws and Regulations Governing Charitable Organizations in the Newly Independent States<sup>1</sup>**

**For**

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This paper is intended to provide an overview of the legislation governing charitable organizations in the Newly Independent States (NIS).<sup>2</sup> Not all NIS countries provide for a charitable or public benefit status. Turkmenistan and Belarus, for example, currently have no legislation governing charitable organizations. And although Azerbaijan, Georgia, and Uzbekistan make reference to charitable organizations in their respective tax codes, they have no rules defining legal status of charitable organizations, nor do they provide any special tax benefits for charitable organizations. Armenia and Russia have enacted legislation governing charitable organizations, but provide for no benefits in coordination with such provisions, rendering them essentially meaningless. Kazakhstan has created a unique system for providing special benefits to so-called “Social Sphere Organizations” (“SSOs”) which are different from traditional charitable organizations and include not only non-commercial organizations, but also businesses operating in specified social areas, as long as they meet certain requirements established in the tax code. Only Kyrgyzstan, Moldova, Tajikistan, and Ukraine have both stand-alone legislation on charitable/public benefit status and meaningful tax exemptions for which organizations with this status are eligible.

Except where indicated otherwise, therefore, this paper will describe the experience of the six countries which have enacted stand-alone legislation governing charitable organizations, namely: Armenia, Kyrgyzstan, Moldova, Russia, Tajikistan and Ukraine. The experience of these six countries will comprise the primary basis for the conclusions presented in this paper. However, Ukraine is the country which has accumulated the most comprehensive experience in the implementation of laws and regulations governing charitable status, and therefore it is the Ukrainian experience, out of these six countries, which will be described in the greatest detail.

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<sup>1</sup> This paper was prepared by Natalia Bourjaily, ICNL’s Vice-President for NIS, and Melanie Lyon, ICNL’s Legal Counsel for NIS.

<sup>2</sup> The Newly Independent States include Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Because the laws governing non-commercial organizations likewise govern charitable organizations, the narrative below analyzes both the laws governing NCOs and COs, recognizing that both are relevant to understanding the not-for-profit legal framework in the NIS. For the purposes of this paper, associations, foundations and other similar entities are referred to as “non-commercial organizations” or “NCOs,” except when referring to a particular country that uses a different relevant term (public organization, non-profit organization, etc.). The subset of organizations that are governed by separate laws on charities will be referred to as “charitable organizations” or “COs.”<sup>3</sup>

## **I. Provisions of the General Laws**

### **A. Consistency and Clarity of the Laws**

Lack of consistency and clarity in the laws is one of the preeminent problems with legislation affecting charitable organizations in several NIS countries. Most notably, Moldova and the Russian Federation suffer from inconsistency stemming primarily from multiple and conflicting levels of legislation. For example, the legislation of the Russian Federation regulates gifts, donations, gratuitous aid, grants and humanitarian assistance using different, and sometimes overlapping, definitions, making it confusing for charitable organizations to claim relevant tax benefits. In Moldova, the 2002 Law on Charity and Sponsorship established the procedure for obtaining charitable status through the registration of an organization as a charitable legal entity with the Ministry of Justice. This law is implemented in parallel process to that which was set by the 1996 Law on Public Associations and in 1999 Law on Public Foundations, according to which registered associations and foundations can obtain a charitable status through a certification process with the charity commission. There is no official justification for such confusion other than inconsistency and dual regulation of the same issue in the legislation.

However, the legislation on charitable organizations in most NIS countries is quite simple, usually consists of only a few laws, and, at least theoretically, is easy to administer. Among the countries with the most consistent legal framework governing charitable organizations are Kyrgyzstan and Tajikistan. Both countries have laws on charities, have only one relevant framework law – such as the Law on Non-commercial Organizations in Kyrgyzstan and the Law on Public Associations in Tajikistan - and have revised the corresponding provisions in the Tax Code (defining “charitable organization”) in order to render them consistent with the definition that exists in the separate laws on charity.<sup>4</sup>

### **B. General Constitutional Framework**

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<sup>3</sup> This paper does not address the legal framework for trade unions, political parties, or other similar organizational forms.

<sup>4</sup> Section 9(4) of the Tax Code of Kyrgyzstan and Section 129 of the Tax Code of Tajikistan.

In general, all constitutions in the NIS guarantee the rights of freedom of association as well as other basic human rights, which allow for establishment of non-commercial organizations including charitable organizations. Ukraine provides a useful exemplar. The Constitution of Ukraine of June 28, 1996 guarantees the right of citizens to form associations: “Ukrainian citizens have a right to form political and public associations; to exercise and protect their rights and freedoms; and to pursue political, economic, social, cultural and other interests with due regard for the restrictions imposed by law in the interests of national security, public order, national health, or in the protection of the rights and freedoms of others.”<sup>5</sup> Other Articles of the Ukrainian Constitution guarantee the freedom of speech and thought; the freedom of expression of opinions and religious beliefs; the freedom to collect, use and disseminate information in any form<sup>6</sup>; the freedom of peaceable assembly, public gatherings, marches and demonstrations<sup>7</sup>; and the freedom of artistic expression.<sup>8</sup>

Constitutions typically also provide for limited circumstances in which such rights may be abridged. For example, the Constitution of Moldova provides that the right to free association may be limited only if organizations are, “by their aims or activities [] engaged in fighting against political pluralism, the principles of the rule of law, the sovereignty and independence or territorial integrity of the Republic of Moldova.”<sup>9</sup>

### C. General Legal Framework

The central problem with the regulation of charitable organizations in the NIS is that some countries (Belarus, Turkmenistan) either provide no charitable status whatsoever, or even where they do recognize charitable organizations as a separate category of non-commercial organizations (NCOs), they provide no meaningful benefits to such organizations (Georgia, Armenia, Azerbaijan, Russia, and Uzbekistan). Therefore, NCOs in these countries have no incentive to seek out charitable status, and, as a result, any laws or provisions on charitable status in these countries are merely descriptive; they have not been implemented in any real sense. Only Armenia, Moldova, Kyrgyzstan, Russia, Tajikistan, and Ukraine have enacted laws specifically regulating charitable organizations, and only four of these six countries (Moldova, Kyrgyzstan, Tajikistan and Ukraine) provide for any meaningful charitable status.

It is also the case that many of the regulations in general laws affecting NCOs also cover charitable organizations (COs.) Accordingly, the following provides a brief overview of the legislation governing NCOs in Armenia, Kyrgyzstan, Moldova, Tajikistan, Ukraine, and Russia. The typical legal framework would include, at a minimum: the civil code provisions, the law on NCOs (and/or special laws on different organizational forms of non-commercial legal entities, like laws on foundations and on associations), a law on

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<sup>5</sup> Article 36 of the Constitution of Ukraine (1996).

<sup>6</sup> *Id.*, Article 34.

<sup>7</sup> *Id.*, Article 39.

<sup>8</sup> *Id.*, Article 54.

<sup>9</sup> Article 41 of the Constitution of the Republic of Moldova (1994).

registration of legal persons, a special law on charitable organizations, laws on licensing, and appropriate tax code provisions.

As a general matter, the civil codes of the countries of the NIS will contain provisions outlining the types of non-commercial legal entities (i.e. associations, foundations, etc.) that are permitted within the country. In addition to any civil code provisions, each country has its own set of laws governing NCOs, of which charitable organizations are a subset. Typically, the number of recognized organizational forms is quite limited, with countries only recognizing associations and foundations. Accordingly, associations and foundations are the most common organizational forms into which charitable organizations are incorporated, although some countries do recognize additional forms such as institutions or unions of legal entities.

### *1. Ukraine*

For example, in Ukraine, a new civil code (having come into effect on July 1, 2004) outlines the basic organizational forms for NCOs (known as non-entrepreneurial legal entities in Ukraine): non-entrepreneurial partnership (which is similar to an association) and non-entrepreneurial institution (similar to a foundation). The 1997 Law of Ukraine on Charity and Charities establishes a registration procedure, as well as the process of establishment and permissible activities of charitable organizations in the forms of foundations and associations.

The new Law on Registration of Legal Persons (which also came into effect on July 1, 2004) establishes yet another registration procedure, applicable to all legal entities including charitable organizations. However, this new law allows for peculiarities relating to the registration procedures for public associations to be established in separate laws. Therefore, as some charities are established as public associations, it is not clear whether the registration procedure from the new Law on Registration of Legal Persons or the old registration procedure from the 1997 Law on Charitable Charity and Charities will apply to charities going forward.<sup>10</sup> In Ukraine, tax legislation permits special treatment of certain organizations based not simply on registration as charities, but rather on compliance with specific tax law requirements. Accordingly, public associations and foundations which have not been registered as charities might qualify for the same tax treatment as charities, if they are capable of meeting these tax requirements.

### *2. Russia*

In Russia, the civil code establishes the basic organizational forms, rules for establishment of and permissible activities for non-commercial legal entities. The Law on Non-commercial Organizations and the Law on Public Associations further define the rules for establishment of NCOs and the types of activities which may be undertaken by the various organizational forms. The Federal Law on Registration of Legal Entities established registration procedure for all NCOs, with the exception of public associations,

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<sup>10</sup> For the purposes of this overview, we will refer to the registration procedure in the Law of Ukraine on Charity and Charities (1997).

whose registration procedure is regulated by the Law on Public Associations. The Federal Law on Charitable Activities and Organizations allows for the establishment of charities in any of the permissible legal forms for NCOs, and establishes special requirements for charities providing the impression that charities will enjoy some tax preferences as a result. Unfortunately, no tax benefits exist in federal Russian legislation for charities, nor are any other benefits tied to the Law on Charitable Activities and Organizations. Without such benefits, there is no incentive for Russian groups to register as charities, rendering the Law on Charitable Activities and Organizations merely declarative.

### *3. Kyrgyzstan*

In Kyrgyzstan, the civil code establishes the basic organizational forms and rules for establishment and activities for non-commercial legal entities (NCOs), as well as the registration procedure, activities and internal governance of all legal persons, including non-commercial legal entities. The Law of Kyrgyzstan on Non-Commercial Organizations further regulates the establishment procedure and activities of different forms of NCOs. (Charitable organizations may be established in any one of the forms regulated by this law). The Law on Registration of Legal Persons sets forth a detailed registration procedure for all legal entities, including charities. And the Law on Charities and Sponsorship provides specific requirements for charitable organizations, which, if satisfied, enable them to become eligible for additional tax benefits. The tax code further defines the criteria by which charitable organizations may become eligible for tax benefits, which are consistent with the criteria established in the Law on Charities and Sponsorship.

### *4. Moldova*

As with other NIS countries, the civil code of Moldova defines the permissible organizational forms, rules for establishment, and permissible activities for non-commercial legal entities. Outside of the civil code, however, the situation in Moldova differs significantly from other NIS countries. Moldova is the only NIS country to have established a separate commission for awarding charity status – the Certification Commission. Moldova had enacted a 1996 Law on Associations and a 1999 Law on Foundations, which both contain provisions governing the procedure for obtaining charity status from the Certification Commission. A legal entity registered under one of these two laws could apply to the Certification Commission<sup>11</sup> to become eligible for charitable (tax-exempt) status. However, the current situation is confusing. In 2002, a new Law on Charity and Sponsorship was adopted, establishing a separate registration procedure for charitable legal entities with the Ministry of Justice under which charitable status is obtained at the moment that the group obtains state registration as a legal entity, bypassing the Certification Commission. Yet this new procedure has not superseded the old one, and for some time has been implemented in parallel with the old procedure of certification by the Commission. It remains to be seen whether this new law will eventually render the Certification Commission obsolete. Notably, the text of the

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<sup>11</sup> The rules and procedures of the Certification Commission are set forth in the Order of the Ministry of Justice of Moldova's Regulation on the Order of Functioning of the Certification Commission (1997).

Moldovan Law on Charity and Sponsorship is almost identical to the Russian Federal Law on Charitable Activities and Charitable Organizations.

### 5. *Tajikistan*

Similarly, Tajikistan has provisions in its civil code which establish the basic organizational forms, rules for establishment, and permissible activities for non-commercial legal entities. The Law on Public Associations further regulates these entities by establishing a registration procedure and requirements for establishment and activities of one organizational form – the public association (which is the primary organizational form for charities in Tajikistan). Additional criteria for charities and public associations which have qualified for charitable status-related tax benefits are defined in the Law on Charities and in the relevant tax code provisions.

### 6. *Armenia*

In Armenia, the Law on Charity regulates charitable organizations in a manner similar to Russian federal law. And as with Russia, Armenian legislation does not provide any incentives, financial or otherwise, for organizations to register as charities.

### D. Types of Organizations

As a general rule, countries of the NIS permit charitable organizations to be established in any legal forms available for non-commercial legal entities. Every NIS country has developed a legal framework for associations and foundations, and several countries have created additional organizational forms beyond these two basic models. As a general principle, associations are always defined based on membership. Many countries limit membership in associations to individuals and other associations (such as Russia, Moldova, Armenia, Kazakhstan, Uzbekistan, Belarus or Turkmenistan), while other countries allow for membership by any legal or physical person (for example, Georgia and Azerbaijan). Foundations are commonly defined as nonprofit organizations which are *not* membership-based, and are formed on the basis of voluntary property contributions. Most NIS countries allow for foundations to be of public *or* mutual benefit. In some countries, like Russia and Uzbekistan, however, foundations must be devoted to pursuing social, charitable, cultural, educational, or any other public benefit objectives.

Other organizational forms for charities which may be found in the NIS include the institution and the union of legal entities, present in Russia, Uzbekistan, Kyrgyzstan, Moldova, and Tajikistan. An institution is defined as a non-profit organization created by the owner for performing managerial, social, cultural, or any other functions of nonprofit nature, and which is financed partially or in full by the owner. Unions are defined as membership-based organizations for legal entities, and are considered a separate

organizational form of public association in countries where public associations allow only physical individuals to obtain membership in public associations.

Russia is the NIS country with the largest numbers of organizational forms. Russian legislation provides a variety of organizational forms for non-commercial legal entities, which include public and religious organizations (associations), nonprofit partnerships, institutions, autonomous nonprofit organizations, social, charitable and any other foundations, associations and unions. There are other sub-forms for public organizations which are established and regulated under the Law on Public Associations. Russia allows for charitable organizations to be established as public organizations (associations), foundations, and institutions, and in other forms determined by the federal laws for charitable organizations.<sup>12</sup> Ukraine also provides several forms for charitable organizations, defined in the Law of Ukraine on Charity and Charities, including membership-based organization, charity foundation, a charity institution, or other charity organizations (foundations, missions, leagues, etc.).<sup>13</sup>

Kyrgyzstan permits charitable organizations to be created in the form of “public organizations (associations), foundations, institutions and other forms.”<sup>14</sup> Moldovan law permits the creation of charitable organizations in the form of associations, funds, and other legal forms not prohibited by law.<sup>15</sup> And Tajikistan permits charitable organizations to be “created in the forms of public organizations (associations), funds, institutions, and in other forms foreseen by the legislation of the Republic of Tajikistan for charitable activity.”<sup>16</sup> Armenia permits charitable organizations to be established as public unions (associations), foundations, and any other forms permitted by law.<sup>17</sup>

#### E. Purposes

Despite extensive similarities between the treatment of non-commercial organizations and charitable organizations, many countries do distinguish between charitable and other non-commercial organizations in outlining purposes which such organizations may serve. The common distinction made between charitable and other non-commercial organizations is that charitable organizations shall serve only the public at large and/or the categories of persons specified by law, while other non-commercial organizations can benefit their members and/or persons and groups of their choice.

Ukrainian law defines charitable organizations as non-governmental organizations, the primary activities of which are both charitable and public-oriented, as defined by the Law.<sup>18</sup> The Law goes on to define charitable activities as selfless activities performed by charitable organizations that do not envision profit making. This phrase seems clearly to include any public benefit activity. The Law of Kyrgyzstan on Patronage and Charitable

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<sup>12</sup> Article 7 of the Federal Law of Russia on Charitable Activities and Organizations.

<sup>13</sup> Article 6 of the Law of Ukraine on Charity and Charities (1997).

<sup>14</sup> Article 6 of the Law of the Kyrgyz Republic on Patronage and Charitable Activity (1999).

<sup>15</sup> Article 8(1) of the Law of the Republic of Moldova on Philanthropy and Sponsorship (2002).

<sup>16</sup> Article 7 of the Law of the Republic of Tajikistan on Charitable Activity (2003).

<sup>17</sup> Article 11 of the Law of the Republic of Armenia on Charity (2002).

<sup>18</sup> Article 1 of the Law of Ukraine on Charity and Charities.



Activity<sup>19</sup> provides that a charitable organization shall be a non-governmental (non-commercial) organization created for implementation of purposes stipulated in the Law, by carrying out charitable activity in the interests of society in general and/or on behalf of certain categories of persons. Tajikistan, Russia and Moldova define charitable organizations in a similar fashion to Ukraine and Kyrgyzstan, while Armenia does not specify that charities must be “non-governmental,” but otherwise employs a similar definition.<sup>20</sup>

As a general rule, NIS countries which have drafted laws on charitable organizations have included lists enumerating the purposes which are deemed to serve charitable goals.<sup>21</sup> These lists vary from country to country, not only in the number and detail of specified purposes, but also as to whether the lists are “open” or “closed.” For example, in Ukraine, Russia, Moldova, Kyrgyzstan, and Armenia, the lists of permissible charitable activities are “closed lists,” meaning that they enumerate the activities or aims which qualify as charitable, and do not include a catch-all category that would allow for the categories to reflect the changing needs of the populace. Tajikistan, alone out of NIS countries with stand-alone charity laws, provides for an open list, by including a catch-all phrase, “other socially meaningful aims determined in accordance with the legislation of the Republic of Tajikistan”.<sup>22</sup>

The following list of purposes taken from the Moldovan law on charity<sup>23</sup> is representative of the region. The Moldovan law states that charitable activity can be carried for the purposes of:

1. social support and protection for individuals, including improving of life quality for poor, social rehabilitation of unemployed, and other persons who are due to physical or mental disability or other circumstances cannot realize their rights and lawful interests;
2. preparation of the population to overcoming consequences of natural disasters, ecological and other catastrophes, for overcoming accidents and disasters;
3. providing assistance to those who suffered as a result of war, natural disaster, epidemical , ecological or other catastrophes, social and ethnical conflicts;
4. increase of the prestige and role of family in the society, and protection of motherhood and childhood;
5. providing material assistance to charitable organizations, social and medical institutions; and

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<sup>19</sup> Article 5 of the Law of Kyrgyzstan on Patronage and Charitable Activity.

<sup>20</sup> Article 11 of the Law of Armenia on Charity.

<sup>21</sup> As was mentioned earlier, nearly all NIS countries (except for Belarus, Turkmenistan and Uzbekistan) have at least developed a definition of “charity organization” (typically in the relevant tax code provisions) and/or “charitable activity”, which would include a brief definition of charitable goals/purposes. However, the discussion herein will be limited to those definitions of purpose presented by the six stand-alone laws on charity from Armenia, Kyrgyzstan, Moldova, Russia, Tajikistan and Ukraine.

<sup>22</sup> Article 3 of the Law of Tajikistan on Charitable Activity.

<sup>23</sup> Article 2 of the Law of the Russian Federation on Charitable Activities and Organizations contains the same list of purposes as that of the law of Moldova.

6. assistance to other activities of public meaning which require such financial and material support.

The purpose-related provisions in the Russian law on charity are in all relevant aspects identical to those of the Moldovan law, and those of Ukraine, Kyrgyzstan, Tajikistan and Armenia are also quite similar to those of the Moldovan law. Nevertheless, there are some substantive differences between the Moldovan list and those of other NIS countries. For example, the Ukrainian law allows charities and philanthropists themselves to define the concrete directions of a charitable organization and to define charitable activity.

#### F. Registration or Incorporation Requirements

As with several other issues, there are no special provisions in the laws on charities dictating special registration or incorporation requirements for charities. Even when the laws on charities define the registration procedures (as with the Ukrainian Law on Charity and Charities, or the Moldovan Law on Charity and Sponsorship), these rules are almost identical to the rules for registration established for other NCOs, public associations in particular. Typically, charitable organizations must register in the same manner dictated in the law of their country for their particular legal-organizational form, and may be founded by the same entities that are permitted to found the chosen NCO organizational form. The following discussion describes the general rules for non-commercial organizations, which are equally applicable to charitable organizations.

##### *1. Who can be a founder?*

The founders' requirements will depend upon the relevant legal organizational form. For example, charities that are founded in the form of public associations may be founded by natural persons (over the age of 18, domestic, and in most instances, as foreign) and other public associations, in Russia, Ukraine, Moldova and Kazakhstan. In Kyrgyzstan, Georgia, and Armenia, associations can be founded by any natural and/or legal persons (domestic and foreign), and foundations can be founded by either natural or legal persons (domestic and foreign).

There are a few additional limitations on who can found a charitable organization. For example, in Russia, Ukraine, Moldova, and Tajikistan, bodies of central and local government and governmental institutions cannot be founders of charitable organizations. In Ukraine, only physical persons and other public associations can be the founders of a public association (including one with charitable status). Or in Moldova, government officials cannot be founders of public associations (including ones with charitable status), if their professional responsibilities include registration and control over the activities of public associations.<sup>24</sup>

##### *2. Number of founders*

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<sup>24</sup> Article 4 of the Law of the Republic of Moldova on Public Associations (1996).

Different organizational legal forms require different minimal number of founders. Typically, foundations will require only one or more founders, while associations may require from 2 to 10 or more. The required minimum number of founders for associations varies from 2 (Armenia, Georgia, Russia), 3 (Moldova, Tajikistan, Ukraine, and Kyrgyzstan) to 10 founders (Uzbekistan, Turkmenistan, Belarus). More founders might be required for charitable organizations incorporated as public associations with national, regional, or international status.<sup>25</sup>

### *3. Associations of Charitable Organizations*

All NIS countries do allow public associations or charitable organizations to create a union of other associations, to register it as a legal entity, and to obtain charitable status. Such unions or associations of legal entities require a minimum of two founders.

### *4. Government Body in Charge of Registration*

The common practice throughout the NIS is to require charitable organizations to register as newly established legal entities under the auspices of the Ministry of Justice or other government body authorized to carry registration of legal persons, such as the Registration Chamber. Moldova is the only country of the NIS to have established a special Certification Commission for registration of charities, although the status of this commission is currently unclear.<sup>26</sup> In addition, some cities and regions in Russia, including the cities of Moscow and Saint Petersburg, have chosen to adopt procedures and establish commissions comparable to that of Moldova, although these commissions will not be discussed in this report.

The imposition of an additional certification procedure for registration with the tax authorities is likewise typically required for charitable organizations in order to qualify for tax benefits. In Ukraine, for example, simply registering as a charitable organization is not sufficient to obtain tax-exempt status. In order to obtain this status, any public association (not only charitable organizations) must be recorded in the Registry of Non-profit Organizations (NPOs) maintained by the Tax Administration as required by the Law on the Taxation of Profits of Enterprises and the Regulation on Registries of NPOs

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<sup>25</sup> In the Russian Federation, Tajikistan, Kazakhstan, Ukraine, Moldova, and Uzbekistan, the registration procedures differentiate depending upon the territorial status of the association, i.e. whether they are planning to perform their activities locally, in several territorial regions, or on the entire territory of the country. The more expansive the territorial scope of the organization, the more complex the registration requirements will be, including requiring a greater number of founders.

<sup>26</sup> Moldova is somewhat unusual, in that it has created a special Certification Commission for awarding charitable status (also within the Ministry of Justice), that was originally responsible for registering charitable organizations, prior to the adoption of the 2002 Law on Charity. After this new law was enacted, the situation became somewhat unclear. In the past, the Certification Commission reviewed the application of an organization and advised the tax authorities as to whether the charitable organization had been awarded a public benefit certificate entitling it to tax benefits. With the adoption of the 2002 Law on Charity, which incorporates its own registration procedures without reference to the Certification Commission, the status of this Commission is in doubt. Therefore, we will examine the procedure contained in the 2002 Law because it is the most current, despite the fact that it remains unclear whether this procedure has taken the place of the Certification Commission.

approved by Order N232 of the Ukrainian State Tax Administration.<sup>27</sup> According to the Kyrgyz Tax Code (Section 9.4), a charitable organization will be eligible for tax benefits if it “has obtained under the established procedure a document, issued by the tax organs, confirming its rights to tax privileges under Sections 112 [exemptions for charitable activity] and 145 [VAT exemptions] of th[e] Code.”

## *5. Registration Process*<sup>28</sup>

NIS charity laws, such as those in Russia, Kyrgyzstan, or Armenia, often do not establish a separate registration process for charities, choosing instead to incorporate by reference the procedures applicable to all non-commercial legal entities.<sup>29</sup> The following discussion identifies the basic requirements of the registration procedure for non-commercial organizations in the various countries.

### *a) Ukraine*

In Ukraine, the following documents must be filed in order to register a charity: (1) founder (s) application or that filed by his representatives, (2) bylaws (regulations)/the protocol of the constituent meeting (congress, conference), (3) the information about the founder(s) and the charity executive, (4) the information about the charity’s local branches (affiliates, offices), and (5) a document to prove payment of the state registration fee.

The application for state registration of a charity must be considered within two months from the date of submitting all necessary documents. The outcome of consideration must be communicated to the applicant within 10 days. The organ which is responsible for state registration may inspect the data contained in the submitted documents. After consideration of the application, the registering body must decide to either register or refuse to register a charity. If registration is granted, the founder(s) is issued a registration certificate in a format stipulated by the Cabinet of Ministers. Fees are charged for state registration in an amount also determined by the Cabinet of Ministers, but this amount may not exceed the equivalent of ten times the pre-tax amount of minimum salary as determined by the government of Ukraine.

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<sup>27</sup> In order to obtain the special tax benefits accorded to NPO status, charitable organizations must demonstrate that they are in compliance with the requirements of the Law on Taxation of Profit of Enterprises (which dictates the type of income that can be received) and apply to be listed on the registry of NPOs. The primary requirement is that a charitable organization cannot conduct any service for a fee. If it does so, it will be excluded from the registry of NPOs and will lose its tax benefits. This outcome does not affect its registration as a charitable organization. However, the meaningful aspect of such nomenclature is in the benefits, to which it will no longer be entitled.

<sup>28</sup> Some countries, such as Armenia and Moldova, have developed special registration requirements for foundations, provided in separate laws on that organizational form. Because associations are the more common organizational form used in the NIS, however, we will limit our discussion on registration processes to those for associations.

<sup>29</sup> The typical provision, such as that from Article 9 of the Federal Law of Russia on Charitable Activities and Charitable Organizations provides that “[s]tate registration of a charitable organization is accomplished in accordance with the procedure, determined by (federal) laws.”

Registration may be refused for failure to fully comply with the registration process, violation of other laws or normative acts of Ukraine, or in the event that another registered charity bears the same name. The decision to refuse a charity the state registration may be appealed in the court in accordance with Ukraine's legislation.

#### b) Russia

In Russia<sup>30</sup>, the following documents must be submitted for registration of a public association: (1) application signed by members of a permanent governing body, (2) two copies of the charter, (3) extracts of the minutes of the founding congress or general meeting reflecting establishment of the association, the approval of the charter and the formation of governing and supervisory bodies, (4) information about the founders, (5) documents confirming payment of registration fees, (6) document confirming the legal address of the association, (7) minutes of the foundation congresses or general meetings for international, all-Russian or interregional public associations, and (8) documents confirming authorization for the association to use its chosen name and symbols.

An application for registration must be considered within one month of submission, and within that time, the registering body must decide either to register the public association or to refuse registration. If an association is granted registration, it is then issued a certificate of state registration, which testifies to the successful state registration of the public association, the entry of this association by the registration body into the unified state register of legal entities, and the payment of appropriate registration fees. Registration fees are determined by the laws of the Russian Federation.

In the event of a refusal to register, the registering body must provide the applicants with written reasons supporting the refusal, which must specifically identify the violations on which the refusal is based. Refusal to register may be based on the following reasons: (1) if the charter of the public association contravenes the Constitution of the Russian Federation, the constitutions (charters) of the subjects of the Russian Federation, the provisions of Articles 16, 19, 20 and 21 of Law on Public Associations or the laws on specific types of public associations; (2) if the list of the founding documents was not submitted in full or they have not been completed in proper order; (3) if a public association with the same name was registered earlier in the territory where this association carries on its activity; (4) if the registering body has established that the founding documents submitted for registration contain untrue information; or (5) if the name of a public association offends the morality and the national and religious sensibilities. Registration may not be refused on grounds of impracticality of purpose.

#### c) Kyrgyzstan

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<sup>30</sup> Registration procedure may be found in Articles 21, 22 and 23 of the Federal Law of Russia on Charitable Activities and Organizations.

The procedure in Kyrgyzstan<sup>31</sup> (specified in the Law on Registration of Legal Entities) applies to both NCOs and commercial legal entities. Under this law, the following documents are required for registration: (1) decision of founders, and (2) by-laws and/or charter, depending on organizational form.<sup>32</sup> A decision must be made on registration within 10 days. The registration is conducted free of charge. Registration may only be refused on the grounds that some aspect of the registration documents violates the laws of Kyrgyzstan. Arguments for refusal for registration shall be provided to founders in writing.

#### d) Moldova

Moldova<sup>33</sup> requires that public associations seeking registration provide the following documents: (1) application signed by all members of the governing body; (2) two copies of the charter; (3) copy of the minutes of the constituent meeting, demonstrating adoption of the charter, decision to found the association, and election of leaders; (4) information about the founders; (5) application of persons to use a personal name of a citizen in the name of the public association (where relevant); (6) decision of the highest organ of the public association to represent the association during the process of registration; (7) document showing the residence of the association; and (8) bank document confirming payment of registration fee.

A decision on registration must be made within one month, resulting in registration of the association (and issuance of a certificate of state registration), postponement of a decision on registration, or rejection of the application. Registration can be postponed for a period of up to three months, but a public association must be notified of such a decision within 3 days of the decision.

Refusal to register may occur in the following circumstances: (1) if the Charter of the public association contradicts the Constitution of the Republic of Moldova, the present Law and other legislative acts of the Republic of Moldova; (2) if requirements, mentioned in the decision about the delay in registration are not fulfilled within a three-month period; (3) if the Charter of the public association with the same name was registered before; (4) if the application about registration of the Charter of public association was presented before the expiration of the year since the date of the coming into legal force the decision of the court about the termination of the activity of the mentioned public association; (5) if the registration body has found out uncertain information in the constituent papers presented for registration; (6) if the name of the public association insults morals, national and religious feelings of citizens. A public association may not be refused registration due to reasons of impracticability of its purpose or because its legal address is that of a member of the association.

#### e) Tajikistan

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<sup>31</sup> Article 12 of the Law of the Kyrgyz Republic on Registration of Legal Entities as of January 18, 2003.

<sup>32</sup> Article 7 of the Law of the Kyrgyz Republic on Registration of Legal Entities.

<sup>33</sup> Article 19 of the Law of Moldova on Public Associations.

In Tajikistan the registration procedures for charities established primarily in the form of public associations<sup>34</sup> is very similar to that of Russia.

f) Armenia

Armenia<sup>35</sup> requires that public organizations applying for registration submit (1) an application for registration, (2) the protocol of the founders' assembly (with resolutions approving the charter, the election of an authorized person to represent the organization, and the decision to apply for registration), (3) information on the founders (only 5 are required if there are more than 5 founders), (4) at least two copies of the charter, and (5) a receipt demonstrating payment of registration fees.

The registration body must make a decision within twenty-one days as to whether to accept or reject the application for registration. In the event that the documents submitted are not complete or are illegible, the registration body must notify the association within 7 days, and the registration body may suspend its consideration of the application for a period of not more than ten days. Rejection may be based on the following grounds: (1) if the organization did not remedy the problems with its application or did not apply to the state registration body to cancel its application within 10 calendar days after being notified that not all documents were presented or that they were illegible or contained faults not related to the main content, (2) the name of the organization, short name (abbreviation) and the logos did not correspond to the requirements of Article 10 of the law, or (3) the presented charter contravenes the RA Constitution or other laws.

6. *Right to Appeal*

All NIS countries being discussed here provide that an organization whose application for registration is refused is entitled to receive a written explanation identifying the specific faults in the application, and may appeal this decision to a court, subject to the general laws of the country, although Moldova places a time limitation of one month on this right to appeal. In addition, all countries provide that refusal of registration may not prohibit the organization from reapplying for registration.

G. Charitable Organization Register

None of the NIS countries maintain a unified special register of all charitable organizations. In fact, most countries have multiple registries which have information about charitable organizations (and often about all registered NCOs). In Russia, Ukraine, Moldova, and Tajikistan, countries which require registration of charitable organizations depending on their territorial status (international, all-republican, regional, or local), the central government body (the Ministry of Justice or Registration Chamber) maintains records on international and all republican organizations, while their regional offices and municipal executive committees maintain information about regional and local organizations, respectively. However, in Armenia, registration of non-commercial

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<sup>34</sup> Article 15 of the Law of Tajikistan on Public Associations.

<sup>35</sup> Article 12 of the Law of the Republic of Armenia on Public Organizations.

organizations (including charitable organizations) is carried out only by the central office of the Ministry of Justice.

The following description of the process governing registries of non-commercial organizations in Ukraine is representative of many NIS countries. Ukrainian law establishes multiple registries for charitable organizations, and there is no a unified registry. The Ministry of Justice departments that carry out the registration of charitable organizations are required to maintain a separate registry for charitable organizations. The Cabinet of Ministers of Ukraine set the procedure for registry maintenance and publication of registry contents.<sup>36</sup> While public access to the registries is technically provided by law, in practice many obstacles prevent individuals from receiving information from any registry. Each division of the registration body (e.g. departments of the Ministry of Justice and municipal executive committees) maintains a separate registry of the charitable organizations it registers.<sup>37</sup> Registry data on national and international charitable organizations should be published in the official mass media. This is not done in practice. The following information is stated in the registry for charitable organizations: date of registration of presented documents, name of the charitable organization, its legal address, the date of approval of the statute of the CO, date of state registration, the purpose of activity of a CO, the members of the highest executive governing body of a CO, the date of issuing a certificate, information about changes into the statute, information about re-organization/liquidation.<sup>38</sup> Defunct COs which have not been formally liquidated remain on the register, which does not contain any information about the actual activities of a CO. The register does not list organizations that were denied the right to register or which have been sanctioned or disciplined.

All legal persons in Ukraine must be also registered with the Ministry of Statistics in order to receive a “code” used for opening bank accounts, applying for a stamp, and conducting other operational necessities).<sup>39</sup> To register, an organization’s representative must submit a statement drawn up according to form and specifying the organization’s name, registration date, registration certificate number, legal status, title of the executive authority, and legal address. The organization is then issued a certificate of entry into the government statistical registry and is given its code. In accordance with the Law on State Statistics,<sup>40</sup> the State Statistical Registry may disclose information to COs and to other legal or natural persons for a fee, except where otherwise stipulated by law (e.g. when the information is considered a commercial or state secret). Statistical information is supposed to be disclosed free of charge only if an organization or other persons are acting on behalf of governmental authorities. Generally, access to statistical information is restricted.

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<sup>36</sup> Article 8 of the Law of Ukraine on Charity and Charities.

<sup>37</sup> Regulation on the Procedure of State Registration of Charitable Organizations, approved by the Decree of the Cabinet of Ministers # 382 as of March 30, 1998.

<sup>38</sup> <sup>38</sup> Regulation on the Procedure of State Registration of Charitable Organizations, approved by the Decree of the Cabinet of Ministers # 382 as of March 30, 1998.

<sup>39</sup> The Law on State Statistics of Ukraine of July 17, 1992 (with subsequent amendments)

<sup>40</sup> Article 8 of the Law on State Statistics.



In addition to the statistical registry, a charitable organization must register with the tax administration, which grants the charitable organization a taxpayer code. Under the Law on Humanitarian Aid,<sup>41</sup> recipients of humanitarian aid must be entered into the unified registry of humanitarian aid recipients maintained by the Commission on Humanitarian Aid and by its regional and district branches, as established by the Cabinet of Ministers.<sup>42</sup>

In practice, access to registries is restricted because no overarching law regulates this process. State authorities maintaining individual registries establish their own regulations, and these authorities are usually not interested in assuring public access to the registries.

In addition to the above-described procedures which are similar to those in other NIS countries. In Ukraine, in order to be eligible for tax benefits on profits, a charitable organization must be entered into the registry of non-profit organizations (NPOs) maintained by the tax administration in accordance with the Law on the Taxation of the Profits of Enterprises.<sup>43</sup> In order to be included into the register, a charitable or other qualified organization which meets requirements of the tax law, shall submit to the local tax authority an application in accordance with the approved form, copies of by-laws and statutes.

According to the Law on the Taxation of the Profits of Enterprises (the Enterprise Tax Law), a CO is tax exempt if:

- (a) it complies with requirements in article 7.11 of the Law,
- (b) it is included into the Registry of NPOs, and
- (c) it does not have incomes other than listed in Article 7.11 of the Law.

All charitable organizations that comply with the law can be included into the Registry of NPOs and are eligible for tax benefits. In accordance with the Law on the Taxation of the Profits of Enterprises,<sup>44</sup> NPOs with tax-deductible status include charitable foundations and charitable organizations established under the Law on Charitable Activities. The Tax Administration determines the requirements for the acceptance of organizations into the NPO registry, verifies organizational compliance with these requirements, and enters organizations into the registry, resulting in the receipt of tax-exempt status. There is no appeals procedure if the CO gets rejected from inclusion into the registry of NPOs. A CO can be excluded from the registry based on the decision of the tax authority maintaining the registry, resulting violation of tax or other legislation by a CO.

## H. General Powers

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<sup>41</sup> Article 1 of the Law on Humanitarian Aid of Ukraine of October 22, 1999.

<sup>42</sup> The Resolution by the Cabinet of Ministers of Ukraine on the Approval of Procedure of Conducting of the Single List of Beneficiaries of Humanitarian Aid, dated March 22, 2000, N543.

<sup>43</sup> Regulation on the Register of Non-profit Organizations and Institutions, approved by the Decree of the State tax Administration of Ukraine # 232 as of July 11, 1997.

<sup>44</sup> Article 7.11.1(b) of the Law on the Taxation of the Profits of Enterprises.

As discussed earlier, charities are, as a general matter, required to register as legal entities in order to qualify as “charitable organizations,” and accordingly possess the same general rights and powers which are accorded to all legal entities. They are permitted to own real property and enter into contracts in the same manner as other legal entities. In many cases, however, there are limitations placed upon a charity’s right to use its resources for prohibited purposes, or the law of a particular country may endow donors or beneficiaries with certain rights as to the use of the charity’s funds. Such limitations typically relate to usage of property, limitations on administrative expenditures, and limitations on charitable organizations’ right to conduct economic activities. For example, the Armenian Law on Charity forbids charitable organizations to accept any property as a donation on condition of using it for the benefit of the donor. The law also contains additional provisions limiting the usage of property, requiring that an organization limit its administrative expenditures to 20% of the yearly profit of the organization, and requiring that at least 80% of the monetary donations and endowments must be used within a period of one year from the donation, unless the donor or charitable program specifies otherwise. In the event that donations are not used within the prescribed time period, they may be confiscated through a court decision. Or in Tajikistan, charitable organizations are not allowed to be co-founders of commercial legal entities alone with other entities.<sup>45</sup> Other countries have similar limitations which will be discussed in other relevant sections of this report.

NIS laws do not typically provide any special rights for potential or intended beneficiaries of a charitable organization to seek redress in court beyond that which would be available against any other type of legal entity. Yet the absence of such provisions in charity laws does not prohibit an individual or legal entity from bringing these types of actions. Even when the laws on charity do not explicitly grant such rights, there is no obstacle for individuals with claims against a charitable organization that is governed by a separate law to bring a case against the organization in court, particularly in instances where the donation has been granted to a charity for a specified purpose and codified in a written agreement. And of course, any person who believes that a charity is violating the law may bring its suspicions to the attention of the authorized bodies (registration, tax body or a prosecutor’s office) for their pursuit. Only the Russian and Moldovan laws specifically provide that any disputes which arise between the charitable organization and individuals or legal entities which have donated funds for charitable purposes, regarding the use of these funds, shall be brought to court.

### I. Membership Organizations

Associations are the most common legal form of charitable organization in NIS. As a rule, NIS charity laws do not provide for special rights or obligations of members of charitable associations which are different from those of associations in general. Members of a charitable association, unless otherwise specified in the relevant law on charity, would have the same rights and obligations as those provided under separate laws on associations. The restriction on distribution of assets, including profits among the members applies not only to charities but to all public associations in many countries.

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<sup>45</sup> Article 14 of the Law of Tajikistan on Charitable Activities.

Most commonly, NIS laws on associations define individuals' rights to freedom of association by prescribing that no one may be forced to join a public association and no one may limit one's right to leave the association. The Law of Ukraine on Public Associations states that public associations are founded and run on the basis of "equality of all members" and also provides that "nobody can be forced to join any civic association."<sup>46</sup> The Russian law on Public Associations also states that, "[t]he right of individuals to form associations includes the right to form voluntary public associations for the protection of common interests and the advancement of common goals, the right to join existing public associations or to refrain from joining them, and the right to leave public associations."<sup>47</sup> Much the same phrases appear in the laws of Tajikistan and Moldova on Public Associations.<sup>48</sup>

The Armenian Law on Public Organizations states that after establishment of a PO, founders become members with rights identical to those of other members.<sup>49</sup> However, this Law - while stating that the right to form association includes the right to become a member and to freely withdraw from membership - also provides that, "this right may be restricted, in cases and manner envisaged by law, for the servicemen of the military and law enforcement bodies."<sup>50</sup> Subject to this general ground for restriction, the Law provides further that members of an association have the following specific rights: (1) to be present at the assembly of the organization, if it is held with the participation of the delegates of the members of the organization, and the person was not elected as one; (2) to get acquainted with the recorded documents of the work of the organization bodies, to receive copies of the adopted resolutions (fees collected for the copies shall not exceed the expenses incurred for making the copies); and (3) to appeal the decisions of the organization's bodies to higher bodies in the manner envisaged by the charter of the organization.<sup>51</sup> The Law of Kyrgyzstan on Non-commercial Organizations, in contrast, requires only that all NCOs should be created and should act on the grounds of voluntarism, self-governance, lawfulness and openness.<sup>52</sup>

Beyond these provisions, most laws of the NIS on associations do not specify any particular procedures that must be followed when a member joins or leaves an association. Rather, the NIS laws permit associations to establish their own procedures governing the exclusion and removal of members, as well as the procedures by which members may join the association, requiring merely that such procedures be contained in the association's charter. For example, the Law of the Russian Federation on Public Associations provides that, "[m]embers of the public association enjoy rights and bear responsibilities in accordance with the requirements of its charter and may be expelled from the public association for violating these requirements, following a procedure

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<sup>46</sup> Articles 6 and 7 of the Law of Ukraine on Charity and Charities.

<sup>47</sup> Article 3 of the Federal Law of Russia on Public Associations (1998).

<sup>48</sup> Article 3(2) of the Law of Moldova on Public Associations; Article 3 of the Law of Tajikistan on Public Associations.

<sup>49</sup> Article 6(1) of the Law of Armenia on Public Organizations.

<sup>50</sup> Article 3(2) of the Law of Armenia on Public Organizations.

<sup>51</sup> *Id.*, Article 7.

<sup>52</sup> *Id.*, Article 4.

indicated in the charter.<sup>53</sup> Other countries simply require that the charter of the organization specify the “rights and responsibilities, conditions and procedure of admission to the organization and resigning from it.”<sup>54</sup>

Most laws on public associations also designate some sort of age requirement for members of associations: Ukraine (persons at least 14 years old, except for youth organizations, which can be determined by the statutes) (Article 12), Russia (18 years or older, 14 for youth associations and 8 for children’s associations) (Article 19), Moldova and Tajikistan (18 years for public associations, 14 for youth associations and 10 for children’s associations) (Article 15) (Article 12). Armenia and Kyrgyzstan’s laws on Public Associations and Non-Commercial Organizations, however, place no age restrictions on membership.

For a specific discussion of the types of legal entities that may join associations, see earlier discussion, p. 9, regarding “*Who Can Be A Founder?*”

## **II. Governance**

### **A. Structures**

All NIS countries dictate some aspects of structure for charitable organizations, either in the stand-alone laws on charity or in the general laws pertaining to non-commercial organizations. However, the extent of detail provided varies from country to country, and also depends upon the relevant organizational legal form. For example, Russia, Ukraine, Moldova, and Tajikistan all contain some provisions within their respective stand-alone laws on charities dictating certain elements that must be contained in the structure and governing bodies of charities in order to comply with the law. In contrast, Armenia and Kyrgyzstan do not have such provisions in their respective charity laws. However, similar provisions to those found in the laws on charity from other countries can be found in the Armenian laws on public associations and foundations and in the Law of Kyrgyzstan on Non-commercial Organizations.

As a general matter, NIS legislation permits the founders of a charitable organization some leeway to decide upon the management structures they prefer and to codify these structures within their charters or by-laws. However, there are some consistent features among the various countries. For example, all countries specify that for charitable organizations in any form, the highest governing body shall always be a collegial body, although the term given to this body may vary depending on the organizational form of a charitable organization and the country. For associations- it is typically a general meeting of members, and for foundations, it is typically a board of directors (or supervisory board), although again the actual terminology used to describe this entity varies throughout the region. These laws also vary considerably in the extent to which they

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<sup>53</sup> Article 6 of the Federal Law of Russia on Public Associations.

<sup>54</sup> Law of Kyrgyzstan on Non-commercial Organizations, Article 10; see comparable provisions in: Law of Moldova on Public Associations, Article 18; Law of Armenia on Public Organizations, Article 11; Law of Tajikistan on Public Associations, Article 13; Law of Ukraine on Charity and Charities, Article 13.

specify details such as voting procedures, officers, duties of various governing bodies, etc. Therefore, we will describe the requirements for each country separately.

### *1. Ukraine*

Article 17 of the Law of Ukraine on Charity and Charities dictates the name and responsibility of various management organs within a charity. According to this Law, the highest management organ of a charity is a collegial body (general meeting of members of a conference), which carries its responsibilities in compliance with the charity's by-laws. Areas of competence of the highest management body include approval of by-laws, adoption of amendments to by-laws, election of the charity's executive and supervisory organs, approval of charity programs, determination of the charity's activity guidelines, decisions regarding reorganization and liquidation, and any other issues stipulated by the charity's by-laws.<sup>55</sup> The Board is the executive organ of a charity, whose responsibilities are dictated by the by-laws of the charity, and which is headed by the president (or director) whose authority is likewise determined by the by-laws.

The highest management organ of a charitable organization is authorized to elect the executive (supervisory) and controlling councils of the charitable organization, and to hear reports by the supervisory council on the use of funds and assets of the charitable organization.<sup>56</sup> The executive organ of a charity is the Board. Competence of the Board is defined in the by-laws of a charity. In order to provide for day-to-day work, the organization appoints an administrative- executive organ headed by the Director (president), whose competence is also defined in the organization's by-laws. A supervisory board is an optional organ for a charity, which can be created by the highest management organ, and would perform controlling and supervisory functions. The members of the executive bodies of a charity, with the exception of the Director (president) cannot receive salaries for their work at the charity. Their expenses, which occur in relation to performance of their functions, may be compensated at the expense of the charity upon the decision of the Board.

The Ukrainian law on Charity does not distinguish between public associations and other organizational forms such as foundations for the purposes of describing structure and governance requirements, nor does it specify (beyond that which is describe above), the types of officers that an organization must have or rules for voting.

### *2. Russia*

Russia's Law on Charitable Activities and Charitable Organizations<sup>57</sup> provides that the highest management organ of a charitable organization is its collegiate body, formed in accordance with the procedure determined by the by-laws of the charitable organization. This body is responsible for the amendment of the by-laws of the charitable organization; the establishment of executive bodies of the charitable organization and of its supervisory

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<sup>55</sup> Article 17 of the Law of Ukraine on Charity and Charities.

<sup>56</sup> *Id.*, Article 5.

<sup>57</sup> Article 10 of the Federal Law of Russia on Charitable Activities and Organizations.

bodies, and termination of their authority; the approval of charitable programs; the approval of the annual plan, of the budget of the charitable organization and of its annual report; the adoption of the decisions on setting up commercial and non-profit organizations, on the participation in such organizations, on opening branches and representative offices; the adoption of decisions on the reorganization and on the liquidation of a charitable organization (with the exception of a charitable foundation).

Members of the highest management organ of a charitable organization must perform their work as volunteers, and may not occupy staff positions in the administration of commercial or non-commercial organizations which have been established by the same charitable organization. The highest management organ of a charitable organization may include only one worker of its executive bodies (with or without a vote).

Russian Laws on Non-commercial Organizations and on Public Associations establish additional rules for structure and competence of management bodies of various organizational forms of non-commercial organizations, which also apply to charities.

### 3. *Kyrgyzstan*

The Kyrgyz Law on Charity and Sponsorship remains silent regarding the management structure and competence of the management bodies of charitable organizations. These issues are addressed in the Law on Non-commercial Organizations which does provide for separate provisions governing the structure of associations, foundations and institutions, including ones with charitable status.

For associations, the law designates the “general meeting” (collegial body) as the highest management organ, and specifies the responsibilities that this organ will maintain. The law also specifies that changes and amendments to the by-laws of an organization must be introduced upon the decision of the general meeting. The general meeting is also exclusively responsible for the following issues<sup>58</sup>: introduction of amendments and additions to the by-laws; prioritizing the directions of activity of the public association and procedure for use of its property; procedures for admission and expulsion from membership of the association (unless otherwise is provided for in the by-laws); procedure of forming the governing bodies; approval of the organization’s annual report on activity and annual balance; decisions regarding the establishment of branches and/or representative offices; participation in activities of other legal entities; reorganization and liquidation; other issues except for those within the authorities of other bodies of the association, as written in the by-laws.

This Article also specifies that the procedures for conducting meetings and voting shall be regulated by the by-laws and are not dictated by the Law itself. In addition to the general meeting, a public association may establish additional governing bodies through its by-laws or by adoption by the general meeting, with the by-laws of the organization designating the procedure for the creation of and the permissible activities of, such bodies.

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<sup>58</sup> *Id.*, Article 20.

Instead of a general meeting, foundations are required to have a Board and a Supervisory Council, with the members of the Board appointed by the Supervisory Council, and the structure of the Supervisory Council to be dictated by the by-laws of the organization. According to the Law, every foundation must have a Board, which is responsible for managing and representing the foundation. This Board may consist of one or more members - legally capable physical persons, and must follow the lawful orders of the Supervisory Council of the foundation. The Board is responsible for submitting reports on the foundation's activity to the Supervisory Council. Other responsibilities and powers of the Board must be provided for in the foundation's by-laws. The Board will be considered to have a quorum for voting purposes if not less than half of its members participate in the meeting.<sup>59</sup>

It is the Supervisory Council which is charged with controlling the activities of the foundation, supervising the decisions of its governing bodies and enforcing these decisions, making decisions regarding the utilization of the funds of the foundation, and ensuring that the foundation properly complies with legislation and the requirements of its by-laws. As with the Board, a meeting of the Supervisory Council will be deemed to have a quorum if half of its members attend the meeting. The Supervisory Council has the following specified areas of authority<sup>60</sup>: to control and determine the directions of activity and the policy of the foundation; to introduce amendments and additions to the by-laws; to adopt a decision on reorganization of the foundation; to appoint and remove the members of the Board; to approve decisions of the Board regarding transactions in the amounts exceeding the amounts specified in the by-laws, as well as transactions with certain types of the property specified by the by-laws; to approve transactions that have conflict of interest; to approve annual report on activities of the foundation prepared by the Board of the foundation; to approve decisions of the Board regarding involvement in commercial corporations or termination of such involvement; to solve other issues in accordance with the by-laws; to examine and audit any and all foundation documents; and to inquire into any aspect of the foundation's activities.

The founders also have supervisory rights over a foundation, retaining the right to make decisions on any issues relating to the activity of the foundation (whether or not the issue is within the competence of the Board or Supervisory Council), and even shall have the right to veto any decision of the Supervisory Council.<sup>61</sup>

#### *4. Moldova*

The provisions in Moldova's Law on Charity are identical to those in Russia in regards to the highest management organ of a charity. In addition, Moldova explicitly permits charitable organizations to have executive and supervisory bodies in addition to the collegial body.<sup>62</sup> Moldovan Laws on Public Associations and on Foundations establish

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<sup>59</sup> Article 26 of the Law of the Kyrgyz Republic on Non-Commercial Organizations.

<sup>60</sup> *Id.*, Article 28.

<sup>61</sup> *Id.*, Article 22.

<sup>62</sup> Article 11(2) of the Law of Moldova on Charity and Sponsorship.

additional rules for structure and competence of management bodies of various organizational forms of non-commercial organizations, which also apply to charities.

For example, the Law of Moldova on Foundations contains extensive provisions setting forth the composition and procedures for the Foundation Board. Moldova (Articles 24-29) requires that foundations be governed by a Foundation Board, with the power to create additional bodies at the discretion of the Board (in compliance with the statutes of the foundation).

The highest management organ of a foundation is the Board. The procedure of assignment and recalling of the members of the Board, the scope of their authority, as well as the procedure of the activities of the Board must be set forth in the by-laws of a foundation. Initial membership on the Board of a foundation shall be assigned by the founder or the executor if the members are not listed by name in the will. The Foundation Board has the authority to: (a) elaborate the strategy of foundation development; (b) approve the budget and its changes, financial reports, and annual reports on foundation activities; (c) manage the property (assets) of the foundation and the procedure of merger with other foundations unless such merger is prohibited by the foundation's by-laws; (d) elect new members of the Board and adopt decisions on the recall of Board members; (e) establish other management organs; (f) direct activities on the enlargement of foundation property; (g) adopt decisions on all matters relating to foundation activities; And (h) ensure observance of the ethical norms of the non-commercial sector by the foundation. The Board shall have access to all the documents of the foundation and be entitled to control the accounting and property record-keeping as well as legality of operation execution by the foundation.

Other bodies of a foundation might include a trustee (or supervisory) council established to supervise a foundation's activities. Public foundations whose property value or assets exceed 1 million leus must have a trustee council. The trustee council shall exercise oversight of the compliance of Foundation activities with the legislation, the foundation's by-laws, and ethical norms, as well as oversight of the accounting and record-keeping. This council shall engage in an audit of annual financial reports and annual reports on foundation activities, it shall point out the defects and make suggestions to the Board as to possible methods of elimination, and no less than once a year, it shall submit an account of its activities to the Board. The trustee council shall be entitled to examine documents of the foundation and call special meetings of its Board. Members of the trustee council shall be entitled to participate in foundation Board meetings.

The foundation may also have other bodies exercising executive functions. These bodies, along with the board of trustees, shall be established by the founders or the foundation Board. The order of establishment and functions of these bodies are specially envisaged by the foundation's by-laws.

## *5. Tajikistan*

Tajikistan's Law on Charitable Activity provides that the highest management organ of a charitable organization shall be the general meeting (or collegial body), which shall be



formed in compliance with charity's by-laws. The matters reserved to this collective body are: adoption of amendments to by-laws, election of the charity's executive and supervisory organs and termination of their authority, approval of charity programs, approval of charity's annual work plan, budget, and of its annual report, deciding on establishment of commercial and non-commercial legal entities, on participation in such entities, on opening of branches and representative offices, and decisions regarding reorganization and liquidation (with the exception of a charitable foundation).

In addition, Article 15 of Tajik Law on Charitable Activity provides that executives of branches and representative offices are appointed by the highest management organ of a charity and perform based on a power of attorney issued by the charitable organization

Tajikistan does not specify (beyond that which is described above) the types of officers, their powers, or rules for voting.

## *6. Armenia*

As with Kyrgyzstan, the Law of Armenia on Charity provides no guidance on the types of governance structures required for charities. Therefore, we must look to the stand-alone laws on public organizations and foundations for these details.

As with other NIS countries, the highest management organ of a charitable association is its general meeting. However, it is up to the founders to choose the remaining structure of the organization; "the structure of the organization is stipulated by its charter and (or) by the decisions of its bodies corresponding to its charter."<sup>63</sup> The law also provides for some minimal requirements, i.e. that the regular meeting of the organization must be held at least once every two years, and that members must be notified in advance of the meeting of the assembly in the manner specified by the charter, but no later than 14 days prior. In addition, this meeting will only be considered valid if it is convened in the manner prescribed by the by-laws, and if the number of participants exceeds the total number of all the members or the delegates stipulated by the charter, which may not be less than half of the total number.

The exclusive authority of the highest management organ of the association:<sup>64</sup>

1. To approve the organization's charter (if it was not approved by the founders assembly), the introduction of changes and (or) amendments to it, or approval of a new charter.
2. To approve the reports on the activities of the organization and on utilization of property.
3. To elect those bodies, which are subordinate and accountable exclusively to the supreme body (if the organization has bodies other than the supreme body), including the election of the body which shall carry out supervision of the activities of the organization; to introduce changes to the staff or premature

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<sup>63</sup> Article 14 of the Law of Armenia on Public Organizations.

<sup>64</sup> *Id.*, Article 14(5).

- termination of the authority of those bodies, meanwhile the duration of their authorities may not exceed the time period envisaged by the charter for the convention of regular meeting of the organization.
4. To make decision on restructuring the organization; to approve the act on devolving property or the balance sheet on division of property, except restructuring by the decision of the court.
  5. To make decision on dissolving the organization, except cases when decision on dissolution is made by court.
  6. To solve other issues, if the charter of the organization envisages the solution of those issues exclusively by the supreme body.
  7. The supreme body of the organization cannot delegate its right on adopting of a decision on exclusive issues to the other bodies of the organization.
  8. The general meeting of the organization shall make decisions in the manner prescribed by the charter of the organization.

Article 14(7) of the Law on Public Organizations also prescribes the process by which the general meeting must make decisions, stating that this process may be dictated by the charter of the organization, subject to a requirement that a decision on an issue within the exclusive authority of the supreme body shall be accepted as valid only if more than half of the members of the organization or of all the delegates have voted for this decision, and if the law or the organization's charter does not require a larger number of votes for the adoption of this decision.

Armenia also has a stand-alone law on foundations, which prescribes separate requirements for this organizational form. For Armenian foundations, the law envisages two main supervisory organs; the highest management organ is the Board of Trustees of the foundation, and the other supervisory organ is the manager or executive director. However, the statute permits the founders to draft the by-laws to provide for additional bodies (such as corporate executive bodies), within the discretion of the founders. The Board of Trustees has the authority to make decisions in the following areas:<sup>65</sup>

1. Development of strategy of the foundation;
2. Approval of the foundation's budget and its changes, the financial reports and the annual reports on foundation's activities;
3. Approval of the procedure on management of the foundation's property;
4. Decisions regarding reorganization of the foundation;
5. Election of new members of the foundation's board of trustees and adoption of decisions regarding early suspension of authorities of members of the board of trustees;
6. Decisions regarding the election of the president of the board of trustees, the manager of the foundation and other bodies envisaged by the charter, and early suspension of their authorities;
7. Formation of other bodies of the foundation envisaged by the charter;
8. Decisions concerning the adoption of changes and additions to the charter of the foundation, approval of new editions of the charter;

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<sup>65</sup> Article 25 of the Law of Armenia on Foundations.

9. Decisions regarding the creation of commercial companies or participation in them, as well as decisions regarding the creation of separated subdivisions and institutions and the adoption of the charters of the latter;
10. Supervision of the financial-economic activities of the foundation;
11. Hearing the reports of the manager of the foundation with regularity envisaged by the charter;
12. Supervision of the process of implementation of the board of trustees' decisions;
13. Election of the person who shall conduct audits (auditor);
14. Fulfillment of other authorities envisaged by this law, the charter, as well as those authorities that have not been reserved for other bodies of the foundation.

In addition, the Law on Foundations provides for the election of a President of the Board, who is responsible for organizing the work of the board of trustees; gathering the sessions of the board of trustees and chairing them; and organizing the recordings of the sessions.

The following rules govern the voting of the Board of Trustees:<sup>66</sup>

1. The board of trustees fulfills its activities through sessions. The session of the board of trustees is considered authorized if more than half of its members participate in it, unless the charter envisages a greater number of participants. The decisions of the board of trustees are made by simple majority of votes of the members present at the session, unless this law and the charter of the foundation envisage a greater number of votes.
2. Decisions regarding the election and dismissal of the president of the board of trustees or the manager of the foundation, as well as decisions regarding reorganization or liquidation of the foundation, or changes and additions to be made in the charter (adoption of new editions of the charter) are made by majority of votes of all members of the board of trustees.

The Law also provides for the election of a Manager of the foundation, whose election and dismissal are also within the province of the Board, and who is responsible for all other issues which are not explicitly reserved to the Board.

#### B. Accountability

Many of the laws on charity (as well as laws on NCOs) do provide some guidance on conflict of interest problems, although in most NIS countries this area is not yet regulated in much detail. Kyrgyzstan and Russia are the only countries with comprehensive conflict of interest provisions, although these provisions do not appear in the charity laws, but rather in legislation on NCOs. Ukraine, Tajikistan, Armenia and Moldova have a few provisions that are intended to reduce the possibility of conflict of interest problems within their charity laws, but do not have any provisions detailing procedures to follow in the event of a conflict of interest problem.

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<sup>66</sup> Id., Article 24.

As a preliminary matter, most laws governing non-commercial organizations contain some form of a prohibition against distribution of assets to members or employees of the organization, except in the form of wages or payments to legitimate social funds (known as the principle of non-distribution). The language contained in the Russian Charity Law is representative of such provisions throughout the region: “If a charitable organization’s revenues exceed its expenditures, the amount of the excess is not subject to distribution among its founders (members), but [] must be directed towards realizing the goals, for the sake of which this charitable organization was established.”<sup>67</sup> In addition, there is also typically a prohibition on distribution of assets among founders upon the dissolution of a charitable organization. Instead, property retained after payment of creditors must be used for charitable purposes in accordance with the procedures determined by the organization’s charter or, in some cases, if this is not possible, to revert to the state. The language in the Law of Moldova on Charity and Sponsorship differs somewhat from that of other NIS countries on this issue, in that it prohibits distribution of remaining assets to founders upon liquidation, *except* for assets actually contributed by founders.<sup>68</sup>

In order to prevent conflict of interest problems, Russia, Ukraine, Moldova, Kyrgyzstan, and Armenia (for foundations) dictate that members of the supreme governing body and/or board members, must perform their work as volunteers and may not receive compensation or be otherwise employed by the organization. Russia permits at most one paid employee to serve on the governing body, while Ukraine permits only the Director to be a paid member of the board.<sup>69</sup> In addition, Russia, Moldova, Armenia, and Tajikistan choose to explicitly prohibit members of the supreme executive or supervising body from occupying staff positions in the administration of commercial and/or non-commercial organizations established by or with the participation of the charitable organization for which they are a member of the governing body.<sup>70</sup>

Beyond these general principles, most countries do possess some additional provisions designed to address conflict of interest problems, although, again, the extent of detail present in such provisions varies considerably among the various countries.

### 1. Ukraine

Current law does not directly address the issue of conflict of interest or of transactions concluded for the personal benefit of founders, members of the board or other interested parties of an organization. The Law on Charity and Charitable Organizations provides that founders and employees of charitable organizations do not have the right to seek material benefits or additional funds in connection with their position in such organizations except where otherwise stipulated by law.<sup>71</sup> In addition, the Criminal Code

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<sup>67</sup> Article 6(2) of the Federal Law of Russia on Charitable Activities and Organizations.

<sup>68</sup> Article 12(4) of the Law of Moldova on Charity and Sponsorship.

<sup>69</sup> Article 10.3 of the Federal Law of Russia on Charitable Activities and Organizations, Article 17 of the Law of Ukraine on Charity and Charities.

<sup>70</sup> Article 10.4 of the Federal Law of Russia on Charitable Activities and Organizations, Article 10.4. Law of Moldova on Charity and Sponsorship, Article 11.4; Law of Tajikistan on Charitable Activity, Article 12.

<sup>71</sup> Article 14 of the Law of Ukraine on Charity and Charitable Organizations.

contains penalties for causing damage by conflicts of interest,<sup>72</sup> i.e., misuse by officials of their position for personal benefit, for profit-making or in the interests of third parties if such misuse has caused significant damage to State or public interests, or to the interests of any natural or legal person.

## 2. *Russia*

Russia's Law on Charitable Activities does not contain any special provisions dedicated to conflict of interest prevention. However, there are such provisions in Russia's Law on Non-commercial Organizations (Article 27). This Law states that personal interest in certain acts of an NCO, including transactions, may result in a conflict of interest between the interested persons and the NCO. The Law goes on to define "interested persons" as including the manager (and deputy manager) of the organization, members of the governing bodies of the organization or members of the bodies supervising its activity, if these persons are employed by the organization or individuals, are participants or creditors of the organization, are close family relations with such persons, or are creditors of the such persons.

The same rule applies if the organizations or individuals are suppliers of goods or services to the organization, major consumers of goods or services produced by the organization, have certain property formed partially or in full by the organization or may generate a profit from the use or disposal of the property of the organization.

When an interested person has an interest in a transaction to which an NCO is or intends to be a party, or if there is any other conflict of interest between the interested person and the organization with respect to an existing or supposed transaction, the interested person must inform the governing or supervising body of the organization prior to the decision to enter into the transaction and the transaction must be approved by the governing or supervising body. If the interested person does not follow the requirements in the law, the transaction may be invalidated by a court, and the interested person will be held responsible to the organization for any losses to the organization resulting from this transaction.

## 3. *Kyrgyzstan*

The only provision within the Law of Kyrgyzstan on Patronage and Charitable Activity governing conflict of interest provides that the property of a charitable organization cannot be transferred (by means of sales or payments for goods, works or services) on terms which are more favorable for founders or members of the organization than would be available to other persons. However, Kyrgyzstan's Law on Non-Commercial Organizations contains several provisions pertaining to conflict of interest, which apply

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<sup>72</sup> Article 165 of the Criminal Code of Ukraine.

to all legal organizational forms (associations, foundations and institutions) equally. According to Article 13 of this Law, a transaction is deemed to suffer from a conflict of interest, where it is conducted between the organization and any interested persons. The term “interested persons” is defined as: officers, members of governing bodies of a non-commercial organization, or other persons that, by strength of their position, may influence the use of property by the organization, and conduct a transaction with their organization personally or via a representative. A conflict of interest is also presumed when a non-commercial organization concludes transactions with relatives of interested parties or with their creditors. This Law provides for procedures that must be followed for settlement of a conflict of interest when it arises. According to Article 14, any interested person must inform the authorized body of the organization (as determined by the organization’s charter) of the conflict of interest in a transaction before that transaction is concluded. If the transaction is not approved prior to completion, the interested person bears responsibility for compensating the losses incurred by an organization as a result of this transaction.

#### *4. Moldova*

The Law of Moldova on Charity contains no special provisions on conflict of interest. However, the Law of Moldova on Foundations specifies that members of the Board of a Foundation must recuse themselves in the event that the Board discusses a matter in which that member has a financial or other interest (or of a relative within one to three degrees), and may not participate in voting on such an issue.<sup>73</sup> In addition, the records of all cases of decisions made by the board favoring a board member must be entered into the minutes of the meeting. The Law on Public Associations has no provisions on conflict of interest.

#### *5. Tajikistan*

Article 12 of the Law on Charitable Activity states that members of the highest body of a charitable organization shall not be simultaneously executives of both the charity and of any commercial entities of which the charity is a partner or a founder. According to Article 18 of the Law on Charitable Activity, transfer of assets which belong to a charitable organization to its founders or members on conditions more favorable than for the third persons is prohibited. Article 24 of the Law on Public Associations states that income generated from activities of an association shall not be distributed among founders/members of the association, and shall be used for statutory and charitable purposes.

#### *6. Armenia*

Armenian laws on Charity and on Public Organizations do not contain special provisions dealing with conflict of interest issues. However, the Law of Armenia on Foundations provides that, if the Board of Trustees discusses an issue which concerns the property or other interests of one of the members or of any person related to him/her (parent, spouse,

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<sup>73</sup> Article 26(2) of the Law of Moldova on Foundations.

child, brother, sister, the spouse's parent, child brother or sister), than this member shall not participate in the voting.<sup>74</sup>

### C. Additional Issues

Other than the provisions that may be found within the legislation specifically governing charitable organizations, one may also find relevant provisions in other laws, for instance in the relevant criminal code, imposing penalties for damage caused by conflicts of interest, i.e. for misuse of one's official position for personal benefit or profit-making, or providing for penalties if such misuse has caused significant damage to the interests of the state, the public, or any natural or legal person. Prosecutions for such violations, however, are somewhat rare, particularly as there are no private sector watchdog organizations involved in monitoring charitable organizations, nor is there a history of governing body members being held liable for non-criminal violations of general duties such as the duty of care or duty of loyalty. In addition, mechanisms for self-regulation, the most common of which would be voluntary adoption of a code of ethics among NCOs or charitable organizations, remain rare in the region. We are not currently aware that such a development has taken place in any of the six countries being considered here.

## III. **Dissolution, Winding Up and Liquidation of Assets**

In most cases, a charitable organization may be terminated through liquidation (either voluntary or involuntary) in accordance with the procedures established for the relevant organizational form – usually association or foundation. Most charity laws in the NIS do not specify liquidation procedures for charities which are different from those established for other not-for-profit legal entities (which are often different depending upon the legal organizational form). Instead, for example, the laws of Ukraine, Russia, Kyrgyzstan and Tajikistan all state in their respective laws on charity that liquidation and reorganization are carried out in the manner specified in the legislation of the country, thereby referring to procedures set in separate laws on public associations, foundations, etc.<sup>75</sup> The Law of Armenia on Charity contains no provisions on voluntary dissolution or liquidation (but does specify procedures to be followed in the event that the charity violates the law), and therefore by implication falls into this same category. The Law of Moldova on Charity specifies simply that a charitable organization may be reorganized or liquidated pursuant to the decision of: the supreme governing body, the executive body, founders or by court decision.<sup>76</sup> Any additional specific provisions regarding liquidation that are present in laws on charity typically take the form of requirements that, in the event a charitable organization has been involuntarily liquidated due to legal violations, it may be

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<sup>74</sup> Article 24 of the Law of Armenia on Foundations.

<sup>75</sup> See Article 10 of the Law of Ukraine on Charity and Charities, stating merely that "Liquidation of a charity is done in accordance with a method stipulated by legislation"; see also Article 6 of the Law of Kyrgyzstan on Patronage and Charitable Activity; Article 13 of the Law of Tajikistan on Charitable Activities; and Article 11(1) of the Federal Law of Russia on Charitable Activities and Organizations.

<sup>76</sup> Article 12(1) of the Law of Moldova on Charity and Sponsorship.

compelled to repay certain tax benefits it has improperly received as a result of its charitable status.<sup>77</sup>

### A. Voluntary Dissolution

For associations, the common practice is that the highest management organ of the organization (as this entity is defined by the law and/or the organization's by-laws) possesses the power to voluntarily initiate dissolution of a charitable organization.

#### 1. *Ukraine*

In Ukraine, the Law on Charity does not contain provisions on dissolution or liquidation. However, the Law on Public Associations provides simply that a public association may voluntarily liquidate in the manner determined by its charter.

#### 2. *Russia*

Russia's Federal Law on Charitable Activities and Organizations specifies only that reorganization and liquidation are accomplished in the manner set by other laws.<sup>78</sup> In the Law of Russia on Public Associations, it is specified that the decision to liquidate may be made by the general meeting or congress of the association, in the manner specified by the by-laws, or through judicial procedure, after which time the association must notify the registering body in order to have itself removed from the state register of legal entities.<sup>79</sup> Only a court can make a decision as to the liquidation of a foundation.<sup>80</sup> A Foundation may be liquidated: (1) if the Foundation's property is not sufficient for the realization of its goals, and the possibility of obtaining the needed property is unrealistic; (2) if the Foundation's determined goals cannot be achieved, and it is impossible to change the goals; (3) if it is not working towards the realization of its statutory goals; or (4) under other circumstances determined by federal law.

#### 3. *Kyrgyzstan*

There are no provisions on liquidation of a charity in the Law on Charity and Sponsorship. The Law on Non-commercial Organizations of Kyrgyzstan (Article 16) prescribes that the liquidation procedure for non-commercial organizations is established in the civil code and other laws of Kyrgyzstan. According to the Law on Kyrgyzstan on Registration of Legal Entities, in order to voluntarily liquidate a non-commercial organization, the authorized organ (for associations, the highest governing body) must immediately inform the registering body of its plans to liquidate, and must provide a copy

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<sup>77</sup> "Taxes and other obligatory dues of the charitable organization which have not been paid as a result of submitting false information about its activities are subject to confiscation according to the procedures stipulated by the legislation of the Republic of Armenia." Law of Armenia on Charity, Article 19.

<sup>78</sup> Article 11 of the Federal Law of Russia on Charitable Activities and Organizations.

<sup>79</sup> *Id.*, Article 26.

<sup>80</sup> Article 18 of the Federal Law of Russia on Non-commercial Organizations.



of the decision to liquidate (taken by the court or the authorized decision making body), along with originals of constituent documents, certificates of state registration, certificates from tax inspectors certifying the absence of outstanding tax obligations, a certificate demonstrating that the organization has closed its bank accounts, permission of the National Bank of Kyrgyzstan, a certificate demonstrating absence of debt to the social fund, and a certificate demonstrating that the organization has surrendered the seal and stamps of an artificial person.<sup>81</sup> A foundation may only be liquidated by the court upon the application of interested legal and/or physical persons.<sup>82</sup>

#### *4. Moldova*

In Moldova, the relevant provision in the Law on Charity dictates simply that a charitable organization may be reorganized or liquidated based on the decision of its highest management body, executive body, by decision of the founders or by court decision.<sup>83</sup> A charitable organization cannot be reorganized into a business partnership. According to the Law of Moldova on Public Organizations, the decision regarding liquidation may be made by the general meeting or convention of the organization.<sup>84</sup> According to the Law on Foundations (Article 34) the procedure for voluntary liquidation of a foundation is established by founders and stipulated in by-laws.

#### *5. Tajikistan*

In Tajikistan, the highest management organ of a charitable association, the general meeting (or collegial body), has the authority to make decisions regarding reorganization and liquidation.<sup>85</sup> Liquidation or reorganization of foundations must be accomplished through court permission.

#### *6. Armenia*

The Law of Armenia on Public Organizations provides that a public organization may voluntarily dissolve upon the decision of its supreme body, for any reason, including for expiration of the terms for which the organization was founded, or satisfaction of the organization's established objectives.<sup>86</sup> This law also prescribes that the procedures to be followed for dissolution are the same as those which apply to all legal entities.

The Law of Armenia on Foundations, however, provides special grounds and procedures for voluntary liquidation of foundations. First, the decision to liquidate must be made by

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<sup>81</sup> Article 17 of the Law of the Kyrgyz Republic on Registration of Legal Entities.

<sup>82</sup> Article 28 of the Law of the Kyrgyz Republic on Non-commercial Organizations.

<sup>83</sup> Article 12 of the Law of Moldova on Charity and Sponsorship.

<sup>84</sup> *Id.*, Article 40.

<sup>85</sup> Article 12 of the Law on Charitable Activities.

<sup>86</sup> Article 20 of the Law of Armenia on Public Organizations.

a majority vote of the board of trustees.<sup>87</sup> The Law specifies the following grounds for liquidation of a foundation:

1. If the property of the foundation is not sufficient for the realization of its activities and the possibility of getting the necessary property is not real;
2. If the foundation by its activities has deviated from the goals envisaged by the charter;
3. If it is impossible to reach the goals of the foundation, or to make changes in these goals;
4. If the activities of the foundation endanger the safety of state and society, social order, health and values of the community, rights and freedoms of others;
5. If the foundation has committed numerous or gross violations of the law, or it has regularly carried out activities contradicting its statutory goals;
6. If the founder, while establishing the foundation, has committed gross violations of the law or falsifications.<sup>88</sup>

However, only a court may approve a decision to liquidate, after which time the court must establish a Commission on Liquidation to define the order and terms of the liquidation process. After such a process has been initiated, the Liquidation Commission takes over management of all affairs of the foundation. The Law designates the responsibilities of the Commission during liquidation.<sup>89</sup>

## B. Involuntary Dissolution

All of the NIS countries being discussed herein (Russia, Ukraine, Kyrgyzstan, Moldova, Tajikistan, and Armenia) require that involuntary dissolution be authorized by court decision, which is accomplished upon action taken by the relevant oversight authority. However, the procedures and grounds for such action differ among the various countries.

### 1. *Ukraine*

In Ukraine, the Law on Public Associations provides that a public association may receive the following sanctions, in the event that it is found to have violated the laws of Ukraine: (1) warning, (2) fine, (3) temporary suspension of some kinds of activities, (4) temporary suspension of all activities, or (5) compulsory dissolution.<sup>90</sup> A written warning should be issued when the association has broken the law (unless the law itself provides for additional penalty). Gross or systematic violations of the law may be punished by a fine, but such a fine may only be imposed pursuant to a court order. The registration body or a Public Prosecutor may also appeal to a court to order a temporary suspension of some activities of the association for a period of 3 months in order to put a stop to illegal activities. This period may be expanded, with court approval, up to 6 months. An association may appeal to a court to renew its right to conduct the suspended

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<sup>87</sup> Article 25 of the Law of Armenia on Foundations.

<sup>88</sup> *Id.*, Article 34.

<sup>89</sup> *Id.*, Article 35.

<sup>90</sup> Article 28 of the Law of Ukraine on Public Associations (1992).

activities if it demonstrates that it has eliminated the reason for suspension. Finally, upon a motion of the registering body, or a prosecutor, a court may order involuntary dissolution of a public association when: (1) the association violates provisions of the Constitution (as stipulated by Article Four of the Law on Citizens' Associations); (2) the association engages in flagrant and repeated violations of the Law on Citizens' Associations; or the association resumes illegal activities after the imposition of a legal penalty.<sup>91</sup>

According to the law, only a Ukrainian Constitutional Court can order the dissolution of all-Ukrainian and international public associations. However, in practice, this provision cannot be enforced because it contradicts Article 150 of the Constitution of Ukraine, which defines the powers of the Constitutional Court. Bankruptcy is an additional ground for liquidation of a public association, and may be initiated by the tax administration or any creditor. The authority seeking liquidation must announce the court's decision regarding involuntary liquidation in the media within 15 days of the decision.

## 2. *Russia*

The process for involuntary liquidation of public associations in Russia follows much the same pattern as that of Ukraine, except that the law designates different parties that possess the right to seek liquidation, depending upon the territorial status of the association. All-Russia or international associations may be liquidated upon application by the Procurator-General. For interregional, regional or local public associations, the procurator of the respective subject of the Russian Federation bears responsibility for liquidation procedures.<sup>92</sup>

In both countries, the grounds for liquidation are the same regardless of the territorial status of the association. A public association may be liquidated by the court for: pursuit of goals or actions aimed at the forcible change of the constitutional system or the destruction of the Russian Federation, undermining state security, establishing armed groups, or incitement of social, racial national or religious hostility, or in the event that the association violates the rights and freedoms of individuals.<sup>93</sup> The association may also be liquidated if it engages in repeated or gross violations of this law and other legal acts or consistently acts in a manner which contravenes its statutory goals.<sup>94</sup>

## 3. *Kyrgyzstan*

The Kyrgyz law on Charity and Sponsorship provides that, in the case that a charitable organization commits actions which contradict its goals or the provisions of the Law, the Ministry of Justice must send a written warning. And in the event that a charitable organization receives repeated written warnings, it may be liquidated according to the

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<sup>91</sup> *Id.*, Articles 19 and 32.

<sup>92</sup> Article 34 of the Federal Law of Russia on Public Associations.

<sup>93</sup> *Id.*, Article 16.

<sup>94</sup> *Id.*, Article 44.

procedures specified in the Law on Registration of Legal Entities.<sup>95</sup> This procedure requires the registering authority to seek court authorization for liquidation.

#### *4. Moldova*

Moldova provides that public associations can be liquidated by decision of the court in instances where they plan activities or commit acts which are intended to bring about violent change in the constitutional system or territorial integrity of the government; (2) plan activities or commit acts which are designed to overthrow the government by force; (3) stir up social, racial, national or religious hatred or hostility; (4) violate the rights and liberties of citizens which are protected by the legislation of Moldova; (5) create military groups within the organizational structure; or (6) in the event that an organization has received repeated warnings during the previous year regarding violations of legislation which have not been corrected.<sup>96</sup>

Moldovan Foundations may be liquidated upon order of the court (based upon petition by the Ministry of Justice) in cases where: the annual value of the foundation's property is less than the value of its initial property; it deviates from its statutory objectives; its aims or means become illegal or contradict the public order or moral norms, or damage the principles, sovereignty, independence or territorial integrity of the state, or where it fails to submit reports as required by Article 22 of the law.<sup>97</sup>

#### *5. Tajikistan*

The Law on Charitable Activity refers to other laws of the Republic for the procedures governing involuntary liquidation or reorganization of charities. The Law of Tajikistan on Public Associations establishes nearly identical grounds for liquidation as those provided in the Russian law. In the event that violations of the law are discovered, a public association can be liquidated by the court upon the application of the Ministry of Justice (the registration body which is also in charge of supervision over the activities of associations). After the court's decision on liquidation, the Ministry of Justice establishes a liquidation commission and defines its competence.

#### *6. Armenia*

According to the Law of Armenia on Charity, in the event that the body authorized to monitor compliance of COs with its legal requirements determines that a violation may have occurred, it should appeal to the court for a petition to carry out a review of the CO.<sup>98</sup> Article 19 of the Law of Armenia on Charity further provides the grounds for compulsory dissolution and the procedures that must be followed in order to carry this out. In the event that the charity engages in activities that violate the requirements of the Law on Charity, the authorized body should first warn the organization in writing. If the

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<sup>95</sup> Article 13 of the Law of the Kyrgyz Republic on Patronage and Charitable Activity.

<sup>96</sup> Article 40 of the Law of Moldova on Public Associations.

<sup>97</sup> *Id.*, Article 35.

<sup>98</sup> Article 18 of the Law of the Republic of Armenia on Charity.

organization has received more than one written warning during the past year, or if significant violations of the law have been discovered, the authorized body may act to invalidate the organization's state registration. In the event that taxes or other necessary payments have not been paid as a result of submission of false information, the charity may be forced to repay this amount, in the manner stipulated in other legislation of the Republic of Armenia.

Under the Law of Armenia on Public Organizations, only a court may adopt a decision on compulsory dissolution of a public organization, and only upon demonstration of satisfaction of the grounds stipulated by law.<sup>99</sup> In addition, the Law on Public Organizations sets the following grounds (which are much the same as those in the Moldovan Law on Public Associations) upon which the appropriate body within the Ministry of Justice may file a lawsuit requesting dissolution of the organization: (1) the activities of an organization are aimed at the forced overthrow of the constitutional order of Armenia, incitement of ethnic, religious or racial hatred, or propaganda promoting violence or war; (2) where an organization has committed numerous a gross violations of law, or carried out activities which contravene its statutory purposes or (3) when the founder or authorized person of the organization committed gross violations of the law during the process of founding the organization. An association may also be liquidated by means of bankruptcy. Involuntary liquidation may only be pursued where other means of eliminating the violations of law have proven to be ineffective or to have been exhausted.<sup>100</sup>

While also subject to any relevant provisions contained in the Law of Armenia on Charity, which apply equally to charitable associations and foundations, a charitable foundation will be governed by the procedures contained in Article 34 of the Law of Armenia on Foundations (described earlier in the section on voluntary dissolution of foundations).

### C. Appeals

All six NIS countries being discussed here allow charities to appeal a decision on liquidation in court. Moldova, Armenia, Russia and Tajikistan each explicitly provide that public associations may appeal the court's decision to liquidate the public association to a higher court.<sup>101</sup> Yet there are some minor differences among these countries. In Russia, for example, in the event that the decision to liquidate is overturned, the state must compensate the association for all losses incurred as a result of the unlawful liquidation.<sup>102</sup> And according to the Law of Armenia on Public Associations, any member of an association may challenge the decision to dissolve by appealing the

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<sup>99</sup> Article 20 of the Law of the Republic of Armenia on Public Organizations.

<sup>100</sup> *Id.*, Article 21.

<sup>101</sup> Article 41 of the Law of Moldova on Public Associations; Article 19 of the Law of Armenia on Charity; Article 45 of the Federal Law of Russia on Public Associations; and Article 29 of the Law of Tajikistan on Public Associations.

<sup>102</sup> Article 45 of the Federal Law of Russia on Public Associations.

decision to a court within 10 days, after which time the court may suspend the decision until it has the opportunity to review the decision.

#### D. Distribution of Assets Upon Liquidation

At a minimum, all NIS countries being examined here specify that, upon liquidation of a non-commercial organization, the rights of creditors must be satisfied prior to final distribution of assets, after which time the remaining property is distributed in a manner consistent with the by-laws and charitable goals of the organization.<sup>103</sup> Many countries establish liquidation committees to manage the liquidation process, while others permit the organizations themselves to continue to manage their own funds after the declaration of intent to liquidate.

In Ukraine, the Law on Charity and Charities looks to other laws to establish the proper grounds of distribution of the property of a liquidating charity. According to the Law on Public Associations, the assets and other property of liquidating public associations must be used to fulfill the goals established in the organization's by-laws, or in limited circumstances, can be turned over to the government upon court decision. Ukraine does not provide for a liquidating commission.

Russia provides that the property which remains after the satisfaction of creditors' claims shall be used for the purposes identified in the organization's by-laws, or in the absence of specification in the by-laws of the association, in the manner determined by the vote of the general meeting, or in cases of dispute – by judicial decision. Russian law demands that any decision on the use of remaining property must be published by the dissolution committee in the press.<sup>104</sup>

According to the Law of Kyrgyzstan on Non-Commercial Organizations, upon liquidation, any property which remains after the satisfaction of the demands of creditors shall be distributed by the liquidation commission or the body authorized to make the decision pertaining to liquidation, in accordance with the charter of the organization.<sup>105</sup>

Moldova does not provide for a liquidation commission to supervise the liquidation of public associations. Rather, the Law of Moldova on Public Associations provides that, in the event of liquidation, any property remaining after satisfying creditors must be directed to the objectives specified in the charter of the organization. As in Russia, however, the law specifies that decisions regarding usage of the property must be published in the press, and that property of a liquidated public association may also become the property of the state after satisfying the demands of creditors.<sup>106</sup> Unlike with public associations, the Law of Moldova on Foundations provides for the establishment

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<sup>103</sup> Article 40 of the Law of Moldova on Public Associations; Article 16 of the Law of the Kyrgyz Republic on Non-Commercial Organization; Article 20 of the Law of Armenia on Public Associations; Article 35 of the Law of Armenia on Foundations; Article 26 of the Law of Russia on Public Associations; Article 13 of the Law of Tajikistan on Charity.

<sup>104</sup> Article 26 of the Federal Law of Russia on Public Associations.

<sup>105</sup> Article 16 of the Law of Kyrgyz Republic on Non-Commercial Organizations.

<sup>106</sup> Article 40 of the Law of Moldova on Public Associations.

of a Commission on Liquidation to supervise the liquidation of a foundation, and likewise provides that this Commission shall engage in certain enumerated procedures for identifying and paying creditors' claims in the property order of priority prior to final distribution of assets.<sup>107</sup> Unlike associations, the property remaining after payment of debts must be transferred to another foundation with similar aims.

Tajikistan provides for the establishment of a liquidation committee by the relevant registration authority (the Ministry of Justice) in the event of liquidation of a non-commercial organization. In the case of liquidation, the assets of a liquidating organization must be distributed in compliance with the by-laws of the association. In certain exceptional cases, the assets of a public association which has been liquidated by the court can be confiscated by the government.<sup>108</sup>

In Armenia, after the satisfaction of creditors' claims, all remaining property of liquidated public associations must be used for the furtherance of the organization's statutory goals or, if this is not possible, must be transferred to the state budget.<sup>109</sup> The Law of Armenia on Foundations also provides a more detailed process that must be followed during liquidation, including describing the responsibilities of the Commission on Liquidation for identifying and paying debts of the foundation in the appropriate order (established by Article 70 of the Civil Code of Armenia). As with public associations, however, after the demands of creditors have been satisfied, any remaining property must be used for achievement of the statutory goals of the foundation, or, if not possible, transferred to the state budget.<sup>110</sup>

#### **IV. Regulation**

##### **A. Regulatory Authorities**

In Ukraine, Kyrgyzstan, Moldova, Tajikistan, and Armenia, the Ministry of Justice is the agency with principal regulatory authority over all not-for-profit organizations, including charitable organizations, although the relevant division may differ depending in some countries depending upon the territorial scope of the organization.<sup>111</sup> In Ukraine, according to the new Law on Registration of Legal Persons which came into effect July 1, 2004, the registration of all legal entities will be conducted by a special registration chamber. However, the situation remains unclear because the Law on Registration of Legal Persons provides that other laws may define peculiarities of the registration procedure for public associations. Therefore, it is possible that public associations will not be registered by this new registration chamber, and the Ministry of Justice will remain in charge of registering charitable associations in Ukraine. In Russia, there is a

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<sup>107</sup> Article 36 of the Law of Moldova on Foundations.

<sup>108</sup> Article 30 of the Law of Tajikistan on Public Associations.

<sup>109</sup> Article 20 of the Law of Armenia on Public Associations.

<sup>110</sup> See Article 35 of the Law of Armenia on Foundations for a full description of the liquidation process.

<sup>111</sup> As discussed earlier, Russia, Ukraine, Moldova and Tajikistan require registration of charitable organizations depending on their territorial status (international, all-republican, regional, or local),

separate Registration Authority with responsibility for registering non-commercial organizations other than public associations.

### B. Licensing and Governmental Approvals

Non-commercial organizations, as with all legal entities, are required to conduct their activities in compliance with the current law.<sup>112</sup> Therefore, charitable organizations wishing to engage in an activity which is licensed must obtain the necessary license. Licensing requirements vary somewhat from country to country. The Law of Ukraine on Licensing of Certain Kinds of Commercial Activities (which is typical of the laws of the NIS region on this issue) provides that the following activities must be licensed: production of medicine, wholesale and retail sales of medicine; passenger or cargo transportation services, veterinary and medical practices, educational services by general education, professional, technical or higher education institutions, local or international tourism, excursions, physical education activities such as professional and amateur sports or coaching.<sup>113</sup> The law further provides that all other types of activities – not specified in the law on licensing – may be conducted without a license. In addition, licensed entities are placed on a Unified Registry of Licensed Organizations<sup>114</sup> as well as on special sub-registries (journals) for each kind of licensed activity, where relevant. The content of these registries is available to government authorities free of charge,<sup>115</sup> but other entities must pay for information from the registry. The authorities that maintain these registries determine the method and amount of payment.

### C. Reporting

The extent to which special reporting requirements for charities are specified in the respective legislation varies from country to country. Ukrainian charitable organizations (along with other non-commercial organizations) are required to submit reports on their operations to the legalizing authorities that monitor their activities only upon the request of these authorities. In practice, legalizing bodies, especially at the local level, require organizations to submit an annual activity report. Of course, the Tax Administration maintains a separate registry of NPOs for tax benefit purposes and is responsible for verifying compliance with legal requirements related to such benefits.

In addition, the Tax Authority requires that NPOs substantiate their profit tax exemption, although such substantiation does not have a set form. In such substantiations, NPOs describe all their activities and declare that they did not engage in the provision of for-profit goods, labor or services during the reporting period. These substantiations are usually a formality. All Ukrainian non-commercial organizations must file income and expenses declarations to financial authorities according to approved procedures.<sup>116</sup> Non-

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<sup>112</sup> Article 16 of the Law of Ukraine on Charity and Charities.

<sup>113</sup> Articles 2 and 9 of the Law of Ukraine on Licensing Certain Kinds of Commercial Activities (2000) (with subsequent amendments).

<sup>114</sup> *Id.*, Article 6.

<sup>115</sup> *Id.*, Article 19.

<sup>116</sup> Article 26 of the Law of Ukraine on Public Associations.



profit organizations that are listed in the registry of NPOs, and that do not engage in the sale of goods, services or labor, may submit simplified reports (as compared to commercial legal entities). If an organization does engage in non-statutory (commercial) activities, it should maintain separate records for such activities, pay taxes and submit regular tax declarations as necessary for other taxpayers.

Ukrainian law also entitles those individuals or organizations who have donated property, funds or other materials to a charity to receive, upon request, a report on how the donated materials were used.<sup>117</sup> Moreover, if donated property was specifically earmarked for particular beneficiary then the charity is *required* to report to the benefactor as to how it was used.

According to Article 19 of the Law of Russia on Charitable Activities and Organizations, charitable organizations must provide an annual report to the registration body, containing information on: (1) financial and entrepreneurial activity of the organization, confirming the observance of the requirements for the use of property and for spending funds of the charitable organization; (2) personal composition of the supreme governing body of the charitable organization; (3) composition and content of the charitable programs of the charitable organization (a list and description of the said programs); (4) content and results of the activity of the charitable organization; (5) violations of the law, exposed as a result of review conducted by taxation bodies, and measures which have been taken to eliminate them.

In addition, Russia requires charitable organizations to present an annual report on financial and entrepreneurial activity to the relevant tax body. The tax body is responsible for ensuring that charitable organizations comply with the necessary requirements as to sources of revenue, properly report the amount of funds received, and pay the appropriate taxes.

Under the Law of Moldova on Charity, the only specific reporting provisions are related to accounting of donations and beneficiaries. For example, charitable organizations must keep accounting of all beneficiaries, including the name, size and goal of the donation, and are required to present such information once every trimester to the appropriate body.<sup>118</sup> In addition, failure to report on financial resources donated or distributed will result in the charity having to pay taxes on these funds.<sup>119</sup> Neither the laws on charity, nor the law on public associations contain any additional specific provisions describing the types of reports that must be filed by such organizations with the government authorities. In addition, the Law of Moldova on Public Associations requires all public associations to provide annual information as to its continuation of activities, and with an indication of the current location of its governing body and other relevant details of the organization. Moreover, if an association fails to provide information for two years, it may be excluded from the State register of public associations, and forfeit the status of a public association and legal person, under the processes specified in the Law.

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<sup>117</sup> Article 22 of the Law of Ukraine on Charity and Charities.

<sup>118</sup> Article 10 of the Law of Moldova on Philanthropy and Sponsorship (1995).

<sup>119</sup> Id.

In Kyrgyzstan, the Law on Patronage and Charitable Activity requires charitable organizations who are conducting public campaigns for collection of charitable donations, to publish an annual report in the official press disclosing the amount of collected donations and how such donations were used, and to give the public open access to their annual reports.<sup>120</sup> Article 17 of the Law on Non-commercial Organizations requires that information on revenue return structure and the amount of property of a non-commercial organization shall be submitted to the state bodies in accordance with the current legislation. As with all other taxpayers, charities must file tax reports.

The Tajik Law on Charitable Activity (Article 22) provides that the registration body (the Ministry of Justice) has authority to supervise and control the activities of a charity. A charitable organization is obligated to provide free access to its annual reports to all interested parties, including media. The law, however, does not provide a special form or any particular requirements for this annual report. Information as to the amount and structure of the revenue of an organization, as well as about the total value of its assets, expenditures, number of staff, salaries and volunteer labor cannot be a commercial secret. The registration body (Ministry of Justice) can request that a charity's highest management organ provide copies of protocols and decisions made by its management bodies, and may send representatives to participate in an organization's internal meetings and events.

The Law of Armenia on Charity requires that charitable organizations submit yearly reports on their activities to the Ministry of Justice and the Tax Authority, which must include information regarding:

1. usage of the organization's property and how it spends its resources;
2. financial activities guarantying compliance with the requirements of the law;
3. the governing supreme body;
4. the contents of the charitable program;
5. the results of the organization's activities; and
6. violations revealed during audits carried out by competent bodies and measures taken for eliminating them.

#### D. State Enforcement and Sanctions

Failure to submit reports required by law is likely to endanger the ongoing existence of a charity, or its continued access to any potential tax benefits. For example, the Law of Moldova on Foundations provides that failure to submit required reports (as specified in Article 22 of the law) is grounds for suspension or liquidation of the foundation.<sup>121</sup> The same is true under the Law of Moldova on Public Associations.<sup>122</sup> See earlier discussion, p. 40, regarding involuntary liquidation for additional explanation of state penalties for failure to meet legal requirements. Under the Law of Armenia on Charity, where the

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<sup>120</sup> Articles 12 and 13 of the Law of Kyrgyz Republic on Patronage and Charitable Activity.

<sup>121</sup> Article 35 of the Law of Moldova on Foundations.

<sup>122</sup> Article 27 of the Law of Moldova on Public Associations.

annual report of the organization discloses possible signs of violations of the law, the supervisory bodies (within the Tax Authority or the Ministry of Justice) may petition to carry out a review of the organization. If the organization receives more than one written warning during a year, or where significant violations of the law are discovered, the authorized body may invalidate the state qualification and registration of the charitable programs. At such time, taxes and other dues of the organization which have not been paid as a result of submission of false information about its activities are subject to confiscation according to the laws of Armenia.<sup>123</sup>

In Tajikistan, in the event that a charity violates the legislation of Tajikistan and/or provisions of its own by-laws, the registration authority (Ministry of Justice) or Prosecutor General can issue a warning addressed to the organization. Such warning is required before the authorized government authority can apply to court for involuntary liquidation of the public association.<sup>124</sup> In addition, activities of public associations can be suspended in for violation of legislation of the Republic.<sup>125</sup>

Suspension of activities means the prohibition (within a defined time period) of the enjoyment of the rights of a legal person, prohibition on distribution of information about organization, promotion of ideas and activities of an organization, participation in other legal entities, establishment of mass media, conduct of meetings and demonstrations with the exception of those which are prescribed by the by-laws for the governance bodies of the organization. In the event that a charitable organization violates the law, an Attorney General can bring this violation to the attention of the government entity in charge of control and supervision of the activities of charitable organizations (typically either the registration or tax authority). The Law on Public Associations also provides that the tax administration has the authority to supervise the compliance of public associations with the limitations placed by law upon sources of profits, use of resources, and payment of taxes, but does not provide for specific reporting requirements relating to this supervision.<sup>126</sup>

#### E. Sanctions for Abuse by the State

As for the penalties that exist for state violation of the rights of charities, all charity laws in the NIS contain similar basic provisions. The laws of Russia (Article 18 of the Law on Charitable Activities and Charitable Organizations), Moldova (Article 19 of the Law on Charity and Sponsorship), Kyrgyzstan (Article 11 of the Law on Charity and Sponsorship), Tajikistan (Article 21 of the Law on Charitable Activities) and Armenia (Article 17 of the Law on Charity) all contain provisions stating that the government guarantees and ensures the protection of the legal rights and lawful interests of participants of charity, as stipulated by the relevant law on charity (and in other legal acts), and guarantees that officials and any other persons hampering the charity

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<sup>123</sup> Article 19 of the Law of the Republic of Armenia on Charity.

<sup>124</sup> Article 28 of the Law of Tajikistan on Public Associations

<sup>125</sup> *Id.*, Article 17.

<sup>126</sup> *Id.*, Article 26.

implementation rights of legal and natural persons will be held responsible in the manner stipulated by the law.

## **V. Foreign Organizations**

### **A. Registration**

As a general matter, all of the NIS countries with laws on charity provide that foreign organizations are equally eligible to conduct charitable activities as citizens of those countries, although there may be some additional administrative burdens applied to foreign entities wishing to conduct charitable activities in the NIS.<sup>127</sup> As an example, the Law of Ukraine on Charity and Charities is typical of other countries, by providing that foreign citizens have the right to do charity in Ukraine, but empowering the Cabinet of Ministers to determine special rules for conducting charitable activities by them.

The Special Resolutions of the Cabinet of Ministers of Ukraine<sup>128</sup> set the registration fee at US\$500 for branches of foreign NGOs. The resolution also details the documents required for registration with the Ministry of Justice. The registration body must consider the application within two months, the same timeframe as designated for Ukrainian NCOs. Registration may be denied if the by-laws do not conform to Ukrainian law, although such a decision may be appealed in court. A registered branch of a foreign NCO must also be registered with the national tax administration, which grants tax exempt status. This application process is the same for foreign and Ukrainian NCOs.

There may be some additional registration requirements for foreign organizations as well. Tajikistan, for example, requires that legal entities with foreign involvement must submit additional documents, as set forth in the Law of Tajikistan “On Foreign Investments in the Republic of Tajikistan.” As a general matter, these regulations are typically not excessively burdensome or discriminatory, although it is not uncommon for foreign organizations to be charged higher registration fees than local organizations.<sup>129</sup>

### **B. Foreign Grants**

In many NIS countries (and in nearly all of those with stand-alone laws on charity) there are no special requirements within the laws for domestic organizations to be eligible to

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<sup>127</sup> Article 22 of the Federal Law of Russia on Charitable Activities and Organizations; Article 26 of the Law of Moldova on Charity and Sponsorship; Article 15 of the Law of the Kyrgyz Republic on Patronage and Charitable Activity; Article 27 of the Law of Ukraine on Charity and Charities; Article 24 of the Law of Tajikistan on Charitable Activities; Article 21 of the Law of Armenia on Charity.

<sup>128</sup> Resolution of the Cabinet of Ministers of Ukraine on the Procedure for Registering Affiliates, Branches, Representative Offices and, Other Divisions of Foreign Public (Non-Governmental) Organizations in Ukraine, dated February 26, 1993 (with subsequent amendments), N145 and Resolution of the Cabinet of Ministers on the Procedure for State Registration of Charitable Organizations dated March 30, 1998, N382.

<sup>129</sup> In Ukraine, for example, regional NPOs must pay a registration fee of approximately US\$14, while the registration fee for international or foreign organizations is approximately US\$500.

receive foreign grants. The exceptions to this rule are Russia, Kazakhstan, Azerbaijan, Belarus and Turkmenistan, which have established special requirements for determining eligibility of foreign grant makers. Under the current Russian legislation, foreign grantors have to be approved by the government and be included on the list of approved grant makers in order for their grants to be exempt from income tax for recipients. A similar list exists for foreign grantors in Kazakhstan.

Other NIS laws typically guarantee a general right to obtain charitable donations or grants from foreign citizens, persons without citizenship, or from foreign and international organizations.<sup>130</sup> For example, the Laws of Ukraine, Kyrgyzstan, Moldova, and Tajikistan on charity all explicitly state that charitable organizations have the right to accept charitable donations from foreign citizens, stateless persons and foreign and international organizations.<sup>131</sup> While the Armenian law does not have the same statement, charities are eligible to receive foreign grants.

It is important to note that several countries distinguish between a grant (which is usually defined as assets transferred on a gratuitous basis for a specific purpose, usually stipulated in the written agreement), a donation (a assets transferred on a gratuitous basis without a specific purpose where the grantor does not have any legal civil power to enforce the use of assets for a specific purpose), and, occasionally, gift. Several countries (Russia, Georgia, and Azerbaijan) have special legislation on grants.

In most countries, this general right to receive foreign grants/aid may be qualified by provisions contained in separate legislation on humanitarian aid, or in government regulations on banking transfers, taxation, etc, but these requirements would be the same for all non-commercial organizations.<sup>132</sup> In addition, income received in the form of humanitarian aid will sometimes be exempt from VAT or profits tax. See discussion below, pp. 49-58, on taxation of passive income, VAT and humanitarian aid, for more details on this subject.

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<sup>130</sup> Article 21 of the Law of Tajikistan on Charitable Activity; Article 14 of the Law of Kyrgyzstan on Patronage and Charitable Activity; and Article 26 of the Law of Ukraine on Charity and Charitable Organizations.

<sup>131</sup> Article 21(4) of the Federal Law of Russia on Charitable Activities and Organizations; Article 25(4) of the Law of Moldova on Charity and Sponsorship; Article 14 of the Law of Kyrgyzstan on Patronage and Charitable Activity; Article 26 of the Law of Ukraine on Charity and Charities; and Article 23 of the Law of Tajikistan on Charity.

<sup>132</sup> Extensive discussion of the system of treatment for humanitarian aid is outside the scope of this report. However, see the discussion, pp. 56-60, on VAT and Humanitarian Aid for general description of these regulations. Ukraine, Russia, Kyrgyzstan and Armenia all have separate legislation on treatment of humanitarian aid: Law of Ukraine on Humanitarian Aid, Resolution No. 136 of the Government of Armenia on Humanitarian Assistance; Law of Russia on Gratuitous Aid to the Russian Federation; Russian Government's Decree #1335 approving the Rules on Providing Humanitarian Aid to the Russian Federation; and the Law of Kyrgyzstan on Contributions for Emergency situations prevention and liquidation in the Republic of Kyrgyzstan; and Resolution of the Government of Armenia #136 of February 13, 2002 on Humanitarian Assistance and Charity Programs and the Regulation for the Compensation of the Amounts of the Value Added Tax subject to payment within the Framework of Humanitarian Assistance or Charitable Programs, endorsed by the cited Resolution.

## VI. Miscellaneous

### A. Rules for Mergers and Dissolution

The earlier discussion regarding procedures for liquidation is relevant here, since as a general matter, the rules governing reorganization will be comparable to those for liquidation, and indeed, are often governed by the same articles. As with liquidation, the specifics of the reorganization process will typically be left within the discretion of the founders, enabling them to establish their preferred procedure for reorganization within the charter of the organization. The most frequent limitation placed upon charitable organizations (and usually equally applicable to other non-commercial entities), is that charitable organizations may not be reorganized into for-profit legal entities.<sup>133</sup> For example, according to the Ukrainian Law on Charity and Charities (Article 10), charitable organizations cannot be transformed into legal entities whose primary purpose is generation of income.

In Russia, the Law on Non-commercial Organizations sets up the following limitations on transformation of various kinds of non-commercial organizations (Articles 17):

1. A nonprofit organization may be transformed into a public or a religious organization (association), into a foundation or an autonomous non-profit organization.
2. An institution may be transformed into a foundation, an autonomous nonprofit organization or an entrepreneurial society. The transformation of state or municipal institutions into nonprofit organizations of other forms or into an entrepreneurial society is permitted under circumstances and following a procedure determined by the law.
3. An autonomous nonprofit organization may be transformed into a public or religious organization (association) or into a foundation.
4. An association or a union may be transformed into a foundation, an autonomous nonprofit organization, an entrepreneurial society or a partnership.
5. The decision to transform a nonprofit partnership is taken by the founders unanimously, and the decision to transform an association (union) is taken by all members that have concluded the founding agreement.
6. The decision to transform an institution is taken by its owner.
7. The decision to transform an autonomous nonprofit organization is taken by its supreme governing body in accordance with this Federal Law following a procedure determined by the charter of the nonprofit organization.
8. When transforming a nonprofit organization, the newly formed organization takes over the rights and responsibilities of the reorganized nonprofit organization in accordance with the statement of transfer.

Neither the Law of Kyrgyzstan on Patronage and Charitable Activity nor the Law on Non-Commercial Organizations contains specific limitations or provisions on

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<sup>133</sup> Law of Ukraine on Charity and Charities, Article 10; Law of Russia on Charitable Activities and Charitable Organizations, Article 11; Law of Moldova on Charity, Article 12;

reorganization. The Moldovan law on charity only prohibits charitable organizations from transforming into business partnerships.<sup>134</sup> In Tajikistan, there are no special provisions for charities or non-profit organizations regulating their re-organization or transformation. The same rules in the civil code apply to all legal entities. The Law of Armenia on Public Organizations specifies that a public organization may only be restructured into other legal-organizational forms of public associations or into a foundation.<sup>135</sup> According to the Law of Armenia on Foundations, foundations can only reorganize through uniting or merging with other foundations, and cannot be transformed into other organizational forms.<sup>136</sup>

## B. Right to Invest Abroad

Russia, Ukraine, Moldova, Armenia, Tajikistan and Ukraine all permit charitable organizations to open bank accounts abroad<sup>137</sup>, and do not specify a list of permitted investments in the laws on charities.<sup>138</sup> None of the laws on charity reflect any more specific provisions on this issue. As a general principle, therefore, limitations on foreign investment would be governed by the same provisions which govern local investments of all NCOs. For example, if an NCO is not permitted to invest in a domestic business, it would likewise be forbidden from investing in a foreign one. In addition, there would be a complex assortment of additional laws dealing with banking and international transactions that would affect all legal entities equally. Examination of such legislation is outside the scope of this report.

## C. Right to Engage in Political Activities

All of the relevant laws on charities and non-commercial organizations contain some restrictions on political activities by charitable organizations. Most are limited to a prohibition on providing monetary donations to political parties or candidates. However, the specific language does vary somewhat from country to country.

Ukraine provides a bit more detail than other NIS countries on this issue, by guaranteeing the right to participate in political activities, to organize meetings, assemblies and demonstrations, to support other public associations, to assist in the creation of public associations to receive information from state and local government authorities necessary for meeting its objectives, to submit proposals to the government, to disseminate information, to advocate for its objectives and its ideals, and to create a news media source.<sup>139</sup> Ukrainian law grants broad rights to NCOs undertaking political activities, such as participation in electoral and other political campaigns and expression of views concerning political parties or candidates for office. The Law on Political Parties

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<sup>134</sup> Article 12 of the Law of Moldova on Charity and Sponsorship.

<sup>135</sup> Article 19 of the Law of Armenia on Public Organizations.

<sup>136</sup> Article 29 of the Law of Armenia on Foundations.

<sup>137</sup> See Article 14 of the Law of Kyrgyzstan On Patronage and Charitable Activity and Article 23 of the Law of Tajikistan on Charitable Activity.

<sup>138</sup> All countries have extensive and complicated rules on foreign investments, which would apply equally to charitable organizations. However, investigation of this body of legislation is outside the scope of this paper.

<sup>139</sup> Article 20 of the Law of Ukraine on Public Associations.

prohibits charitable and religious organizations from financing political parties.<sup>140</sup> Yet Ukrainian law allows NCOs to actively lobby and participate in the preparation of legal and normative documents, including those requested by state or local authorities or political parties. As with other NIS countries, however, Ukrainian charities may not provide monetary or other direct support to political parties or candidates.

In Armenia, the Law on Charity states that monetary and other material means provided to political parties and commercial organizations shall not be considered to be “charity,” as that term is defined in the law, but does not provide any additional detail as to the specific types of political activities which are prohibited.<sup>141</sup> The Law of Armenia on Public Organizations, however, specifies that in order to qualify as a public organization, that organization may not have “political objectives.” If it does, it must register under a different legal-organizational form.<sup>142</sup> Similarly, the laws of Russia, Moldova, and Kyrgyzstan on charity are almost identical in their prohibition on the expenditure of monetary and other types of support to political parties, movements, groups and campaigns, accomplished by excluding such activity from the definition of “charitable activity”.<sup>143</sup> The Law of Tajikistan also specifies that charitable organizations may not use its property or expend funds in support of political parties, motions, groups and campaigns.<sup>144</sup>

## **VII. Tax Laws**

### **A. Tax-Exempt Status**

No NIS countries provide for full tax-exempt status on any types of income received by charitable organizations. Instead, charities are given varying tax treatment depending upon the type of income involved. The following discussion sets out a basic outline of the treatment of various types of income within the tax codes of the six NIS countries with charity laws, as well as Kazakhstan, which has created a unique type of organization (the SSO), which is governed solely by tax code provisions.

### **B. Economic Activities**

With regard to income from economic activities, Russia, Kyrgyzstan, Moldova, Tajikistan, and Kazakhstan all permit charitable organizations to conduct economic activities directly (i.e. do not require the organization to establish a subsidiary) so long as the activities are connected to the organization’s charitable purpose. Ukraine and

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<sup>140</sup> Article 15 of the Law on Political Parties in Ukraine of April 5, 2001.

<sup>141</sup> Article 3 of the Law of Armenia on Charity.

<sup>142</sup> Article 3 of the Law of Armenia on Public Organizations.

<sup>143</sup> Article 2 of the Federal Law of Russia on Charitable Activities and Organizations; Article 2 of the Law of Moldova on Charity and Sponsorship; and Article 1 of the Law of the Kyrgyz Republic on Patronage and Charitable Activities.

<sup>144</sup> Article 15 of the Law of Tajikistan on Charitable Activities.



Armenia require that charitable organizations in the form of public associations set up a separate subsidiary in order to carry economic activities.

Only three countries (Ukraine, Moldova, and Kazakhstan) provide for exemptions from income/profits tax on income generated from economic activities (sales of goods and services).

As a general rule, however, income from economic activities, even those directly related to the charitable/statutory purposes of the organization will be subject to income tax. Usually in the NIS, a charity that carries out unrelated economic activities does not lose its non-commercial status, but the profits generated through such activities are subject to tax at the general rate

### *1. Ukraine*

In Ukraine, charitable organizations (and other NPOs properly registered with the tax authority as tax-exempt), are exempt from profits tax on income from entrepreneurial activities, as long as such activities are related to the statutory purposes of the organization.<sup>145</sup> The activities which are exempt from tax are those which fall into the category of “primary activities,” defined as the provision of educational, cultural, scientific, informative and other services for the public. In addition, “primary activities” include the sale of goods and services that promote the principles and ideals for which the charity was established, and which are closely related to its statutory goals (as long as the prices charged are lower than the market price or subject to state regulation).<sup>146</sup> Income from economic activities which do not fall into this category is fully taxed.

### *2. Russia*

Russia does not provide any special benefits to charitable organizations. However, Russian NCOs are permitted to engage in entrepreneurial activities as long as their statutory activities remain their principal activities. As a general matter, Russian tax legislation does not grant any exemptions for profits of NCOs arising from entrepreneurial activities, regardless of the amount of profits or relatedness to the statutory purposes of the organization, and provides for no special treatment whatsoever for charitable organizations in contrast to other NCOs. Income of an NCO received as a result of the sale of goods and services is subject to profits tax at the general rate. Unless a charity sets up a separate subsidiary to carry entrepreneurial activities, current legislation does not allow for separate accounting for exempt and not-exempt income, and therefore a charity carrying any entrepreneurial activities cannot deduct legitimate expenses from the revenue generated from entrepreneurial activities and has to pay income tax on its entire revenue.

### *3. Kyrgyzstan*

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<sup>145</sup> Article 7(11) (13) of the Law on Taxation of Profits of Enterprises of Ukraine.

<sup>146</sup> Id.

Charities in Kyrgyzstan are permitted to conduct entrepreneurial activities only if this activity serves the charitable purposes for which the organization was established and directly corresponds to such purposes.<sup>147</sup> However, entrepreneurial activities will not result in the loss of tax privileges which may be applicable to passive or gratuitous income. Moreover, income obtained from entrepreneurial activities will be taxed, unless it is also used for charitable activities or purposes. Kyrgyzstan provides an exemption from profits tax for income derived from “charitable activities.” In Kyrgyzstan, some sales may qualify as charitable activities if they occur at or below cost, and therefore income from such activities will be exempt from taxation. Income from other economic activities will be fully taxed.

#### *4. Moldova*

Moldovan framework laws on charities, associations and foundations all permit these organizations to conduct entrepreneurial activities directly, as long as such activities are related to the organization’s statutory purposes.<sup>148</sup> Income from entrepreneurial activities which are related to a charity or NCOs statutory purposes is exempt from profits tax.<sup>149</sup> Entrepreneurial activities are “activities conducted in accordance with legislation, except for work pursuant to labor contracts performed with the aim of receiving income or where income is gained as a result thereof regardless of the aim of the activity from which the income arises.” If a charity (or NCO) wishes to conduct unrelated economic activities, however, it must establish a separate enterprise, considered a “side business”, whose income is taxed at the general rate of 25%.<sup>150</sup> Unrelated economic activity is defined as any entrepreneurial activity not provided for by the charter, by-laws, or other documents of a non-commercial organization, and/or an activity conducted in violation of the requirements set in the Tax Code. It is within the purview of the tax authorities to decide whether any economic activity conducted by a charitable organization (or NCO) should be classified as a related or unrelated activity.

#### *5. Tajikistan*

Tajikistan does not restrict the right of charitable organizations to conduct entrepreneurial activities, but charitable organizations are not given tax exemptions for profit derived by them from such activities.<sup>151</sup>

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<sup>147</sup> There is some confusion among various definitions that may be found in Kyrgyz laws relating to economic and entrepreneurial activities. The Civil Code defines entrepreneurial activity as “independent activity, conducted at a [person’s] own risk, aimed at derivation of profits.” Section 1 of the Civil Code of Kyrgyzstan. The Tax Code does not use the term entrepreneurial activity, but elects to use the term ‘economic activity’, defining it as “all types of economic activities, conducted by persons regardless of purposes and results of such types of activities.” Section 9(5) (1) of the Tax Code.

<sup>148</sup> Article 28 of the Law of Moldova on Public Associations; Article 13(3) of the Law of Moldova on Charity and Sponsorship; and Article 23 of the Law of Moldova on Foundations.

<sup>149</sup> Section 52 of the Tax Code of Moldova.

<sup>150</sup> Section 53 of the Tax Code of Moldova.

<sup>151</sup> Charitable activities are defined as “voluntary activities of physical and (or) legal entities aimed at implementation of charitable purposes . . . in the form of transferring assets to citizens and legal entities, rendering services and performing works on a gratuitous basis or on privileged conditions, or in exchange

## 6. Armenia

In Armenia, charities in the form of public organizations may engage in entrepreneurial activities<sup>152</sup> only through creating a commercial organization or through participating in one.<sup>153</sup> Charitable foundations, however, are permitted under the Law on Foundations to carry out entrepreneurial activities without establishing separate commercial entity if (and only if) such activities (1) further the statutory purpose of the organization, (2) correspond to those purposes, and (3) are envisaged in the charter. In any event, profits from entrepreneurial activities are fully taxed, regardless of whether the organization may conduct them directly or not. Direct engagement in entrepreneurial activities by NCOs (other than foundations) is prohibited by law, and may result in punitive actions taken by registering authorities. However, such engagement does not appear to jeopardize tax benefits applicable to income obtained on a gratuitous basis.

## 7. Kazakhstan

In Kazakhstan, NCOs are not entitled to any tax exemptions for income received from economic activities, although they may qualify to receive exemptions for gratuitous income or certain limited types of passive or investment income. Under the Tax Code, however, organizations known as SSOs are generally exempt from corporate tax on income earned from “exempt activities”, whether or not such activities include economic activities. Any organization, commercial or non-commercial, can qualify as a SSO. In order to qualify as an SSO, an organization must derive no less than 90 percent of its gross annual income from the government’s subsidies, public support, or provision of services or conduct of exempt activities, i.e. activities which fall into one of several enumerated fields, such as healthcare, child care and education, science, sports, culture, library services and social welfare.<sup>154</sup> This exemption is available only if the SSOs entire income is used for the performance of the exempt activities. In the event that the SSO is found to have *not* met this requirement, the exemption will be denied and will result in a retroactive imposition of income tax for the whole tax period (financial year) in which the organization failed to qualify.

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for such payment as would not exceed costs incurred in connection with their sale.” Section 9(4) of the Tax Code of Kyrgyzstan. See also Section 129 of the Tax Code of Tajikistan.

<sup>152</sup> Entrepreneurial activities are defined in the Law of Armenia on Value Added Tax as: “economic activities implemented regularly for the purpose of deriving income. The economic activity is any activity performed for compensation.” Section 2 of the Law on VAT. However, the Civil Code also defines entrepreneurial activity, but does not define it in terms of regularity, stating merely that activity is considered entrepreneurial when the person engaging in it “aims at gaining profit by using his/her property, selling goods, performing works or services, at his own risk.” Section 2 of the Civil Code. This discrepancy between the two definitions of entrepreneurial activities results in a certain amount of uncertainty, as to which definition applies, and therefore whether public organizations may conduct occasional entrepreneurial activity without becoming subject to the requirements for “entrepreneurial activities”.

<sup>153</sup> Article 4(3) of the Law on Public Organizations.

<sup>154</sup> SSOs also include organizations which meet a predetermined ratio of disabled/non-disabled employees. Section 121(1) and 121(2) of the Tax Code of the Republic of Kazakhstan.

## C. Passive Income Taxation

All six NIS countries with charity laws provide for some type of exemption to charities for gratuitous income, although the specific types of exemptions vary considerably throughout the region.

### 1. *Ukraine*

Ukraine provides that donations in cash or in kind (including grants) are exempted when given to (among others) charitable foundations and public associations. Membership dues are not exempt for charitable organizations or for other public associations. Ukrainian law also permits charitable organizations (and other NPOs listed in the registry) to engage in investment activities and grants tax exemptions on investment income received by such organizations.<sup>155</sup> The Ukrainian Profits Tax Law defines “passive income” as “revenues received as interest, dividends, insurance benefits and indemnities, as well as royalties.”<sup>156</sup> The passive income of all types of NPOs is tax-exempt. Income of an NPO received in the form of dividends is tax exempt (dividends are deemed passive income). While paying out dividends, an issuer of dividends must withhold and make an advance payment of profits tax in the amount of 30 percent of the amount of dividends. The amount of profits tax paid by the issuer upon distribution of dividends is deductible from the aggregate amount of profit tax accrued in the current or subsequent reporting periods.<sup>157</sup>

Rent and lease payments, however, are not considered to be passive income. They are not taxed to the extent the rental payments do not exceed costs (including, for example, maintenance costs, electric and other communal charges) and accrued depreciation. Any income in excess of costs and depreciation is taxed on general grounds. Capital gains are not considered passive income, and are fully subject to tax. This capital gains tax applies even to one-time sales.<sup>158</sup>

### 2. *Russia*

In Russia exemptions for gratuitous income are scattered throughout the Tax Code. The following types of income, *inter alia*, are not included in the tax base for the purpose of profits tax:<sup>159</sup>

- 6) funds, assets and other property obtained in the form of gratuitous aid under the procedure established by the Gratuitous Aid Law;<sup>160</sup>

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<sup>155</sup> Article 7.11.1(b) of the Law of Ukraine on Taxation of the Profits of Enterprises.

<sup>156</sup> Article 7.11.13 of the Company Tax Law.

<sup>157</sup> Article 7.8.2 to 7.8.4 of the Company Tax Law.

<sup>158</sup> Article 5 of the Profits Tax Law.

<sup>159</sup> Exemptions listed are those as may be relevant to this survey; references are to numbers of the respective Sub-clauses of Section 251 (1) of the Tax Code.

<sup>160</sup> The Law of the Russian Federation on Gratuitous Aid (Assistance) to the Russian Federation and on Introduction of Changes and Additions to Certain Normative Acts of the Russian Federation on Taxes and on Introduction of Privileges as Regards to Payments to the Budget and State Non-budget Funds in

11) assets obtained on a gratuitous basis by a Russian organization from an organization, if the latter owns more than 50 percent in the charter capital of the Russian organization;<sup>161</sup>

14) assets obtained by a taxpayer for purposes as designated by giver, including grants (provided such assets are accounted for separately);<sup>162</sup>

“Grant” is defined for purposes of this Chapter as: “monetary funds and other property, if their transfer (receipt) satisfies the following conditions:

- provided on a gratuitous and irrevocable basis by physical persons, non-commercial organizations, including foreign and international organizations and associations, as listed and approved by the Government of the Russian Federation;
- provided to facilitate specific programs in the field of education, art, culture, environmental protection, as well as for specific scientific research; and
- provided on the conditions determined by the grantor, with mandatory submission to the grantor of a report on the designated use of the grant.”

22) property gratuitously obtained by state and municipal educational institutions and non-state educational institutions licensed to pursue educational activities for carrying out their statutory activities;

27) property (including money) and property rights obtained by a religious organization in connection with the performance of religious ordinances and ceremonies and from the production of religious literature and articles of religious designation.

In addition, Section 251 (2) of the Tax Code exempts the portion of income spent on the support of non-commercial organizations and for conduct by them of their statutory activities, provided such funds are subject to separate accounting.<sup>163</sup> More specifically, the following incomes are exempt from tax:

- entrance fees, membership fees, designated contributions and allocations to public law professional unions established pursuant to the principle of obligatory

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Connection with Implementation of Gratuitous Aid (Assistance) to the Russian Federation as of May 4 1999 (Gratuitous Aid Law).

<sup>161</sup> Property obtained under this sub-clause (except for monetary funds) is not viewed as *income* provided that it is not transferred to *third persons* within one year from the moment of its receipt.

<sup>162</sup> The Tax Code includes as funds designated for defined purposes the “assets obtained by a taxpayer and used according to its designation, established by the organization or physical person which is the source of financing.” The Tax Code lists 9 such assets and includes grants. Among other types of funds designated for defined purposes are “funds obtained from the Russian Fund for Fundamental Research, Russian Fund for Technological Development, [and the] Russian Humanitarian Scientific Fund.”

<sup>163</sup> Section 251 (2) refers to income (except excised goods and materials) specifically designated for maintenance of non-commercial organizations and conduct by them of statutory activities, received from other organizations and/or physical persons and used by the said recipients according to the designated purpose.

membership, participatory contributions, and donations, recognized as such by the Civil Code of the Russian Federation;<sup>164</sup>

- property inherited by non-commercial organizations pursuant to a will;
- financing received from the federal budget, budgets of the federal entities of the Russian Federation, local budgets, and budgets of state non-budgetary funds, provided for the conduct of statutory activities of non-commercial organizations;
- funds and other property obtained to conduct charitable activities;
- aggregate contributions by founders of non-state pension funds;
- pension contributions to non-state pension funds;
- funds donated by owners to institutions established by them, used in accordance with their designated purpose;
- certain funding within and among professional organizations of advocates;
- funds obtained by trade unions pursuant to collective contracts (agreements) for conduct by trade unions of social and cultural and other events provided by their statutory activities;
- certain funding to and from ROSTO (Russian Defensive Sports and Technical Organization);
- property (including monetary funds) and property rights obtained by religious organizations for the purpose of conduct of statutory activities.

Although the list of types of income that may be excluded from the taxable base may seem extensive, in practice, a typical NCO is rather limited in its ability to receive tax exempt income.

Types of income traditionally viewed as passive or investment income (under the Tax Code identified as “non-realization” income) are subject to profits tax and are not exempt for non-commercial organizations.

### 3. *Kyrgyzstan*

In Kyrgyzstan, under the recent revisions to the tax code, the following types of revenue of NCOs are not included in the calculation of “gross annual income,” and are therefore not taxed: (1) membership and entry fees, (2) gratuitously transferred assets, so long as used for statutory purposes, and (3) humanitarian aid and grants, so long as used for statutory purposes.<sup>165</sup>

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<sup>164</sup> Section 251(2) (1) of the Tax Code names those types of persons or entities to whom gifts are registered as donations and thus exempt. The Civil Code limits the recipients of donations to the following: citizens; healthcare, nursing, social protection and other similar institutions; charitable, scientific and educational institutions, foundations; museums and other cultural institutions; public and religious organizations; the Russian Federation and its constituents; and municipal formations. Hence, not all non-commercial organization may receive donations (for instance, non-commercial partnerships, unions of legal entities, autonomous non-commercial organizations, and house building cooperatives) and gratuitous transfer to them will be deemed a gift and subject to profits tax.

<sup>165</sup> Section 93 (6) of the TC.

The Kyrgyz Tax Code provides thorough definitions of these terms, apparently in response to the tax authorities' prior difficulties in enforcing the Tax Code effectively:

- “Membership fees” are defined as: “assets contributed to membership-based non-commercial organizations in the amount designated and the manner stipulated in the founding documents of the organization, provided that such transfer is not conditioned upon reciprocal provision of services to such member free of charge or below costs.”<sup>166</sup>
- “Entry fees” are defined as: “assets contributed to membership-based non-commercial organizations by persons upon joining the organization in the amount designated and under the procedure stipulated in the founding documents of the organization, provided that such transfer is not conditioned upon reciprocal provision of services to such member free of charge or below costs.”<sup>167</sup>
- “Humanitarian aid” is defined as: “assets gratuitously provided by governments and international, foreign, and local organizations to the Government of the Kyrgyz Republic, local authorities, state, and non-commercial organizations, as well as to individuals in the form of food, consumer goods, equipment, appliances, clothing, medical supplies and pharmaceuticals, other goods aimed at the improvement of the conditions of life among the population, [directed towards] the prevention or elimination of emergency situations of a military, ecological, or industrial nature, subject to the subsequent consumption and (or) gratuitous distribution of those assets.”<sup>168</sup>
- “Grants” are defined as “assets gratuitously provided by governments and international, foreign, and local organizations to the Government of the Kyrgyz Republic, local authorities, state and non-commercial organizations (except for those pursuing political aims).”<sup>169</sup>

While these new definitions may appear rigid, they may also represent an improvement over prior law by introducing regularity and transparency into tax treatment of assets obtained on the gratuitous bases.

In addition, certain types of income traditionally viewed as “passive” are subject to exemptions or special treatment, regardless of whether the taxpayer organization is commercial or non-commercial: (a) dividends received by legal entities that are residents of Kyrgyzstan are not subject to the profits tax;<sup>170</sup> (b) interest payable to any person is taxed at its source, through a withholding of 10 percent, and is not included in gross

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<sup>166</sup> Section 9 (68) of the TC.

<sup>167</sup> Section 9 (69) of the TC. These definitions of “entry” and “membership fees” were apparently considered necessary in light of other provisions of the Tax Code, as well as problems with tax enforcement. The tax authorities have indicated that entrepreneurs attempt to use membership fees to hide commercial relationships between customers and an NCO; an “NCO” provides services in exchange for a “membership fee” or “entry fee,” even though no actual membership relationship exists.

<sup>168</sup> Section 9 (4-3) of the TC.

<sup>169</sup> Section 9 (4) (2) of the TC.

<sup>170</sup> Section 112 (4) of the TC. Dividends (as well as interest) received by non-residents are taxed at the source through withholding of 10 percent.

annual income upon submission of documentary evidence of withholding.<sup>171</sup> Income from renting out property is included in gross annual income and taxed under the regular procedure within the gross annual income.<sup>172</sup>

#### *4. Moldova*

In Moldova, revenues obtained on a gratuitous basis are exempt from income tax for NCOs, provided that receipt of donations is provided for in the organization's charter. There is no precise definition of a grant in Moldovan legislation, but grants are generally treated as donations and exempt under Section 52 of the Tax Code. The same applies to membership fees, as long as their payment complies with the charter. Although Moldova does not provide any special exemptions regarding passive or investment income, such income would be subjected to the same test which is applied to entrepreneurial income (namely whether it may be considered related to the organization's statutory purposes), and therefore may or may not benefit from exemptions, depending upon the particular factual situation.

#### *5. Tajikistan*

Tajikistan does provide exemption from profits tax for gratuitous transfers, membership fees, and donations received by "organizations", as this term is defined in the Tax Code. The term "organization", includes "public and religious organizations (associations), foundations, institutions, associations (unions) of legal entities, and international, intergovernmental and other organizations carrying out non-economic activities."<sup>173</sup> The term grant is defined in the Law on Charitable Activity as "property (including monetary), which is transferred gratuitously to natural persons and non-commercial organizations for their performance of a specified program or project."<sup>174</sup> Tajikistan provides exemptions for dividends only when paid from one resident enterprise to another. Tax on bank interest is withheld at the source at a rate of 12%. All other income traditionally viewed as "investment income" is fully taxed at the rate of 30 percent.<sup>175</sup>

#### *6. Armenia*

Armenia provides that assets (including membership fees) and services received by non-commercial organizations on a gratuitous basis are not considered "income" for taxation purposes.<sup>176</sup> In addition, all resident organizations, regardless of their nature as commercial or non-commercial, are exempt from tax on the following types of income: dividends, income from privatization certificates, residual property received from

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<sup>171</sup> Section 108 (1) and (3) and Section 93 (1) (3) of the TC.

<sup>172</sup> Section 93 (1) (3) of the TC.

<sup>173</sup> Section 18(1) of the Tax Code.

<sup>174</sup> Article 2 of the Law of Tajikistan on Charitable Activity.

<sup>175</sup> Section 40 of the Instruction on Calculation and Payment to the Budget of the Tax on Profits of Legal Entities #61 as of February 4, 2000.

<sup>176</sup> Section 8 of the Profits Tax Law of Armenia.



liquidation of a legal entity, and income from investment in foreign currencies and securities.<sup>177</sup>

## 7. *Kazakhstan*

In Kazakhstan, NCOs<sup>178</sup>, are exempt from taxation of income “in the form of [. . .] grants, entry and membership fees, charitable aid, gratuitously transferred property, subsidies, and donations.”<sup>179</sup> The NCO shall account for such income separately from taxable income.<sup>180</sup>

SSOs<sup>181</sup> are exempt from taxation on the same types of income (so long as the income is directed towards exempt activities), with the exception of entry and membership fees.<sup>182</sup> It is unclear whether the omission of entry and membership fees in the list of exemptions for SSOs was intentional or an oversight.

A “grant,” as defined by the Tax Code, is “property provided on a gratuitous basis by countries, governments, international or government organizations, as well as by foreign non-governmental organizations or foundations (whose activity is of charitable and international character and does not contradict the Constitution of the Republic of Kazakhstan and which is included on a list established by the Government of the Republic of Kazakhstan) to the Government of the Republic of Kazakhstan, legal entities, and natural persons; [and] property provided on a gratuitous basis by foreigners and stateless persons to the Republic of Kazakhstan and to the Government of the Republic of Kazakhstan for attainment of particular goals.”<sup>183</sup>

In addition, in Kazakhstan, all NCOs are exempt from taxation of “premium”, which is defined as interest earnings from loans, bank deposits and debt securities, as well as financial leasing payments, payments for property transferred into trusts and payments under certain insurance agreements.<sup>184</sup>

### D. Treatment of VAT and Humanitarian Aid

#### 1. *Ukraine*

Ukraine provides the most expansive VAT-related benefits to charitable organizations out of all NIS countries. It is the only NIS country which provides categorical exemptions on VAT payments to all registered NPOs on the gratuitous transfer (import) of goods and

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<sup>177</sup> Sections 26, 29, 28 and 8 of the Profits Tax Law, respectively.

<sup>178</sup> Section 120 of the Tax Code,

<sup>179</sup> Section 80 (2) (14) of the Tax Code.

<sup>180</sup> Section 120 (4) of the Tax Code. No sanctions for non-compliance are explicitly imposed by the Tax Code, though it is likely, that the exemption will not be applied if the organization fails to keep separate accounting.

<sup>181</sup> Section 121 of Kazak Tax Code.

<sup>182</sup> Section 121 (3) of the Tax Code.

<sup>183</sup> Section 10 (1) (4) of the Tax Code.

<sup>184</sup> Section 10(1) (2) of the Tax Code of the Republic of Kazakhstan.

services for charitable purposes *and* on equipment and office supplies for internal use by NPOs.<sup>185</sup> This exemption does not apply to excise goods, securities, intangible assets and certain goods intended for economic activity specified by the government. NPOs of the disabled are exempt from VAT on sales of their goods and services, except excise goods, gambling services and purchased goods. Such organizations may also claim a zero-rate VAT and seek a rebate of any input VAT (i.e., VAT paid in connection with purchasing goods and services). As a general rule, sales or transfer of goods or services are subject to VAT at their actual value, even when these transactions are conducted for free or below actual cost.<sup>186</sup> However, VAT is not levied on charitable aid or on free-of-charge transfers of goods or services to charitable organizations or to other organizations listed in the NPO Registry. In addition, VAT is not levied on the free transfer of goods or services to beneficiaries of charitable aid recognized as such by the law.<sup>187</sup> Contributions of assets to the charter capital of a legal entity, or an organization's collection of member ship dues are not VAT taxable transactions.

In addition, the VAT Law establishes a list of transactions which are exempt from VAT regardless of whether they are performed by commercial or non-commercial entities, including<sup>188</sup>: (1) sale through subscription and delivery of print media; sale of books, school notebooks, school textbooks and other educational materials produced in Ukraine; (2) payment of tuition to properly accredited educational institutions; (3) sale of specialized goods for the disabled; (4) healthcare services rendered by properly accredited institutions; and (5) the maintenance of homes for the elderly and disabled.

Ukraine also has a separate Law on Humanitarian Aid<sup>189</sup>, which specifies the procedures for labeling and distributing charitable (humanitarian) aid, as well as for control over the provision of humanitarian services. According to this law, if charitable (humanitarian) aid is received from a foreign legal or natural person, the recipient of such aid must be accredited by the Commission on Humanitarian Aid to receive exemptions from VAT and other taxes.

## 2. *Russia*

In Russia, all organizations, individual entrepreneurs and importers, including non-commercial organizations, are deemed taxpayers for the purposes of VAT. Russia essentially provides no benefits for NCOs or charities with regard to VAT. It does impose a reduced rate of 10% (compared to the general rate of 20%) on the supply and import of the following goods (regardless of the type of legal entity involved):

1. certain foodstuffs, as specified by the Tax Code;
2. certain goods for children, as specified by the Tax Code;

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<sup>185</sup> Section 5(1) (21) of the Law of Ukraine on VAT.

<sup>186</sup> Section 4.2 of the VAT Law.

<sup>187</sup> Section 4 of the VAT Law.

<sup>188</sup> Section 5 of the VAT Law.

<sup>189</sup> The Law of Ukraine on Humanitarian Aid, as of October 22, 1999.

3. printed periodicals (including the supply of related editorial and publishing services), except for printed periodicals of advertising or erotic character;
4. book products connected with education science and culture; and
5. medical items of domestic and foreign origin.

Additional exemptions for VAT (other than import VAT) which may be significant for NCOs may be found throughout the Tax Code. Some of the most relevant items for NCOs are the transfer of capital assets, non-material assets and other property to NCOs for conduct of their primary statutory activities, unconnected with entrepreneurial activities and inheritance of property<sup>190</sup>; goods works and services (except for excised goods and minerals) performed within the framework of provision of gratuitous aid to the Russian Federation under the procedure established by the Law on Gratuitous Aid<sup>191</sup>; gratuitous provision of goods, works and services as charity.<sup>192</sup> In addition, Section 150(1) of the Tax Code exempts certain imports from VAT, including goods (except for excised goods and minerals), imported as gratuitous aid to the Russian Federation.

There is no general registration threshold for VAT and no separate procedure for registration as a payer of VAT. Any NCO must apply for tax registration in the same manner as any other legal entity, within ten days of obtaining state registration as a legal entity. An NCO will be exempt from VAT if it elects to be taxed under the “simplified taxation system.” However, this system does not affect obligations with regard to import VAT.

### 3. *Kyrgyzstan*

Kyrgyzstan does not provide any general VAT exemptions or preferential rates for all NCOs. However, supplies provided by charitable organizations for charitable purposes are subject to a general exemption (as long as they are supplied at or below cost). In addition, the Tax Code exempts certain other socially beneficial supplies from VAT, upon the condition that such goods and services are supplied at or below cost, and so long as the supplier is an NCO:

1. supplies of goods, works and services provided by non-commercial organizations for healthcare, education, science, culture and sports establishments;
2. supplies of goods, works and services provided by non-commercial organizations for social security or the protection of children or low-income elderly;
3. supplies of services provided by healthcare, education, science, culture and sports institutions;
4. supplies of religious services by religious organizations;
5. supplies of specialized goods for the disabled; and

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<sup>190</sup> Section 39(3) of the Tax Code.

<sup>191</sup> Section 434 of the Tax Code; Law of the Russian Federation on Gratuitous Aid as of May 4, 1999.

<sup>192</sup> Section 149(3): “gratuitous transfer of goods (performance of works, rendering of services) within the framework of charitable activities on the gratuitous basis pursuant to the Federal Law ‘On Charitable Activities and Charitable Organizations,’ except for excised goods.”

6. supplies by charitable organizations for charitable purposes.<sup>193</sup>

Import of the following goods (which may be of interest to NCOs) is exempt from VAT<sup>194</sup>:

1. goods provided for rendering assistance when liquidating consequences of natural calamities, armed conflicts and accidents;
2. goods imported as humanitarian assistance, grants under the procedure established by the Government of the Kyrgyz Republic;
3. pharmaceuticals in accordance with the list approved by the Government of the Kyrgyz Republic;
4. educational materials and school accessories, scientific publications; and
5. baby food.

#### 4. *Moldova*

Moldova designates certain limited types of organizations as exempt from VAT payments on specified items: (1) enterprises of the Associations of the Blind, the Deaf, the Handicapped, (2) goods and services of educational institutions and goods provided by cafeterias of educational institutions and hospitals, (3) food services for the poor and/or elderly provided by charitable organizations, and (4) rituals and ceremonies conducted by religious organizations.<sup>195</sup> The following is a selection of supplies and imports which may relate to the non-commercial sector and are VAT-exempt:<sup>196</sup>

1. Import of goods and services which were manufactured by a taxpayer on the territory of Moldova;
2. groceries and other goods for children;
3. preschool facilities, clubs, health resorts and other places of social and cultural value as well as serving a housing or communal purpose which are being transferred by public authorities to associations, institutions and organizations;
4. services and goods by educational institutions (as long as all revenues are re-invested into the educational process);
5. services and actions for which there is a state duty; services related to care for the sick and elderly; medical services (except for cosmetic procedures; books and periodicals, except for those relating to advertising or of an erotic character;
6. capital assets being transferred to the statutory capital of an entity;
7. goods and services, imported or purchased on the territory of the Republic of Moldova or of funds from loans and grants granted to the Moldovan Government, or provided by the government guarantees out of funds from loans of international finance institutions for specified projects, as well as from grants provided to budget subsidized institutions according to the list approved by the Government.

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<sup>193</sup> Section 145 of the Tax Code of Kyrgyzstan.

<sup>194</sup> Section 147 of the Tax Code of Kyrgyzstan.

<sup>195</sup> Selected entries from Section 103 of the Tax Code.

<sup>196</sup> Id.

The following imported goods (which may also be relevant for non-commercial organizations) are exempt as long as their importation complies with all conditions stipulated in the applicable tax and customs legislation and regulations: goods for rendering assistance after natural disasters, armed conflicts, and other public emergencies and humanitarian assistance-related goods (designated as such by the Government).

### 5. *Tajikistan*

Tajikistan does not provide for any decreased rates or zero-rating for NCOs or charities. It does exempt certain enumerated goods and services from VAT payment, but these exempted materials and transactions are quite limited. The only organizations which may obtain a general exemption from VAT are associations of the disabled, blind and deaf (which meet the necessary statutory requirements), as well as enterprises owned by such associations are exempt from VAT. Otherwise, VAT exemptions are based upon the type of operation or import, rather than the type of organization (although some exemptions may be limited in practice to a particular type of organization)<sup>197</sup>:

1. sale, transfer or lease of real property (subject to certain limitations);
2. provision of religious services by religious organizations;
3. provision of medical services;
4. provision of educational services for children and teenagers in clubs, workshops and art studios, as well as childcare services in preschool institutions; and
5. import of goods, performance of works and services as humanitarian assistance, as well as import of goods to be transferred to state bodies of the Republic of Tajikistan and public organizations for the purpose of eliminating consequences of natural calamities, accidents and catastrophes.

### 6. *Armenia*

In Armenia, NCOs may enjoy VAT privileges with regard to goods imported by them from abroad, or acquired in Armenia, if used within the framework of “humanitarian assistance and charity programs” under the procedure specified in certain governmental regulations<sup>198</sup> and the budget legislation. Under these programs, VAT becomes reimbursable when and only when the government elects to “co-finance” a humanitarian or charitable program. To receive the reimbursement, an organization must obtain humanitarian or charitable status by applying to the Central Commission on Humanitarian Assistance (which provides reductions on customs duties and other fees). Upon approval of a humanitarian or charitable program by the Central Commission and procurement of government “co-financing”, the initiator of the program must obtain a voucher for each transaction (for both import operations or domestic acquisition) from

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<sup>197</sup> Section 187 of the Tax Code of Tajikistan.

<sup>198</sup> Resolution of the Government of Armenia #136 of February 13, 2002 on Humanitarian Assistance and Charity Programs and the Regulation for the Compensation of the Amounts of the Value Added Tax subject to payment within the Framework of Humanitarian Assistance or Charitable Programs, endorsed by the cited Resolution.

the Ministry of Finance, which is subsequently tendered to the customs authorities or to the domestic supplier in lieu of VAT payment.<sup>199</sup>

#### E. Deductions for Donors

Kazakhstan, Tajikistan, Ukraine, Moldova, Armenia, and Kyrgyzstan all provide for *some* tax benefits to donors in return for charitable contributions, although few provide truly substantial benefits. Russia does not provide any benefits for legal entities, and benefits for individual donors supporting charities are minimal and it is difficult for donors to take advantage of even these minimal benefits.

In Ukraine, legal entities may deduct donations made to NPOs in an amount ranging from two to five percent of taxable income.<sup>200</sup> Ukraine also provides for the possibility of an additional five percent for deductions made to certain enumerated institutions, such as money donated to organizations engaged in the protection of Ukraine's cultural heritage.<sup>201</sup> Individuals may take a deduction of no more than four percent of taxable income, as long as the donations are made to an organization which is registered in accordance with the Law on Charity.<sup>202</sup> In Ukraine, donations made by natural persons in forms other than monetary donations (such as in the form of purchase of lottery tickets, participation in fundraising activities, or transfer of assets) are not deductible.

Russia is the only country being discussed here which does not provide any tax-related benefits for legal entities that contribute to non-commercial organizations. An individual taxpayer may take what is known as a "social tax deduction" in order to decrease his or her income tax base by up to 25 percent, for income transferred by taxpayers for "charitable purposes in the form of monetary aid to organizations of science, culture, education, healthcare and social security that are financed in full or in part from the funds of respective budgets, as well as organizations of physical culture and sports, educational and preschool institutions for the needs of physical development of citizens and maintenance of sports teams, as well as donations transferred to religious organizations".

In Kyrgyzstan, the tax code provides incentives for charitable donations by legal entities and individuals in the form of deductions. The relevant tax provisions are as follows: "Gross annual income of a legal entity shall be decreased by the amount of an asset, including money and property (at its market value), gratuitously transferred to charitable and budgetary organizations in the course of the tax year, in an amount not exceeding five percent of the taxable income of the taxpayer, provided that those assets are not used

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<sup>199</sup> Section 1(d) of Resolution #136 reads as follows: "In accord with the work plans of the government of the Republic of Armenia and in the event of humanitarian assistance or charity programs of essential public significance the government of the Republic of Armenia, in conformity with the law of the Republic of Armenia on the National Budget, may act as a co-financer, implementing the co-financing in a procedure stipulated by the law and within the time-frames stipulated by this regulation."

<sup>200</sup> Section 5(2) (2) of the Law of Ukraine on Profits Tax. Although small businesses that are taxed according to the Law on Simplified Taxation are not eligible to apply for such deductions.

<sup>201</sup> Section 5(2) (3) of the Law of Ukraine on Profits Tax.

<sup>202</sup> Clause K, Section 5 of the December 26, 1992 Cabinet Decree on Personal Income Tax.

to the benefit of the legal entity that transfers them.”<sup>203</sup>

“Gross annual income of an individual shall be decreased by the amount of an asset, including money and property (at its market value), gratuitously transferred to charitable and budgetary organizations in the course of the tax year, in an amount not exceeding five percent of the taxable income of the taxpayer, provided that those assets are not used to the benefit of the individual who transfers them.”<sup>204</sup>

In Moldova, resident taxpayers (both legal entities and individual)<sup>205</sup> are permitted to deduct “donations for charitable purposes made during the year, not in excess of ten percent of the amount of [their] taxable income,” provided that such donations are substantiated in the manner established by the Government.<sup>206</sup> The Tax Code defines “donations for charitable purposes” as such “donations or gifts” to:

- public authorities and public institutions financed by the state budget, the budgets of territorial subdivisions, and/or the state social security budget public;
- NCOs; and
- religious organizations.

In Tajikistan, individuals and legal entities may deduct up to two percent of their taxable income for payments to “charitable organizations” and for the purpose of carrying out “charitable activities”.<sup>207</sup> The value of in-kind donations is calculated as the lesser of the market value of the property or the cost of its production.

In Armenia, under the Profits Tax Law, monetary and in-kind contributions and services rendered to non-commercial organizations (and other specified entities) are deductible up to 0.25% of the donor’s gross income. Under the Law of Armenia on Personal Income Tax, monetary and in-kind contributions as well as services rendered to specified organizations, including charitable organizations, can be deducted from the individual’s taxable income for the year, up to a maximum of five percent of taxable income.<sup>208</sup>

Kazakhstan permits a deduction from taxable income of an amount up to two percent of the taxpayer’s taxable income (for legal entities only) of the value of any property gratuitously transferred to a charitable organization.<sup>209</sup> Both legal entities and individuals may claim deductions for charitable contributions up to five percent of taxable income.<sup>210</sup>

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<sup>203</sup> Section 112 (3) of the Tax Code.

<sup>204</sup> Section 88 (2) of the Tax Code.

<sup>205</sup> Section 36 (1) of the Tax Code.

<sup>206</sup> Section 36 (3) of the Tax Code, the Regulation of the Cabinet of Ministers #489 as of May 4, 1998 establishes documentary requirements.

<sup>207</sup> Section 133 of the Tax Code.

<sup>208</sup> Section 13 of the Law on Income Tax.

<sup>209</sup> Section 133 of the Tax Code of Tajikistan; Section 122(1) of the Tax Code of Kazakhstan.

<sup>210</sup> Sections 112(3) and 88(2) of the Tax Code of Kyrgyzstan.

We are not aware of any provisions granting additional tax deductions or credits to donors who contribute to charitable organizations via their last will and testament.

#### F. Endowments

None of the NIS laws contain special rules for taxation of income or investment rules from endowments. For information as to whether income from endowments is taxable and investment rules for endowments, see discussion above regarding passive/investment income. As to whether foundations are subject to separate rules because of their endowments, the general answer is no. There are separate rules governing foundations, but almost no provisions which relate directly to endowments. See the discussion on Passive/Investment Income, pp. 49-55, for further detail on the general treatment of this issue.

Only the Law of Moldova on Foundations contains provisions which provide for special rules related to endowments. This provision requires that foundations whose property value or assets exceed 1 million leus must have a trustee council, which shall exercise oversight of the compliance of foundation activities with the relevant legislation, as well as compliance with ethical norms and accounting requirements.<sup>211</sup>

#### G. Tax-related Reporting

See earlier section on reporting, pp. 39-41, for full discussion of reporting requirements.

#### H. Special Reporting Rules for Foundations

Of the countries of the NIS with meaningful charitable status, only Moldova, Armenia and Kyrgyzstan impose special reporting requirements on foundations.

The Law of Kyrgyzstan on Non-commercial Organizations contains separate provisions on each legal organizational form (associations, foundations and institutions). For foundations, Kyrgyzstan imposes certain internal reporting requirements, specifying that the Board must submit reports to the Supervisory Council at least every six months, if the foundation is involved in any production or other business activities, and every year if the foundation is not involved in such activities.<sup>212</sup> The Board shall also be required to provide any information upon request of the Supervisory Council or founders, on the management or activities of the foundation. Other than these provisions governing internal reporting procedures, Kyrgyz foundations are subject to the same rules which govern associations or institutions.

Moldova has more detailed provisions on this subject than other countries. For example, Article 22(c) of the Law of Moldova on Foundations requires foundations to submit an annual report to the Ministry of Justice containing data on the activities of the foundation, fulfilled programs, sources of funding, total amount of funds used during the fiscal year,

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<sup>211</sup> Article 29(1) of the Law of Moldova on Foundations.

<sup>212</sup> Article 26 of the Law of the Kyrgyz Republic on Non-Commercial Organizations.



users of foundation funds and services, and amount of administrative costs. This report must also contain information as to the names of Board members and employees of the foundation, relatives of these parties within one to three degrees of relationship who used its funds and services during the reporting period, as well as information on the location of the foundation and identifying the head of the foundation. Failure to submit this information within two years will result in removal of the foundation from the State Register of Non-Profit organizations upon decision by a court made on the motion of the Ministry of Justice.

The Law of Moldova on Foundations further specifies that within six months from the end of each fiscal year, a foundation must publish a report on its activities, which must be made available to the public and must include the following information: the total amount of finances and materials used for the achievement of statutory objectives during the fiscal year, programs implemented by the foundation, the number and categories of foundation users, and the amount of the foundation's income that was used for administrative expenses.<sup>213</sup>

The Law of Armenia on Foundations contains the following relevant provisions<sup>214</sup>:

1. The foundation must keep the following documents for the terms stipulated by the law and other legal acts:
  - 1) Certificate of state registration of the foundation, the charter, additions and changes made to the charter, the new edition of the charter, the decision and the agreement on establishment;
  - 2) Documents proving the property rights of the foundation towards the property indicated in the foundation balance;
  - 3) Internal documents approved by its bodies;
  - 4) Charters of its separated subdivisions and institutions;
  - 5) Annual reports;
  - 6) Accounting balance documents;
  - 7) Financial and statistical reports presented to public administration bodies;
  - 8) Protocols of the sessions of its bodies;
  - 9) Agreements signed by it;
  - 10) Documents dealing with its financial-economic and other activities.

Within 6 months following the end of each fiscal year, all foundations must publish for the general public (through a mass media outlet) the following information:

1. a report on its activities, including information about the programs accomplished, sources of funding, the total amount expended during the fiscal year and the total amount of administrative-managerial expenses, the usage of property, the first and last names of the members of the board of trustees, and names of the manager and

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<sup>213</sup> Article 33 of the Law of Moldova on Foundations.

<sup>214</sup> Article 36 of the Law of Armenia on Foundations.

- persons engaged in the foundation's staff, if they have used the foundation's means and services within the accounting year;
- 2. an annual financial report; and
- 3. an auditor's report, if the value of the foundation's active capital exceeds 10 million drams.<sup>215</sup>

In addition, a foundation is required to notify the Ministry of Justice in writing within 15 days after publishing the report required by Article 39. In the event that a foundation publishes an incomplete report within the stipulated period, the Ministry of Justice must send the foundation a written warning requiring the publication of this report within one month. If the foundation fails to publish the report within the defined time or does not otherwise fulfill the demands of the warning, the Ministry of Justice may appeal to the court with a request to liquidate the foundation.<sup>216</sup>

In addition, Armenia specifies certain reporting requirements related to accounting practices for foundations.<sup>217</sup> For example, foundations must keep a current accounting balance and financial and statistical reports, which are consistent with the Law on Foundations and other legal acts. It is the Manager of a foundation who bears responsibility for organizing the maintenance of an accounting balance, ensuring its truthfulness, for timely submission of the annual, financial and statistical reports to the pertinent public administration bodies (such as the Ministry of Justice or the tax authority), as envisaged by the law and other legal acts, as well as for the truthfulness of information that is presented to the foundation bodies and other persons. This Law also requires that accounting of administrative and managerial expenses of the foundation be kept separately from other expenses of the foundation.

#### I. Administrative Expenditures

In Russia, Moldova, Tajikistan, and Armenia, charities are required to demonstrate that their administrative expenses do not exceed the amount permitted by law, which in most countries is limited to 20% of the organization's yearly income.<sup>218</sup> In Kyrgyzstan, no more than 2% of all funds expended during the financial year may be used for remuneration of administration and management staff.<sup>219</sup> However, these strict provisions are more relaxed than they appear, as they do not apply to remuneration paid to persons participating in implementation of charity programs. In addition, laws of many countries permit a donor to authorize a greater percentage of its donation to be applied to administrative expenses of the organization.

#### J. Accounting Requirements

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<sup>215</sup> *Id.*, Article 39.

<sup>216</sup> Article 38 of the Law of Armenia on Foundations.

<sup>217</sup> Article 37 of the Law of Armenia on Foundations.

<sup>218</sup> Article 10 of the Law of Moldova on Philanthropy and Sponsorship (1995); Section 20 of the Law of Tajikistan on Charitable Activity; Section 12(3) of the Law of Armenia on Charity; Article 20(3) of the Law of Russia on Charitable Activities and Charitable Organizations.

<sup>219</sup> Section 9(3) of the Law of Kyrgyzstan on Patronage and Charitable Activity.

Ukraine permits the scope and format of charity statistical reporting to be determined by the Cabinet of Ministers, but the format of financial reporting is to be determined by the central tax authority, to which charities are required to submit financial reports on the use of property and funds in the designated manner.<sup>220</sup> Russia and Armenia require only that charities keep office and accounting records in the manner prescribed by law.<sup>221</sup> The Law of Moldova on Charity and Sponsorship requires that charitable organizations and their sponsors maintain a strict accounting of the beneficiaries of charitable assistance and sponsorship by recording the names, amounts and purposes of charitable contributions and sponsor support, and provide a quarterly report on this to the government bodies in charge of financial control of charitable organizations.<sup>222</sup> Tajikistan does not provide any specific accounting requirements for charities, only a general requirement that public associations must submit financial reports to the tax administration in the manner determined by that body.

Although not explicitly required by the laws on charity, the Laws of Moldova and Armenia on foundations do require foundations to keep separate records for administrative expenditures in order to allow the tax authority to more easily ascertain whether the organization is complying with the limitations on administrative expenditures.<sup>223</sup> For additional requirements, see the discussion above regarding deductions for donors, pp. 59-61, for description of special reporting requirements pertaining to charitable donations, and passive/investment income, pp. 49-55, for discussion of recordkeeping requirements pertaining to other types of passive income, for which there may be requirements for separate accounting. Of course, as with other legal entities, charitable organizations must comply with any relevant laws of their country on accounting practices for legal entities.

## **VIII. Compliance**

### **A. General**

The charity legislation in the six NIS countries being discussed here: Armenia, Kyrgyzstan, Moldova, Tajikistan, Russia, and Ukraine, is relatively simple and straightforward. Overall, the additional restrictions and rules for charities do not differ greatly from those applicable to all non-commercial organizations. There is a notion throughout the region, however, that there are insufficient incentives for organizations to registering as charities, because the accompanying tax incentives are so minimal. We are not aware of any studies that have been conducted to determine whether charitable organizations comply with the law.

### **B. Specific**

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<sup>220</sup> Article 24 of the Law of Ukraine on Charity and Charities.

<sup>221</sup> Article 16 of the Law of Armenia on Public Organizations; Article 19 of the Law of Russia on Charitable Activities and Organizations.

<sup>222</sup> Article 20 of the Law of Moldova on Charity and Sponsorship.

<sup>223</sup> Article 23(3) of the Law of Moldova on Foundations; Article 38 of the Law of Armenia on Foundations.

There are negative notions which color the public perception of non-commercial organizations as a whole. They are seen as “grant-eaters,” organizations which advocate for their own special interests at the expense of the larger society. However, charitable, and other types of “social” organizations can manage to avoid such stigma, and are typically not seen as sham organizations created for the purpose of avoiding payment of taxes.

However, the governments of several NIS countries, particularly Russia, Azerbaijan and Uzbekistan, have recently expressed the notion that non-commercial organizations are being used for political purposes. Obviously, such a perception is quite damaging to the sector. It remains to be seen whether such announcements will have any serious practical effects on the ability of non-commercial organizations to function and prosper.

### C. Sanctions

See earlier discussion, pp. 32-36, regarding involuntary termination/dissolution for discussion of sanctions for failure to comply with legal requirements.

## **IX. Government Funding**

There are no special rules relating to charitable organizations’ ability to engage in government contracting, except to the extent that the rules of that country might forbid a charitable organization from conducting economic activities directly, as in Ukraine or Armenia.<sup>224</sup> In such cases, a charitable organization would be unable to engage in government contracting without forfeiting its charitable status. Otherwise, charitable organizations generally have the same rights as other non-commercial organizations to compete for government contracts. As with all non-commercial organizations, there are some contracting rules which can have the unintended effect of preventing or discouraging NCOs from participating in government tenders. For example, the typical requirement for bidders to provide a deposit in the amount of some percentage of the contract can be prohibitive for NCOs, which frequently have very little spare capital and therefore cannot sacrifice such an amount in order to secure the right to compete. There are no programs or policies designed to ensure proportional distribution of contracts as between government-controlled organizations, commercial organizations, and NCOs. Although many NIS countries are starting to become more aware of the ability of NCOs to assist the government in relieving the burden of providing services directly, government-NCO contracting is still a relatively young phenomenon, and most NIS countries still refrain from providing much state support to NCOs.

## **X. Privatization**

Currently there are no special legal forms or procedures which have been created to permit or facilitate the privatization of state assets or programs into the charitable sector.

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<sup>224</sup> See earlier discussion of economic activities, p. 46-49.

## **XI. Conclusion**

With few exceptions, the laws of the NIS on public benefit/charitable status remain underdeveloped. Meaningful tax benefits for non-commercial organizations are rare, and even rarer are additional benefits which distinguish charitable organizations from other non-commercial organizations in more than name. As a result, despite some improvement in countries such as Moldova, charitable organizations often tend to have the same minimal benefits as other non-commercial organizations. Much progress is needed before the countries of the NIS recognize the value of the experience of other countries in Western Europe in supporting the development of a vibrant charitable sector through provision of significant tax benefits to charitable organizations and their donors.