

## INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW

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### ICNL's Comments on the Not-for-Profit Organization Act: Concept of the Act

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The International Center for Not-for-Profit Law (ICNL) is an international organization that provides technical assistance, research, and education to support the development of appropriate laws and regulatory systems for not-for-profit organizations (NPOs) in countries around the world. ICNL has worked on NPO law reform projects in over eighty countries in conjunction with the Open Society Institute, World Bank, United Nations, OSCE, Council of Europe, and other stakeholders. ICNL has been active in Central Asia since 1997, providing assistance to NPO/government working groups addressing NPO legal reform.

ICNL has had the pleasure of reviewing the Not-for-Profit Organization Act Draft: Concept of the Act (Concept Paper) prepared by the working group led by the Ministry of Justice and Home Affairs. We commend the working group for their comprehensive and well-written Concept Paper. ICNL looks forward to providing assistance on this initiative as it moves forward.

To support this initiative, we thought it would be useful to provide comments and comparative information on the eight points raised in Section 1 of Concept Paper. Taking these points in turn:

- 1. *Categorization, Definition and Permissible Activities of NPOs.*** The Concept Paper states, in this area, "relevant practices of other countries should be looked at closely." Previously in our communication as of October 7, we provided an overview of NPO legislation in Central and Eastern Europe (CEE) that describes organizational forms, definitions, and permissible activities for NPOs. To introduce the Western European experience, we are sending the article on associations and foundations in German law, by Prof. U. Drobniig, and the article on associations and foundations in France by Prof. L.A. Nordon. To represent the experience from the NIS region, we provide the working group with the overview of the legislation for NPOs in Russian Federation. Laws reviewed in the above articles are available upon request.
- 2. *Detailed Rules Related to the Most Common NPO Organizational Forms.*** The CEE Overview referenced above provides summary information on this topic. On October 7, we provided the drafters with examples of progressive legislation (from Estonia, Bosnia-Herzegovina, and Kosovo). We are also sending the Bulgarian and Montenegro laws, which are recognized as progressive in the CEE region and address several organizational forms of NPOs in one law. In addition, we are sending laws representing varied approaches to regulating foundations from other regions (from France, and Armenia), as well as the comparative overview of foundations in the EU. We are also sending laws on associations from France and Poland. To provide the working group with some background information on "non-traditional forms" we are sending the Czech Act on Public Benefit Corporations, and the Law on Non-commercial Organizations of

the Russian Federation which regulates “agencies” (or “institutions”) among other forms of NPOs.

- 3. Economic Activities.** The issue of economic activities is one of the most important issues in legislations regulating NPOs. We commend the working group for raising this issue. As an issue of good international practice, all NPOs should be permitted to carry out entrepreneurial activities. In many laws however, there is a clause limiting such activities to those that advance (or relate to) the NPO’s primary statutory purpose. Laws of different countries use different approaches of limiting the extend to which NPOs should be permitted to carry economic activities. We are sending an excerpt from ICNL’s NPO tax survey from the CEE region summarizing the extent to which NPOs should be permitted to engage in economic activities as well as the tax treatment of income generated from these activities. The article on taxation of NPOs in the EU by Caroline Newman addresses issues of permissibility of economic activities and taxation of income from economic activities of NPOs in the EU.
- 4. Mutual Benefit/Public Benefit Organizations.** As we understand the Concept Paper, mutual benefit and public benefit organizations essentially have the same tax treatment under Mongolian law. Accordingly, the question is posited whether this distinction is necessary. Various options are possible – ranging from eliminating this distinction to revising the tax or framework laws. We need to learn more about the situation from our Mongolian colleagues before proffering advice, and we look forward to follow-up discussions on this topic during our visit. To represent different approaches we suggest that the working group refer to the previously mentioned overview of taxation of NPOs in the EU, which discusses which organizations are granted public benefit (tax exempt) status in countries of the EU. We are also sending comparative law materials providing different approaches to granting tax exempt (public benefit) status (model provisions for PBO law, Hungarian Act on Public Benefit Organizations, the Bulgarian law mentioned above, and an article on taxation of NPOs in the US.)
- 5. Registration in Ulaanbaatar.** We agree with the concerns expressed by the working group and fully endorse the recommendation that a mechanism be developed to facilitate registration at the local level. We also recognize that the determination of the appropriate registration authority is a country-specific determination informed by local circumstances. In most CEE countries NPO registration is carried out by courts, and in the NIS either by the Ministry of Justice, or by the Registration Chamber. The selection of the proper registration body should be made based on the legal tradition, competence, and capacity to perform the registration function in the most efficient way. Another important issue that has not been mentioned in the concept paper, but might be of interest to the working group is the actual procedure of registration /legalization of NPOs. While there are different approaches to registration, the simple rule is that the registration of associations and foundations should not be more difficult than for business legal entities. There is a trend in many countries of the CEE and NIS regions to make the registration procedure identical for all legal entities, including NPOs and businesses. The working group might also be interested in various registration procedures for NPOs in Western Europe which are addressed in the attached article.
- 6. Reporting.** We agree that this is an important and complex issue. Specifically, we think that there should be two-tiered reporting requirements. For NPOs that receive no public funding, limited tax benefits, etc., we think that there should be no (or modest) reporting requirements. NPOs receiving public support and significant tax preferences should be subject to reporting

requirements narrowly tailored to the benefits provided. To avoid overwhelming the working group with documents, the only documents we recommend that the working group review are the article on "Integrity, Good Governance, and Transparency Rules for Self-Regulation" and the "Fundamental Principles on the Status of Non-governmental Organizations in Europe" and the explanatory memorandum. More comparative laws on this topic can be provided upon request.

**7. Government Official's Involvement in NPO Management Structures.**

This is an interesting issue presented by the working group, and ICNL will conduct comparative research on this subject in advance of our visit.

**8. Unregistered and Foreign NPOs.** The attached UNMIK Regulation contains provisions addressing unregistered associations and foreign NPOs, and we have also attached an article on International Non-Governmental Organizations and their Legal Status by Marcel Merle. As an example of regulation of registration of foreign organizations in a particular country, we propose ICNL's memorandum on registration of foreign organizations in the US. Regarding the status of the unregistered associations, we refer the working group to the previously mentioned articles on French and German associations and foundations.

Once again, ICNL commends the working group on its draft and expresses its appreciation for this opportunity to provide assistance. We hope this background information is helpful, and we look forward to our continued work together.

Respectfully submitted,

The International Center for Not-for-Profit Law  
Washington, DC

**Attachments:**

- 1.** Armenian Law on Foundations.
- 2.** Bulgarian NGO Law.
- 3.** Burtseva, Natalia, *Legislation for NPOs in Russian Federation*.
- 4.** Comparative Overview of Foundations in the EU - Legal and Tax Highlights.
- 5.** Czech Act on Public Benefit Corporations.
- 6.** Drobny, Ulrich, *Associations and Foundations in German Law*
- 7.** French Law on Associations.
- 8.** French Law on Foundations.
- 9.** Fundamental Principles on the Status of Non-governmental Organizations in Europe and explanatory memorandum.
- 10.** Hungarian Act on Public Benefit Organizations.
- 11.** ICNL, *Integrity, Good Governance, and Transparency Rules for Self-Regulation*.
- 12.** ICNL, *Survey of Tax Laws Affecting NGOs in Central and Eastern Europe (excerpt)*.
- 13.** Model Provisions for PBO Laws.
- 14.** Newman, Caroline, *Taxation of NPOs in the EU*.
- 15.** Newman, Caroline, *Registration Procedures for NPOs in Western Europe*.
- 16.** Merle, Marcel, *International Non-Governmental Organizations and their Legal Status*.
- 17.** Nordon, Luise, A., *Associations and Foundations in France*.
- 18.** Montenegro NGO Law.
- 19.** Polish Law on Associations.
- 20.** Russian Federation Law on Non-commercial Organizations.