

Current state of the legal regulation on the non-profit organizations in Mongolia

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1. Constitutional resources on the non-profit organizations

Following constitutional mission on respecting the accomplishment of civil society and article 10 in chapter two stipulating right for freedom of association in political parties or other voluntary organizations on the basis of social and personal interests and opinion acknowledge the existence of non-profit organizations in particular for the non-governmental organizations and provide foundations for them to operate.

2. Other legal provisions related to the non-profit organizations

2. 1 Civil code items 25 through 38 refer to the non-profit organizations, for example item 25 in chapter two of the civil code defined legal persons to have right to form a for-profit or non-profit organization with concrete goals specified by law or rules. The civil code item on the distribution of dividends does not refer to the definition of the non-profit organizations.

2. 2 non-conformity between civil code item 33.1 on For-profit legal persons shall be established in the form of partnership or company and Non-profit legal persons shall be established in the form of association, foundation or cooperative and absence of clear distinction between such organizations that issue in the tax law cast doubt on the significance of the definition mentioned above. In addition there observed some mismatch and inaccurate wording in the definition of the non-profit and for profit organizations in the civil code item 25.2 and 33. Furthermore, law on cooperatives refers to the non-profit organization in items 8.2.1- assets of non-profit organizations shall be registered as member's contribution of assets contributed in-kind and cash and item 14. 1.6 stipulating that members have right to share in the distribution of the cooperatives' annual income in accordance to the procedures.

Legal provisions mentioned above don't justify distribution of income among members and very definition of non-profit organizations. These inconsistencies and ambiguities in the legal documents may cause negative political consequences prompting wealthier rural individuals take advantage of these loophole by forming cooperatives in disguise of non-profit organizations.

2. 3 the civil code item 36.6 stipulating "Monasteries and churches, participating in the civil legal relations, shall observe provisions of the law pertaining to the legal status of foundations" prompted me to look at how the legal ground for the parties have been laid. According to the constitution and item 4b and 11a in the law on political parties, parties pertain to have membership and non-profit, however both the civil code and the law on the political parties miss clear definition on the status of the parties. Any legal persons and bodies other than parties obliged to report to the governmental agencies that issued licenses or special permissions for to operate, while the supreme court registers the new parties, however according to the party law, financially parties should be self sustaining with obligation to submit their financial reports to the government. This situation may create some controversies for leaving party activities beyond the legal boundaries; there is legal environment for leading parties in power to stay beyond the financial audits and controls.

2. 4 there exist legal provision on other controversial form of non-profit organization in the civil code: Namely, Article 143 in the civil code with regard to Apartment owners' association with

143.1. In case two or more households become owners of their apartment in the same communal apartment house, the Apartment owner's association (hereinafter refereed as an

association) shall be set up with the purpose of exercising communal ownership rights, ensuring safety maintenance of the apartment house and protecting rights, benefits and interests of apartment owners.

143.2. Apartment owners inhabiting in neighboring few apartment houses may join and form a single association.

143.3. The Apartment owner's association shall not enjoy the rights of legal person.

143.4. All other persons owning apartments in the same apartment house shall be obligated to be members of the Apartment owner's association.

143.5. If the apartment house is composed of the mixed ownership apartments including state property and local property apartments, representatives appointed by the organization authorized by owners shall be members of the Association.

And rights of the apartment owner in civil code item 148.1.3. To have a voting right commensurate to the own share in the regarding the maintenance and disposal of communal ownership objects.

Perhaps it is recommendable for the Apartment owners' association to define its status whether it would be for profit or non-profit and base the voting rights depending on their decision. As of now, almost all of the apartment owners' associations bear the characteristics of the non-profit organizations as the apartments have been privatized for free for the tenants. It is hard to find support the idea that the civil code article 143.3 citing "The Apartment owner's association shall not enjoy the rights of legal person" does not correspond with the constitutional article 16.10 saying "The right for freedom of association in political parties or other voluntary organizations on the basis of social and personal interests and opinion." Perhaps the preceding article in the civil code designed to prevent business interest for obtaining licenses for claiming better location for profitable business or protect playgrounds amidst apartment buildings among other personal and business interests. The question of the discussion on determining, clarifying the status of the so called non-profit organisation is, why there has been attempts for solving conflicts by withdrawing a step back from the principles of the civil society.

3. Organizations formed under special legal regulations

Any non-governmental organizations formed under special legal regulation should adopt the status of either for profit or non-profit as defined in the civil code. But, there is some non-governmental organization hard to fit in the legal definitions. Following may serve as the causes for them to define their status as for or non-profit organization. 1) There is no legal provision for determining their status 2) lack of legal background for the organizations to determine their status. An organization has to benefit and sustain disadvantage for adopting of either status have their pluses and minuses. But in reality some individuals and organizations hate disadvantages. There are risks for some individuals and organizations take advantage of vague legal provisions, in form of distributing dividends, claiming tax relief and seeking tax benefits.

Let's see the example of the indulgence in the following table.

3.2 Table

Names of the organizations and relevant special legal regulations Files in the list of law code	Forms specified under law			Vague legal ground: non of the preceding three forms
	Non-profit	For profit	Optional for the organization	
Parties: Law on the political parties 90-h-03	-	-	-	+
Trade unions. Law on the trade unions, 91-h-05	-	-	-	+
Monasteries: law on the government and monasteries relations, 93-h-21	-	-	-	+
Education: education law 02-h-13	+12.2	-	-	-
Health: law on health 98-h-16	-	-	-	+
Red cross: law on the legal regulations on the Red Cross 00-h-14	+ 5.2	--	-	-
Notary: law on Notary 97-h-10	-	-	-	+
Association of lawyers: law on Lawyer 02-h-18	-	-	-	+
Co-operatives: law on cooperatives 98-h-10	+ Civil code time 33.2	+ 14.1.6?	-	-
Chamber of commerce and industry: law on the Chamber of commerce and industry 95-h-31	+ 8.1	—	-	-
Art Culture: law on art and culture 96-h-04	-	-	+7.1	-
Apartment owners' association: civil code 02-h-08, pending law	-	-	-	+143.3

4. Non-profit organization and taxation

- 4.1 According to the civil code items 26.6 stating "Non-profit legal persons shall undertake activities in compliance with the objectives specified by their by-laws or charters" and item 26.7 "For-profit legal persons shall be entitled to undertake any activity not prohibited by law or not in conflict with common behavioral norms" non-profit organization supposedly should not engage in the activities other than their mission and charter. Furthermore the law on the non-profit organizations failed to do so; the Court shall rule dissolve of the NGO.

- 4.2 On January 31, 1997 an amendment stating The relations pertaining to establishing, assessment, amendment of any taxes, tax credit and exemption, tax payment shall be regulated solely by the taxation law was introduced on January 31, 1997. The introduction of the amendment has been undertaken in two states, first one is by annulling all the relevant legal provisions in other laws pertaining to the issue, secondly by reformulating the cancelled provisions and reflecting the main points in the tax law. (The government made the promise.) However there has been cases for government to fail the promise, for example, following item in the article 22 in the first draft of the law on the non-governmental organization saying "A Contributor to a public benefit registered non-governmental organization may deduct the amount of the contribution from annual income subject to taxation at the current market price rate. A Contributor of an inheritance to a public benefit, registered non-governmental organization shall be exempt from inheritance tax" completely lost its point in the amendment.
- 4.3 Economic entity and organization income tax law of Mongolia. Under the article 3 of that law, any economic entities, legal persons engaged in economic activities as well as non-governmental organizations, religious organizations are considered taxpayers.

1. The following economic entities and organizations are to be taxpayers:

- 1) Companies, cooperatives, partnerships, foreign companies and joint ventures, which are involved in all forms of ownership, situated on the territory of Mongolia;
- 2) A representative office of foreign companies which gains profit in Mongolia;
- 3) A commercial bank, credit or insurance agencies and other agencies similar to them;
- 4) Non-Government organizations; (This subparagraph was added by Law of April 17, 1997.)
- 5) Religious organizations;
- 6) Legal entities, which own state or local property;
- 7) Legal entities not residing in Mongolia; (This subparagraph was added by Law of November 9, 2001.)
- 8) Legal entities engaged in business other than those described in subparagraphs 1-7 of paragraph 1 in this article of the present law; (Subparagraphs 4-7 were added to this paragraph by Law of April 17, 1997. Changes were introduced by Law of November 9, 2001.)

However the law misses clear statement related to the parties, trade unions and non-profit organizations.

- 4.4 Under the long article 5.1.1 of the tax law on of taxable income, The taxable income is calculated by deducting cash collected in either credit union o any other co-operatives, fund for the possible loss and risk fund for saving and credit banking organizations. In addition, if you pay close attention to this long tedious article will notice that the contributions donation to any individuals or organizations is not deductible from the taxable income. In general law reflects evolution of the law, however it becoming common practice in Mongolia to including misleading paragraphs in legal documents. It is assumed that relevant additions and amendments to the law have been introduced in Nov 9, 2001 and April 24, 2003. Unless updates to the laws made public, it is going to be hard for consumers to find out which version of the legal act in force.
- 4.5 Article 7 of the tax law mentioned about Tax Exemption and Relief for non-profit organizations as stating" The taxes and donations by members or supporters of non-government organizations; and The income of non-government organizations that provide social services and are registered with the state register." I have left out the other tax exemption and relief with regard to other economic entities and organizations.
- 4.6 Article 8. 1 of the law on the non-governmental organizations state "The Court shall compulsory dissolve a non-governmental organization on the following grounds:
 1) the non-governmental organization has conducted activities inconsistent with its mission. "2) The non-governmental organization has repeatedly violated laws and/or conducted activities of a severe nature. According to this article, there is ground for considering a non-governmental that serves public as not a taxpayer referring to the

article 3.1.4 and 7.17 of the tax law cited earlier. However if the non-governmental organization serve for the benefit of its members, it is eligible a taxpayer. Over the course of developing the draft on law for the non-governmental organizations in consultation with foreign specialists, the draft carried articles on imposing tax on the income earned by the non-governmental organizations by undertaking activities unrelated to their mission or not reflected in their charter, thus obliging the organization to submit tax report to the relevant offices. However, due to confrontations and objections during the numerous steps of considering the draft, this question was cancelled but they left the part with preparing balance sheets and tax report. At that time some suggested the change of the organizational status in case the non-mission activities prevail in the NGO, unlike dissolving the organization by the court ruling.

- 4.7 Article 8.4 in the **ECONOMIC ENTITY AND ORGANIZATION INCOME TAX LAW OF MONGOLIA** and article 10 in the income tax serve as clarifications to the following articles in the general taxation law.

Article 6. Registration of Taxpayer

1. Business entity and organization that are to be taxpayers are subject to registration at the Tax Administration.
2. Registration of a citizen, who is a taxpayer, shall be defined in conformity with the specific tax law.

Article 10. Taxpayer's Obligations

- 6) A business entity and organization shall withhold and remit to the budget imposed taxes on salaries, wages and other similar remunerations of their employees and non-employees for the required fixed term;

Article 24. Rights of The State Tax Administration and Its Inspectors

3. The tax inspector shall have the following rights: 5) In the event of a failure of business entity and organization to withhold pay to the budget tax on labor remuneration and income paid to others, to have the business entity and organization to repay from its assets;

Under constitution paying the imposed tax is one of the legal responsibilities of Mongolian citizen. It is seen as the violation of the constitution by shifting citizen's responsibilities for paying tax to economic entities and NGOs, even worse, holding them accountable for failures in tax payment. It will be a different case if the state is imposing taxes on the public organizations or its agencies. We should see the issue from the point of view that constitution is the contract made between state and its citizens, with more privileges for the citizens.

5. Rights to form non-profit organizations

5.1 According to article 4.1 and 3.1 of the law on the non-governmental organization, non-governmental organization is defined as:

- To be for non-profit (not to have shares and distribute dividends)
- Not to be a party, monastery or a trade union
- To be established voluntarily by citizens or by legal persons other than State bodies (that exercise legislative, executive and judicial powers) on the basis of their individual or social interests and opinions; this refers to any individuals who are not citizen of Mongolia.

It can be established in accordance with the following procedures: A non-governmental organization shall be considered established after the founders have issued a decision to establish the non-governmental organization and have approved the non-governmental organization's by-laws. The non-governmental organization shall exercise its rights as a legal person after it is registered in the State registry.

5.2 The civil code article 30.1 stating "Unless otherwise stipulated in the law, citizens and legal persons may establish legal persons as prescribed by law and To assume its functions or meet public needs, the state may establish legal persons, using own or joint property" is related to the establishment of any organizations with rights as the legal bodies whether its for or non profit. It is observed that the establishments like apartment owner's associations seem exist without rights as legal persons.

6. Registration of the non-profit organizations

6.1 the article through 15-18 in the law on the non-governmental organizations reflect the procedures for registration and de-registration of the NGOs. In particular, article 16 on regulations on the NGO registration designed to protect rights of individuals to seek rights to the NGO. The Justice Ministry holds the authority to register NGOs and following are the documentations to present for the registrations:

- Petition (request by the head of the Board of the Directors of the prospectus NGO for the state registration)
- Name, address of the NGO
- List of names and addresses of the Board members, executives and head
- Charter of the NGO signed by Director of the Board
- Receipt of the relevant commissions and fees for registration

6.2 The BGO can submit their petition for registration directly to the Justice ministry or through local administration. The ministry can deny the request or petition on the following grounds:

- Incomplete documentation
- Failure to meet the requirements set in article 10 in the law on non-governmental organization

6.3 Upon the receipt of the petition from the NGO, the ministry should assign the receipt number and notify the organization. The ministry should make decision whether to register or not, or whether to dissolve within 30 days after the receipt of the petition. Following may impede the decision making

- The mission and objective of the NGO fail to meet Mongolian laws or
- Choice of the same name as already existing NGO

6.4 The Ministry should present official response about the denial of the registration, the NGO appeal the decision to the court. If the NGO does not hear from the ministry about its registration within the set date, they should assume its registration and start functioning and claim for the certificate of registration.

6.5 The civil code does not contain any articles about the registration; only attribution about registration is the article 27. 5 stating, "Legal persons shall register their names as it stipulated in the Law."

6.6 The civil code has detailed articles on the coordination of the assets of the dismissed legal persons or organizations, including paragraph 32.9 stating "After satisfying debts of claimants, any remaining property shall be transferred to the legitimate owners or to authorized persons, if provided by law."

But under the nongovernmental organization law stated in article 7.2, 8.2 and 25.3 the assets of the dismissed NGO can be transferred to the organizations with similar mission, in absence of such organization the assets can be used as funding for activities similar to that of the dismissed NGO.