

CHARITABLE ORGANISATIONS IN THE RUSSIAN FEDERATION

Nicholas M N Rumin¹

Introduction

Recent additions to Russian legislation, namely Russian Federal Laws "On Non-Commercial Organisations" (No. 7-FZ of 12th January 1996), "On Public Associations" (No. 82-FZ of 19th May 1995), and "On Benevolent Activities and Benevolent Organisations" (No. 135-FZ of 7th July 1995), have significantly clarified and broadened the legal status of charitable activities and of charitable organisations in the Russian Federation. (Previously, all non-commercial organisations, including Charities, were governed by a single relatively incomplete USSR Law "On Public Associations" (No. 1708-1 of 9th October 1990) as well as Decree No. 2057-1 dated 18th December 1991 of the RSFSR Supreme Soviet "On the Registration of Public Associations".) For foreign persons and legal entities, the most welcome change in the new legal regime is found in the new law "On Public Associations" which removes the old requirement that the founders of such organisations include at least ten (10) citizens of the Russian Federation. The new minimum requirement is that such organisations be founded by at least three individuals (either Russian or foreign), meaning that foreign entities are now permitted to form public organisations (including charities) without the mandatory participation of Russian citizens.

Legal Forms for Charitable Organisations

At the outset, it should be stressed that a variety of types of non-commercial organisations may be considered to be charities. Such organisations, once established, may also register (at the time of state registration or subsequently) as a charity pursuant to the Russian Federal Law "On Benevolent Activities and

¹ Nicholas M N Rumin, Baker & McKenzie - St Petersburg, Russia.
Tel: (+7 812) 325 8308 Fax: (+7 812) 325 6013.

Benevolent Organisations" (hereinafter the "**Law on Charities**"), which provides certain legal benefits to them.

The Law on Charities defines a benevolent (charitable) organisation (hereinafter a "**Charity**") as a non-governmental, non-commercial organisation formed to realise specific goals as set out in the Law on Charities through charitable work. A Charity is a non-commercial organisation, meaning that its activities are further regulated by the Russian Federal Law "On Non-Commercial Organisations". The Law on Charities also regulates the charitable activities of all legal entities and physical persons. (We review the Law on Charities in greater detail below.)

Public Organisations (Associations)

Of the legal forms contemplated by the Law on Charities and the Law "On Non-Commercial Organisations", the most common is the social organisation (association) which itself is subject to the Russian Federal Law "On Public Associations" (hereinafter the "**Law on Public Associations**").

The Law on Public Associations defines a "public association" (hereinafter a "**Public Association**") generally as a voluntary, self-regulating, non-commercial formation, founded by citizens (including foreign persons) and legal persons (other Public Associations only) gathered together on the basis of their common interests to realise certain aims as set out in the charter of the Public Association. The possible legal forms for Public Associations include "Public Organisations", "Public Movements", "Public Foundations", "Public Institutions", "Organs of Public Self-Assistance" and "Unions (Associations) of Public Associations". All of these legal forms must, except where noted below, be founded by at least three individuals who need not be Russian citizens. The only legal entities which may be founders, participants or members are other Public Associations, including foreign public associations.

Public Organisations

"Public Organisations" are based upon the voluntary association of their separate members and are founded to protect and advance their general interests and jointly-established aims, as stated in the Public Organisation's Charter. Public Organisations are entitled to engage in entrepreneurial activity directed exclusively for the achievement of the interests and aims set out in its Charter. However, the participants (members) of Public Organisations are not responsible for the obligations of the Public Organisation or vice versa. Further, the membership

does not retain any legal rights to the assets of the Public Organisation, including membership dues.

The primary leadership organ of a Public Organisation is its general meeting of members, while day-to-day management is effected by its executive committee and control-audit committee. (For Charities, the executive committee is deemed to be the primary decision making authority, although obviously its composition is determined by the members of the Charity.)

Public Organisations are often formed as the legal form for a social club whose aims may include charitable activities but which exists primarily to promote the various aims of its members. The advantage of this legal form is that it is premised upon the personal efforts of an active membership whose individual projects, consistent with the aims and interests of the organisation (as stated in its charter), would be funded by the organisation. As discussed below, obtaining charitable status forces the Public Organisation to focus its aims and interests upon charitable goals.

Public Foundations

A "Public Foundation" is a Public Association without membership whose aim is to assemble an asset base from voluntary donations of property to be used for socially beneficial purposes.

A Public Foundation is entitled to engage in entrepreneurial activity (and establish commercial organisations) exclusively for the achievement of socially beneficial aims amongst those for which the Public Foundation is established. The founders and executive committee of a Public Foundation may not use the aforementioned asset base to advance their own general interests. Further, a Public Foundation is obliged to publish annually an account of its use of the Public Foundation's asset base. The founders of a Public Foundation are not responsible for the obligations of the Foundation or vice versa.

The management body of a Public Foundation is appointed by its founders. A Public Foundation may only be liquidated by a judicial order. Likewise, the charter of the Public Foundation may only be amended by a judicial order except where the charter specifically provides for amendments by decision of the executive committee.

As compared to a Public Organisation, a Public Foundation does not contemplate the active participation of a group of members or participants, both because it does not have a membership and because its primary purpose is the accumulation of

assets and funds for specific ends, which may be charitable. As discussed below, registering a Public Foundation as a Charity has the effect of further focusing the Public Foundation's scope of activity.

Public Institutions

A "Public Institution" is a Public Association without membership formed to provide a specific set of services in accordance with the interests of its founders (usually including another Public Association) and with the aims of the Public Institution as established in its charter. It may be funded by its founders, who are liable for the Public Institution's obligations to the extent that its assets are insufficient to cover its obligations. This liability in itself is enough to make this option undesirable.

The management of a Public Institution is appointed by its founders, who may also appoint a collegial body to make recommendations to the founders as to the specific activities of the Public Institution

Organs of Public Self-Assistance

An "Organ of Public Self-Assistance" is a Public Association without membership formed to resolve various social problems arising in the lives of citizens at home, work or school. It is formed upon the initiative of such citizens and conducts its activities in a self-directed manner without an executive committee. The absence of an executive committee suggests that Organs of Public Self-Assistance may not be registered as charities, although they may carry out charitable activities.

Unions (Associations) of Public Associations

The Law on Associations provides for the formation of Unions (Associations) of Public Associations including the participation of "foreign, non-commercial, non-governmental associations". The legal existence of all such Unions (Associations) of Public Associations takes place from the moment of state registration of the separate foundation documents for such Public Associations.

Foundations, Agencies and Other Legal Forms for Charities

There currently does not exist separate legislation regarding the formation of foundations and institutions (although these legal forms are contemplated by the

Civil Code of the Russian Federation). As a result, the Administration of the Ministry of Justice in some cities is reluctant to register Charities in legal forms other than those types of Public Association discussed above.

One should stress, however, that virtually all organisations, including commercial entities, may engage in charitable activities. However, the extent to which tax benefits are available to an organisation engaged in charitable activities depends, in part, upon whether it is a commercial or non-commercial organisation, and secondly upon whether or not it is a Charity. Since Charities are, by definition, non-commercial organisations, they enjoy the greatest measure of tax and other benefits under Russian law. (We discuss these further below).

The Operation of a Charity

1. Summary of the Law on Charities

We describe below the principal aspects of the Law on Charities.

1. The Law on Charities includes a list of activities which are recognised as charitable, which should be listed in the Charter of the proposed Charity. These include (this list is not complete):
 - (a) the social support and protection of citizens, including improvements to the material conditions of the impecunious, the social rehabilitation of the unemployed, invalids and other persons who, as a consequence of their physical or intellectual condition or other circumstances, are unable to independently realise their rights and lawful interests;
 - (b) assisting in strengthening the prestige and role of the family in society;
 - (c) assistance in protecting motherhood, childhood and fatherhood; and
 - (d) assisting activities in the sphere of the protection of the health of citizens, including propaganda of healthy lifestyles and the improvement of the moral/psychological conditions of citizens.
2. The Law on Charities requires the state registration of Charities as well as of their branches and representative offices. The Law on Charities also permits Charities to be associated and to amalgamate with other charitable

organisations, on the condition that the association or amalgamation retains its non-commercial character.

3. The highest management organ of a Charity is its Executive Committee.
4. The permitted sources of charitable contributions are set out in detail in the Law. These include foundation contributions, membership dues (where a membership exists), charitable donations in cash or in kind, profits from unrelated business transactions (including profits from securities), receipts from fundraising activities (including permitted commercial activities), amounts received from state budgets, and the value of volunteer work as well as other non-forbidden sources of income. Such contributions may also come from foreign or stateless citizens as well as from foreign and international organisations. One advantage of charitable status is that a Charity may also receive foreign currency contributions from abroad without having to apply for and receive a separate licence from the Central Bank of Russia in respect of each contribution.
5. A Charity may engage in entrepreneurial activities for the sole purpose of achieving its charitable aims and for this purpose it may also establish joint-stock and limited or added liability companies on the condition that it is the sole founder of such commercial organisations, and that the profits of these commercial organisations are directed solely to realise the charitable aims of the Charity and are not distributed among its members. The right to unilaterally establish commercial organisations is a significant advantage arising from charitable status, since the Law "On Non-Commercial Organisations" seems to preclude non-charitable non-commercial organisations from being 100% owner-founders of commercial organisations. (At the same time, this distinction, arguably, is more theoretical than practical and it remains to be seen how the same will be applied by Russian authorities.)
6. A Charity may own a considerable range of assets, including buildings and other structures, equipment, monetary assets, information resources and other property permitted by law, as well as intellectual property.
7. A Charity may not use more than 20% of the total assets spent by the Charity over the course of a financial year for the salary expenses of administrative and executive staff, not including salary expenses for persons participating in the realisation of charitable programs. Further, where the charter of the Charity or the charitable program does not specify to the contrary, no less than 80% of all charitable contributions received

by the Charity must be used for charitable purposes within one year of receipt of the contributions.

8. A Charity is obliged to keep its financial records in accordance with the Russian Federal Law "On Accounting" (No. 129-FZ of 21st November 1996), as well as the "Regulation on Book-Keeping and Accounting in the Russian Federation", approved by the Order No 170 of the Ministry of Finance of 26th December 1994, and as amended from time to time. In addition, a Charity must submit information as to its activities to the State Statistical Committee and tax inspectorate in accordance with Russian law.
9. Foreign and stateless citizens as well as foreign and international organisations may engage in charitable activities within the borders of the Russian Federation, including the formation of Charities and participating in Unions (Associations) of Charities.
10. The State supervises the activities of Charities to ensure that they conform to the Law on Charities. In this regard, the Charity is obliged to submit a yearly accounting of its activities to the Administration of the Ministry of Justice where the Charity is registered. Both the Administration of the Ministry of Justice and the Charity are obliged to ensure free access to the annual report to the public and to the media. (There are similar though simpler requirements for non-commercial organisations which are not Charities.)

2. Membership of Public Associations (Charities)

The Law on Public Associations distinguishes between "founders" and "members" which participate in the foundation and decision making process of the Public Association, and "participants", which do not.

As a practical matter, this permits the formation of a Charity in the form of a Public Organisation which would be closely controlled by a strictly limited membership whose number would not include the numerous participants in the Charity's activities. This distinction would, of course, have no impact upon Public Foundations and Public Institutions which, as already stated, do not have a membership and where the Executive Committee is appointed by its founders. Some Public Associations may consider this to be a disadvantage, since for outsiders, there will be no way of distinguishing between those members of the Executive Committee who are founders and those individuals who are not.

3. Territorial Scope of Public Associations (Charities)

The Law on Associations provides that Public Associations (Charities) which exist and carry on their activities within the borders of *one* subject of the Russian Federation (the City of St Petersburg and Moscow are separate federal subjects for this purpose) are deemed to be "regional" Public Associations and are registered by the Administration of the Ministry of Justice in the subject where the Public Association is located.

Public Associations (Charities) whose activities take place in more than one and less than 50% of the subjects of the Russian Federation *and* have representative offices, branches, departments and affiliated organisations within the territory of these subjects, are deemed to be "interregional" Public Associations and are registered by the Administration of the Ministry of Justice at the location of the executive body of the Public Association.

Public Associations (Charities) whose activities take place in 50% or more of the subjects of the Russian Federation *and* have representative offices, branches, departments and affiliated organisations within the territory of these subjects, are deemed to be "all-Russian" Public Associations and are registered in Moscow with the Ministry of Justice.

The Law on Public Associations further provides that a Public Association (Charity) having its organisation, branch or affiliate, or representative office in a foreign state may be recognized as having international status.

4. Tax Considerations for Charities

Very generally, non-commercial organisations, including Charities, are entitled to receive contributions in any form, free of profits tax and VAT. The foregoing includes profits received from commercial organisations founded by a Charity in order to advance its charitable aims. Such commercial organisations would be liable for profits tax only on such portion of its profits which are not contributed directly to the Charity, but would be required to pay and collect VAT, in any event, on all of its commercial activities.

Documents Required to Register a Public Association (Charity)

The following documents must be submitted to the appropriate Administration of the Ministry of Justice in order to register a Charity. (We note that these documentary requirements are identical to those required for the registration of a

Public Association. However, a Charity's charter must conform to the provisions of the Law on Charities as well.)

First, there must be a letter of application signed by each of the founding members (or executive committee) of the Public Association (Charity) (at least three (3) individuals), each of whom must set out his or her current place of residence;

Second, two original copies of the Charter of the Public Association (Charity) must be prepared. This document, when registered constitutes, the legal basis for the activities of the Public Association (Charity). It must contain the following information:

- (a) The full and shortened name, goals and legal form and location (juridical address) of the Public Association (Charity);
- (b) The structure of the Public Association (Charity) (management, control and auditing organs) and the sphere of activities in which it will operate;
- (c) The conditions for obtaining and losing status as a participant in the Public Association (Charity); the rights and obligations of its participants (only if formal status as a participant is contemplated);
- (d) The competency of and procedure for forming the management organs of the Public Association (Charity), their authority and permanent location;
- (e) The procedure for making changes and amendments to the charter of the Public Association (Charity);
- (f) Source(s) of funding for the Public Association (Charity) and the rights of its managing bodies in relation to the administration of its property; and
- (g) The procedure for reorganising or liquidating the Public Association (Charity).

The Charter may also contain a description of any symbols the Public Association (Charity) may use and also specify all its other activities as permitted under law, and in particular the Law on Charities.

Third, the Minutes of the general meeting of the founders on establishment of the Public Association (Charity) signed by each founder.

Information on each of the founders is also required. For individuals this document should contain the name of each person, their place of birth, date of birth, passport details and country of citizenship as well as a signature sample. For legal entities this requirement is met by submitting a notarised copy of the legal entity's registration certificate and charter as well as an extract from the trade registry in the legal entity's home jurisdiction, and (where available) Certificate of Good Standing.

Proof of payment of the registration fee is also needed, together with confirmation of the legal address of the Public Association (Charity). This latter should be in the form of a guarantee letter written on the landlord's letterhead.

Minutes of the foundation meetings or of the general meetings of the structural subdivisions of the Public Association (Charity) located in other subjects of the Russian Federation (only required for the registration of an interregional or all-Russian Charity) must be available.

Lastly, where the Charity uses the name of an individual or a trademark or other device subject to laws protecting intellectual property, the Charity must submit written permission to use the same.

Following State registration, the Public Association (Charity) is obliged to complete a set of secondary registrations with the State Committee for Statistics, the State Tax Inspectorate, as well as the various social funds located in the region where such Public Association (Charity) is registered.

Conclusion

As between establishing a Public Association (Charity) as a Public Organisation, Public Foundation or a Public Institution, the choice should depend on a determination as to the objectives of the Public Association (Charity), and as to the role of its membership and participants, as discussed above. As discussed, the usual choice for many new charities is between a Public Association with an active membership having a wide range of activities (the Public Organisation), a closely controlled funding body with no membership and minimal input by participants (a Public Foundation) and a subsidiary body of another Public Association (a Public Institution).

Obtaining charitable status places greater responsibility upon a Public Association (or other legal entity, as discussed above) to conform to the requirements of the Law on Charities, including the obligation to make an annual report, subject to

publication, to the Administration of the Ministry of Justice in the region where the Public Association (Charity) is registered.