ASSESSMENT REPORT OF THE LEGAL AND REGULATORY FRAMEWORK AFFECTING NGOs IN THE REPUBLIC OF CYPRUS

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EUROPEAN CENTER FOR NOT-FOR-PROFIT LAW
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PART I: INTRODUCTION

The European Center for Not-for-Profit Law (ECNL) is a public benefit organisation registered in Hungary, which aims to promote the strengthening of a supportive legal environment for civil society in Europe by developing expertise and building capacity on legal issues affecting non-governmental organisations (NGOs) and public participation. To accomplish this aim, ECNL convenes key stakeholders, facilitates cross-sectoral and cross-border dialogue, and provides professional assistance on legal issues affecting civil society. ECNL’s methodology of work emphasises participation, transparency and local ownership. ECNL’s core activities support the analysis, drafting and implementation of civil society legislation, empower local partners to carry on legal reform and advocacy activities, make available resources, information, and cutting-edge research, and promote the sharing of comparative expertise.

ECNL, with its affiliate, the International Center for Not-for-Profit Law (ICNL) has assisted the development and reform of the legal and policy frameworks affecting NGOs in over 15 countries of Central and Eastern Europe, including ten new EU member states. ECNL is pleased to have the opportunity to provide technical assistance to the Government of Cyprus in an effort to create a more enabling legal environment for a vibrant and sustainable civil society in the country.

The following is the Assessment Report of the Legal and Regulatory Framework affecting NGOs in the Republic of Cyprus, based on the legal and field research conducted between November 5 and November 17, 2007. Thanks to the contributions of a wide range of stakeholders, this Report is the product of an inclusive, participatory assessment process. We would like to express our appreciation to the Ministry of Foreign Affairs, the Planning Bureau and UNDP— as well as to all those who offered their time and insights on the legal and regulatory framework in Cyprus.

A. Scope of Assessment

The term “NGO” is not typically defined in the legal systems of most countries. In other words, the laws of most countries define certain legal organisational forms, such as associations, foundations, non-profit companies, trusts, friendly societies, institutes, etc, which all have certain common characteristics, including the fact that they are non-governmental and that they are formed for a not-for-profit purpose. The term “NGO” or “NPO” is used as a kind of catchall phrase to refer to such organisations.

Similarly, in the Republic of Cyprus, the term “NGO” is not defined as a separate organisational form. For the purposes of this report, the term “NGO” will be considered as embracing all organisational forms of not-for-profit, non-governmental organisations, including both membership forms (e.g., associations, clubs, non-profit companies) and non-membership forms (e.g., foundations). The key defining characteristics are that these organisations are set up voluntarily and their aims are not-for-profit. Part II provides a list of specific organisational forms.

Certain organisational forms that may make up, alongside NGOs, the broader fabric of civil society, are generally excluded from the scope of this assessment, including
political parties, cooperatives, religious communities and trade unions. The reason for this is primarily the limitation in the given time and budgetary framework. The choice was made to include the so-called ‘general-purpose’ organisations commonly understood as NGOs, whose regulation seemed to be more in need for reform as compared to the other listed organisations, which pursue particular purposes as determined by the laws that govern them.

The Assessment Report is a review of the legal and regulatory framework affecting all aspects of the NGO life-cycle – that is, on the establishment, existence, internal governance, external supervision, and termination of NGOs, and on their funding and fiscal treatment. It is based on desk review of the laws and regulations, administrative directives and court decisions that impact on NGOs (restricted to the documentation to which ECNL has had access, see Appendices 1 and 2) and field research conducted through consultations with the relevant stakeholders, including government officials, members of Parliament, NGOs and lawyers, to help assess the actual implementation practices (see Appendix 3).

B. Structure of Report

The Report consists of two main parts beyond the Introduction (Part I) and Appendices. Part II provides an overview of the current legislative environment of NGOs in Cyprus, describing the findings related to each organisational form, as well as the fiscal and funding environment of these organisations. The purpose of this part is to provide a comprehensive overview of the current regulations affecting NGOs and their implementation practices. References to discussion points in Part III are made where relevant.

Part III turns to the major issues, challenges or areas for reform identified during the assessment. This part examines the findings that may be noted as a violation or a divergence from International and European law and best practices; as well as points to overarching issues in the current legislation that need to be addressed at a policy level. In addition, this chapter provides recommendations for reform in each issue area and lays out recommendations for the legal reform process as a whole. The Report aims to point to the proper directions and next steps to be taken in terms of its recommendations, with the clear understanding that more work needs to be undertaken by the interested stakeholders to arrive at concrete legislative solutions and suggestions.

ECNL shall be happy to provide further information on any of the issues and recommendations in this Report.

1 General purpose organisations may be established for any lawful purpose (in the case of NGOs, with the limitation of such purpose being a non-profit one); while special purpose organisations may only be established to fulfil a particular purpose as defined by the law governing them (e.g., a trade union may be established to represent the interests of workers through organizing them as its membership).
PART II: SUMMARY OF THE LEGAL FRAMEWORK AND REGULATION OF NGOS IN THE REPUBLIC OF CYPRUS

There are four main types of NGOs in Cyprus: 

- clubs
- associations
- foundations
- non-profit companies

All types of NGOs can also be voluntary organisations. In addition, the legal form of charity still exists but is obsolete.

Article 21(2) of the Constitution of the Republic of Cyprus guarantees every person the right to freedom of association. Restrictions are only allowed if prescribed by law and absolutely necessary in the interests of the security of the Republic, the constitutional order, or public safety, health or morals.

II.1. CLUBS

Clubs are established under the Clubs (Registration) Law 1930, a colonial law.

The law defines clubs as “a society of not less than twenty persons associated together for social intercourse or for purposes of mutual entertainment and convenience or for any other lawful purpose except the acquisition of gain.”\(^2\) (See III.2.). The Law goes on to state that official, ecclesiastical and religious institutions and Freemasons lodges or chapters can not be deemed clubs\(^3\). Clubs are either for youths, with no members over eighteen, or adults, with no members under sixteen\(^4\). Clubs may not operate for the acquisition of gain\(^5\).

Clubs are similar to associations (see below). At the registry of associations we received information that the distinction is that clubs should have purposes or interests that are broader than just the members, such as community groups or sports groups.

The status of clubs as legal personalities is not clear in the written law. The implication is that they have legal personality. The position in relation to the personal liability of members of the committee is similarly unclear (See III.1.). Clause 19 of the Clubs (Registration) Law states that “All actions or legal proceedings by or against a club shall be brought by or against the secretary of such club as representing the members thereof”.

Clubs are required by law to register, in practice by obtaining a permit to operate from the District Office. There are six districts in total which may issue such permits. Establishing a club is open to any legal citizen of the Republic of Cyprus. In practice, it was reported that Turkish Cypriot founders residing in the northern part of the island face difficulties. (See III.3.)

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\(^2\) Clause 2, The Clubs (Registration) Law 1930
\(^3\) Ibid
\(^4\) Ibid Clause 8. Also, Clause 5(2)(c) requires the Clubs rules to include this provision
\(^5\) Ibid Clause 2
The founders must submit an application form and a copy of the constitution. The application is checked by the Mayor. The District Office may also send copies of the application to the competent ministry(ies) for comments.

The name of the club is checked to ensure it is not undesirable and does not clash with that of another club\(^6\). However, discretion is also applied in the registration of the name of the Club as the law provides that “no Club shall be registered by a name, which according to the Registrar is undesirable”\(^7\) (See III.4. and III.13.) There is no check of the name against other types of NGO.

Clubs with unlawful purposes\(^8\) or that appear to be under the control of persons of groups struck off the register will not be registered\(^9\).

Any club in order to register has to have “premises”.\(^10\) Officials interpreted “premises” as referring to a separate space designated for the club.

There is a fee for registration. The process takes two-three months. Refusals are rare (See III.4. and III.13.).

According to the Registrar of associations in the Ministry of Interior, clubs can register as an association, but associations may not register as a club. This is due to the differences in purpose (clubs are seen to have a broader purpose than associations, as noted above). As for all NGOs, under the Law on Lawyers\(^11\) a lawyer must be used when registering a club (which also implies that they are legal persons). (See III.4.)

The District Office is required to keep an updated register of clubs\(^12\), which includes the club’s name, objects, contact details, details of committee members, number of members and rules relating to membership and amendment of the rules\(^13\). The register is open for public inspection on payment of a fee\(^14\). Club secretaries are required to notify the District Office of any alteration to information kept in the register\(^15\). No central register is kept.

The club secretary is obliged to apply for a renewed permit to operate every June\(^16\) (See III.6.). Renewal is a simplified procedure which takes about a week. Newly registered clubs must re-apply next June, regardless of how long they have been

\(^6\) Ibid Clause 7(2)  
\(^7\) Ibid Clause 7(1)  
\(^8\) As defined in Section 63 of the Criminal Code or otherwise unlawful  
\(^9\) Clause 9 Clubs (Registration) Law 1930  
\(^10\) Ibid Clause 3(1)  
\(^11\) The law states that a lawyer must be retained to undertake any “drafting, revision, change of any founding document or constitution of a company of any type or of any application, report, declaration, testimony, under vow, decision or other document that concerns the establishment, registration, organisation, re-organisation or dissolution of any legal person/entity.” The exact clause is not known as we have only seen this extract, not a full translation of the law.  
\(^12\) Clause 4(1) Clubs (Registration) Law 1930  
\(^13\) Ibid Clause 4(2)  
\(^14\) Ibid Clause 4(4)  
\(^15\) Ibid Clause 6(b)  
\(^16\) Ibid Clause 5(1)
operating for\(^{17}\). This is the primary form of monitoring (See III.14.). Clubs must submit:

- Name, address and purposes of the club;
- Names and addresses of Committee members, members and prospective members and date of last payment of subscription;
- A copy of the rules of the club\(^{18}\).

The District Office can require the secretary to sign a sworn affidavit verifying the information provided.

A club is required to keep a book including the names and addresses of every member and guest who has visited the club. The District Officer or authorised police officer may enter a club’s premises at any time to inspect its premises, its books or papers, to investigate any issue relating to the club or to obtain the names and address of those present\(^{19}\). (See III.13.) It is an offence to prevent the officials from fulfilling these duties, to fail to provide information requested\(^{20}\), to fail to supply information required by law or to knowingly supply false information\(^{21}\).

There are few specific governance provisions for clubs. Clause 2 of the Clubs (Registration) Law defines “secretary” as “any officer of the club or other person performing the duties of secretary”. Clause 4(2)(c) implies that management of a club is the responsibility of a committee including the secretary.

Club secretaries are required to notify the District Office of any alteration to the rules within seven days\(^{22}\).

Rules for the dissolution of clubs state that clubs with less than twenty members are officially defunct and should by law be dissolved, but this is a slow process. In practice clubs that have ceased to exist fail to re-register and by that method are removed from the register (See III.5. ).

Clubs may also be removed by the District Office. The procedure is triggered by a complaint from a senior police officer. Following a full inquiry the District Office may then strike off a club for the following reasons\(^{23}\) (See III.5. and III.15.):

- the club has ceased to exist;
- the club has less than twenty members;
- it is not conducting its affairs in good faith;
- its rules are not being complied with;
- it is an unlawful association as defined by s.63 of the Criminal Code or is habitually used for any other unlawful purpose;
- it is a betting or gaming house, as defined by the relevant legislation;
- there is frequent drunkeness on its premises;

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\(^{17}\) Ibid Clause 10  
\(^{18}\) Clause 5(2), Clubs (Registration) Law 1930  
\(^{19}\) Ibid Clause 13  
\(^{20}\) Ibid Clause 16(4)  
\(^{21}\) Ibid Clause 16(2)  
\(^{22}\) Ibid Clause 6(a)  
\(^{23}\) Ibid Clause 11
- it is illegally selling alcohol on its premises;
- it habitually admits persons who are not members or guests.

The secretary may appeal against such a decision within 21 days.\(^{24}\)

In addition it is an offence to:
- Be or purport to be a member or representative of an unregistered club;\(^{25}\)
- Consent to the sale of alcohol to a person who is not a member or guest;\(^{26}\)
- Contravene any regulations contained in the Clubs (Registration) Law.\(^{27}\)

II.2. ASSOCIATIONS

Associations (also translated as ‘clubs’ but a distinct legal form from ‘clubs’ as discussed above) are established under the Associations and Foundations Law of 1972\(^{28}\) and regulated by this law and further regulations which may be issued by the Council of Ministers\(^{29}\), although such regulations seem not to have been issued. There are 3,079 (three-thousand-seventy-nine) associations currently registered in the Republic.

The law defines an association as “the organised union of at least twenty persons for the purpose of accomplishing a specific non profit making purpose” (See III.2.). Members of an association may include corporations as well as individuals, although it is unclear how this happens in practice.

According to the distinction explained at the registry of associations, associations would be organisations established for narrower mutual benefit purposes than clubs, with a more restricted membership (for example, professional associations or common interest groups). In practice this distinction remains unclear.

The position in relation to liability of associations is, in law and in practice, unclear. Clause 17(4) of the Associations and Foundations Law states that both the association and the official responsible shall be liable in full for any damages incurred as a result of acts or omissions taken in the course of their duties. Officials stated that the law confers no limited liability for members. This contrasts with their interpretation of liability in relation to foundations, although the law is the same for both. In practice, litigants sue both the association and key officials (usually the president, vice-president and treasurer) when legal disputes arise (See III.1.).

Associations must register with the Ministry of the Interior. An association registered in accordance with the Associations and Foundations Law will obtain legal

\(^{24}\) Ibid Clause 12
\(^{25}\) Ibid Clause 16(1)
\(^{26}\) Ibid Clause 16(3)
\(^{27}\) Ibid Clause 16(5)
\(^{28}\) The Associations and Foundations Law, Law No.949 of 14 July 1972.
\(^{29}\) Ibid Clause 48(1)
\(^{30}\) Ibid Clause 2
personality. The Associations and Foundations Law requires founders or administrators to submit the act of incorporation, names and addresses of members, the signed and dated memorandum of association, the club’s emblem and a description of its assets. There is a fee for applications.

As part of its consideration the Ministry of Interior consults with all competent ministries and often times requests a police check on the founders. The aim is to ensure that the proposed activities will not “sabotage the security of the Republic or the public order or public safety or public health or the public morals of the fundamental rights and freedoms of the person”\(^{32}\). In practice a primary concern seems to be the identification of possible political or highly controversial notions. Another reason cited was to ensure that organisations that would fall under separate laws (e.g., a university) do not establish themselves as associations. Organisations which are objected by the ministry or the police will have no legal status and will be refused registration (See III.4.).

Associations applying for registration will face a considerable degree of scrutiny of their internal administration. Clause 8 of the Associations and Foundations Law sets out certain requirements which must be included in the memorandum of association\(^ {33}\). Registration may be withheld or refused if officials are dissatisfied with an association’s administrative provisions. In addition officials at their own discretion may comment on other aspects of internal administration (See III.13.).

Registering associations are required to produce a list of at least twenty (20) resident members. There is no requirement for residents to form the majority of all members when the number of members exceeds twenty. It was reported that Turkish Cypriots who live in the northern part of the island can have problems proving that they are resident (See III.3.). However the Government of the Republic of Cyprus stressed the fact that there is no doubt or ambiguity as regards the status of Turkish Cypriots as residents possessing the exact same rights as every other citizen of the Republic of Cyprus. Of course this is not the case with illegal settlers from Turkey and other persons who have entered and/or reside illegally in the occupied areas. The Government of the Republic of Cyprus clarified that restrictions do apply as regards the registration of NGOs by illegal settlers or the participation of illegal settlers in NGOs registered in the Republic of Cyprus, but not for Turkish Cypriot citizens of the Republic. Restrictions also apply to persons who are involved in cases of illegal exploitation of Greek Cypriot properties in the occupied areas, other human rights violations or on grounds of national security, national interest etc, restrictions which apply to all persons applying to form an NGO, irrespective of their place of residence.

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\(^{31}\) Ibid Clause 6(1)

\(^{32}\) Ibid Clause 3(1)

\(^{33}\) These are: purpose, name and seat; rules relating to members and membership; revenue sources; how the association shall be represented both in and out of court; details on the establishment, role and removal of administrative organs; rules for members meetings; rules for amending the memorandum of association; rules for auditing accounts; and rules concerning the dissolution of the association.
In principle, corporate members (legal persons) are counted individually, even if they are themselves membership organisations with many members. This has created particular problems for federations (e.g., associations of NGOs), which can have trouble finding twenty corporate members, and yet may in practice represent hundreds of people. In practice it seems that in such cases twenty individual members representing all of the corporate members are registered as founding members of the association. This creates a discord between the legal representatives and the actual decision-makers of the association. (See III.2.)

The name of the association is checked to ensure it does not clash with that of another association. There is no check of the name against other types of NGOs.

The registration process is slow. According to registration officials, registration takes six to eight months in average, but in practice cases may take between one and two years. If there is a problem with the application, officials will highlight them to applicants and suggest changes.

Clause 6 of the Associations and Foundations Law states that applications must be accepted if legal grounds are present. In practice, applications for registration may be delayed or even refused by the Ministry for any of the reasons suggested above, or indeed for other reasons. It was stated by Government officials that the criteria for assessing applications are provided in a document issued to applicants. However, some NGOs stated in interviews that they are not aware of the criteria, and that government officials are perceived to exercise a significant level of discretion when assessing applications. Some interviewees stated that they have no access to the official making a decision on their case. (See III.4. and III.13.).

The Ministry of Interior, as registrar, keeps a register of associations and a copy of the articles of associations of registered associations. New associations are added to the register, but updates to this information are not made and defunct associations are not removed. (See III.14.) The information is available for inspection by ‘interested parties’. Who or what interested parties are is not clear, and access to the registry in practice depends upon the discretion of officials.

Clubs can register as an association, but associations may not register as a club. As for all NGOs, the Law on Lawyers requires that a lawyer must be used when registering an association (See III.4.).

The monitoring regime for associations is at best unclear and at worst entirely absent, leading to a serious accountability deficit. While the reasons are not clear, it is certainly the case that associations do not submit financial statements to the Ministry of Finance. The assessment could not confirm whether this is because associations do not come under the scope of the Tax Code or because they are deemed essentially exempt based on certain clauses of the Tax Code (see II.7. and III.10.). Some respondents indeed stated that associations must submit an annual return to the Ministry of the Interior. It is not clear if this requirement is enforced, or if there is any

34 The Income Tax Law of 2002
The Associations and Foundations Law states that the highest organ in an association is the assembly of members.¹⁶ Unless stated otherwise, the assembly shall elect, supervise and (if necessary) remove members of the council of administration, oversee membership, expel members (if necessary), appoint auditors, and approve the association’s balance sheet, amendments to the memorandum and dissolution. Decisions are made by an absolute majority of those present (understood to mean that a majority of all members present must support a measure, including abstentions). There is no prescribed quorum for members’ meetings, except for dissolution votes (half plus one members) and votes to amend the purposes (three-quarters of members).³⁸ Invalid or unlawful decisions of the assembly may be overturned by the courts if an action is filed by an interested party within six months.³⁹

Associations are to be “administered” by one or more members and with simple majority voting (unless the memorandum states otherwise).⁴⁰ These persons shall be in charge of the affairs of the association and shall have such powers as prescribed by the memorandum.⁴¹ They shall represent the association in and out of court.⁴²

Conflict of interest provisions prevent members from voting in relation to any decisions relating to legal action between the association and the member in question, a close relative or a company in which the member has an interest. There appears to be no restriction on members being paid for services provided, including for managing the association. There is also no clear legal restriction on self-dealing e.g. members seem free to authorise contracts between the association and themselves or a connected person or party (See III.8.).

The memorandum must contain rules on the procedures for its own amendment. Amendments must be filed with the Ministry within 21 days. This does not seem to happen in practice.

Associations can be dissolved by the members, if the membership becomes less than twenty (See III.5.), or by court order.⁴⁴ Rules for dissolution by members should be set out in the memorandum. The rules must include a restriction on the distribution of any remaining property amongst members.⁴⁵ Unless stated otherwise, a members’ meeting with half plus one members present must approve dissolution. Associations

²⁵ Clause 18, The Associations and Foundations Law 1972
²⁶ Ibid
²⁷ Ibid Clause 21(1)
²⁸ Ibid Clause 22
²⁹ Ibid Clause 23(1)
³⁰ Ibid Clause 15
³¹ Ibid Clause 17(2)
³² Ibid Clause 17(1)
³³ Ibid Clause 16, repeated in Clause 21(3)
³⁴ Ibid Clause 24
³⁵ Ibid Clause 8(i)
should inform the Ministry of their dissolution so that the register can be updated. In practice, few associations inform the Ministry of their dissolution.

Court dissolution can be initiated by the administrators of the association, one-fifth of members or the Attorney General. The court may dissolve an association if:
- it has become impossible to elect administrators;
- it has become impossible for the association to continue in accordance with its memorandum;
- the purpose of the association has been fulfilled;
- the association has been inactive for long periods (officials said that they interpreted this as ten years);
- the association is seeking a different purpose; or
- the association is engaged in unlawful activities.

In practice, few if any associations are dissolved by the courts or for having less than twenty members.

“Unlawful activities” as stated above are defined by Clause 3 of the Associations and Foundations Law 1972 as those that “sabotage the security of the Republic or the public order or public safety or public health or the public morals of the fundamental rights and freedoms of the person.” Any organisations undertaking such activities will have no legal status and will be refused registration or, if already registered, will be dissolved by court order. Any person involved in the administration of such an organisation will be guilty of an offence punishable by imprisonment, a fine or both.

II.3. FOUNDATIONS

As with associations, foundations are established under the Associations and Foundations Law of 1972. As before, foundations are regulated by this law and further regulations which may be issued by the Council of Ministers, although it is not known if any such regulations have been issued.

An alternative translation of ‘institutions’ is also being used. In addition, the term ‘trust’ may be used, although there is specific separate legislation relating to trusts.

A foundation is defined in the Law as “the total set of property committed to servicing a certain purpose.”

A foundation is established through an act of incorporation, either by legal action or ex vivo as an act of last will. It achieves legal personality through registration of its act of incorporation under the Associations and Foundations Law.

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46 Ibid Clause 10
47 Ibid Clause 3(1)
49 Ibid Clause 48(1)
50 Ibid Clause 2
51 Ibid Clause 28(1)
52 Ibid Clause 27(4)
Funds are normally transferred by the founder on incorporation unless otherwise requested by the founder. The court may permit revocation of a foundation which has been incorporated but not yet registered if the founder requests with good reason. The Attorney General is ultimately responsible for ensuring the trust is executed and may take any legal action necessary to achieve this.

A foundation may be established by one or more founders. No minimum amount of funds is specified in laws and regulations, but in practice officials will assess whether they believe the funds are large enough to meet the stated objectives.

Officials stated that, unlike associations, the administrators of a foundation are not personally liable. However, the Associations and Foundations Law is the same for both foundations and association. Clause 37(2) of the Law states that: “the institution shall be liable for the acts and omissions of the organs in charge...to the extent that...[it] took place in the performance of duties entrusted thereto...In addition, the person who is responsible shall be liable in full”.

In practice the position is the same for both associations and foundations as litigants sue both the foundation and key officials (usually the president, vice-president and treasurer) when legal disputes arise (See III.1.).

The purposes for which a foundation can be established are not clear. All that is stated by the Associations and Foundations Law (Clause 2) is that it must be for “a certain purpose”. Clause 42, which relates to changes to a foundation’s purposes, states that any new purpose must not be contrary to “the provisions concerning the public benefit or general interest purpose”. This implies that foundations must have public benefit or general interest purposes but this is not explicitly stated in the law.

In practice the Ministry of Interior will not register the establishment of a new foundation if it is not established for the public benefit. What is considered public benefit seems to be entirely at the discretion of the relevant officials and there are inconsistencies in application. One example given was of a fund to pay for the education of the children of employees of a particular company which was refused registration (See III.13.).

Foundations, like associations, must register with the Ministry of the Interior. Clause 27(2) of the Associations and Foundations Law states that the Commission shall register a foundation unless its purposes are illegal. It was stated by Government officials that the criteria for assessing applications are provided in a document issued to applicants. However, some NGOs stated in interviews that they are not aware of the criteria, and that government officials are perceived to exercise a significant level of discretion when assessing applications. Some interviewees stated that they have no access to the official making a decision on their case. (See III.13.).
Illegal purposes are those that “sabotage the security of the Republic or the public order or public safety or public health or the public morals of the fundamental rights and freedoms of the person”\(^{56}\). In practice the main aim of the registration process seems to ensure that the proposed activities are not illegal, specifically that its purposes are not political or highly controversial. An organisation with these purposes will have no legal status and will be refused registration.

As with associations, foundations applying for registration will face a considerable degree of scrutiny of their internal administration. The Ministry will consult with all competent ministries and receive a police check on the founders. The name of the foundation is checked to ensure it does not clash with that of another foundation. There is no check of the name against other types of NGO.

Registration may also be withheld or refused if officials are dissatisfied with a foundation’s administrative provisions. As with the *de facto* restriction on purposes, these restrictions are not written in law or regulations, but are essentially discretionary and applied inconsistently (See III.4. and III.13.).

The process is slow. According to registration officials, registration takes six to eight months on the average, but in practice cases took between one and two years. Outright refusals of registration are rare. If there is a problem officials will highlight them to applicants and suggest changes.

As for all NGOs, the Law on Lawyers requires that a lawyer must be used when registering a foundation (See III.4.).

Unlike associations, there is a clear monitoring regime for foundations. All foundations must keep “precise and detailed” books of accounts, complete accounts for each calendar year and submit them to the Ministry within one month of completion\(^{57}\). As well as all transactions, the accounts should detail the amounts held at the beginning of the year, the amounts collected during the year and any outstanding amounts owed\(^{58}\).

The accounts must be audited by a certified auditor\(^{59}\). In addition, the Courts can order the auditing of a foundation’s accounts by an appointed auditor at the foundation’s expense\(^{60}\).

According to the registration officials, non-complying foundations are sent two reminder/warning letters before they are referred by the Ministry of Interior to the Attorney General. The Attorney General has the power to dissolve a foundation which does not comply. This happens very rarely – once every three-five years on average according to the registrar.

\(^{56}\) *Ibid* Clause 3(1)
\(^{57}\) *Ibid* Clause 35(1)
\(^{58}\) *Ibid*
\(^{59}\) *Ibid* Clause 35(2)
\(^{60}\) *Ibid* Clause 39
The information collected is publicly available. There appears to be no scrutiny of this information by the authorities, however, leaving foundations effectively free of any oversight. (See III.14.)

The provisions of the Trustees Law apply in relation to administration of property. The Attorney General must authorise the sale or alienation of any immovable property, having satisfied himself that it is in the interests of the foundation. (See III.7.)

Foundations are to be “administered” by one or more persons with simple majority voting (unless the act of incorporation states otherwise). These persons shall be in charge of the affairs of the foundation and shall have such powers as prescribed by the act of incorporation. They shall represent the foundation in and out of court. If there is any doubt as to the extent of the administrator(s)’ powers in any given case it shall be assumed that their powers extend to every relevant act (See III.7.).

Conflict of interest provisions prevent administrators from voting in relation to any decisions relating to legal action between the foundation and that person, a close relative or a company in which they have an interest. There is also an implied restriction on self-dealing by administrators in Clause 38 of the Associations and Foundations Law, which empowers the Courts to appoint a temporary administrator in cases where there is a conflict between the interests of the administrators and the foundation (See III.8.).

Amendments to the foundation may be made by the courts. This includes amendments to the purposes if they are no longer capable of being achieved, in which case new public benefit or general interest purposes should be created in line with the founder’s most probable wish. If that is not possible, the court may authorise the transfer of property to a related purpose. A court approval for an amendment is still required even when the founder is still alive.

Following an application by the administrators the courts may authorise amendments even against the founder’s will if it is deemed necessary in the achievement of the foundation’s purposes. The courts may also appoint temporary administrators if the necessary members for administering the foundation are absent.

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61 Ibid Clause 36
62 Ibid Clause 40(b). Referred to is Chapter 193 of the Common Laws – Trustees Law
63 Ibid Clause 32
64 Ibid Clause 34(2)
65 Ibid Clause 34(1)
66 Ibid Clause 34(2)
67 Ibid Clause 33
68 Ibid Clause 29
69 Ibid Clause 42(1)
70 Ibid Clause 42(2)
71 Ibid Clause 41
72 Ibid Clause 38
A foundation shall cease to exist according to the rules set out in the act of incorporation, or if dissolved by the court. Dissolution by the courts shall occur if a foundation’s purpose has been achieved or is incapable of being achieved, or if the foundation is engaged in unlawful activities. Any remaining funds will be used in accordance with the act of incorporation or, failing that, transferred to the government to distribute for the same or similar purpose.

As for associations, unlawful activities which may lead to dissolution are those that “sabotage the security of the Republic or the public order or public safety or public health or the public morals of the fundamental rights and freedoms of the person.” Any person involved in the administration of a foundation undertaking these activities will be guilty of an offence punishable by imprisonment, a fine or both.

II.4. NON-PROFIT COMPANIES

Non-profit companies can be established under the Companies Law Cap 113 as amended on numerous occasions.

The use of non-profit companies as a vehicle for NGOs has increased in popularity recently. For many years few if any NGO used this form. However, since 2004, when the Company Registrar recognised the distinction, 341 new non-profit companies have been registered.

A non-profit company is “an association…formed as a company…for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members.”

This is not a separate legal form so much as a type of company which receives certain privileges (it may, with permission, drop the word ‘limited’ from its name) and is subject to certain additional restrictions on its economic activities.

Legally, anyone can be a founder or director of a non-profit company, although some interviewees claimed that in practice non-EU citizens may have difficulties. It was also stated that this is the easiest way for a Turkish Cypriot to establish an NGO in the Republic. One member is required to establish a non-profit company. In practice, applicants are encouraged to have seven establishing members, as a non-profit company is a non-profit association (See III.3.).

73 Ibid Clause 43(1)
74 Ibid Clause 43(2)
75 Ibid Clause 45
76 Ibid Clause 3(1)
77 For information, there are 12,000 registered companies in total.
78 Clause 20(1) Companies Act. Non-Profit companies are also referred to in Clause 16(1) of the Act as companies “promoting art, science, religion, charity or any other like purpose not involving the acquisition of gain”.
79 Ibid Clause 20(2)
80 Ibid Clause 3(1) and 4(2)
A company is a body corporate\(^{81}\) that is either limited by shares or limited by guarantee. Our understanding is that non-profit companies must be limited by guarantee, which limits the personal liability of members to the (typically nominal) amount stated in the memorandum\(^{82}\).

All companies, including non-profit companies, are required to register with the Company Registrar\(^{83}\). The initial application is considered by the Company Registrar. If the application is in order it is passed to the Ministry of Trade and Commerce, which publicises the application in a newspaper. If no legitimate objections are received after three weeks a license to operate is issued. The whole process takes four to six weeks.

The name of the not-for-profit company is checked to ensure it does not clash with that of another such company. There is no check of the name against other types of NGOs such as associations or foundations. There is no particular scrutiny of an applicant’s purposes.

The registration fee is €170.86, with a €85.43 fee if the expedited procedure is selected, and €85.43 to have the word ‘limited’ removed from the company’s name.

As for all legal persons, the Law on Lawyers requires that a lawyer must be used when registering a non-profit company. A lawyers’ fee for a company registration is usually in the region of €850 to €1700 (See III.4.).

Non-profit companies must comply with the accounting and monitoring regime for companies. They must produce annual, professionally audited accounts on an annual basis in line with clear accounting standards. The accounts must be submitted to the Company registrar who keeps a paper record. The public may inspect the accounts for a €8.54 fee. They may also for the same fee access documents setting out the registered address, directors and purposes of the company.

Failure to submit accounts is punishable by a fine. In practice, the authorities will do little more than write a letter reminding an organisation of its obligations (See III.14.).

As companies, non-profit companies must meet comprehensive if flexible governance and internal administrative requirements. The requirements are flexible in that the memorandum can be easily amended to allow a wide range of different governance structures. Some restrictions exist in relation to changes to the name\(^{84}\), objects, amendment, disposal, merger, amendment and dissolution provisions, some of which require a statutory notice period and authorisation\(^{85}\). There is also an obligation to inform the Company Registrar of these changes\(^{86}\).

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\(^{81}\) Ibid Clause 15(2)  
\(^{82}\) Ibid Clause 3(2)(b)  
\(^{83}\) Ibid Clause 14  
\(^{84}\) Ibid Clause 19(1)  
\(^{85}\) Ibid Clause 7(1)  
\(^{86}\) Ibid, Clause 7(2)
The requirements are comprehensive in that the detailed governance provisions in Table A of the Companies Act provide a basic framework for governance and by default apply wherever the memorandum is silent or unclear\textsuperscript{87}.

Every company is required to draw up articles of associations which set rules regarding membership and other issues\textsuperscript{88}. The articles can be added to or amended without need for official authorisation from the registrar or courts\textsuperscript{89}.

Dissolution provisions are included as part of Table A. Any funds remaining on the dissolution of a non-profit company are passed to a similar non-profit organisation. In cases of compulsory dissolution this is overseen by the liquidator.

Clause 20(1) states that a non-profit company “prohibit[s] the payment of any dividend to its members.”\textsuperscript{90} Non-profit companies are free to undertake economic activities so long as the profits are applied for the company’s purposes.

Clause 16(1) of the Companies Act restricts non-profit companies to ownership of “no more than six donums of land, but that the Governor may by license empower any such company to hold lands in such quantities, and subject to such conditions, as the Governor thinks fit”. Whether this clause has been repealed is not known, but even if still on the statute books it is not believed that it is enforced (See \textsuperscript{III.15}).

\textbf{II.5. VOLUNTARY ORGANISATIONS}

“Voluntary organisations” are a sub-set of NGOs identified by the Pancyprian Volunteerism Coordinative Council Law of 2006. The 2006 Law confirms the continuation of the Pancyprian Volunteerism Coordinative Council (PVCC)\textsuperscript{91}. The PVCC was originally established in 1973 as the Pancyprian Welfare Council.

\begin{itemize}
  \item contribution in social programming, civil dialogue and social policy formulation & implementation
  \item Development of policy and strategy for the advancement and achievement of the short and long-term objectives of the voluntary sector and general social welfare in collaboration with the governmental or other authorities of the Republic.
  \item Foundation, maintenance and administration of the Volunteer Centres
  \item Promotion and Development of Volunteerism
  \item Evaluation, promotion and advancement of the work of the voluntary sector.
  \item coordination of members to help implement its own policies:
  \item providing technical and advisory support to members;
\end{itemize}

\textsuperscript{87} \textit{Ibid} Clause 10  
\textsuperscript{88} \textit{Ibid} Clause 8  
\textsuperscript{89} \textit{Ibid} Clause 12  
\textsuperscript{90} \textit{Ibid} Clause 20(1)  
\textsuperscript{91} Clause 3(3), Pancyprian Volunteerism Coordinative Council Law of 2006 recognises the PVCC as the supreme coordinative body. It is essentially a self-governing organisation, overseen by a Management Committee elected by the organisations (although some interviewees claimed that membership is influenced by the government). It has the power to establish many of its own regulations and procedures, although these may be overturned by the House of Representatives within twenty days. It is funded by central government. Regional and Community Volunteerism Coordinative Councils and Community Committees of Volunteerism may also be established and overseen by the national PVCC. The role of the PVCCs includes:
“Voluntary organisations” for the purposes of the law are “any organisations that comprises of volunteers, the main or exclusive purpose of this organisation being a non-profit making one”\textsuperscript{92}. A detailed definition of the non-for-profit purpose is provided which can be summarised as organisations pursuing social welfare purposes or any other purpose to address needs or promote the welfare of citizens or residents of the Republic of Cyprus\textsuperscript{93}. (See \textit{III.15}.)

These organisations are eligible to become members of the PVCC. Nothing in the law affects the status, activities or powers that have been granted by other laws to any clubs, foundations or associations\textsuperscript{94}. The law states “organisation” includes any group that is made up of natural or legal persons, explicitly including associations, foundations, committees and clubs registered under the association or foundation laws\textsuperscript{95}.

Voluntary organisation status does not bring additional legal benefits, such as favourable tax status. However, with its emphasis on social welfare and voluntary action, voluntary organisations see themselves as developing a reputation of being ‘real’ NGOs, as opposed to other types of NGOs which can be seen as covers for economic or political activity (See \textit{III.14}.). As a result, it was stated by some respondents that voluntary organisations are often more successful in public fundraising – for example, voluntary organisations raised over CYP£500,000 in a week for the Tsunami appeal in 2004. At the time of the visit, there were 43 registered Pancyprian voluntary organisations, 6 District Volunteerism Coordinative Councils and more than 280 District/Local level organisations operating at a local level.

The Pancyprian Volunteerism Coordinative Council Law establishes national, district and local registers for PVCC members\textsuperscript{96}. Upon registration an NGO becomes a member of the PVCC\textsuperscript{97}, for which it must pay a CYP£20 annual subscription. Any

- advising government bodies on funding policies; and
- encouraging, promoting, organizing and financing members’ participation in international conferences, seminars or meetings on volunteerism or social welfare.

In practice, the PVCC provides financial and other support to member organisations.

\textsuperscript{92} \textit{Ibid}, Clause 2

\textsuperscript{93} \textit{Ibid} Clause 2 states “every voluntary action or act that tends to relieve human suffering, human poverty of illness or need and any bodily, mental and psychological malfunction, as well as any action which serves the welfare or protection of children, teenagers, youngsters, adults and old persons, any action which contributes to the prevention or dealing with social problems or needs and generally any action which contributes to the amelioration of the welfare of persons residing, permanently or temporarily, in the territory of the Republic of Cyprus”

\textsuperscript{94} \textit{Ibid} Clause 22

\textsuperscript{95} \textit{Ibid} Clause 2: “Organization” means every organized group of natural or legal persons including associations, institutions, committees and clubs which has an administrative structure and is operationally autonomous, fulfils the minimum criteria for being registered in the Register of Voluntary Organisations and that is registered in accordance with the provisions of the Associations and Foundations Law. Since not-for-profit companies are registered under the Companies Act, they are not eligible for membership in the PVCC.

\textsuperscript{96} \textit{Ibid} Clause 10(1) and 10(2)

\textsuperscript{97} \textit{Ibid} Clause 11(1)
organisations which did not already have the status of a legal person obtain that status upon registration.\footnote{Ibid Clause 11(2)}

In order to become members NGOs must submit an application to the Management Committee of the PVCC.\footnote{Ibid Clause 11(4)} The PVCC assesses applications as well as cases where a registration may need to be deleted.\footnote{Ibid Clause 5(a) – 5(c)} The manner and procedure for registering organisations is determined by the PVCC.\footnote{Ibid Clause 14(1)(f)} These regulations may be overturned by the House of Representatives within twenty days.\footnote{Ibid Clause 14(2)}

Information held on the register is available to all government authorities and to the public following a written application.

Voluntary organisations must submit an annual report to the PVCC no later than March each year.\footnote{Ibid Clause 12(1)} There must also submit annually a budget and a short informational note setting out their plans and priorities for the upcoming year.\footnote{Ibid Clause 12(2) and 12(3)} Failure to provide this information may result in removal from the register.\footnote{Ibid Clause 13(1)} The law does not state that accounts or financial reports be kept or submitted, nor does it impose any requirement for accounts to be audited. In practice, however, the PVCC does request submission of annual accounts.

Voluntary organisations are required to abide by the general policies of the PVCC and accept its advisory role.\footnote{Ibid Clause 12(d) and 12(e)} A voluntary organisation removed from the register for any reason may appeal to the General Assembly of the PVCC, which can ratify or overturn the decision by a simple majority.

Paid staff may not also be members of the board of voluntary organisations.

\section*{II.6. CHARITIES}

There remain on the statute books from colonial times laws relating to the specific legal form of ‘charities’, although these laws are effectively defunct. The laws are based upon the charity law of England and Wales.

The main law of which we have had sight is the Charities Law of 1925. This implies the existence of other laws relating to charities which we have not seen. The 1925 Charities Law primary role is to set out circumstances in which the trustees can apply to become a body corporate.\footnote{Ibid Clauses 4 and 5}
The law defines charities as organisations with “educational, literary, scientific or public charitable purposes” \(^\text{108}\). Charities are overseen by trustees who are personally liable “for their own acts, receipts, neglects and defaults for the due administration of the charity and its property” \(^\text{109}\). It requires incorporated bodies to provide an updated list of trustees every five years \(^\text{110}\) and furnish annual accounts of income, expenditure, assets and liabilities to the Administrative Secretary \(^\text{111}\). The Governor may order such accounts to be audited \(^\text{112}\).

Clause 13 states that “the Supreme Court shall have power and jurisdiction –

(a) To enforce every trust created for a charitable purpose;

(b) To give all directions and make all such orders as may appear to it necessary or expedient for the administration of any trust created for a charitable purpose;

(c) To sanction the sale or other disposition of any property subject to a charitable trust on being satisfied that such sale or disposition is for the benefit and advantage of the charity”

Clause 14 requires the Attorney General to be a party to any legal proceedings relating to charities, and requires the AG’s approval for any compromise.

All proceedings under the law shall be instituted and determined by the Supreme Court in accordance with English law \(^\text{113}\) (See III.15).

II.7. TAXATION

There are two main tax advantages for NGOs. Firstly, they can be exempt from income tax (tax exemption). Secondly, they can obtain ‘charitable status’, allowing donations to them from Cypriot tax payers to be treated as tax deductible.

**Exemption on Income Tax** is granted by clause 8 (13) of The Income Tax Law of 2002, which exempts from tax “the income of any religious, charitable or educational institution of a public character”. In addition, clause 8 (17) “subject to such conditions as the Council of Ministers may impose” exempts “the income of any company formed exclusively for the purpose of promoting art, science or sport, not involving the acquisition of profit by such company or by its individual members and whose activities are confined solely to that purpose”.

The Law states “the tax shall be charged, levied and collected upon the chargeable income of any person”. \(^\text{114}\) For the purposes of the law, ‘a person’ includes “an individual and a company”, \(^\text{115}\) and ‘a company’ includes “any body with or without

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\(^\text{108}\) Clause 2, Charities Law 1925
\(^\text{109}\) Ibid Clause 6
\(^\text{110}\) Ibid Clause 5(3)
\(^\text{111}\) Ibid Clause 10
\(^\text{112}\) Ibid Clause 11
\(^\text{113}\) Ibid Clause 15
\(^\text{114}\) Clause 6, Income Tax Law of 2002 (as amended)
\(^\text{115}\) Ibid, Clause 2
legal personality... as well as every company, fraternity or society of company incorporated or registered outside the Republic”116 “The definition of “company” in this case includes clubs associations and foundations although, in practice, some are not registered with the Inland Revenue Service. The exemptions are presumed to be automatic, with no need to apply to the Inland Revenue Service. The exemptions, where applicable, are based upon either claus 8(13) or 8(17) of the Income Tax Law. For the clubs, associations and foundations which are not registered with the Inland Revenue Service, the Service does not take any measures as their income is anyway exempt.

Non-profit companies are registered with the Inland Revenue Service as taxable entities. The law suggests that exemption under clause 8(17) should apply to non-profit companies, but it does not seem to in practice. The Council of Ministers can grant approval for exemptions, but there appear to be no clear written criteria on which such exemptions are made.

According to some interviewees the Ministry of Finance communicates by phone, which leaves NGOs without clear instructions or a written record of discussions or agreements with the Ministry.

See Part III.10, for recommendations relating to taxation of NGOs.

Charitable status (which allows tax exempt donations) is officially awarded by the Ministry of Finance acting with the authority of the Council of Ministers. All NGOs except clubs are eligible for charitable status. It is not clear why clubs are excluded, given especially the explanation presented by the Registrar in the Ministry of Interior, according to which clubs serve broader community purposes, while associations’ purposes are usually limited to the mutual interests of their members. (See III.15.)

Charitable status is not established in any law or regulations. The criteria are set by the Ministry of Finance. They are not made public, and there do not appear to be any set written rules used by the Ministry when assessing applications. However, discussion with the Ministry and NGOs revealed the following broad rules for obtaining charitable status:

- The NGO must be non-profit making.
- The NGO must not engage in commercial activities or compete with businesses (officials take a tough line on this, barring all commercial activities including primary purpose activities which may have a commercial flavour such as selling publications);
- NGOs may rent out any real property they own, but must not sell, invest or develop real property (however, exemptions may be given depending on the circumstances of the case);
- Board members may not be paid for serving on the board, although payment for other services provided to the NGO may be allowed;
- Relatives of Board members may not hold paid employment, and other conflicts of interest are also likely to be queried;

116 Ibid
- NGOs must spend down a significant part of their income each year – 75-80% is the figure in practice;
- Upon dissolution, NGOs must transfer their assets to an NGO with similar purposes which is approved by the Ministry;
- NGOs must submit audited accounts to the Ministry every year. The accounts must prove information on the activities during the year and disclose any economic activity and any payment to Board members.

The Ministry will often insist that these rules and principles are included in the NGO’s governing document.

In practice, even the application of these rules is unclear and inconsistent. Officials state that they look at applications on a case-by-case basis, and it is clear that the rules can be stretched or ignored if an official feels it is merited. For example, one NGO was requested to remove “consultancy” from among its activities (which activity would further the purpose of the NGO), while another one was allowed to rent its donated building (which will usually be considered a non-mission related activity). Based on the information received from the Ministry officials, commercial activity is often allowed after taking into consideration all the circumstances. It seems that the more important a commercial activity is to an NGO from the point of view of income generation, the less likely that it will be accepted. (See III.13.)

Application for charitable status requires submission of the governing document and financial records. Acceptance is, in practice, often negotiated. The Ministry will consider applications and raise its areas of concern with the NGO. The NGO will make its case, and the dialogue will continue until either the status is agreed or the NGO withdraws from requesting the status. The Ministry of Finance therefore rarely refuses charitable status.

Similarly, organisations with charitable status will often negotiate an acceptable level of commercial activities with the Inland Revenue Service during the year, or discuss the commercial activity revealed in the annual report. It is not known if an NGO has even had its charitable status revoked for unacceptable commercial activity.

Most donations made under this law are of real (‘immovable’) property. The expectation of a gift of immovable property in a will is often the prompt for an application for this status by an NGO.

See Part III.14. for recommendations relating to preferential tax treatment for ‘deserving’ NGOs.

**Value Added Tax** is levied at four rates by the Republic: 0%, 5%, 8% and 15%. The VAT threshold is an income of €15600 from taxable activities (supplies of goods or services) in a twelve month period. On accession to the EU the government adopted the EU’s Sixth Directive on VAT, which includes a schedule of exemptions from VAT.

Under the provisions of the Seventh Schedule of the VAT Law, the supply of services or goods by non-profit organisations is exempt from VAT. The fields covered are:
welfare; social security work; protection of children, young people or the elderly; and physical education. Non profit organisations providing cultural services (for example library services, museums or theatres) are also exempt, so long as the exemption does not lead to the distortion of competition.117

Also exempt is the supply of services to members of non-profit organisations in return for a membership or subscription, so long as they are not likely to disrupt competition. The fields covered are: political; trade union; religious; patriotic; philosophical; philanthropic; and civil.118

Whether because of the pre-existing complication of this law or because of the recent changes, we were informed that many NGOs were confused about what NGO income was liable for VAT. It was reported that officials were unable to confirm to NGOs whether membership fees, tickets for fundraising events or even donations were subject to VAT. NGO respondents also stated that they were not clear when they should register and when they need not.

Although the regulations have been clarified in this report, some NGOs stated that officials applying the VAT law were not always familiar with these provisions. This may be because of the relatively small number of NGOs which are currently registered under the VAT scheme.

In addition, NGOs reported that the procedure for reclaiming VAT was unclear and bureaucratic. It was stated that very few applications were successful.

**Capital Gains Tax** is not levied on a “gift made for educational, instructive or other charitable purposes to a local authority or to any charitable institution in the Republic approved as such by the Council of Ministers.”119 This is assumed to refer to NGOs with charitable status.

**II.8. INCOME GENERATION**

**Government funding** of NGOs is significant and growing. The government recognises the sector as a key partner in achieving many of its goals, and would like to move closer towards the EU model of government-NGO partnership in service delivery. However, the government retains doubts over the NGO sectors’ ability to fulfil that role. The government’s doubts are not without merit, and a number of respondents stated that many NGOs lack the skills and capacity to meet expected standards for proposal writing, reporting and project management. A result is that the same small number of known and trusted NGOs benefit from government funding.120

Compared to the rest of the EU there is little pressure on either government as funders or NGOs as service providers to focus on the quality of service provision. This has

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117 Clauses 7, 8 and 9, Seventh Schedule to Law 95/1 of 2000 on VAT
118 Clause 12, Seventh Schedule to Law 95/1 of 2000 on VAT
119 Clause 6(f) of the Capital Gains Tax Law 1980, as amended in 1989
120 For example, it was stated that the Asylum Service funded almost the same handful of NGOs each year.
translated into a comparative lack of emphasis on quality of service when government grants are being distributed or projects monitored.

The main form of direct government financing is grant funding. We found no evidence that other forms of funding are used, such as subsidies, service contracts or in-kind support. There is no consistency between different funding ministries in application, monitoring or reporting procedures and standards vary.

The best practice encountered was the Social Welfare Services funding of the Ministry of Labour and Social Welfare. The Ministry has a clear, detailed written procedure for assessing applications which is set out in a scheme of State Funding published annually. The Scheme establishes priorities for funding. These are broad in scope, allowing a wide range of social welfare NGOs to apply each year.\textsuperscript{121} Applicants must base their service provision on a need as identified by research.

Applications are open to ‘social providence voluntary organisations’ which includes all types of NGOs that provide social services that meet six criteria.\textsuperscript{122} The exception is non-profit companies, which are excluded. There is considerable emphasis on the community nature of applicants.

There is a three-stage application process, with initial consideration of the applications’ legality, completeness and concurrence with priorities by a three-person Primary Evaluation Panel at District Level. Its recommendations are then considered by a national Secondary Evaluation Committee. This prioritises applications and considers the budget implications. The Secondary Committee’s recommendations are then approved by the Director. The criteria for applications are set out in the Scheme.\textsuperscript{123} Any problems will be highlighted by the committee with an opportunity for resubmission.

The latest figures available indicate that of 327 applications, 264 were approved at a total value of CYP£4,800,000. Grants are in the range of CYP£15,000- CYP£50,000. Successful applicants are invited to an awards event where their grants are presented by the Minister. However, there is no official list published of grants made. Grants cover a range of purposes, including running costs.

There is an appeals process for applications refused by the Primary and Secondary Evaluation Committees. Appeals are considered by a separate Committee.

Successful applicants receive money in three stages, the final instalment of 30\% being paid upon receipt of satisfactory audited accounts and report. During the project

\textsuperscript{121} In 2007 the priorities were treatment of the demographic problem/low birth rate, prevention of social problems/support of the family (including combating early school leaving and delinquency), and combating social exclusion and poverty and integration of women and other susceptible groups into society (Article 4, Scheme of State Funding for 2007).

\textsuperscript{122} Legitimacy and good governance; financially solvent and viable; affinity of goals with the programme; capability to activate voluntary service and volunteers; effectiveness of state-funded activities; and voluntary membership. (Article 7, Scheme of State Funding for 2007).

\textsuperscript{123} \textit{Ibid}, Article 6 lists the criteria for the proposal as: clarity and utility; multiplication result; coherence in proposal; clarity of description; added value; realistic budget; and new technologies utilisation.
NGOs are expected to provide status reports and may be visited by the District Supervisor.

It is not known what the oversight procedure for projects funded by other government departments is. However, some NGOs reported that government departments had unrealistic reporting requirements. There was also little emphasis on service quality, although this did not seem to be a cause of complaint for government, NGOs or beneficiaries.

See Part III.16, for recommendations relating to government funding of NGOs.

**Fundraising** in public is regulated by The Street and House to House Collections Act 1959. As the name suggests, this relates solely to the solicitation of cash or property door-to-door or in a public place.\(^{124}\)

Fund-raising of this kind requires a licence.\(^{125}\) Fund-raising without a licence is punishable by imprisonment or a fine.\(^{126}\) A licence can be obtained from the Licensing authority made up of the district commissioner, mayor and senior police officer or his representative.\(^{127}\)

Licences are granted subject to such conditions imposed by this committee or the governor (this is a colonial law).\(^{128}\) This may cover such issues as badges or certificates of authority for collectors, issuing of receipts, publishing of accounts and/or details of the application of the funds.

With the advent of the Republic responsibility for granting licences has passed to the District Offices of the Ministry of Interior. Officially twenty days notice is required, although in urgent cases (such as the recent Greek forest-fires) this requirement can in practice be ignored.

When exactly permission is needed is unclear. Under some accounts, permission is only needed for purposes that are mentioned in the law. Hence, for example, public fund-raising to purchase bullet proof vests by an organisation of retired military personnel did not require permission. Meanwhile, fund-raising for certain public benefit purposes, such as medical costs, may not be allowed on the grounds that, at least in principle, these costs should be covered by the state. While the conditions are generally unclear, in practice such fundraising is almost always allowed (there are exceptions – see next section). (See also III.13.)

Fundraising without a licence is punishable by a fine, although in practice prosecution only occurs where fraud is suspected (again, there are exceptions – see next section).

The law is vague in places. In some circumstances collection boxes are considered public fundraising and need to be licensed, in other cases not.

\(^{124}\) Clause 2, The Street and House to House Collections Law
\(^{125}\) Ibid Clause 3(1)
\(^{126}\) Ibid Clause 4
\(^{127}\) Ibid Clause 2
\(^{128}\) Ibid Clause 3(2) and 5
Lotteries are regulated separately, needing the permission of the Ministry of Finance.

**Trading and Economic Activities** are not clearly regulated. As stated above, ‘excessive’ economic activity can be a bar to registration as an NGO or obtaining or maintaining charitable status. This is demonstrated by the *de facto* distinction when assessing charitable status between ‘income generating’ activities (which are acceptable) and ‘business activities’ (which are not). It is not clear how the distinction is made.

Notwithstanding the above, in practice associations can engage in unlimited economic activities. While the Law on Associations and Foundations states that associations may only be established with a not-for-profit purpose, it is silent on their ability to engage in economic activities in order to realize their primary (not-for-profit) purposes. (See III.9. and III.14.) Non-profit companies can also engage in unlimited but taxable economic activities but these must directly further their purposes.

Therefore, once registered, it is possible for associations and possibly other types of NGOs to engage in unlimited, unrestricted and untaxed economic activities. This is because associations are not required to register under the Inland Revenue for tax purposes (or at least in practice they do not register, see III.10), and there is no regular supervision over their activities. Therefore, an association can engage in economic activities which will go unnoticed by any supervisory authority. Not surprisingly, this anomaly is being exploited and numerous examples were raised of associations which were primarily businesses masquerading as associations in order to avoid tax. For example, one association is known to be a restaurant, with diners becoming ‘members’ upon ordering food.

See Part III.9. for recommendations relating to NGOs economic activities.
PART III: FINDINGS, ISSUES AND RECOMMENDATIONS

Part III consists of three sections. The first section highlights actual or potential violations of specific international requirements or best practice recommendations in civil society regulation, or highlights practices which diverge from current practice within the EU. The second section identifies and discusses overarching issues which cut across a wide range of regulations and agencies and which have a negative impact on the development of the NGO sector and its relations with the Government. The final section suggests recommendations for a reform process.

A. Issues to be addressed in light of European and International Standards

To assess and evaluate the legal framework for civil society and NGOs in Cyprus, ECNL relies on European norms and standards, as rooted in international law and good regulatory practice. As detailed below, relevant international law includes: (1) UN human rights instruments protecting fundamental freedoms; (2) the European Convention on Human Rights and Fundamental Freedoms (ECHR), with a particular focus on Article 11 (protecting freedom of association) and the interpretative case-law from the European Court of Human Rights; and (3) the Council of Europe Recommendation on Legal Status of NGOs. “Good regulatory practice” is based on an examination of comparative European practice and the identification of those regulatory approaches that are most enabling for civil society, and therefore compliant with international law.

The UN human rights instruments protecting the fundamental freedoms include the following:

- Universal Declaration of Human Rights (UDHR) (1948)\(^ {129}\);
- International Covenant on Civil and Political Rights and the First Optional Protocol (ICCPR) (1976)\(^ {130}\);
- International Convention on the Elimination of All Forms of Racial Discrimination (1969);
- Convention on the Elimination of All Forms of Discrimination against Women (1989);
- Convention on the Rights of the Child (1990);
- UN General Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Defenders Declaration) (1999).

The State has a duty to promote respect for human rights and fundamental freedoms. That duty includes both a ‘negative’ responsibility – i.e., to refrain from interference with rights and freedoms – and positive – i.e., to ensure that the legal framework is

\(^{129}\) Article 20: Everyone has the right to freedom of peaceful assembly and association.

\(^{130}\) Article 22: Everyone shall have the right of freedom of association with others, including the right to form and join trade unions for the protection of his interest.
appropriately enabling and that the necessary institutional mechanisms are in place “to ensure all individuals” the recognized rights and freedoms. Article 2 of the ICCPR is explicit in describing this State duty.

Cyprus signed the European Convention on Human Rights (ECHR) on December 16, 1961. The Convention was ratified and entered into force on October 6, 1962. The Convention, like the ICCPR, extends a wide range of rights to individuals – and in some cases, to legal entities – including the freedom of association, freedom of speech, the right to privacy and the right to property. Restrictions are only allowed under specific conditions and on specific grounds:

1) A restriction must be prescribed by law;
2) Restrictions are only allowed in the interest of national security, territorial integrity and public safety, to prevent disorder and penal acts, the protection of public health or good morals, the good name or rights of others, to prevent the disclosure of information received in confidence or to guarantee the authority and impartiality of courts;
3) Restrictions are only acceptable when necessary in a democratic society, which incorporates the principle of proportionality.
4) Restrictions must not violate Article 14 of the Convention, which forbids discrimination.

For purposes of this assessment, Article 11 – embodying the freedom of association – is of central concern. The European Court of Human Rights, in considering the scope of Article 11, has firmly established that there is a right under international law to form legally registered associations and that, once formed, these organizations are

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131 See the U.N. Charter, Articles 55-56; the Universal Declaration of Human Rights, Sixth Preamble; ICCPR, Article 2; ICESCR, Article 2; U.N. Declaration on the Right to Development, Article 6; U.N. Defenders Declaration, Article 2.
132 ICCPR, Article 2: (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
133 The Convention allows “any person, non-governmental organization or group of individuals claiming to be a victim of a violation” to submit an application after meeting the admissibility criteria (Article 25, ECHR). It can be inferred, therefore, that NGOs are protected by certain fundamental rights; the right to complaint would be meaningless with no substantive rights to protect. Thus, it can be assumed that references in the Convention to “everyone” may in principle refer to natural and legal persons, including NGOs. Indeed, many decisions by the European Court confirm the standing of NGOs under the Convention.
134 Article 11 establishes that: (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interest. (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”
entitled to broad legal protections. In United Communist Party of Turkey and Others v. Turkey (“UCP”), the Court held that “the protection afforded by Article 11 [freedom of association] lasts for an association’s entire life and that dissolution of an association … must accordingly satisfy the requirements of paragraph 2 of that provision …” In Freedom and Democracy Party (ÖZDEP) v. Turkey, the Court affirmed the nexus between the freedom of association and the freedom of speech (Article 10 of the ECHR).

### European Court of Human Rights

Notable decisions relating to freedom of association include:

- United Communist Party of Turkey and Others v. Turkey (30 January 1998)
- Socialist Party and Others v. Turkey (25 May 1998)
- Sidiropoulos and Others v. Greece (10 July 1998)
- Freedom and Democracy Party (ÖZDEP) v. Turkey (8 December 1999)
- Stankov and the United Macedonian Organization Ilinden v. Bulgaria (2 October 2001)
- Refah Partisi and others v. Turkey (13 February 2003)
- Gorzelik and others v. Poland (17 February 2004)
- Moscow Branch of the Salvation Army v. Russia (5 October 2006)

On October 10, 2007 the Committee of Ministers of the Council of Europe adopted a Recommendation to member states on the Legal Status of NGOs in Europe (CM/Rec(2007)14). This is the first international legal instrument that targets the legislator, the national authorities and the NGOs themselves. It aims to recommend standards to shape legislation and practice vis-a-vis NGOs, as well as the conduct and activities of the NGOs themselves in a democratic society based on the rule of law. The recommendation was adopted to recognise the importance of NGOs in modern society and to elaborate minimum standards for their operation. In establishing standards, the CoE Recommendation dovetails neatly with the best regulatory practices in Europe. Notably, all 47 member states of the Council of Europe (COE), including the Government of Cyprus, voted unanimously to adopt the Recommendation; it is therefore incumbent upon each to follow these standards.

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136 UCP, European Court of Human Rights, (133/1996/752/951) (Grand Chamber decision, January 30, 1998) (“The right guaranteed by Article 11 would be largely theoretical and illusory if it were limited to the founding of an association, since the national authorities could immediately disband the association without having to comply with the Convention. It follows that the protection afforded by Article 11 lasts for an association’s entire life and that dissolution of an association by a country’s authorities must accordingly satisfy the requirements of paragraph 2 of that provision. . . .”)

137 See OZDEP, European Court of Human Rights, (93 1998/22/95/784) (Grand Chamber decision, December 8, 1999) (“Article 11 must also be considered in light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and democracy.”)
III.1. LIABILITY

“The legal personality of NGOs should be clearly distinct from that of their members or founders.”

(Para 26, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

“The officers, directors and staff of an NGO with legal personality should not be personally liable for its debts, liabilities and obligations. However, they can be made liable to the NGO, third parties or all of them for professional misconduct or neglect of duties.”

(Para 75, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

The potential criminal or civil liability of key officials of clubs, associations and foundations is far from clear in Cyprus. All three legal forms appear to have the status of legal body. An association or foundation registered in accordance with the Associations and Foundations Law will obtain legal personality by virtue of clauses 6(1) and 28(1) of the Associations and Foundations Law respectively. The Clubs (Registration) law also grants legal personality by implication.

The position in cases of legal action is not clear. Clause 19 of the Clubs (Registration) Law states that “All actions or legal proceedings by or against a club shall be brought by or against the secretary of such club as representing the members thereof”. Clause 17(4) and 37(2) of the Associations and Foundations Law state that both the association or foundation and the official responsible shall be liable in full for any damages incurred as a result of acts or omissions taken in the course of their duties.

However, the confusion in practice is illustrated by a statement of officials that the members and officials of associations are personally liable, whilst administrators of a foundation are not – despite the law being worded identically for both types of NGO.

In practice the position is the same for all NGOs. When legal disputes arise, litigants sue both the NGO and key officials (usually the president, vice-president or treasurer) personally. There is no clear distinction between civil and criminal liability. This position runs against European best practices and the COE standards cited above.

Once again, the position for non-profit companies is clearer and more favourable. Non-profit company status confers a clear limited liability status on members and directors in cases of legal action of bankruptcy.

The lack of clarity over members’ or officials’ liability is a serious disincentive to holding office within an NGO and on occasion could be seen as being contrary to natural justice (see the case studies below). The norm within the EU and elsewhere is that the establishment of a NGO with legal personality shifts potential liability from the individual to the institution – indeed, this is the chief reason for endowing organisations with legal personality. We are aware of no other country where the reasonable and proper liability of an NGO can become the personal liability of individual officials even when they have been acting in good faith.
**Case Studies**

An NGO that raised funds without permission was reported to the courts by the Attorney General. Perhaps uniquely, given that no fraud was suspected, a prosecution followed. The association was fined and the money raised seized by the court. Although the funds were not in the end needed for the original purpose, they had in the meantime been applied by an official of the NGO for other public benefit purposes based on the decision of its governing body (two years had passed since the funds were originally raised). The court treated the funds as stolen and prosecuted an official of the NGO for receiving stolen goods and contempt of court, even though he was not present at the meeting where the decision to spend the funds was made. The official is being prosecuted in his personal capacity and may not use the NGO’s funds for his legal costs.

In another case, an environmental NGO and its officials are being repeatedly sued for libel by corporations that hold the NGO’s claims of their polluting activities untrue. In such cases, the officials of the NGO are being held personally liable simply for engaging in activities that constitute the core purpose of the organisation.

**Recommendation**

The position should be clarified so that individuals are only personally liable in cases where their deliberately criminal or wilfully negligent acts have directly contributed to a loss to the NGO. In all other cases, particularly where officials have acted in good faith, the liability and costs of any legal action should properly be met from the NGO’s funds.

**III.2. MINIMUM NUMBER OF FOUNDERS OF AN NGO**

“Everyone has the right to freedom of peaceful assembly and to freedom of association with others... No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society.”

(Article 11(1) and 11(2), European Convention on Human Rights)

“Two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired, so long as this number is not set at a level that discourages establishment.”

(Para 17, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

The Clubs (Registration) Law of 1930 and the Associations and Foundations Law of 1972 require at least twenty persons to establish a club or association respectively (clause 2 in both instances). Both laws also state that the number of members fall below twenty, a registered club or association shall be dissolved (clause 11(a) and 24(b) respectively). As described in Part II, a foundation must have a minimum of two (or possibly three) founders, and a non-profit company two, in practice usually seven founding members.  

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138 Companies Act Clauses 3(1) and 4(2)
We respectfully note that the prescribed threshold runs afoul of Article 11 of the Convention and indeed the European best practices (infra). Critical to the operation of Article 11 is the obligation of a Respondent State – not the plaintiff – to demonstrate before the European Court of Human Rights (Court) that the interference in question meets the prescribed criteria. True, the Court has not yet decided on a case involving the minimum number of founders. Nevertheless, the case law pertinent to Article 11 permits the conclusion that the threshold prescribed in the laws does not serve any legitimate aim, or at least is not necessary in a democratic society.

The chart on the legal framework for not-for-profit organisations (NPOs) in the countries of Central Europe, including many of the new EU member states\(^{139}\), supports the foregoing conclusion. As the chart indicates, the minimum number of founders of a membership organisation in CE countries, with few notable exceptions (Poland and Lithuania), varies from two to ten. Similarly, most of the EU “old” member states require only two persons to establish an association (Austria, Belgium, the Netherlands, Italy, France, England and Wales, Sweden). In Spain, three persons are required as founders, while in Germany the minimum threshold is seven persons. These statutory practices reflect general consensus among the academics that any number of founders between two and ten meets the interference test set out in Article 11, Paragraph 2, of the Convention.

Greece stands out as the only EU “old” member state whose minimum founder threshold requirement exceeds ten and matches the one prescribed in Cyprus. Because of such a high threshold, most membership organisations in Greece have chosen to operate in the form of civil not-for-profit partnership – which can be established by two persons only.

Not only do the thresholds prescribed depart from Article 11 of the Convention, but they also make it very difficult for the so called second tier umbrella organisations (federations and similar organisations of legal persons) to register and operate. (See II.2.)

**Recommendation**
Amend the laws so as to reduce the required minimum number of founders, in line with European best practices.

### III.3. NON-CITIZENS’ PARTICIPATION IN NGOs

“*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.*”  
(Article 1, European Convention on Human Rights)

“*Any person, be it legal or natural, national or non-national, or group of such persons, should be free to establish an NGO.*”  
(Para 16, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

\(^{139}\) Please see Appendix 4.
“NGOs should not be subject to any specific limitation on non-nationals being on their management or staff.”

(Para 49, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

The participation of non-citizens as founders, directors or members of NGOs is not restricted in law, but it was reported that in practice that it can sometimes be limited when these laws are applied (See II.1. and II.2.). For example, we understand that at one instance citizens of Nepal were denied to be founders of an association seeking to promote cultural ties between the Nepal and Cyprus, because they did not have permanent residence, but rather temporary residence in Cyprus. In addition, we understand that Turkish Cypriots are in practice denied to be founding members of an association.

We respectfully note that such a practice runs afool not only the Law on Associations and Foundations, which guarantees freedom of association to “any person”, without further reference to his or her nationality, but also to Article 1 of the European Convention, which requires that a Contracting Party secure to everyone within its jurisdiction rights and freedom guaranteed by the Convention. Indeed, the significance of the Article 1 of the Convention is that it constitutes a nexus between Chapter I of the Convention, which proclaims rights guaranteed by the Convention (declaratory provision) and the specific responsibilities of a Contracting Party in protecting those rights, including freedom of association.

A Contracting Party assumes dual positive responsibility according to Article 1 of the Convention. First, it must secure that its legislation complies with the Convention. This is also in accordance with Article 57 which prohibits general reservations. Second, the state must intervene in any alleged case of violation of human rights committed by public authorities at any level (police, court, etc). Accordingly, the State is responsible for any violation of the Convention which resulted from legislation incompatible with the Convention or acts (or omissions of acts) of public authorities at all level (whether the victims of violations are nationals or not of a Contracting State in question).

Critical for the operation of Article 1 are the notions: “everyone” and "within jurisdiction". The notion of everyone reflects the universal characters of human rights that are protected by the Convention. Hence, the Convention affords and guarantees human rights not only to citizens, but also to any other category of persons, such as foreigners, persons without citizenship, minors and handicapped persons. Accordingly, the underlying rationale of the notion ‘within jurisdiction’ is not to restrict categories of individuals that enjoy protection afforded by the Convention. Rather, its purpose is to establish the necessary legal nexus between everybody and a Contracting Party. To that end, it is not necessary that this legal nexus is ongoing and firm, such as in the case of citizenship or residence, or temporary residence. Suffice it that a Contracting Party may exercise some kind of authority over an individual. It is legitimate for the state to define its own jurisdiction, as provided by Article 56 of the Convention. However, it has to take into consideration the boundaries that are prescribed by the Convention and the ECHR case law in this regard. In the light of

140 Article 4, Associations and Foundations Law of 1972
the foregoing observations, it is incumbent on the Government to secure fair and impartial implementation of Article 4 of the Law on Associations and Foundations to any non-citizen within its jurisdiction, as defined by the Convention.

**Recommendation**

Secure fair and impartial implementation of Article 4 of the Law on Associations by removing *de facto* impediments of non-citizens forming associations in Cyprus, in line with Cyprus’s international commitments arising from Article 1 of the European Convention.

### III.4. REGISTRATION PROCEDURE

“*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority.*”

(Article 13, European Convention on Human Rights)

“A *reasonable time limit should be prescribed for taking a decision to grant or refuse legal personality.*”

(Para 37, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

“The rules governing the acquisition of legal personality ... should not be subject to the exercise of a free discretion by the relevant authority.”

(Para 28, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

“Legal personality should only be refused where... a name has been used that is patently misleading or is not adequately distinguishable from that of an existing natural or legal person in the state concerned.”

(Para 34, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

For associations and foundations, the Commissioner is required to accept an application for registration if the legal grounds are present (clauses 6(4) and 27(2) of the Associations and Foundations Law respectively). However the Law does not address a number of critical points pertinent to the registration process.

First, it does not set out a deadline in which registration must be agreed, should the application meet the legal requirements; nor does it spell out legal consequences of the “silence of administration” in this respect.

Secondly, the Law does not set out a deadline in which the applicant – following the request by the Commissioner - is given an opportunity to remedy flawed or incomplete registration documents. (Whilst clause 48(1) of the Law provides that the Council of Ministers shall issue regulations which shall *inter alia* address the manner in which clubs and institutions shall be registered, dissolved and liquidated, we understand that no such regulations have been enacted.)

As a result, and in the absence of legal remedies that otherwise might be available for such situations, the Commissioner has broad discretionary powers to hold up the registration process as they see fit. This could be seen as violation of both Article 11
(freedom of association) and Article 13 of the Convention (right to an effective remedy).

As the attached chart (See APPENDIX 4.) on the legal framework for NPOs indicates, most of the CE countries provide reasonable deadlines for the registration authority to decide on the application for registration or request that an incomplete or flawed application be remedied. In addition, some of the countries surveyed provide specific legal remedies for a registration authority’s failure to meet those deadlines (e.g. Poland, Hungary, and Bulgaria).

Furthermore, the Law on Clubs allows discretionary power to the District Officer to refuse registration on grounds of the name of the club being “undesirable”. While in practice there was no such case encountered in terms of a club, there were associations whose names were rejected on similar grounds. There are no clear legal guidelines publicly available to NGOs regarding their choice of names (except in the case of not-for-profit companies). In addition, allowing discretionary power to the registering official in terms of the use of the name can be considered a violation of Article 11 of the Convention, which states that any interference with freedom of association must be prescribed by law, and that the piece of legislation in question must be accessible and foreseeable.

Finally, the requirements under the Law on Lawyers that a lawyer is required for all registrations add another barrier to registration. This is particularly an issue for smaller NGOs, upon whom the cost of lawyers’ fees would have a disproportionally severe impact.

Case Studies

A professional association has still not been registered after two years. The first problem is its name. As the NGO would have the word ‘Cypriot’ in its name the authorities expressed concern that the public might mistake it for a government body. The NGO wished to use that name in order to comply with the nomenclature standards of the European association of which it is part.

For another NGO the issue was a statement on its registration application that its activities would include organising seminars, courses and conferences. It was refused on the grounds that it was not permitted to be a university. The organisation has appealed against this decision, which is still pending after two years.

Recommendation

Clarification and streamlining of the procedures for registration would be needed. We recommend setting out a reasonable deadline in which the authorities must register an NGO. In addition, we recommend setting out a deadline for an applicant to remedy a flawed or incomplete application. In relation to these we suggest drastic simplification of the registration procedures so as to enhance effectiveness and comply with the Convention and European best practice. Such simplification would include

141 “No Club shall be registered by a name, which according to the Registrar is undesirable”. Clubs (Registration) Law 1930, Clause 7(1)
abandoning the practice of requesting concurrence from a range of competent ministries and conducting police checks on founders; as well as eliminating any discretionary elements in determining the name of a club or association; and eliminating the need for a lawyer to be retained when submitting an application. Finally, legal remedies should be provided in case the authorities fail to respond to the application for registration within the prescribed deadline.

III.5. GROUNDS FOR DISSOLUTION

“The legal personality of NGOs can only be terminated pursuant to the voluntary act of their members – or in the case of non-membership-based NGOs, its governing body – or in the event of bankruptcy, prolonged inactivity or serious misconduct.”

(Para 44, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

Further to the discussion on founding NGOs above, the respective laws for clubs and associations state that the NGO shall be dissolved should its number fall below twenty (respectively clause 11(a) of the Clubs Law 1930 and clause 24(b) of the Associations and Foundations Law 1972). The wording of the Associations and Foundations law indicates that the dissolution procedure is triggered by the force of law (ex lege) as soon as the condition in question is met (See II.1. and II.2.).

The number of members may fall below twenty for various reasons, many of them entirely beyond the power of an organisation or a member in question (death, loss of business and legal capacity of a member, etc). Triggering the dissolution procedure ex lege could therefore be against the will of the organisation’s members and could undermine their right to associate as protected by the Convention. In addition, the dissolution of any legal entity gives rise to serious legal consequences (distribution of organisation’s property, status of rights and obligations arising from legal transactions the dissolving organisation has undertaken, etc). Because of these reasons, an organisation should be given an opportunity to increase the number of its members before the dissolution procedure is triggered. We understand that this is what actually happens in practice, however the practice is based on the discretion of the competent officials rather than a due legal process.

Clause 24(c)(ii) of the Associations and Foundations Law provides inter alia that an association shall be dissolved due to “long lasting inactivity”. Officials indicated that in practice this would have to be a period of about ten years. However, it is not clear what level of activity would be considered sufficient. For example, would one annual general meeting be considered sufficient activity? This gives the competent authority broad discretionary power to decide on this critical matter.

For this reason, it is our view that clause 24(c)(ii) runs afoul of Article 11 of the Convention. As already noted, Article 11 inter alia provides that interference with freedom of association must be prescribed by law. In the Court’s case law, this means that the law is both accessible and of a certain quality – i.e., written in precise and simple language which a common person can understand (Meastri v. Italy, judgment
of February 17, 2004). The wording of the requirement set out in clause 24(c)(ii) is not precise enough and thus does not meet the “prescribed by law” threshold.

Furthermore, amongst the grounds for dissolution in case of Clubs, a number of reasons are listed which are clearly outdated (stemming from the fact that this law had been legislated in 1930) and could not clearly be considered a “serious misconduct” as defined by the COE recommendations. These include, e.g. that “there is frequent drunkenness on its premises”, that “it is illegally selling alcohol on its premises”, or that “it habitually admits persons who are not members or guests”. We presume that these reasons are not cited in practice and we have found no evidence during the assessment that they would be applied, however, it would enhance the rule of law if the grounds for dissolution in case of Clubs would be updated and harmonised with those of the Associations and Foundations Law, as well as European standards.

**Recommendation**
Set out a deadline (e.g., three months) in which a club or association is given an opportunity to increase the number of members up to the prescribed threshold, before the dissolution procedure is instigated. Provide that holding a general meeting in accordance with the memorandum of an organisation constitutes the minimum threshold of an organisation’s activity, which will not trigger application of Article 24(c)(ii) of the Associations and Foundations Law. Update Art 23 of the Clubs Law to reflect current day concerns and standard grounds for dissolution.

### III.6. RE-REGISTRATION OF CLUBS

“*NGOs should not be required to renew their legal personality on a periodic basis.*”
(Para 41, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

Clause 5 of the Clubs (Registration) Law of 1930 requires Clubs to re-register every June. This runs contrary to common EU practice and may be seen as a restriction on freedom of association. It is also a resource intensive and inefficient method for monitoring organisations.

**Recommendation**
The requirement for clubs to re-register should be abolished.

### III.7. GOVERNANCE OF FOUNDATIONS

Foundations may in theory be administered by one person. The proper administration of an NGO by a board of trustees or directors is the first and most important element of an effective governance system. There are serious weaknesses with a system that allows sole administrators, especially when, as the case is in practice in Cyprus, the foundation serves a public benefit purpose.

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142 Clause 23, Clubs (Registration) Law 1930
Firstly, it is impossible to guarantee that the best interests of the NGO will be protected, as there can be no independent oversight to identify or manage circumstances where the personal interests of the administrator and the interests of the NGO might clash.

Secondly, a collective board allows full discussion of issues and the recruitment of members with a diverse range of skills and experiences needed for effective oversight.

Thirdly, it removes the perceived need for external oversight by the state regarding the internal decisions of the foundation. As an example, in case there was a collective governing body, the requirement prescribed by the Associations and Foundations Law according to which the Attorney General must authorise the sale or alienation of any immovable property, could be removed as there would be capacity to decide upon the best interests of the foundation among its governing board. While the need for such authorisation is understandable under the current regulatory framework, in the light of European practices, this requirement could be considered as intervening with the organizational autonomy of the foundation.

Finally, the current governance provisions fail to clarify the distinction between management and governance responsibilities. The board is responsible for governance, setting policies and ensuring that day-to-day management of the NGO is undertaken in accordance with these policies. Board members of smaller NGOs may be more directly involved in management issues, in which case the oversight role of a collective board assumes even greater importance.

**Recommendation**

Consider amending the laws or regulations to require a minimum of three administrators of a foundation, in line with best practice in the EU. Alternatively, if a new system of ‘public benefit’ status will be established (see III.14), governance needs for public benefit foundations may be effectively addressed through that system. Accordingly, the requirement of the Attorney General to approve of alienation of immovable property could be removed.

### III.8. CONFLICTS OF INTEREST

“NGOs should not distribute any profits which might arise from their activities to their members or founders but can use them for the pursuit of their objectives.”

(Para 9, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

The regulations relating to self-dealing and conflicts of interest are unclear and seemingly not effectively implemented. Whilst members or administrators of associations and foundations are prevented from involvement in decisions relating to legal proceedings between themselves and the NGO, there appears to be no restriction on payment of members or connected parties. There is an implied

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143 Whilst two administrators would be better than one, it would still effectively give the chair sole power through the use of his casting vote in the event of a 1-1 tie in voting on an issue.

144 Clause 16 Associations and Foundations Act, repeated in Clause 21(3)
restriction on self-dealing by administrators of a foundation\textsuperscript{145} but no equivalent for associations.

Clause 20(1) of the Companies Act states that a non-profit company “prohibit[s] the payment of any dividend to its members.”\textsuperscript{146}

The \textit{de facto} rules for charitable status prevent board members from receiving payment for serving on the board, although payment for other services provided to the NGO may be allowed, and prevent relatives of board members from holding paid employment. Other conflicts of interest are also likely to be queried.

\textit{Recommendation}

Self dealing and unmanaged conflicts of interest are the most common means by which NGOs are misused. Such practices contrast with the expected public benefit and voluntary ethos of NGOs and have a serious corrosive effect on the integrity of the sector. It is the role of government to develop and implement effective laws and regulations to control and manage these practices. When developing criteria for a new “public benefit status” (see below, \textit{III.14.}), principles of regulating conflict of interests should be considered as well.

\textbf{III.9. INCOME, PROPERTY AND ECONOMIC ACTIVITIES}

“\textit{NGOs should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities without any special authorisation being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned.}”

(Para 14, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

The various laws do not contain specific provisions on legitimate sources of income or property for any type of NGO, nor establish any conditions under which they may engage directly in economic activities. Whilst this implies a commendably liberal approach, whereby any otherwise legal source of an organisation’s income is legitimate, in practice a number of restrictions are made. These restrictions are imposed on a discretionary basis by officers at registration and especially, when applying for charity status.

For NGOs with charity status the nature and level of economic activity undertaken is monitored, and almost all economic activity as a means of income generation is banned. This contrasts with those clubs, associations and foundations which do not have charity status, and which in practice are not registered with the Inland Revenue Service. (See \textit{II.7.} and \textit{II.8.}) They are free to develop and operate considerable tax-free business interests. This not only erodes public faith in the expected public benefit and voluntary ethos of NGOs, but also has a potentially adverse impact on fair competition.

\textsuperscript{145} \textit{Ibid} Clause 38
\textsuperscript{146} Clause 20(1)Companies Act
In practice, this creates an extreme choice for clubs, associations and foundations, which must choose between an entirely unrestricted but publicly-tainted status; and a highly restrictive but publicly more respected status.

The position for non-profit companies is clearer. All non-profit companies are registered with the Inland Revenue Service as taxable entities and are permitted to engage in economic activities so long as they further their objectives. Economic activity undertaken purely for income generation is not allowed.

**Recommendation**

As a principle, NGOs should be free to engage in economic activities, both in direct furtherance of their purposes and as a means of generating income. However, the negative impact of the current de facto unrestricted and untaxed regime and the extreme choice facing most NGOs makes it critical that clearly defined conditions are established and implemented setting out what economic activities are permissible and the circumstances in which they can be undertaken. Many countries provide for an illustrative list of (legitimate) sources of an NGO’s income (membership fees, passive income, donations, etc) and, more importantly, set out specific conditions under which an NGO may engage in economic activities.

We would recommend that the government consider setting out specific conditions for clubs, associations and foundations to engage directly in economic activities.

**III.10. TAXATION OF NGOs**

“NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support, such as exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as incentives for donations through income tax deductions or credits”.

(Para 57, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

The current taxation system is, in places, not very clear (See II.7.). In terms of corporate income taxes, in practice, the level of tax an NGO pays is not based on its activities, but rather on its legal form. That is to say, associations, clubs and foundations are all effectively untaxed, whereas non-profit companies are taxed at a fixed rate of 10%.

This is a significant divergence from the norm in the EU, where corporate income tax paid relates to the type of income and activity for which the income is used, rather than the specific legal form of the NGO. Hence, income from grants, donations, membership fees and primary or ancillary economic activities in pursuance of the objectives will usually be free of income tax for all types of NGOs. Income from partly or purely commercial economic activities may be taxed.

Other inconsistencies identified (e.g. the exclusion of clubs from applying for charitable status; unclear grounds for NGOs becoming VAT payers etc.) also need further examination.
**Recommendation**

It is recommended that the laws (income tax as well as others) relating to taxation of NGOs are reviewed, with a view to establishing a system of taxation based upon activity rather than legal status. We would recommend that working group of stakeholders from government and the NGO sector is established to explore this further.

**III.11. REGISTRATION OF BRANCH OFFICES OF FOREIGN NGOs**

“Any person, be it legal or natural, national or non-national, or group of such persons, should be free to establish an NGO and, in the case of non-membership-based NGOs, should be able to do so by way of gift or bequest.”

*(Para 16, Council of Europe Recommendations on the Legal Status of NGOs in Europe)*

The Law is silent on the point of registration of a branch office of a foreign NGO. It seems possible for a foreign NGO to establish a branch office through registration as a not-for-profit company with non-resident members; however, it is not clear if an association or a foundation could be set up as a branch of a foreign NGO.

**Recommendation**

The Government may consider setting out conditions for foreign organisations to open a branch office in Cyprus. To the extent possible, in line with European best practices, those conditions should match the ones prescribed for registration of foundations and associations – in particular with respect to the grounds for the refusal of registration, registration and dissolution procedure.

This issue could be partially addressed also by Cyprus joining the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, which provides that the parties recognise the legal personality of an organisation recognised as such in another country that joined the treaty, so long as these organisations comply with the conditions of having “a non-profit-making aim of international utility” as defined in the treaty. Besides allowing international NGOs of countries who are a party to the treaty to be recognised in Cyprus, this would also facilitate the presence of Cyprus NGOs active in Brussels as Belgium is a party to this treaty.

**III.12. POLITICAL ACTIVITIES AND CAMPAIGNING**

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas.”

*(Article 10, European Convention on Human Rights)*

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147 Art 1 (a) of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, European Treaty Series #124
“NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law.”
(Para 12, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

“NGOs should be free to support a particular candidate or party in an election or a referendum provided that they are transparent in declaring their motivation.”
(Para 13, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

There are no clear regulations or guidelines on what level of political campaigning is acceptable by NGOs in Cyprus. The issue of political campaigning by NGOs came to a head with the Annan Plan Referenda in 2004. Some NGOs campaigned during the referendum, contributing to a view amongst parts of society that NGOs are institutionally unaccountable and in some cases may be politically motivated. Some NGOs faced scrutiny from Parliament, and there has been an intensification of scrutiny on newly registering associations, resulting in a number of NGOs choosing to register as non-profit companies instead.

Recommendation
Clear guidelines on the level and nature of permissible political activity and campaigning could be developed. The regulations or guidelines should ensure that freedom of speech as guaranteed by Article 19 of the Constitution and Article 10 of the Convention is not restricted. The regulations should also confirm the right of informal NGOs or coalitions to freedom of assembly and expression as guaranteed by the Constitution and Convention.

III.13. DISCRETIONARY REGULATION

“Acts or omissions by public authorities affecting an NGO should be subject to administrative review and be open to challenge by the NGO in an independent and impartial court with full jurisdiction.”
(Para 10, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

“The rules governing the acquisition of legal personality should... be objectively framed and should not be subject to the exercise of a free discretion by the relevant authority.”
(Para 28, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

“The rules for acquiring legal personality should be widely published and the process involved should be easy to understand and satisfy.”
(Para 29, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

Discretionary regulation runs counter to the spirit of the requirements of the Convention and the recommendations of the Council of Europe. The high level of discretion exercised by government agencies in the regulation of NGOs in Cyprus is perhaps the most striking feature of the system. Numerous examples were found of government agencies failing to disclose the criteria for regulatory decisions. There were also many examples of government agencies failing to act with consistency. Examples include:
• The assessment of the purposes of associations when registering with the Ministry of Interior (and the ensuing determination of whether an organisation may register as a club or as an association, and whether it may register at all);
• The assessment of the purpose being ‘public benefit’ when registering as a foundation with the Ministry of Interior;
• Acceptable administrative provisions for registering associations or foundations;
• The assessment of ‘charitable status’ by the Ministry of Finance;
• The level of acceptable economic activity by NGOs with charitable status;
• Conditions under which fundraising permissions may be issued, etc.

Our findings were confirmed by the fact that no Ministry or other official was able to present to us any implementing regulations for the laws that were reviewed for this Report. Furthermore, examples like at the Ministry of Finance, which communicated by phone leaving no written record of what conditions have been imposed or agreed in a particular case, reinforced the assumption that there were no written regulations in force.

This significantly hampers the effectiveness of the sector as well as its relations with the government in a number of ways, chiefly:

• It erodes both public and NGO sector trust and confidence in government, which may lead to perceptions that it is opaque, remote, inefficient or even corrupt;
• It renders impossible education of the sector in compliance with regulations;
• It prevents effective consultation with the sector over regulations and the development of self-regulation and regulatory partnerships;
• It makes attempts to comply with regulations unpredictable, and therefore more inefficient and costly;
• It erodes public trust and confidence in the NGO sector, which may be seen as unregulated and open to abuse;
• It hampers effective development and implementation of a government strategy for the sector;
• It enables a culture of favouritism and corruption to exist within government (however we should state that no evidence of either was sought or found in relation to the regulation of the NGO sector).

**Case Study**

The experience of an NGO helping immigrants, illustrates the problems with discretionary and vague laws. The NGO raised funds for an urgent operation for an illegal immigrant whose medical treatment the government would not fund. The government wished to deport the immigrant in question.

The NGO applied to the District Office of the Ministry of Interior for permission to raise funds for the medical costs. The permission was refused on the grounds that fund-raising was not allowed for non-Cypriots or for medical expenses, although
these rules are not written anywhere and much fund-raising for medical costs occurs in practice.

In the meantime, the NGO’s latest application for a fund-raising licence remains unanswered after a year.

**Recommendation**

Clear, non-discretionary, comprehensive and public regulations should be developed, especially where these are prescribed by law (such as in the case of the Law on Associations and Foundations). These regulations should be applied consistently and all regulatory decisions or actions should be made in line with the regulations. All correspondence with NGOs should be in writing if requested. NGOs should have a right of appeal to an independent adjudicating body against any decision. NGOs should also have the right to complain to an independent adjudicator should their case be dealt with in an unfair or discriminatory way.

**B. Cross-Cutting Issues**

**III.14. REPUTATION OF THE NGO SECTOR AND ‘PUBLIC BENEFIT’ STATUS**

“NGOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities to a designated supervising body.”

(Para 62, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

The NGO sector in the Republic of Cyprus is not very well regarded compared to some other EU countries. The situation reflects in part ignorance and in part a lack of trust between the public and NGOs similar to what has been experienced especially in the new EU member states. There have been questions about the accountability, role and credibility of the sector from both government and a significant section of the public. Those interviewed identified three main reasons.

Firstly, as discussed above, a significant number of associations are likely to be primarily commercial organisations. They could have adopted the particular legal vehicle of association because of the tax advantages and de facto absence of government scrutiny once established. Whilst by no means all associations fit this profile, the public is likely aware of sufficient numbers of ‘commercial associations’ to affect the normal public perception of the sector as voluntary and public benefit in nature.

Secondly, a number of NGOs were active in campaigning in the 2004 Referenda on the Annan Plan. These received high media attention and added to the perception of many in government and wider society that at a more general level, actors in the sector are “politcised”, i.e. a tool for political forces. The sector as a whole is somewhat tainted by this perception.
Finally, the sector as a whole is relatively underdeveloped by EU standards. Management capacities of NGOs, their ability to generate income and deliver high quality services have much room to develop. While run by highly committed and credible professionals, the lack of effectiveness in governance and management often leaves NGOs vulnerable to the negative public image.

Deficiencies in the law and its application are partly responsible for all three of the above issues. The monitoring regime is at best unclear and at worst entirely absent, and there is little to prevent commercial organisations from ‘piggy-backing’ NGO status once established; there are no clear rules on the level or nature of acceptable campaigning or political activities by NGOs; and there is little support or incentives in the legal framework to help raise standards in the sector.

As a result NGOs have come under increasing pressure from government and society to demonstrate accountability. Government has increased scrutiny of the sector, particularly at the registration stage. The response from some NGOs has been to become either non-profit companies or, for those that meet the criteria, voluntary organisations. These legal vehicles are subject to tighter scrutiny and/or are more clearly limited to ‘public benefit’ purposes. NGOs that adopt these forms are therefore making a clear public statement about their credibility and legitimacy.

**Recommendations**

The recent popularity of non-profit company status and the development of voluntary organisation status illustrate the desire for a more credible legal vehicle for what some have perhaps crudely but understandably styled ‘legitimate’ or ‘real’ NGOs. The impulse to publicly identify and reward deserving NGOs exists in many jurisdictions. However, such recognition in most European countries is usually not linked to a specific legal form, or – as discussed in the introduction – an “official” definition of the NGO.

In most cases it is expressed through the establishment of a ‘public benefit’ status for NGOs which are exclusively public benefit in character and meet certain best practice criteria. Usually, all types of NGOs that can register in the country may be eligible for such status if they meet these criteria. In addition to the enhanced credibility that the status brings, in many cases there are also more tangible benefits, such as favourable tax status or privileged access to government funding.

The Republic has its own version of such acknowledgement in the ‘charitable status’ overseen by the Ministry of Finance. However, the opaque and discretionary way in which it is applied and its rather narrow focus mean that NGOs with charitable status expect and receive no extra credibility from that status. The main advantage of this status is currently seen in the eligibility for tax deductible donations.

We would recommend that the Government and the Ministry of Finance develop a system which appropriately identifies and rewards NGOs which may be

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148 The establishment of the “voluntary organisation” status similarly indicates an intention to identify NGOs trustworthy for public support; however, this concerns only social service providing organisations and is strongly linked to the funding scheme of the Social Welfare Department.
considered well-managed and trustworthy of public support, regardless of the legal form it assumes. This may be achieved either through a reform of the current ‘charitable status’ regime so that it has more efficiency and credibility, or by developing a new system of a ‘public benefit status’. Regardless of which approach is taken, the Government needs to involve NGOs in the definition and development of criteria; and a more transparent process for assessing the public benefit or charitable status is needed. There should be clear and objectively applied rules, and a greater emphasis on the definition of public benefit and best practice in governance, financial management and impact assessment. Finally, benefits associated with such status will need to be determined to match the obligations that NGOs with this status shall undertake. Such system will greatly enhance the effectiveness of the process and provide a much needed tool for government and the public to make qualitative judgments on NGOs at little or no extra cost to the government or the sector.

Secondly, the government should review and reform the monitoring regime for NGOs. A comprehensive monitoring regime is a crucial to maintain accurate records, identify cases of concern, spot trends within the sector, foster an ethos of accountability in NGOs, and deter those intent on abusing the sector. Monitoring contributes to the maintenance of public trust and confidence in the sector and the government as the regulator.

In particular, the law relating to public accounting and reporting by associations should be clarified. While there is probably no need to establish stringent or burdensome reporting requirements for all associations, there would be a need to establish a more effective system to keep updated information. The authorities need to identify, remind and (if necessary) take action against non-compliant associations.

Greater scrutiny of accounts and annual returns from all NGOs should occur. However, this should be coordinated with the possible development of the new charitable or “public benefit” status. Public benefit organisations that will be registered under this new status should in fact be subject to greater scrutiny than the whole of the sector given the higher level of obligations and benefits they would assume. At all times, scrutiny should occur based on legally determined criteria and a transparent due process. The mechanism could be designed to make use to the extent possible of the IT and new internet applications (e.g., internet based reporting and database / registry) in order to reduce costs and increase transparency.

Whilst resources may not allow full scrutiny of all information gathered, regulators should scrutinise at least a sample of returns collected, some of which should be selected for scrutiny on a risk-basis and others selected randomly. The establishment of a scrutiny process should be widely publicised to enhance the deterrent effect.

III.15. MULTIPLE LEGISLATION AND REGULATION

The legislation affecting NGOs in the Republic of Cyprus developed piecemeal, as is true of most if not all countries. However, the situation is complicated by the presence of elements typical of charity law, as seen in common law countries, alongside the civil law tradition of associations and foundations, as found in continental Europe.
The legal system has been moving away from the common law model towards the civil law model. However, elements of the common law model remain. Perhaps the most interesting example of this is the ‘rediscovery’ of the non-profit company as a legal vehicle for NGOs. As a result, many membership-based NGOs pursuing a specific purpose are now able to choose between three different regulatory regimes – club, association or non-profit company. The confusion inherent in this system is exacerbated by a lack of coordination between the different regulators.

It is not known how much of the charity law from colonial period remains on the statute book. However, even one of the laws of which we have had sight could have far reaching effects if it were to be implemented, giving as it does considerable power and jurisdiction over all charitable trusts to the Supreme Court, as well as requiring the Courts approval for any disposal or property by a charitable trust.

**Recommendation**

A full review of all laws and regulations relating to NGOs should be undertaken by local legal experts familiar with the entirety of the legal system, and any defunct laws repealed. Updates are necessary in colonial laws of provisions which are clearly outdated (such as the disproportionate emphasis in the regulation of clubs on avoiding drunkenness at its premises). NGO regulators should meet to agree a strategic and coordinated approach to regulation of the sector.

**III.16. GOVERNMENT FUNDING**

“**NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support.**”

(Para 57, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

Government funding can be a critical source of funding for NGOs, especially for those engaged in service delivery. NGOs should be entitled to participate in open, fair, and non-discriminatory processes carried out by state bodies for the awarding of grants, contracts or other funding. Where a public body contracts for goods or services, it must do so in accordance with a system, which is fair, equitable, transparent, competitive and cost-effective.

NGOs should also be eligible to bid for public funds on an equal footing with for-profit entities. In some situations it may even be appropriate for NGOs to have preferential bidding status as public benefit organisations.

Government should also be aware of the different ways in which NGOs can be financially supported. Grants can be effective, particularly in helping NGOs to build capacity or develop innovative projects. For service delivery, contracts or service agreements may be more appropriate. In other circumstances, in-kind grants, subsidies or soft loans may be effective. Whatever methods are used, government should ensure that it encourages best practice and innovation within the sector.

**Case Study**
A women’s rights NGO received funding from the Ministry of Labour’s Social Welfare Fund in 2004 to enable it to open two women’s shelters. However, according to the NGO, the Ministry first delayed opening of the shelters, then halved funding in the second year. This left the NGO with a shortfall of CYP£50,000, forcing them to close the shelters. No clear reason was provided for this action. The NGO appealed that the cut in funding was in breach of contract. Whilst the Ministry agreed to reinstate at least part of the funding, the funds have still not been paid and the dispute is now the subject of legal action.

Shortly after this dispute erupted, Ministry of Justice officials and the press stated that there were concerns about the professionalism of the NGO. They claimed that the NGO had exaggerated the number of beneficiaries when reporting their activities. The NGO’s officials stated that they provided services to many more women than most of their peers, due chiefly to their dedicated and flexible approach. Unlike other shelters which only provide assistance during office hours, they assisted needy women at any time and consequently had many more clients. Nevertheless, a police investigation was instigated into possible misuse of state funding. Following two investigations and an official audit no evidence of misuse was found.

The NGO representatives stated that their innovative and flexible approach and consequent success had fostered resentment from competitors and some elements in society. This and the NGO’s receipt of foreign funding had created resentment. They speculated that this resentment may lie at the root of their problems.

**Recommendation**

Non-discriminatory and competitive government funding systems should ensure that as many NGOs as possible are able to tender for contracts or apply for grants. To enable this, it is recommended that government departments ensure that application and reporting requirements in relation to government funding are clearly written and impose no greater administrative burden than is necessary for proper due diligence and verification of fund use. Secondly, government should institute programmes to help NGOs build their capacity so that they can meet the expected standards for proposal writing, reporting and project management.

Government should ensure that they are using the most appropriate funding mechanism in each circumstance. Whatever funding method is used should reward best practice and the delivery of quality services. New applicants should be encouraged to avoid complacency and encourage competition and innovation.

When elaborating a reformed charitable status or a new system of ‘public benefit’ status for NGOs, easier access to government financing may be amongst the potential benefits for NGOs with the status. This would also increase the ability of government to rely on well-managed and trustworthy organisations when disbursing public funds.
C. Recommendations for a Reform Process

“Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people’s opinions as to the functioning of society. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.”
(Para 76, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

“NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.”
(Para 77, Council of Europe Recommendations on the Legal Status of NGOs in Europe)

We respectfully recommend that in the process of deciding about the possible changes in the legal framework for NGOs outlined in this Report the Government of Cyprus considers the participation of the NGO sector as the stakeholders being affected by the reform. It is our firm conviction, based on the experience of such reform processes in other European countries, from Estonia to the United Kingdom, that in order for the reform to be effective, cooperation and dialogue is needed from the beginning of the reform process. Active participation of NGOs in the process (rather than being merely “consulted” at the time governmental drafts are already developed) will lead to higher quality legislation, easier implementation and greater compliance due to the ownership developed of the new legislation by those affected by it.

We would therefore recommend that the Government initiates the following measures in designing the next steps and the longer term reform process:
- establish one or more inter-sectoral (multi-stakeholder) working groups to develop the conceptual frameworks and agree on the most important issues (e.g., in relation to the definition of what constitutes “public benefit” and the criteria for such status);
- establish a timeline and a clearly staged process for the reform (e.g., concept development, policy discussions, legislative drafting, adoption of legislation, transition period for the implementation);
- organise regular opportunities for information and input of NGOs through various interactive channels (roundtable discussions, conferences, workshops, internet etc.) at all stages of the reform;
- support capacity building of both government officials and Parliamentarians and non-governmental experts (lawyers, NGO leaders, academics) through a range of activities (e.g., study tours, training workshops, translation of relevant publications etc.) in order to enable all parties to make informed decisions in the process.

Should there be a need for its assistance, ECNL will be pleased to advise in the development of a more concrete plan for the legal reform process.
APPENDICES

APPENDIX 1: LEGISLATION REVIEWED

Chapter 41 of the Common Laws - Charities Law

Chapter 95 of the Common Laws - Street and House to House Collections Law

Chapter 112 of the Common Laws - Clubs Registration Law

Chapter 113 of the Common Laws - Companies Law

Chapter 193 of the Common Laws – Trustees Law

Constitution of the Republic of Cyprus, Article 21(2)

Law No. 71 of 1965 on The Trade Unions

Law No.39 of 1967 on The Cyprus Red Cross Society

Law No. 57 of 1972 on Clubs and Institutions

Law No. 24 of 1980 on The Immovable Property Tax

Law No. 52 of 1980 on Capital Gains Tax

Law No. 95/1 of 2000 on VAT

Law 117(I) of 2002 on Special Contribution for the Defence

Law No. 118 of 2002 on Income Tax Law

Law No. 61(I) of 2006 on Pancyprian Volunteerism Coordinative Council
APPENDIX 2: OTHER DOCUMENTS REVIEWED

An Assessment of Civil Society in Cyprus, A Map for the Future – CIVICUS: Civil Society Index Report for Cyprus, 2005


Criminalisation of KISA and its Chairperson, The Background – Steering Committee, KISA, 8 May 2007

Comments on the Cyprus Club and Institutions Law (Official Gazette, No. 57/1972)

Cyprus Mail, 10 October 2007 – “KISA boss faces court over CYP£573 in 'illegally raised charity funds’” by Leo Leonidou

Cyprus Mail, 13 October 2007 – “Persecutions of NGOs puts us in dangerous territory“

Letter from Ministry of Commerce: Approval of Charity Organisation, 12 November 2007

Ombudswoman’ Report on KISA request to the District Officer regarding Fundraising, 16 November 2006

Procedure for the Registration of a Company Limited by Guarantee (from Eleftheria Anastasiou), 26 October 2007

Response from the Attorney General to the Secretary General of the Ministry of Interior on the definition of the terms "philanthropic, humanitarian/charitable and religious causes" as referred to in the Fundraising (Street collection) Law, 26 June 1990

Response from the Attorney General on Fundraising by the Association of Veteran Soldiers of Larnaca, 1 August 1996

Social Welfare Services of the Ministry of Labour and Social Insurance - Scheme of State Funding for 2007
APPENDIX 3: LIST OF STAKEHOLDERS INTERVIEWED

- Eleftheria Anastasiou - Registrar of Companies (non-profit companies)
- Georgios Antoniades - Ministry of Interior
- Alexandra Attalides and Yiouli Taki - INDEX Research
- Nicoletta Charalambides - KISA
- Andreas Christodoulou - Ministry of Labour (Department of Labour Relations-Trade unions)
- Achilleas L. Demetriades - Barrister, Lellos P. Demetriades Law Office,
- Kyriaki Demetriou & Michalis Loizides - AKTI
- Juliette Dickstein - BSP, US Embassy
- Kim Foukaris and Jaco Cilliers - USAID and UNDP Programme Manager
- Takis Hadjigeorgiou - Parliamentarian
- Julia Kalimeri - APANEMI
- Bulent Kanol – Management Center
- Nadia Karagianni, Michalis Avraam, Andros Karayiannis, Marianna Larmou - Board members of NGO support center
- Georgia Kosioti - Legal Services
- Leda Koursoumba - Law Commissioner
- Emmanuela Lambrianides and Petros Mavrikios - Planning Bureau (ODA, NGOs) and Ministry of Foreign Affairs (ODA, NGOs)
- Eleni Neophitou and Rita Pantazi - Social Welfare
- Olivia Patsalidou and Board members of the Council - PANCYPRIAN VOLUNTEERISM COORDINATIVE COUNCIL
- Makis Polydorou - Ministry of Interior (Asylum Service, contact with NGO dealing with migration)
- Geoff Prewitt - UNDP Bratislava
- Costas Shammas - Peace Center
- George Stavri - Medecins Sans Frontieres
- Athina Stephanou - Inland Revenue
- Georgios Theocharides - Federation of Environmental and Ecological NGOs in Cyprus
- Themis Theodossiou – Ministry of Finance (Charitable foundations)
- Mr. Zevlaris - VAT Officer
- 16 NGOs participating in the Round-table meeting organized on November 14, 2007
APPENDIX 4: LEGAL FRAMEWORK FOR NOT-FOR-PROFIT ORGANISATIONS IN CEE COUNTRIES (EXCERPTS)\textsuperscript{149}

### Founding Requirements for Membership Organisations in Central Europe

<table>
<thead>
<tr>
<th>Country</th>
<th>Minimum Members</th>
<th>Permitted to found and join?</th>
<th>Special umbrella organisation form? If so, how many organisations needed to found?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Citizens</td>
<td>Permanent residents</td>
<td>Foreigners</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>3\textsuperscript{150}</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>3</td>
<td>Yes\textsuperscript{151}</td>
<td>Join Only</td>
</tr>
<tr>
<td>Estonia</td>
<td>2</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Hungary</td>
<td>10</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Latvia</td>
<td>2</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Lithuania</td>
<td>3</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Community Orgs.</td>
<td>15</td>
<td>Yes\textsuperscript{157}</td>
<td>No\textsuperscript{158}</td>
</tr>
<tr>
<td>Poland</td>
<td>15</td>
<td>Yes</td>
<td>Join Only</td>
</tr>
<tr>
<td>Simple Associations</td>
<td>3</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Romania</td>
<td>3</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Slovakia</td>
<td>10</td>
<td>Yes</td>
<td>Join Only</td>
</tr>
<tr>
<td>Slovenia</td>
<td>10</td>
<td>Yes</td>
<td>Join Only</td>
</tr>
</tbody>
</table>

### NPO Registration Procedures in Central Europe

<table>
<thead>
<tr>
<th>Country</th>
<th>Entity Type</th>
<th>Body</th>
<th>Time</th>
<th>Default</th>
<th>Special Refusal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Association</td>
<td>Local District Court; public benefit organisations must also register with the Ministry of Justice</td>
<td>14 days for Ministry of Justice</td>
<td>Ministry of Justice: Considered rejected</td>
<td></td>
</tr>
<tr>
<td>Foundation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Association</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{149} © International Center for Not-for-Profit Law (ICNL), 2007
\textsuperscript{150} Public benefit associations must have at least 7 natural persons or 3 legal persons as members.
\textsuperscript{151} Citizens of any member state of the European Union have equal rights when residing in the Czech Republic.
\textsuperscript{152} Sometimes contested by the Ministry of Interior, but supported by a ruling of the Constitutional Court.
\textsuperscript{153} At least one founder must be 18 years old.
\textsuperscript{154} Minors can found Latvian public organisations if at least sixteen years old or with their parents’ consent.
\textsuperscript{155} Technically, only citizens over 18 may be members of community organisations; other persons may be able to become “associate members,” though conditions for associate membership are not well-defined.
\textsuperscript{156} Children under 18 may be members of an organization active in the field of children’s or youth activities.
\textsuperscript{157} No minimum number of organisations for creating an umbrella organization is specified. Legal persons whose activities are income-oriented may only be “supporting members” of such organisations.
\textsuperscript{158} Foreigners who are not permanent residents may join a Polish association if the association’s statute explicitly so provides.
\textsuperscript{159} In practice, however, it is recommended that foreigners found associations with local citizens.
\textsuperscript{160} Permanent residents and foreigners may join if the statute explicitly so specifies.
<table>
<thead>
<tr>
<th>Country</th>
<th>Entity Type</th>
<th>Body</th>
<th>Time</th>
<th>Default</th>
<th>Special Refusal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hungary</td>
<td>Foundation</td>
<td>Registration departments of county and city courts</td>
<td>Expedited procedure, max. 30 + 30 days</td>
<td>Considered registered (from Jan. 1, 2003)</td>
<td>Military organisations must have prior government approval</td>
</tr>
<tr>
<td></td>
<td>Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Association, Foundation</td>
<td>District Courts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-profit Company</td>
<td>District Commercial Court</td>
<td>3 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>Non-Profit Organisation</td>
<td>Chief Public Notary (the commercial registrar)</td>
<td>30 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public Organisation</td>
<td>Ministry of Justice</td>
<td>1 month</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>If NPO uses communist symbols or symbols of USSR or LSSR</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Association</td>
<td>Municipal offices</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public Institution</td>
<td>Public registry that is established under the Ministry of Justice. The statutes must be checked by the notary before that</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Community Organisation</td>
<td>National: Ministry of Justice; local: municipal offices</td>
<td></td>
<td>1 month</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>Association</td>
<td>Local branch of National Registry Court</td>
<td>3 months</td>
<td>Administrative authorities informed, and can object</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foundation</td>
<td>Local branch of National Registry Court</td>
<td>14 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Simple Association</td>
<td>Local starost office</td>
<td>30 days</td>
<td>Considered registered</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>Association</td>
<td>Primary court</td>
<td>3 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foundation</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Association</td>
<td>Ministry of Interior</td>
<td>10 days</td>
<td>Considered registered after 40 days</td>
<td>If NPO's goals are incompatible with being non-compulsory, or if it's a church, party, or firm</td>
</tr>
<tr>
<td></td>
<td>Foundation</td>
<td>Ministry of Interior</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-Profit Organisation</td>
<td>Regional office</td>
<td></td>
<td></td>
<td>If it is not a gathering of property or not publicly beneficial (advisory ministry's report is used to determine this)</td>
</tr>
<tr>
<td></td>
<td>Investment Fund</td>
<td>Regional office</td>
<td>Date set in proposal, or by decree</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>Association</td>
<td>Local state administrative bodies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foundation</td>
<td>Ministry over the foundation's area of activity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>Association</td>
<td>Local state administrative bodies</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>