
NON-PROFIT PUBLIC SERVICE CORPORATIONS
COMPARATIVE STUDY OF CERTAIN COUNTRIES

The Netherlands
Belgium
Germany
The United States
Canada
Czechoslovakia (pre-1939)

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NONPROFIT PUBLIC SERVICE ORGANIZATIONS

COMPARATIVE STUDY OF CERTAIN COUNTRIES

Executive Summary

I. Importance of Nonprofit Organizations.

Private nonprofit organizations that provide health care, social, cultural, educational, scientific research, religious and other similar services for the public benefit ("NPOs") play a very significant role in the societies of countries throughout the world. NPOs go by various names in different countries, such as nonprofit, charity, foundation, association, public interest, non-share organizations, etc. However, as a general matter these organizations are all part of a class of institutions that occupy a position between government organizations and for-profit companies by combining some characteristics of government with some characteristics of private enterprise. NPOs usually focus on the provision of public service rather than profit maximization (similar to governments), but their financing is primarily through voluntary non-tax mechanisms (similar to for-profit companies).

NPOs are required to provide services and use their assets with an intent to benefit the "public" rather than "private persons." Although NPOs are generally permitted to make a profit (i.e. earn a surplus), they are not permitted to distribute such profit to Members, Trustees, officers or other private persons.

The creation and use of NPOs has become increasingly popular because NPOs offer a number of important advantages.

1. NPOs provide many types of beneficial services that otherwise would not be provided by for-profit companies because the conduct of the services do not typically generate an economic profit.
2. NPOs relieve government of certain obligations by providing services that government would otherwise be required to provide.
3. NPOs are decentralized flexible entities that can respond to emerging needs in society more quickly than large centralized governments.
4. The existence of NPOs in a field of interest, such as health care, results in beneficial competition among providers. This stimulates innovation, enhances the quality of services, creates greater efficiency and responsiveness to public needs and lowers economic cost.

5. NPOs encourage volunteerism and citizen participation in activities that promote the public good through membership on NPO boards of trustees and committees and citizen involvement in NPO activities and services.
6. NPOs tend to accumulate more knowledge and expertise on a specific subject because of their high degree of specialization.
7. The existence of NPOs results in charitable contributions by individuals, businesses and grant making foundations due to tax incentives and a general desire to help organizations that are doing "good works" for the public. Donations of this nature help reduce the size of grants and subsidies requested from the government.
8. The existence of NPOs facilitates grants and contributions from international non-governmental development organizations.
9. If a government owns and operates an activity that has high risks and potential liability for negligence (such as a hospital) and transfers the operation of the activity to an NPO, the government has also transferred potential liability for future acts of negligence or misconduct to the NPO. By making the transfer, the government has reduced its overall future risk exposure.

This Comparative Study reviews the legal status and role of NPOs in the following specific countries: The Netherlands, Belgium, Germany, The United States and Canada (the "Study Countries"). In addition, it also reviews the status of NPOs in Czechoslovakia before 1939. In each Study Country NPOs play an important role in the areas of health care, culture and social service. NPOs also play a role in general education of citizens, however, in most Study Countries grammar and secondary schools and universities are owned and operated by various levels of government instead of by private NPOs.

The importance of NPOs in the Study Countries is evidenced by the extent of their involvement in the economy, level of their revenues, the number of jobs they create and similar statistics. The following indicators are an example of the significance of NPOs in the Study Countries.

1. In Belgium there are approximately 35,000 NPOs involved in areas as diverse as science, education, health and social services, scientific research and leisure programs. NPOs provide approximately 61% of all hospital care in Belgium.
2. In the United States it is estimated that (i) NPOs generate annual revenues of about 8% of the Gross Domestic Product, (ii) there are over 1,400,000 NPOs that are tax-exempt and (iii) over 15 million individuals are employed by or perform significant voluntary services for NPOs.
3. In the Federal Republic of Germany (i) NPOs account for around 3% of the Gross Domestic Product, (ii) the Federal Association of Voluntary Welfare Agencies has more than 60,000 NPO members that employ about 750,000 professional staff employees and (iii) NPOs operate over 2,300 hospitals and clinics employing over 265,000 individuals.

4. In the Netherlands the majority of all hospitals (about 85%) are operated by NPOs, usually by church related organizations. In 1991 the government transferred the operation of 16 national museums to NPOs.
5. Each Study Country encourages the growth of NPOs by granting some form of income tax exemption.

II. Summary of Comparative Study.

This Section summarizes the major findings of the Comparative Study.

A. Legal Characteristics. Many important legal characteristics of NPOs are the same or very similar among all of the Study Countries. In some situations, differences exist and are noted. The following statements apply to each Study Country, unless otherwise indicated.

1. In each Study Country it is possible to form an NPO under the civil statutory law of that country.
2. Once formed, an NPO is recognized as a legal person under the law.
3. An NPO is permitted to make a profit (i.e. to generate an operating surplus), but is not permitted to distribute such profit or surplus to its Members, Trustees, officers or any other private person.
4. Upon dissolution, the surplus assets of an NPO must be distributed to another NPO that has charitable purposes similar to the dissolving NPO. Thus, an NPO's assets must always be applied to a charitable purpose.
5. Any person (natural, legal or governmental) may create an NPO.
6. An NPO always has a fundamental governing instrument that is usually referred to as its "Articles." The NPO generally becomes a legal entity when its Articles are filed with the government or published as prescribed by law.
7. An NPO usually has Members, a Managing Board of Trustees or Directors (the "Board" or the "Trustees") and officers. The Members elect the Trustees and the Trustees appoint the officers.
8. The Members generally hold certain fundamental powers, including the power to elect Trustees, to amend the governing instruments, to dissolve the NPO and often to veto any act of the Trustees.
9. The Board sets policy, elects officers and makes broad management decisions.
10. The officers administer the day to day operation of the NPO.

11. It is often permissible to have some other organization, entity or the government appoint some of the Trustees. If the government is the founder of the NPO, it is not unusual for the government or its officials to appoint all or a majority of the Board.
12. NPOs have the legal ability to own property.
13. Employees of NPOs are private employees. They generally have the same rights and benefits as employees of for-profit companies.
14. Most NPOs have the same independence from government as for-profit companies. (For a discussion of NPOs that are founded by the state and that receive their property from the state see "Other Aspects", below).
15. NPOs are usually subject to the same general regulatory laws that apply to for-profit companies. These include laws relating to such areas as safety, labor, anti-monopoly, the environment, contracts and torts.
16. NPOs are generally exempt from income tax. In some Study Countries they are liable for property taxes, and VAT or sales taxes, but not in other Study Countries.
17. In all of the Study Countries, donor contributions are deductible for income tax purposes to a greater or lesser degree.
18. Most of the Study Countries have conflict of interest laws that relate to transactions between an NPO and a Member, Trustee or officer or a company in which he or she has an interest. However, in most instances these laws are very liberal. It is permissible for the governing instruments of an NPO to provide conflict of interest rules that are stricter than the minimum required by law.

B. Other Important Aspects of NPOs. Many of the individual Study Country reports include a discussion of the transfer of government property to NPOs, sources of revenue and sources of capital funds. These are summarized below.

1. Transfer of Property to an NPO by Government. If a government is the founder of an NPO and plans to transfer the use of state property to the NPO, there are a number of ways such a transfer can occur. These include the following methods:

- (a) Transfer outright ownership of the property to the NPO;
- (b) Lease the property to the NPO; or
- (c) Enter a management contract with the NPO relating to the operation of the property.

The transfer documents under any of these methods can contain provisions to safeguard the continued use of the property for charitable purposes and include monitoring and reporting

requirements. In addition, the applicable law may give the government supervisory authority over the conduct of an NPO if the NPO is seriously breaching its governing instruments or not operating in a manner that is consistent with its intended purpose. An NPO law may also provide other safeguards, such as (i) giving a court the power to order an NPO to cure or halt a serious breach or improper conduct or to remove an officer or Trustee who is mismanaging or violating the governing instruments of the NPO, and (ii) requiring audited financial statements and annual reports to the government.

2. **Sources of Operating Revenue.** Generally NPOs receive operating revenues from the sale of services and goods relating to their public service purposes (such as reimbursement for health care services in the case of hospitals), contributions from donors, government grants and subsidies, membership dues and investment income if they have accumulated an endowment fund.

3. **Sources of Capital Funds.** Capital funds are obtained from bank loans, government loans and grants, contributions made pursuant to a specific fundraising campaign, and, in some cases, through the issuance of tax-exempt bonds. In these situations it is often necessary to enhance the credit of the NPO by obtaining government guarantees, a bank letter of credit or bond insurance.

III. Individual Study Country Discussions.

For a more complete discussion of the characteristics of NPOs in each of the Study Countries, see tabs 2 - 6. In addition, for informational purposes, tab 7 contains a brief discussion of the legal status of NPOs in Czechoslovakia before 1939. Due to the desire to be concise and relatively brief, the discussion for each Study Country is somewhat generalized and some variations exist that cannot be dealt with in this short space. However, these summaries provide a view of the nature and governance of NPOs in the Study Countries, and the degree of independence from or interdependence with government.

THE NETHERLANDS

Importance of Nonprofit Organizations

Privately controlled nonprofit organizations play a large role in the society of the Netherlands. These organizations provide many services to the public that the government would otherwise be responsible for providing. There is a long tradition of activity by private non-profit organizations in the areas of health care, social services, cultural affairs and, to a much lesser extent, private schools.

1. Character of Entity

NPOs in Holland can be Foundations or Associations and, in some cases, Limited Liability Companies. In either case the NPO may earn a profit but is not allowed to distribute profits to private persons. In most cases NPOs are formed by a notarial deed that contains the Articles of the NPO. An NPO possesses a separate legal personality. The primary difference between Associations and Foundations is that Associations have Members and Foundations do not. Foundations are more commonly used for charitable public service organizations than are Associations.

2. Type of Law

Foundations and Associations are created under the general provisions in the Dutch Civil Code.

3. Creation and Governing Instruments

Who May Create. There is no restriction on the identity of the founders.

Governing Instruments. The governing instruments are the Articles. By-laws may also be adopted. The Articles must contain the Foundation's name and address, the object of the Foundation, and the manner of appointing officers. In the case of Associations, the Articles must include the same items and, in addition, must also set forth the obligations of Members, if any, and the manner of convening general meetings.

Government Filing. The notarial deed, which contains the articles, must be registered with the Chamber of Commerce and Industry of the district where the NPO has its registered office. In addition, the register must contain the names and addresses of the officers or others who have representative authority to act for the NPO. The NPO has an indefinite life unless otherwise provided in the Articles.

4. Purposes

A charitable NPO must have an idealistic, social or other public benefit purpose. In order to obtain favorable tax treatment, an NPO's purposes must be cultural, ecclesiastical, scientific or for the welfare of the public. Welfare of the public includes nursing, healing, housing of the sick and disabled, providing employment for mentally or physically disabled

people, the elimination of prejudice and discrimination, and providing means to the economically underprivileged.

5. Governance

Foundations. Foundations have a Board and officers. The Board elects itself and elects the officers. Foundations do not have Members.

Associations. Associations have Members, a management (i.e., a Board) and officers. Membership is described in the Articles. The existing Members may admit additional Members as may the management. Membership is personal unless the Articles provide otherwise. The management is appointed by the Members from among the Members. However, the Articles may also permit non-Members to be appointed to the management. The Articles may also provide that one or more officers (but less than half in number) shall be appointed by persons other than Members. The management designates from their midst a chairperson, a secretary and a treasurer.

Because Associations have Members and Foundations do not, Associations can be much more representative than Foundations.

Powers. Subject to any restrictions contained in the Articles, the Board of an NPO is charged with the management of the NPO. The Board does not have authority to enter agreements to purchase, dispose of or encumber registered property, or to undertake a guarantee or become a debtor, or to warrant performance by a third party or provide security for a debt of a third person, except to the extent permitted in the Articles. In the case of Associations, all powers not conferred by law or in the Articles vest in the Members.

If the officer of an NPO breaches the law or the Articles, or is guilty of mismanagement, a Court may remove the officer upon the request of the Public Prosecutor or any interested parties.

6. Assets

Ownership. NPOs may own their own assets.

Transfer by Government. Most NPOs in the Netherlands have not received capital assets from the government. In some situations, such as in the area of culture, museums and other buildings owned by the government are sometimes leased to NPOs or are subject to management contracts with NPOs for the operation of such buildings and their activities. This permits the cultural activity to be operated by an NPO and, at the same time, allows the government to retain ownership and control of the buildings. This device seems to be used in cultural areas more so than in other charitable activities. In the area of education, public schools have not been transferred to NPOs and continue to be owned and operated by the government.

Dissolution. Upon dissolution of an NPO, any surplus assets must be devoted to the charitable objects of the NPO. Thus, the assets are forever dedicated to public benefit purposes.

7. Major Revenue Sources

The major source of operating revenues for cultural NPOs is government subsidies and grants (approximately 98%). Government support takes three primary forms:

- i. annual recurring subsidies;
- ii. four year grants that are subject to review and renewal; and
- iii. one-time grants for specific projects.

Government subsidies and grants are made through state-controlled Funds, the board members of which are appointed by the government. The Funds receive and act upon subsidy and grant applications from NPOs.

In the case of health care, the major source of operating revenue is reimbursement from the public insurance system and private insurance companies. Since public schools are owned and operated by various levels of government, they are funded by tax revenue. There are also some private schools sponsored by religious organizations or other private groups. A primary source of their revenue is tuition that is paid by students or their families.

8. Capital Expenditure Sources and Capital Financing

Principal sources of long-term loans for capital expenditures include fund-raising from donors, bank loans and some loans and grants from the government. In the case of hospitals, bank loans for approved projects are generally guaranteed by the government. The Netherlands has only recently begun a program for tax-exempt financing that likely will become a useful source for capital funds for NPOs.

9. Employees

Employees of NPOs are treated in the same fashion as employees of for-profit companies.

10. Relation to Government

Independence. Based on a long tradition of freedom from government control, all NPOs have the same independence from government as do for-profit companies. Government is not involved in management and does not approve their Board Members. However, NPOs must submit annual reports to the government. When seeking government subsidies and grants, NPOs submit program information and budgets to the granting agency. If an NPO is in serious breach of its Articles, upon the application of a Public Prosecutor or another interested person, a Court may require the NPO to cure the breach or, in some situations, to dissolve.

Tax Treatment. Qualified NPOs are exempt from income tax; however, income from an unrelated trade or business is subject to the income tax. NPOs are required to pay real estate tax with respect to any real property they may own. Qualified NPOs are generally exempt from the VAT output tax but are liable for the VAT input tax. NPOs are also liable for gift and inheritance taxes if the assets received exceed certain nominal values. In

general, contributions of cash or property made to a qualified NPO are deductible by the donor up to 10% of gross income.

General Regulations. Generally, NPOs are subject to the laws of property, contract, tort and succession in the same fashion as for-profit companies and natural persons.

11. Conflict of Interest

In the case of an Association, if a matter involves a conflict of interest between the Association and an officer or Board member, the Members may designate one or more persons to represent the Association. Further, the Articles of an Association may provide that a Member shall not vote on matters that concern him/her or his/her spouse or a direct-line blood relative.

12. Other Structural Matters

An NPO can own more than one facility. An Association may have a parent corporation or a subsidiary; however, a Foundation cannot have a parent because it does not have Members. Nevertheless, it is possible for a Foundation to have affiliates which share all or most of the same Board members.

13. Public Corporations

There is little history of the use of public corporations in the Netherlands. Rather, public services have generally been dispensed either directly by government officials or by non-profit charitable entities not controlled by government. Most primary and secondary schools are generally governmentally owned and operated, although some are owned and operated by NPOs that are not directly controlled by the government.

However, one limited recent development has been to create "Funds" separate from the government, which are like public corporations. Their boards are appointed by government. The Funds are established for separate categories or groups of activities for which the government traditionally makes grants and loans. The government is the source of moneys for the Funds and the principal activity of the boards is to entertain applications from relevant organizations for the subsidies, grants and loans and to determine the subsidies, grants and loans that will be made. (See "Major Revenue Sources", above.)

BELGIUM

Importance of Nonprofit Organizations

Non-profit corporations (associations sans but lucratif - "ASBL") form an important part of the health, cultural and social activities of Belgium. Although many organizations dealing with healthcare, education, cultural and social services are public services run and financed by the government, a significant number of hospitals, social service organizations, artistic organizations and other public service entities operate as ASBLs. Recent statistics show that approximately 35,000 ASBLs exist in Belgium. These include the following:

Religious (education, charity, etc.)	3,500
Scientific	1,000
Artistic	2,500
Leisure	2,700
Education	3,800
Health and social, etc.	5,000
Sports and other	<u>16,000</u>
Total	34,500

1. Character of Entity.

An ASBL may not distribute its assets or profits to Members or other private persons and must devote its principal activities to charitable purposes that benefit the public.

2. Type of Law.

ASBLs are created under the Belgium Special Act on ASBLs of May 24, 1921.

3. Creation and Governing Instruments.

Who May Create? Any persons, including legal entities, may establish an ASBL, but there must be a minimum of three Members.

Governing Instruments. The primary governing instruments are Articles of Association.

Government Filing. The Articles of Association must be published in the Moniteur Belge (Official Gazette) in order to become effective. No government approval is required to create an ASBL.

4. Purposes.

An ASBL may be established for religious, scientific, artistic, leisure, education, health, social or other purposes that benefit the public. An ASBL may not have a financial purpose, although a limited amount of commercial activity is allowed if it furthers the aims of the ASBL.

5. Governance.

Corporate Positions. An ASBL has Members, a Board of Trustees and officers. An ASBL may have both voting Members and non-voting Associate Members. The law requires a minimum of two Trustees on the Board.

Who Selects Members, Trustees and Officers. The Members are identified in the Articles. Trustees are elected by the Members and officers are appointed by the Trustees.

Certain Types of Trustees. Ex-officio Trustees are not allowed, but the Articles may provide that one or more Trustees will be presented by an outside organization.

Trustee Eligibility Standards. The Articles may set forth special eligibility requirements for one or more Trustees.

Powers. The Members hold certain fundamental powers, including the power to elect Trustees, amend the Articles, cause dissolution of the entity, approve the annual budget and veto Board decisions. The Board is entrusted with determining policy and providing management of the ASBL, subject to the veto of the Members. The officers are charged with the day to day administration of the ASBL.

6. Assets.

Ownership. An ASBL may own or lease assets but may only own real property in line with its purpose (e.g. the building in which its headquarters are located).

Transfer by Government. In most instances assets owned by ASBLs were acquired directly by the ASBL from third parties (either by purchase, gift or the sale of goods or services) and were not transferred to ASBLs by the government. However, if such transfers were to occur today, it is likely that the government would wish to install a certain degree of monitoring and control to make sure that the assets continued to be used for the applicable public service purpose. (See "Relations to Government", below.)

Dissolution. Since an ASBL is set up for a non-profit purpose, in case of dissolution its assets cannot be distributed to its Members (with some exceptions). Instead, the assets are usually given to another ASBL pursuing the same purpose.

7. **Major Revenue Sources.**

ASBLs receive operating revenue from the sale of services and goods (such as reimbursement from public insurance in the case of hospitals, direct payment by purchasers in the case of museum gift shops and tuition in the case of schools), contributions from donors and Membership dues. Government subsidies and grants are available, but to a lesser degree than in other countries. Some ASBLs also receive income from investment portfolios that have been created by endowment contributions.

8. **Capital Expenditures Sources and Capital Financing.**

ASBLs in Belgium generally obtain funds for capital financing through a combination of donor contributions and bank loans. Government grants and loans for capital projects are usually not available except for hospital investment and renovations. Tax-exempt bonds are not commonly used in Belgium to generate capital funds.

9. **Employees.**

Employees of ASBLs are considered private employees who are generally subject to the same laws and have the same rights as employees of for-profit companies.

10. **Relations to Government.**

Independence. There is no requirement that an ASBL have any relation or tie to the government. However, if the government sets up an ASBL, as the founder the government can decide the extent of its participation in and influence on the ASBL.

Tax Laws. Normally, no income tax is paid by an ASBL, unless the tax authorities declare that it has made a "commercial profit." In addition, an ASBL is not subject to property tax, except for a very small (0.17%) tax on the totality of its assets. Withholding taxes on ASBL portfolio income must be paid by the ASBL. ASBLs are exempt from the output VAT, but liable to input tax at the appropriate rates on purchases. Cash contributions to an ASBL are tax deductible by the donor and limited to 10% of the taxable income for individuals and 5% of taxable profit for companies.

11. **Conflict of Interest Restrictions.**

In general, Belgium law does not contain conflict of interest provisions relating to ASBLs.

12. Other Structural Matters.

An ASBL may be part of a system of two or more commonly controlled ASBLs and may operate more than one facility. However, an ASBL is not permitted to own or invest in a for-profit company.

13. Public Corporations.

There are some examples of public non-profit corporations in Belgium. Generally, their use is confined to activities that provide a broad public benefit, such as port authorities, central credit banks, public utilities and energy projects. These corporations are created and controlled by the government. All of the Board Members are appointed by the government. The Belgium name for these public corporations is "Establishment of Public Utility."

GERMANY

Importance of Nonprofit Corporations

In Germany there are private NPOs that take the form of corporations or associations. These NPOs provide services primarily in the areas of social services and culture. The Federal Association of Voluntary Welfare Agencies has more than 60,000 NPO members that employ about 750,000 professional staff employees. NPOs account for approximately 3% of the Gross Domestic Product.

In the health sector, approximately 51% of the hospitals are owned and operated by "Institutes," which are either part of government or government controlled legal entities. Another 35% of the hospitals are owned and operated by Church-related organizations, and 14% are owned by for-profit companies.

In the field of education, almost all schools are owned and operated by the government. A small number of private schools are operated by NPOs.

1. Character of Entity

NPO corporations and associations may not distribute their assets or profits to private persons and their principal activities must benefit the public.

2. Type of Law

NPO corporations and associations are created under Sections 21-79 and 80-89 of the German Civil Code.

3. Creation and Governing Instruments

Who May Create. Any persons, including legal entities, may establish an NPO.

Governing Instruments. The primary governing instruments for NPO corporations and associations are By-Laws.

Government Filing. The By-Laws of a corporation must be filed with the District Court where the corporation is located in order to become effective. The By-Laws of an association must be approved by the appropriate state agency to become effective.

4. Purposes.

An NPO may have as its purpose development and well-being of the public at large, health care, general welfare, youth welfare, environmental protection, education, culture, sport, scientific research, care of the poor or religion.

5. Governance

Corporate Positions. An NPO has Members, a Board of Trustees (in the case of corporations) and a Board of Directors (in the case of associations) and officers.

Who Selects Members, Trustees and Officers. The method of identifying the Members is set forth in the By-Laws. Trustees or Directors are elected by the Members and officers are appointed by the Trustees or Directors.

Powers. The Members hold certain fundamental powers, including the power to elect the Board, amend the By-Laws, cause dissolution of the NPO and approve the annual budget.

6. Assets

Ownership. An NPO has the right to own or lease assets in the same manner as a for-profit company.

Transfers by Government. In most instances assets owned by NPOs were acquired directly by the NPO from third parties (by purchase, donations or the sale of goods or services) and were not transferred to NPOs by the government.

Dissolution. In the case of dissolution, assets must not be distributed to private persons, but must continue to be applied to similar charitable purposes.

7. Major Revenue Sources

NPOs receive operating income from the sale of services and goods (such as reimbursement from public insurance in the case of hospitals, direct payment by purchasers in the case of museum gift shops and tuition in the case of private schools), government subsidies and grants, contributions from donors and Membership dues. NPOs also receive investment income if they hold an endowment fund.

8. Capital Expenditures Sources and Capital Financing.

NPOs in Germany generally obtain funds for capital financing through a combination of donor contributions and bank loans. Government grants and loans for capital projects are sometimes available.

9. Employees

Employees of NPOs are considered private employees who are generally subject to the same laws and have the same rights as employees of for-profit companies.

10. Relations to Government

Independence. There is no requirement that an NPO have any relation or tie to the government.

Tax Laws. Income from donations and investment income used for the charitable purposes of the NPO is exempt from income tax. NPOs are also exempt from gift tax and inheritance tax on contributions received by the NPO and from the property tax to the extent property is used for charitable purposes. NPOs are generally subject to the VAT output and input tax at a reduced rate of 7%. Donors are allowed to deduct contributions to qualified NPOs for income tax purposes up to a limit of 5% or 10% of taxable income depending on the nature of the activities of the NPO.

11. Conflict of Interest Restrictions

In general, German law contains liberal conflict of interest provisions relating to NPOs. However, the By-Laws may contain conflict of interest rules that are stricter than the minimum requirements under the law.

12. Other Structural Matters

An NPO may be part of a system of two or more commonly controlled NPOs and may operate more than one facility. An NPO may be a Member of another NPO.

13. Public Corporations

There are some examples of public non-profit corporations in Germany. Generally, their use is confined to activities that provide a broad public benefit, such as port authorities, central banks, public utilities and energy projects. These corporations are created and controlled by the government. They may be managed by a Board of Directors or by a single managing Director. In either case, the management is appointed by the government. In the health and education areas, generally public facilities are owned and operated through Institutes which are part of the government or government controlled corporations.

UNITED STATES

Importance of Nonprofit Organizations

Privately controlled nonprofit organizations play a very significant role in the United States. It is estimated that (i) 50% of all organizations (profit and nonprofit) in the United States are nonprofit organizations, (ii) 20% of all corporations (forprofit and nonprofit) are nonprofit organizations and (iii) nonprofit organizations account for about 8% of the Gross Domestic Product.

Many billions of dollars are contributed to charitable organizations every year. Almost every adult citizen is a member of one or more nonprofit organizations.

Over 1.4 million nonprofit organizations are recognized for special treatment under Federal income tax laws. Nonprofit organizations also provide employment for many millions of workers, especially in the fields of health care, education, social services and culture.

1. Character of Entity

An NPO is an organization that can conduct any lawful activity, but which may not distribute any of its income to its Members, Trustees or officers or to other private persons. An NPO is permitted to make a profit (i.e., a surplus) as long as the profit is not distributed as dividends or other income to private persons.

In general, there are two types of NPOs, charitable and mutual benefit. The primary activities of a charitable NPO must provide a public benefit or public service. Charitable NPO's include health care, education, religious, cultural, social service and scientific research organizations. The primary activities of a mutual benefit organization provide benefits to its members. This category includes trade and professional associations, social clubs, homeowner associations, political organizations and labor organizations.

Upon dissolution, any surplus assets of a charitable NPO must be distributed to another charitable NPO organization or to the state. Thus, the assets of a charitable NPO must forever be dedicated to a charitable purpose. However, upon dissolution of a mutual benefit NPO, any surplus assets may be distributed to the members of the organization.

The balance of this summary will be devoted primarily to charitable NPOs.

Charitable NPOs are usually corporations (but may also be trusts or unincorporated associations). A charitable NPO is generally a private entity that constitutes a separate juridical person under the law.

2. Type of Law

Charitable NPOs are usually created under the general non-profit corporation laws of any one of the 50 states.

3. Creation and Governing Instruments

Who May Create. Any person (natural or legal) may create a charitable NPO.

Government Instruments. A charitable NPO usually has two governing instruments, Articles of Incorporation and a Code of Regulations or By-Laws. The Articles are very brief and usually contain only the most fundamental provisions, such as the corporate name, identity of the initial Members and/or Trustees, the charitable purposes of the corporation, a dissolution clause and amendment procedures. The Code of Regulations is usually more extensive and contains the general rules of governance such as how and when Members meet and take action, how and when Boards of Trustees or Directors (the "Board" or the "Trustees") meet and take action, how committees of the Board meet and take action, how officers are selected, the power and authority of the Members, the Trustees and the officers, conflict of interest rules, reporting requirements, indemnification provisions and amendment procedures.

Government Filing. The Articles and amendments to the Articles must be filed with a state government department to become effective, whereas the Code of Regulations and amendments to it become effective merely by the action of the Members. Generally, state approval of Articles is perfunctory and relates only to confirming that the Articles contain the provisions that are required by law to be included in the document.

4. Purposes

The purposes of a charitable NPO may include health care, education, cultural activities, social services, as well as other charitable purposes that provide public benefit.

5. Governance

Corporate Positions. Charitable NPOs generally have Members, a Board of Trustees or Directors and officers. (Care must be taken so as not to confuse the position of Member of a charitable NPO and the position of member of the Board of Trustees. These are two distinct positions within the charitable NPO. It is possible, however, for the same individual

to serve as a Member and Trustee at the same time.) The size of the group of Members and the size of the Board is usually set forth in the governing instruments (and, thus, may be any size that the Members wish to set forth in such instruments). The officers' positions are also set forth in the governing instruments and usually must include, at a minimum, a president (chief executive officer), secretary (recording officer) and treasurer (fiscal officer).

Who Selects Members, Trustees and Officers. The identify of the Members, or the means of identifying the Members, is set forth in the governing instruments. The Members elect the Trustees. It is permissible for the Members to elect as Trustees persons who are Members as well as persons who are not Members. As noted, it is generally permissible for one or more Members to be elected to serve as Trustees. In fact, it is permissible for all of the Members to elect themselves to also serve as all of the Trustees.

Certain Types of Trustees. Under the Code of Regulations, officers may be permitted to serve as Trustees with or without vote. The Code of Regulation may also identify as a voting or nonvoting Trustee the person who is then holding some other specified office, such as a town Mayor (i.e., an ex officio trustee). In addition, most state laws also permit Boards to include honorary and non-voting Trustees if this is desired.

Trustee Eligibility Standards. The eligibility requirements for Trustees is completely flexible and is set forth in the Articles or in the Code of Regulations, as determined by the Members. Thus, there could be nominal and very general eligibility requirements or there could be very extensive and specific requirements, all as determined by the Members. Specific eligibility requirements could include such things as; (i) being a resident of a specific area or a Member, Trustee or officer of a specific organization; (ii) being a certain type of government official; (iii) being from a specific category of persons, such as consumers or disabled persons; (iv) being part of a religious group or order; (v) being part of a specific profession or trade, or (vi) some combination of the foregoing applicable to different Trustee seats in order to obtain broad relevant experience on the Board.

Powers of Members, Trustees and Officers. The Members are usually required by law to hold the most fundamental powers of a charitable NPO, such as the power to elect the Trustees, to amend the Articles and Code of Regulations, to approve mergers and reorganizations, and to approve the dissolution of the NPO. The Trustees make general policy and provide general direction for a charitable NPO, whereas the officers oversee the day to day operations and activities in a manner consistent with the law, governing instruments and Board policies. It is permissible for the governing instruments to reallocate one or more of the Trustee powers to the Members (if desired by the Members) and to contain limits and restraints on the powers and duties of the Trustees or officers (if desired by the Members).

Fiscal Management. Day to day fiscal management is usually the responsibility of the chief financial officer of a charitable NPO. This usually is a staff employee who works with the treasurer of the NPO.

6. Assets.

Ownership. Generally charitable NPOs own their own assets.

Transfer by Government. If a government body owns and operates a public benefit activity (such as a hospital) and wishes to privatize that activity, it may either transfer ownership of the pertinent assets to a private charitable NPO or it may lease such assets to a private charitable NPO under a long term arrangement. In either case, although the NPO conducts the charitable activities by using the pertinent assets, it can be required to observe certain requirements concerning the manner or use of the assets pursuant to terms set forth in the instrument of transfer or in the lease, as the case may be. When such a transfer of assets occurs, generally the charitable NPO pays little or no consideration for the assets (whether purchase price or rent) because after the transfer the assets continue to be irrevocably dedicated to a public benefit purpose just as they were when owned or possessed by the government. However, it is not unusual for the transfer agreement to specify the conditions for eligibility of some or all of the Trustees to assure community representation, or for the transferring government body to retain the right to appoint some (usually a minority) of the Trustees of the charitable NPO that receives the assets so that the government body can continue to monitor and have a voice in the use of the assets and the activities of the NPO.

If an individual donor makes a donation to a charitable NPO, the donor is allowed to make an unrestricted gift or to place certain lawful restrictions on the gift. These restrictions may control the purposes for which the principle of the gift (or the income it generates) is used within the charitable activities of the NPO. Such restrictions may be enforced by the donor or by the government in appropriate court proceedings.

Use of Assets. Although assets of a charitable NPO cannot be distributed to Members, Trustees officers or other private persons, they may be used to pay reasonable compensation for services or reasonable prices for goods and supplies and, under proper circumstances (see "Conflict of Interest Restrictions", below) even if the recipient is a Member, Trustee, officer or other private person. Upon dissolution surplus assets of a charitable NPO may be transferred only to another charitable NPO that operates similar charitable activities or to the state.

Restrictions. Generally, charitable NPOs own their operating assets free of restrictions on the ability to sell, lease or encumber such assets. The lack of such restrictions is consistent with the concepts of private enterprise and also makes it easier to obtain capital financing from outside sources. Of course, the assets are always subject to the general requirement that they be used for the charitable purposes of the NPO. In addition, various encumbrances and related commercial covenants and restriction may be (and often are)

imposed on NPO assets by lenders if the NPO borrows capital funds from outside sources. Further, the governing documents may subject asset transfer or encumbrancing to approval by a sponsor organization or a parent entity.

7. Major Revenue Sources.

The major revenue sources of charitable NPOs are from the sale of services (such as reimbursement for health care or fees for school tuition), membership dues, charitable donations from individuals and foundations, governmental grants and subsidies, and investment income (such as interest and dividends). Generally, governmental subsidies are not available for general operating expenses, and grants and loans are limited to special uses. See "Relations to Government", below. In the case of hospitals, reimbursement for services comes primarily from governmental programs for the elderly (medicare) and for the poor (medicaid), private health insurance, and direct payments by patients.

8. Capital Expenditure Sources and Capital Financing.

Charitable NPOs in the United States generally have several sources of funds available to them for their capital expenditures, variously including bond financing, bank loans, building funds generated from endowment fund income or depreciation allowances, donations from private persons, companies and charitable organizations and loans or grants from government. Of course, an NPO's ability to borrow funds is closely tied to its ability to generate a continuing surplus cash flow that can be used to repay the loan and the interest thereon and, in some instances, to obtain an appropriate loan guarantee from another credit-worthy source.

Bond Financing. Long-term bonds may be issued directly by a charitable NPO or, if the interest received by the bond holder is to be tax-exempt, will be issued through a state or local government agency, and sold through underwriters (e.g., investment bankers or banks) or placed directly with institutional investors. Much of the bond financing, particularly by hospitals and higher-education institutions (universities and colleges) is done through state and local governments in order to achieve lower interest costs resulting from the willingness of bond holders to accept lower interest rates because the interest received by them is exempted from U.S. federal income taxes and also frequently from state and local income taxes. These are generally referred to as tax-exempt bonds. Such financings are enhanced when they can be done on a group or system basis. See "Structural Matters", below. Frequently, bond insurance is provided which further enhances the quality of the bonds and permits further reduction of interest rates. The insurer guarantees that it will pay the full principal of the bonds and also the interest for a specified number of days after the primary obligor fails to pay, if that should occur.

Bank Borrowing. Charitable NPOs may also borrow money for intermediate terms of maturity through mortgage loans or other secured loans from banks. This is more direct and more simple than bond financing, but generally bears higher interest rates, most particularly in comparison to tax-exempt bond financing, and the amount of the loan is generally limited to 65% to 80% of the project costs, whereas tax-exempt bonds can generally be issued for 100% of the project costs.

Internal Funds. Commonly, capital expenditures for smaller cost items or projects, or for part of larger projects, will be generated from internal funds which may be derived from general operations, possibly by way of setting aside in a building fund or depreciation reserve fund an allowance for depreciation of capital assets (frequently factored into insurance reimbursement for costs of hospital services), or from investment income on endowment funds.

Donors. There is a tradition in the U.S. of substantial donations to charitable NPOs. Frequently such NPOs conduct fund raising campaigns expressly directed toward providing building funds generally, or specifically directed toward a particular building project (e.g. a new hospital wing, rehabilitation of an existing hospital building). The tradition of donations is reinforced by the federal and state income tax laws which allow deductions from taxable income for the full amount of such charitable contributions (up to 50% of gross income). Such deductions are generally available for donations that are made to nonprofit hospitals, and educational, cultural and social service entities, among others.

Loans and Grants From Government. On a much more limited scale, some charitable NPOs also receive low-interest loans and grants from federal and state government under various programs of a limited and frequently temporary nature. They are based on applications made to government and are generally awarded on a competitive or priority rating basis. This source generally provides a minor fraction of the funds needed for capital expenditures.

9. Employees

Generally, the officers and employees of charitable NPOs are private employees, whose rights and benefits are substantially the same as those of officers and employees of for-profit corporations and businesses.

10. Relations to Government.

Independence. The vast majority of charitable NPOs have substantially the same independence from government as have private for-profit corporations and businesses. Government is not involved in the management of such enterprises, does not appoint any of their board members and does not approve their budgets.

Special Benefits. However, because charitable NPOs (which generally includes hospitals, educational, cultural and social service enterprises, among others) receive various special benefits and privileges under various laws (e.g., tax laws, postal services, etc.), they are required to submit information reports annually to the federal government and are monitored by state agencies to assure continual adherence to their public service purpose, and that private persons do not benefit except as members of the public benefiting from their charitable activities. In addition, they tend to be restricted in the expenditure of their moneys for any political purposes including the lobbying of legislative bodies for the enactment of any legislative measures.

General Regulation. With minor exceptions, charitable NPOs are also subject to the general regulatory laws that apply to for-profit entities, such as safety, labor, anti-monopoly, and environmental laws, to name a few.

Tax Laws. With respect to the tax laws, generally charitable NPOs are exempt from income taxes (except for that portion of their net income, if any, derived from any trade or business that is not related to the charitable purposes upon which their tax exemption is based). If the NPO generates too much unrelated business income (generally more than 5 to 10%), it will risk losing its tax-exempt status. The real property used by an NPO for its charitable purposes is generally exempted from local property taxes. Likewise, charitable NPOs are usually exempted from excise taxes, such as sales and use taxes. As noted previously, donors may deduct contributions for purposes of the income tax up to a limit of 50% of gross income.

Tax-Exempt Bonds. As noted above, bonds financed by charitable NPOs through state and local governmental agencies are generally favored by exemption of the interest paid thereon from federal, state and local income taxes, which results in lower interest paid on such bonds.

11. Conflict of Interest Restrictions.

Because charitable NPOs generally raise some of their funds from broad solicitations of donations from the public and because of favorable tax treatment accorded to them, the law subjects them to restrictions against conflicts of interest and self-dealing that are more stringent than those applied to for-profit organizations but generally somewhat less stringent

than those applied to governmental officers and employees. In many instances contracts between an NPO and a Trustee or his or her company are permitted as long as they are for fair value and upon reasonable terms, there is prior full disclosure of the interest, and the interested Board member refrains from voting upon (or promoting) the entry by the entity into such contract.

These restrictions and prohibitions also apply to contracts between the entity and the families and business associates of the Board members and officers of the nonprofit entity.

It is generally permissible for the governing instruments to provide conflict of interest rules that are more strict than the minimum required by law, including absolute prohibition of any contract with Trustees, officers or other related persons.

12. Other Structural Matters.

Charitable NPOs are generally permitted by state law to own, lease and operate one or more hospital or other facilities within the state or in two or more states. Further, state law permits several of such legal entities to be under one control. This structure can be particularly useful in the context of borrowing money or issuing bonds in that the resources of several facilities or entities can be marshalled to provide stronger security for the credit thereby extended to the entity or group of entities.

State law generally permits charitable NPOs to invest in for-profit, separately-incorporated businesses. If the for-profit company is controlled by the NPO and the business of the for-profit company is large in relation to the charitable activities of the NPO, the NPO could risk losing its tax-exempt status. The income earned by the for-profit company is subject to tax, even if the NPO owns all of its stock.

13. Public Corporations.

Substantially all of the foregoing summary has been devoted to discussing private nonprofit entities organized under general nonprofit corporation laws of the states of the United States that provide public benefit services.

In the United States it is also possible for public service activities to be conducted by a government entity, such as the Federal government, or a state, county or city. These activities can be owned and conducted as a department of the government or by separately incorporated "public corporations" that are indirectly controlled by a governmental unit, usually by government officers appointing their governing boards. Public corporations are usually created by a special statute. Some are created by local governments at their option pursuant to a state law permitting their creation, such as some county or municipal hospitals or libraries. These special entities may receive subsidies from the state budget, or may

receive special local tax support, such as by special levies on real property voted for their specific purposes by the electorate.

Public corporations frequently conduct special or unique functions such as special national or state museums or theaters, major hydroelectric systems, turnpikes and major port operations. However, public corporations are also found in activities that are also conducted by privately controlled charitable NPOs, such as colleges and universities, public libraries, museums and hospitals. The vast majority of grammar schools and high schools are owned and operated by governmental districts, not by public corporations, although privately controlled NPOs also provide such levels of education.

Except for elementary and secondary education, public general libraries and some social services, the subsidized governmentally controlled public corporations constitute a small part of the total number of entities performing health, educational, cultural and social service tasks for the public.

CANADA

Importance of Nonprofit Organizations

Nonprofit organizations of the type described below are of great importance to the delivery of public services and benefits in Canada. NPOs also provide an important social function by allowing the widely geographically separated and ethnically diverse population to serve special interests of groups or regions. NPOs in Canada must be formed for special purposes of a social, religious, scientific, artistic, sporting, educational or similar character, and operated without financial benefit to their Members.

The legislation providing for creation of NPOs allows participation by the public in the management of the NPOs and in fact such participation is important for several reasons:

- generation of income through membership fees, sponsorships and grants
- control of management actions through membership meetings, resembling in the case of some types of such organizations, shareholder meetings
- ability of governmental institutions to measure interest of the public in the activities of the NPO for the purpose of deciding on grants

The corporate form of NPO is prevalent in larger projects, as it ensures continuity of the entity, allows for property ownership and insulates members and directors from liability. Federal legislation as well as the legislation of the provinces provide for the creation of corporations without share capital as a corporate vehicle designed specifically for NPOs. NPOs, however, exist in many forms:

- corporations without share capital
- corporations with share capital (commercial corporations) operated without profit to its members
- associations, which are not legal entities
- trusts
- corporations created under specific legislation allowing for incorporation (such as special purpose nonprofit housing companies formed under the Housing Development Act)
- corporations created by a special Act of Parliament, such as private hospitals or religious organizations

If one of these legal entities meets the requirements of the Income Tax Act, and registers under that Act, it will be considered a charity that may issue receipts for donations, which entitles the recipients to deduct the donations for tax purposes. There are over 60,000 registered charities in Canada, but the total number of NPOs is far higher. NPOs form an integral part of the system of public services and employ thousands of persons. They provide almost all of hospital service and the preponderance of higher education, much of the cultural facilities and a significant part of social services. They substantially relieve the government from the burdens of having to provide a large part of public service activities. A very high percentage of primary and secondary education and a significant part of social services are provided directly by governments below the federal level through governmentally owned and controlled schools and other facilities. The following describes the nature and characteristics of the nonprofit public service enterprises in Canada.

1. Character of Entity

The majority of NPOs are incorporated as "corporations without share capital" under the Canada Corporations Act or equivalent provincial legislation, for the purpose of carrying on, without pecuniary gain to their members, objects of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or other like object to which the legislative authority of the jurisdiction extends. Hospitals and health care facilities are included under such charitable purposes.

2. Type of Law

Those with functions in more than one province are usually founded under the federal laws of Canada, the Canada Corporations Act as specially supplemented and modified by Part II of that Act for corporations without share capital. Similar corporations are also incorporated under comparable laws of the provinces, such as the Ontario Corporations Act, and special variations on that Act for institutions such as hospitals.

3. Creation and Governing Instruments

Under the Canada Corporations Act, these NPOs are created upon application, by at least three persons, to the Department of Consumer and Corporate Affairs for the issuance by the Minister of Consumer and Corporate Affairs (Minister) of letters patent granting a charter. The application must state, among other things, the purposes of the proposed corporation and the names of at least three applicants who will also form the first board of directors (Board) of the NPO. The application must be accompanied by the by-laws of the NPO which include provisions, among others, for the conditions for membership of the NPO, whose Members may also include societies or companies, and for the appointment and removal of directors, trustees, committees and officers and their respective powers, for the audit of accounts, and procedures for amending the by-laws.

The application and by-laws must be approved by the Minister before he will grant the letters patent to create the NPO. Further, any amendment of the by-laws must be

approved by the Minister to be effective. The Minister is authorized to make changes from the application in granting the letters patent. The corporation is created on the date of the letters patent, notice of which is published in the official newspaper.

Unincorporated NPOs are not legal entities, and are generally used in small or risk-free projects (i.e. book club) or projects where no property will be held. By-laws may exist to establish internal rules, but documentation is usually not extensive. Trusts are established by a contract naming one or more trustees (administrators) of a trust fund.

Special purpose corporations are generally established under an Act governing a specific activity or sector of society. The governmental department or institution responsible for such sector is usually informed of, or required to review and approve, the application for incorporation.

4. Purposes

The purposes of an NPO under the Canada Corporations Act are one or more of those public service functions enumerated in 1 above or other like objects as reviewed and approved by the Minister; and its functions are limited to the purposes set forth in the letters patent, as supplemented, but also include functions that are ancillary or incidental to those purposes.

5. Governance

The governing body of the NPO under the Canada Corporations Act is a Board of Directors, the first members of which are designated in the application. Successors to such Directors are elected as provided in the by-laws, usually by the Members. The letters patent may not be supplemented to add to or reduce the objects of the NPO except as permitted by a by-laws provision approved by a 2/3 vote of the Members, and approval, through supplementary letters patent, by the Minister. The Members of an NPO elect Directors, approve major changes, such as changes to by-laws, and approve financial statements. The Members also approve appointment of the auditors of the NPO. The day-to-day operation of the NPO is conducted by such officers as are given the responsibility and duties under the by-laws. Such officers are appointed as provided for in the by-laws, usually by the Board.

Governmental bodies do not manage the affairs of such NPO, but NPO's are subject to reporting requirements and inspection as noted below.

6. Assets

NPOs that are legal entities may own, purchase, sell, lease and deal in any form of assets or property convenient to their activities. Such assets must be used in a manner consistent with the public service purposes provided in the letters patent by which the NPO is governed. Upon dissolution of an NPO, its assets are to be distributed to one or more NPOs serving comparable purposes.

7. **Major Revenue Sources**

The major revenue source of such NPOs are from charges made in connection with their public services, items sold, members' dues, charitable donations, and borrowings. Surpluses may be accumulated for the purpose of acquiring assets or otherwise carrying out the purpose of the NPO. Government provides some economic assistance to some NPOs in the form of grants, usually for special purposes or project. Institutions of higher education receive subsidy assistance based upon numbers of students enrolled.

8. **Capital Expenditure and Capital Financing**

In addition to operating surpluses and donations, the chief source of capital funds is borrowing, usually from banks, and sometimes issuing debt securities. Such NPOs have the same powers to borrow money and issue debentures and other debt securities as do for-profit corporations. Any such borrowing powers must first be provided for in the by-laws by a 2/3 vote of the Members. Security for such borrowing may be provided by mortgaging property or by hypothecating or pledging assets of the NPO or procuring guarantees of its Members or benefactors. They may issue perpetual debentures which are irredeemable, or redeemable only upon the happening of stated conditions.

9. **Employees**

The employees of NPOs are private employees, and their employment rights and benefits tend to be like those rights and benefits pertinent to employees of for-profit corporations.

10. **Relations to Government**

As noted above, the letters patent and by-laws are the governing documents and they, and supplements and amendments thereto, are subject to approval by the Minister. If an NPO conducts itself in a manner inconsistent with the purposes provided in the letters patent, it is subject to being dissolved by action initiated by the Attorney General of Canada.

NPOs must maintain books of account and keep minutes of all meetings. They must appoint auditors. NPOs must file annual reports or "summaries" with the Minister. Failure to file such reports or to make various other filings are subject to investigation by the Minister through appointed investigators with authority to compel the production of documents and obtain warrants. The Members may appoint inspectors with the same power to inspect any affairs of the NPO.

The NPO may register as a charity under the Income Tax Act, in which event its income is exempt from income taxes. Charitable contributions to a registered NPO are deductible from income in computing income taxes of donors.

In the case of hospitals in the Province of Ontario, the Ontario Public Hospitals Act provides an official government oversight procedure. The Lieutenant Governor may appoint an investigator to review and report on the quality of management and patient care at any hospital. If the Lieutenant Governor believes, based on the investigator's report, that changes are necessary in the best interest of the public, he may appoint a supervisor for the hospital for a period of time until terminated by the Lieutenant Governor. The supervisor provides advice and guidance to the hospital Board and administrators and may require the Board to do any act within its authority. If the Board fails to follow the written direction of the supervisor, the supervisor may carry out the requested act on behalf of the Board or Members of the NPO. Further, no act of the Board during the supervisor's tenure is valid unless approved in writing by the supervisor.

As noted above, under 7, governmental assistance is provided to some NPOs, particularly in the social, educational and cultural sector.

11. Conflict of Interest Restrictions

A Director has the duty to inform the Board at a meeting as early as is possible if he has any interest, direct or indirect, in a contract or proposed contract with the NPO and he must abstain from voting with respect to such contract.

12. Other Structural Matters

An NPO may operate multiple facilities or conduct operations consistent with its purposes. It may have branches and agencies. NPOs may amalgamate, enter into partnerships and enter into other arrangements with any other company, society, firm or person for any activity that is consistent with its purposes and that it could carry on alone.

An NPO may also enter into arrangements with governmental bodies that are conducive to the conduct of the NPO's purposes, and obtain from governmental authorities any rights, privileges and concessions for such purposes.

13. Public ("Crown") Corporations.

Crown corporations are corporations established by a federal or provincial government to carry out a public purpose. Because of their variety it is very difficult to describe the objectives of Crown Corporations of Canada in general terms. But for the purpose of this summary we must generalize with the understanding that there are variations not noted here. Generally, Crown Corporations are owned and controlled by the government and are included in the government budget or subsidized to the extent they do not generate sufficient revenues for their assigned tasks. Their functions range from those ordinarily conducted within government departments (such as the Economic Council of Canada) to activities

frequently conducted by private enterprise (such as the Canadian Broadcasting Corporation). However, most Crown Corporations are unique, each being selected to perform a particular task for the government. The public participates in a very limited manner in the management of Crown corporations through appointment of non-governmental persons to the boards by the relevant governmental body (the responsible ministry or government).

ČSR

Basic Information on Position of Organizations in the Nonprofit Sectors

The core of the laws being valid until the early 50s of this century was strongly influenced by Austrian tradition. The same applied to organizational forms in the areas that we are addressing.

Legislation often used the terms of the public institute, enterprise or plant. Their position or other features may be argued. Their provision was not clear. It should be noted that a considerable part of organizations providing public services, were not legal entities.

1. Characterization

Primarily, it is necessary to differentiate between an independent public institute and dependent public institute. The independent institute is a legal person, entity of rights and obligations. The dependent institute was connected with a budget of some legal person. was a part of capital of state or other public law corporation.

In contradistinction, the establishment of an independent institute was subject to a law.

However, under the form of law were created some independent institutes, especially public national schools, forced schools or communal cemeteries. Pursuant to the law, the form was necessary in case that the existence of such institutes was obligatory.

The relation of the public institute to the destined persons of the services was stipulated by the institutional by-laws.

The public utility corporation was, by its way and purpose, a designated and limited part of public administration. The public utility corporation could be operated even by a private person, who was empowered on the basis of a concession to operate a part of the public administration. Thus, the institute was a narrower term than the public utility corporation. The difference between those two terms consisted in the fact that the institute represented at any time a permanent establishment, while the public utility corporation could be of a temporary character.

Further, a distinction between the public institute and the public law institute had to be made. The first term meant that the institute was commonly accessible, but the contacts of citizens with it was governed by private law. The public institute's regime was provided by public law.

As an example of such institute could serve the saving banks pursuant to law No. 302 of the year 1920. Another example were hospitals, poor hospitals and some museums, as well as road fund pursuant to Sec. 1 of act No. 116/1927 Coll.

2. Legal Provision

The basis should be seen in Sections 26 a 27 of the General Civil Code of the year 1811. In respect of the institutes the provisions are very incomplete. The Princely Court's Decree of May 21, No. 541 was still valid.

3. Purpose of public corporation and public institute

Both entities were basically determined to perform power (state, public power) of authority in a decentralized way. As it used to be stated, they had an ability to order free people and force them to obey the order, including ability to issue concrete administrative acts with official decision character.

4. Legal Provisions of Health Care or Hospitals, respectively

The organization of health care of the first Czechoslovak republic followed with Austrian tradition. The organization was effected the most under Joseph II., who laid the foundation to an organization of public charity and organization of health and humanitarian institutes, which at that time were excluded from solely private care.

Since legal provisions of health care were rather scattered at the beginning of the First Republic, the preparation works on new codification were already started at 1919. The draft law from 1919 divided health institutes in state institutes and extra-state institutes. The law specified state's duty to establish health and humanitarian institutes and to cover operational costs. Simultaneously, also a self-governing principle was developed consisting in the fact, that some hospitals in regions were supposed to be under the supervision of administrative council elected by regional municipality. Extra-state institutes were supposed to be administrated by corporations, which would establish them, and as for the institutes with public law, the state administration was reserved broad power of supervision. This draft law did not become a law mainly because of a fear from financial consequences for treasury and instead the Law No. 242/1920 Coll., on temporary settlement of legal relations of health and humanitarian institutes was issued. Pursuant to the law, the state administration was in charge of supervision over all public health and humanitarian institutes and private institutes with public law, for whose establishment was necessary doctors' management or cooperation, in either medical or administrative respect. The law also nationalized hospitals and health and humanitarian institutes. It also gave an option to nationalize other public institutes or private institutes, respectively, in case it was required by extremely important state interests.

Public hospitals were especially important. The public hospitals were health institutes, which were given public law and which would, upon such law, accept ill people with no respect to their citizenship, religion and solvency and they would provide them with medical aid and full treatment within the period of their illness. The public hospitals were institutes, which were not public authorities, but which were still authorities of public administration and which would carry out public tasks of administration. The cabinet, as the only authority in the state had power to give public right to and withdraw public right from the hospitals,

upon the proposal of the Ministry of Health Care and after an agreement with the Ministry of Interior and the Ministry of Finance and after hearing of pertinent regional municipality.

Administration Character of Public Hospital.

Public hospitals were independent legal entities, e.g. public funds pursuant to the Act 19/1888. It was possible to be classified under the concept of independent public institute. Public hospital was not a municipal institute, it was independent legal entity not dependent on the municipality, which was administered under its status. In the Statutes of hospitals are mentioned duties of the founders of hospitals (regions, resp. municipalities) if concerning investment costs and their duty make non-interest bearing loans public hospitals in cases, when they appear to be in temporary hardship. Founder of the hospital (region or municipality) donated to the hospital buildings and necessary real estate for free of charge use for such period of time for which the public hospital, resp. regional hospital or municipal hospital will exist. (It should be mentioned that such modification was particularly in the Czech Republic, in Moravia and Slovakia other, but in the principle very similar modification was involved.)

As opposed to the above mentioned general public hospitals the state public hospitals and the regional public hospitals existed as well. These are essentially state institutes or regional institutes without special independent legal entity and their economic was part of the state or regional economic.

Bodies of Administration of Public Hospitals

Exact provisions in this direction had the Hospital Act and other regulations issued by the Decree No. 33/1890. Administration bodies of public hospitals were supreme administration and administration committees. Supreme administration is an authority, which makes quorum on important issues, concerning the administration of public hospital (budgets, anniversary bills, systematization of medical places, disciplinary law), administration committee was than an executive body, which performed the decision of the supreme administration and governed the administration of the hospital. Regional committee was authorized to institute for every public hospital its trustee, who had the right to vote in the administration committee as well as in the supreme administration. Otherwise the regional committee had a number of authorizations, specified in the law as well as in the Statutes of public hospitals.

Management of the public hospitals consisted particularly in properly assessed treatment rate, for whose assessment the budget of the hospital was the base. Treatment rate was divided into three classes. Dividing of hospitals into treatment classes was very significant for the tax purposes, particularly for exempt from the turnover tax. This special modification had the Prague General Hospital, whose administration was performed by the state administration. Uncollectible treatment fees were reimbursed by the regional funds.

Significant role was played by the Fund for Support of public hospitals and Medical Institutes in the Czechoslovak Republic. It was created by the Act from the year 1921 and executed by several laws. Under mentioned laws there was collected the seven percent additional charge to all direct taxes, which were subject to additional charges. From the

returns from the additional charge was reimbursed at first in the Prague General Hospital the amount 2.400.000 as a reimbursement for the additional charge return.

Private hospitals completed the network of public hospitals. Important role among them had hospitals of religious orders. They contributed to specialization of medical treatment and were effective means against certain diseases, particularly TBC.

In the Czech lands was in the year 1930 there were 91 public hospitals with 17.680 beds, in Moravia 36 public hospitals with 7.910 beds and in Slovakia 30 public hospitals with 6.096 beds. Around the year 1930 there were in CSR inclusive Subkarpatian Ukraine 161 public hospitals with 33.020. There were 280 private hospitals, convalescent homes, homes for pregnant and private institutes for mental diseases with 16.000 beds.