
Analysis of the Legal Status of Ukrainian NGOs

BIZPRO Project prepared six part series of Analysis of the legal status of Ukrainian NGOs. The purpose of the six analyses is to look at the special status of business associations, among the laws governing NGOs. The analyses also take a look at the proposed new legislation, and how it will impact business associations.

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LEGAL STATUS & FORM OF UKRAINIAN BUSINESS ASSOCIATIONS

I. Legal Status

As of mid-2001, the right of Ukrainian entrepreneurs to form and participate in associations are guaranteed by Ukrainian laws at various levels and by Ukrainian court decisions. International agreements ratified by the Verhovna Rada are also considered to be legislative acts of Ukraine (and other Ukrainian laws may not interfere with guarantees accorded by such agreements). Therefore the provisions of specific international agreements are also pertinent to understanding the legal status of Ukrainian associations.

It should be noted that such guarantees are granted to entrepreneurs proper. Although Ukraine has not yet approved a single framework law on business associations, attempts to limit the area of its regulation by only 'employers' associations' would narrow significantly the right of entrepreneurs to unite in general. In fact, most private entrepreneurs do not hire employees, and as such, are not employers. Besides, many persons for various reasons often prefer to skip official registration as entrepreneurs – but even this does not curb their constitutional right to create associations in order to protect and jointly implement their economic and social rights.

The Ukrainian Constitution

The Constitution of Ukraine holds several important guarantees for the activities of a business association. Article 36 proclaims the rights of citizens to create unions, including NGOs and professional associations.

Another important guarantee is the right proclaimed by Article 42 for every individual to engage in entrepreneurial activity that is not prohibited by law. It is a personal right that is to be protected against all attempts to block or limit the right of entrepreneurs to engage in business activities of their own choice and without discrimination on the part of governmental agencies, bodies of local self-government, or of any other persons.

Of special importance is the right, confirmed recently by the Supreme Court of Ukraine, of every individual for a free choice of his/her representative or protector of his/her rights (Article 59). Thus, all entrepreneurs are free to protect their rights on their own, or to authorize somebody to do so, including those associations of which they are members.

The guarantees provided in the Constitution do not require additional grounds or justification. On the contrary, an official or government body that would restrict the rights provided by the Constitution would have to prove that implementation of these rights is incompatible with other constitutional guarantees or infringes on the rights of others. Not only is the government restricted from limiting the exercise of these rights, Article 19 of the Constitution prevents the government from requiring any additional actions (or procedures) that are not specifically required by the law.

International Agreements and Treaties

The following are the principal international law acts regulating the activities of associations in Ukraine:

- the 1966 International Covenant on economic, social and cultural freedoms (995-042);
- the 1950 European Convention on protection of human rights and fundamental freedoms (995-004, ratified by Ukraine in 1995); and
- Convention 87 of the International Labor Organization on association freedoms and protection of organization rights (993-125, ratified by Ukraine on 11 August 1956).

The Pact and the European Convention guarantee the right to form associations, including trade unions, and this right can be limited only by law (not by an administrative bodies!) in the interests of national security and public order, or to protect the rights and freedoms of other persons. Note should be made that the guarantees accorded by this Convention are applicable to both natural and legal persons. As seen from the title of the Convention, 'fundamental freedoms' are not limited to 'human rights.' The Convention has provided a legal ground for many legal entities (for instance, editorial boards of printed media) to have won their case in court on the basis of this Convention.

The right to form associations is still relatively undeveloped in international law, but Convention 87 provides clear interpretations of what this right brings to business associations. These include:

- **Article 2** provides ‘to all entrepreneurs, without any preference, the right to establish organizations of their own choice, without prior permission from executive bodies, and also the right to join such organizations on the only condition of compliance with the charter of these organizations’.
- **Article 3** guarantees the right to freely develop charters and administrative rules of associations, to freely choose their representatives, to manage their staff and organize their activities, as well as to formulate programs and objectives. The article also prohibits participating states from restricting these rights or from any interference that hinders exercising these rights.
- **Article 4** forbids disbanding or temporary closure of an entrepreneurs’ association by administrative decisions (e.g., decisions of the Office of Attorney General, the Antimonopoly Committee or the State Tax Administration) without proper court consideration.
- **Article 5** proclaims the right of entrepreneurs’ associations to form or join federations and confederations, as well as the right of every association of this kind to become member of an international entrepreneurs’ association (the act of which will not trigger re-registration under Article 34 of the Public Association Act).
- **Article 6** stipulates that provisions of Articles 2, 3 and 4 apply to federations and confederations of associations of entrepreneurs.
- **Article 7** indicates that obtaining of the legal entity status by such organizations cannot be limited by requirements that contradict the contents of Articles 2, 3 and 4.
- **Article 8** requires that national legislation does not interfere with or violate these guarantees.

Since the Convention addresses both “organizations of workers and entrepreneurs”, the legal status of associations is the same as that of trade unions. This is an important point, as the Ukrainian Constitutional Court in 2000 found that several Ukrainian regulations contradicted with the Convention in regards to trade unions. This decision was prior to the passage of the law on employers’ associations – hence there are grounds to believe that the norms of said law may also violate the Convention (e.g., requiring mandatory registration).

Special Laws

Even though associations often act as enterprises or associations of enterprises (depending on their registration as either incorporated or unincorporated entities), their status as not-for-profit organizations is defined by such major Ukrainian legislative acts as the Law of Ukraine on Corporate Profit (334/94), the Law on Enterprises (887-XII), The Charity Organizations Act (531-XII), the Law on Employer Organizations (2436-III) and the Law on Citizens’ Associations (2460-XII).

Laws of Ukraine are sometimes unclear as to groups of individuals to be recognized as entrepreneurs. Thus under the Law on Enterprises, privately owned companies as legal entities are defined as independent business entities (entrepreneurs), otherwise all their shareholders and owners would also have to be recognized as entrepreneurs, even though under the Employer Organizations Act the ‘employer’ is understood as the company owner or the owner’s authorized representative, and not the business as a whole. It seems obvious that mere membership in a corporate union does not constitute entrepreneurial activity. These associations of legal entities are recognized as non-profit organizations under the Law on Corporate Profit in case unions, associations and other amalgamations of legal entities (1) are established with the purpose to represent the interests of their members, (2) do not perform any commercial activity and (3) are financed solely by the proceeds of membership fees (code 0012 of the Non-profit Register).

Administrative Acts

As a rule, the main constraint in establishing an association of enterprises is the need to obtain permission by the Antimonopoly Committee (887-XII, Art. 3 part 1). As will be shown later, this permission is not necessary for associations that do not engage in business operations, but only represent their members and protect their interests.

Another possible obstacle can be the requirements of the registration agencies concerning, for example, registration of entrepreneurs’ associations whose membership includes both individuals and legal entities. As discussed previously, the Public Associations Act does not offer a conclusive definition of legal entities participating in public associations. The matter is further complicated by the suggestion that legal entities as collective members could be represented by a personnel (or staff). First, this runs counter to the recognized principle of a free right to join and leave such associations (membership is approved or rejected by the majority of votes). Second, collective membership in an association can lead to a direct conflict of interest – an enterprise is to be represented by a group that has been traditionally considered as employees. In this case, it seems expedient associations to add a phrase in their charter that has proven useful: “Members of the association can be persons registered as subjects of entrepreneurial activities in (the given industry) and/or on (the given territory) or in (the given region)”.

Judicial Practice

An important court ruling on the guarantees of association activity is the decision by Constitutional Court of Ukraine of 18 October 2000 [#11-pn/2000 (case 1-36/2000)]. It concerns compatibility of articles 8, 11 and 16 of the “Law of Ukraine on trade unions, their rights and activity guarantees” with the Constitution of Ukraine. Note should be made of the following components of this ruling.

First, the rights of an association’s activity are not limited to the ‘territorial status’ of the organization (e.g., a local, national, or international association). That is, a regional association is not limited to working only on the regional level if its members have authorized it (by its members’ power of attorney or under agreements with other business associations) to represent their interests on, for example, the national level. This principle is addressed in Article 36 (part 3) of the Constitution.

Second, the Constitutional Court has confirmed the right to create an association on the basis of the free will of its members (irrespective of regional, territorial or industry characteristics) – and the absence of any requirement for employees of an enterprise to form an association.

Third, the Court recognized that certain government requirements (e.g., a ban on the creation of a new association if similar associations have already been established) and the attempt to set a cap on the number of members, are an infringement on the constitutional rights of citizens.

Fourth, any requirements of the compulsory registration of an association or explicit agreement of administrative agencies on such registration were declared equivalent to a preliminary permission for its activity, and therefore unconstitutional. Thus, for instance, if associations solely represent their members, no ‘permission’ required by the State Antimonopoly committee for registration and/or activities may be considered as constitutional.

Last, the Court confirmed the right of associations to create national federations or confederations and other alliances of associations at their discretion.

Thus, we can conclude that the Constitution of Ukraine, the international agreements and the decisions of the Constitutional Court concerning associations do not provide for the numerous constraints introduced by administrative practice regarding the creation and operation of associations not engaged in business activities. More detailed analysis of these legal guarantees will serve as a reliable tool to protect the rights of entrepreneurs and their associations.

II. What are the organizational and legal forms of associations?

Selecting the appropriate legal and organization form when establishing an association in Ukraine can have important consequences on the future operations and activity of the organization. An ‘association’ implies, by definition, that it consists of several persons or entities as members. The law does not set a minimum cap on the number of participants (founders and members) of any association. Under current Ukrainian legislation, membership-based business associations are limited to the following forms:

- Non-Incorporated:
 - Type 1: Public associations legalized via public notification (public partnerships);
 - Type 2: Representative Offices of Foreign Associations;
- Incorporated:
 - Type 3: Public associations legalized via registration (public associations);
 - Type 4: Associations of associations (both incorporated or non-incorporated);
 - Type 5: Charities;
 - Type 6: Unions of Enterprises.

What are the basic differences of those forms?

There are some norms that apply to all types of membership associations. Except for employers’ organizations, there is no requirement as to the minimal number of founders and members for local business associations. In practice, however, there should be at least three legally able persons for the registration to be valid. As for a nation-wide association, it cannot be registered unless it has offices in the majority of regions (that is, at least in 14 oblasts or cities of Kiev and Sevastopol).

Some norms are specific to the type of an association of enterprises. For example, state owned enterprises may not participate in its work, neither can enterprises of coal and power industries (under Article 3 of the Law on Enterprises). At the same time, the Law on Employers’ Organizations allows enterprises to form associations, irrespective of the form of their ownership.

Analyses Regarding Legal Status of Ukrainian NGOs #1

As a public organization, a business association has practically no constraints on its reorganization or liquidation. However, its participants and/or other subjects of entrepreneurial activity may not be its legal successor – only other non-profit organizations or the state are eligible to act in such capacity.

In contrast to associations of enterprises, NGOs are not currently subject to foreclosure procedures on the grounds of bankruptcy and decisions of the court of arbitration. Hence, it is only within the jurisdiction of courts of law to stop or suspend the operations of NGOs on the proposal of the prosecutor's office or other juridical body in case of violations of article 37 of the Constitution and of article 4 of the Law on the Associations of Citizens (both articles define illegal activities of associations, such as establishing military units, etc.). The operations of an employers' organization can be stopped or suspended by a court's injunction in the event of this organization violating its charter; the court then can also rule on the date of election of new managing bodies of such and organization.

The below table attempts to more clearly explain the various types and characteristics of business associations in Ukraine.

Common Types of Business Associations in Ukraine

<i>Type of associations</i>	<i>Public organizations legalized by notification</i>	<i>Representative offices of foreign associations</i>	<i>Public organizations legalized by registration</i>	<i>Associations of associations</i>	<i>Charities</i>	<i>Unions of Enterprises</i>	<i>Employers' Organizations</i>
Laws Regulating Establishment and Operations of the Association	Law on Public associations # 2560, 1992	Resolution by Cabinet of Ministers # 140, 1993	Law on Public associations # 2560, 1992	Law on Public associations # 2560, 1992	Law on Charities and Charitable Activities # 1531, 1997	Law on Enterprises # 887, 1991	Law on Employers' Organizations #2436, 2001
Legal Entity/Public Limited Liability	No	No	Yes	Yes	Yes	Yes	Yes
Equal Rights (One Person – One Vote)	Yes	No	Yes	Yes	Yes	No	No
Limited Distribution of Assets Among Participants	No	No	Yes	No	Yes	No	Yes
Limited Participation of Legal Entities	Yes	No	Yes	No	No	No	No

Below we provide some additional analysis of the two types of associations that choose not to register as legal entities. These are increasingly popular options among Ukrainian NGOs due to the difficulty of establishing other types of associations and additional pressures involved due to significant time losses and mandatory reporting procedures. Time-consuming registration and reporting procedures for registered public associations discourage many potential participants of associations, particularly private businessmen, from going through official channels.

In addition, registered associations are subject to control by numerous governmental agencies (tax administrations, statistics, registration and licensing agencies, local government bodies, prosecutor's office, fire hazard inspectorate, etc.). As a result of fines and duties levied by these agencies, many NGOs in Ukraine have to close their operations while others are often unable left with little funds to offer services to their members.

Associations Legalized via Public Notification

It is assumed that most acting associations operate as partnerships and do not care about registration. As a result, associations legalized via public notification have become an attractive alternative to registered NGOs. Such associations may include simple partnerships, ad hoc committees, and branch offices of registered associations. These associations can be made legal in less time and without payment of a registration duty, even though many problems emerge in managing such associations.

One related problem is that Ukraine recognizes partnerships only between legal entities or as associations of legal entities. Moreover, the current Civil Code prohibits joint activity and joint ownership between natural persons and legal entities. This means associations legalized via public notification cannot combine membership of both natural persons and legal entities.

For those interested in establishing such type of associations, the most useful approach seems to be conformity with the following norms that both are appropriate for both the operations of registered associations and associations legalized via public notification. (Additionally, these norms are consistent with the draft revisions to the Civil Code, which means associations following these guidelines will not require significant changes once the new Civil Code is adopted). Such norms include:

- two or more partners freely define the goals and the contents of the association in a written agreement consistent with current laws and which does not allow payment of dividends (in Ukraine, dividends obtained as a result of joint activities without creation of a legal entity would be subject to taxation as dividends);
- partners may offer their funds, pieces of property or ownership rights as their contribution (not their services or work);
- real estate and other property that is subject to obligatory state registration on behalf of one or several partners, but not to all of the partners;
- the agreement should specify the procedure for compensation of partners' expenses incurred in the interests of their partnership;
- the agreement should specify that each of the partners has the right to act on behalf of the association, unless the agreement authorizes several or all partners to act jointly (according to a written agreement or as a result of a power of attorney provided by the rest of the partners);
- partners cannot refer to lack of authority by a certain partner in his dealings with third parties on behalf of the partnership, unless they can prove his fraud or that the third parties have been aware or should have been aware of this lack of authority;
- partners will incur costs or losses proportionately to their contributions (whereas in non-profit organizations with the status of a legal entity – and one needs to remember this! – such contributions are deemed equal, and participates as a rule are not obliged to incur costs or losses if these exceed their respective contributions);
- partners will have access to the joint activity documentation;
- the agreement can provide for continuation of the activities of the association despite the termination of membership of one of the partners;
- partners are subject of joint liability for losses incurred and for third person liability in case of liquidation of the association;
- each of the partners is free to terminate membership in the association, but is liable for possible losses incurred by the association over a certain period.

Representative Offices of Foreign Associations

A special category is made up of representative offices of associations legalized in foreign countries (particularly where the terms are easier for legal entities to create an association). These offices have the status of non-residents, if they do not engage in other activities beyond representing the interests of the association and those of its members. As a result of this non-resident status, they are not required to pay profit tax in Ukraine and will have fewer constraints in terms of currency regulation.

The disadvantage for such representative offices is the far higher registration fee (currently this is equal to USD 500), the existence of offshore zones list that may lead to retained profit, and the need to carry out certain expenses in the country where the association has been legalized. However, these disadvantages can be mitigated if the foreign or international association pays the operating expenses of the representative office in Ukraine.

PECULIARITIES OF LEGALIZATION OF BUSINESS ASSOCIATIONS IN UKRAINE

In the process of establishing business-associations whose legal forms were described in the previous article, the development of registration documents is of critical importance. Some business-associations consider it to be a purely formal, "one-time" procedure, and as such use samples from others, turn for assistance to specialists not sufficiently familiar with the specifics of operation of nonprofit organizations, or, conversely, rely only on their own knowledge and experience. This kind of approach can often result in delays of registration, refusal to include it in the registry of non-profit organizations, as well complications in business association management and self-disbandment. These problems can be avoided if attention is paid to the following: first, understanding the legal norms of registration documents and second, understanding the various legalization procedures for business associations with or without the status of legal entity.

I. Structure and content of registration documents for a business association

The structure of registration documents (charters or regulations) is relatively established and is determined by laws on relevant types of business associations. The registration documents may contain also regulations related to peculiarities of establishing and activity of business associations and comply with the law of Ukraine.

Thus, the registration documents of employers` organization should contain regulations on members` responsibility in social relations; procedure for paying entrance, membership and target fees; procedure for receiving authorization from shareholders for establishing specific social norms in agreements that are obligatory for employers (minimal salary, inter-tariff correlation, minimal social benefits and guarantees, and operation of social assets)¹.

1.1. General regulations

As a rule, this section contains full and short name, legal form, indication of legal entity status and its requisites, legal address (location of management organs), as well as legislation act according to which a business association was created.

Business-association in a form of associations of entrepreneurs has to indicate a form of ownership, and the others should indicate their territorial status: international, all-Ukrainian and local (inter-oblast, republic in Autonomous Republic of Crimea, oblast, city in Kyiv and Sevastopol, raion, city, city raion etc).

It is prohibited to use individual names of state authorities organs, self-governance organs, as well as names of other legal entities or associations of citizens that are included to relevant registries.

1.2. Purpose of establishing goals, directions and forms of activity

This section should contain features according to which a business association unites subjects of entrepreneurial activity (industry, territory, amounts of sales etc) aimed at joint implementation, representation and advocacy of their economic, social, or professional rights. Also, it is necessary to indicate that the purpose of business-association`s activity is not for profit.

It is expedient to indicate in registration documents, in particular, that in order to implement its charter objectives determined by the current legislation a business-association might:

- *Represent and advocate its rights and rights of its members in state administration and local self-governance organs, courts, economic courts and courts of arbitration, as well as against other individuals and legal entities;*
- *Submit solicitations related to implementation of their charter objectives to state administration and local self-governance organs, as well as other individuals;*
- *Be a founder or shareholder of unions, associations and other voluntary associations aimed at assisting business associations in implementing their charter objectives;*
- *Found mass media and other enterprises, institutions and organizations that are necessary for their charter operation, ?s well as promote publishing as it is determined by law.*

¹ The Law of Ukraine on Employers` Organizations, N 2436-III of 05/24/2001 (Art. 11)

1.3. Shareholders. Terms and procedure for participation and its termination

Business-association always is a membership organization, and the law requires determining rights and duties of members regardless of its legal form. Since an issue of membership of legal entities in public organizations occurs often, it is expedient to use the wording like the following: "members of the association may be individuals that are registered in a territory of... as subjects of entrepreneurial activity in the sector of ...".

1.4. Rights and duties of shareholders

The registration documents should necessarily provide the right of business association members to delegate the representation and advocacy of their rights and interests according to the charter objectives of its activity.

It is worthwhile mentioning that members of business association are obliged: to fulfill requirements of its registration documents and resolutions of administration organs; submit information that is necessary for implementing charter objectives; pay fees in the determined order and size, participate in activity of business-association personally or through a representative.

1.5. Territorial organization. Creation of branches

Business-association with a status of a legal entity (besides charity organizations with local status) has the right to create its local units: branches that may be legal entities, as well as branches and representative offices without creating a legal entity. Opening branches and representative offices does not require its state registration, if registration documents of business association do not indicate other thing, but they have to be registered by tax service organ according to business association location. Business association in a form of association of entrepreneurs informs the state registration organ on opening units through inserting additional information in its registration card.

Units operate on the basis of charter or regulations approve by the management organ of business association. They should not contradict with its registration documents. Managers of branches and representative offices act on the basis of letters of attorney provided by executive manager of business association. Such order of management is also provided for units of foreign business associations in Ukraine.

1.6. Procedure for establishing and operation of administration organs. Authorities of administration organs

The legislation does not determine the organs of association management, except supreme management organs. However, as a rule, business associations have an executive organ that acts permanently (board or other collegial organ, or president or another manager), and inspection organ (revision commission or supervisory council).

The supreme management organ is the general assembly of business association members or representatives elected (seconded) by members. Members that did not participate in elections of a representative may second a representative personally based on properly certified letter of attorney, if it complies with the registration documents.

The registration documents should indicate the exclusive competence of this organ: making decision on approval of changes and amendments to registration documents; determining main directions of activity; use of property and costs, as well as delegating specific authorities to other organs and units; electing and recalling members of management organs; termination of activity of business association.

1.7. Sources of forming property and costs.

The procedure of their use, reporting, control, as well as implementing economic and other types of activity that are necessary for implementing charter objectives. Business associations may be owners of movable and immovable property, costs, non-material assets and property rights purchased legally from members, other individuals and legal entities from Ukraine, foreign states, interstate and international organizations. It is worthwhile to mention that a business association may also receive property from their members and other individuals to be used free of charge.

It is important to determine sources of property and costs of business-association according to the laws on taxation, because it determines the possibility for receiving a status of non-profit organization after its

disbandment.

1.8. Amendments and changes to the registration documents

Only the supreme management organ (general assembly of members) may make changes and amendments. In order to ensure stable work, it is worthwhile to stipulate that these changes are made by the majority as 2/3 of persons, who are present and participate in voting, and by preliminary submission or recommendation of another management organ.

Business association informs the registration organ on changes and amendments "within the term established by law". At present, it is the following: for public organizations – five days after adopting changes and amendments; for charitable organizations – ten days, for branches of foreign business associations in Ukraine – one month). This formula allows avoiding changing registration documents in case of each change of legislation.

Also, business associations have to inform the registration organ on the change of their location within seven days; failure to fulfill this requirement may even lead to abolishment of the state registration of association of enterprises.

1.9. Procedure for terminating this activity. Use of property after reorganization or elimination

Termination of activity is carried out through the registration and self-disbandment (by the decision of the supreme management body), or by the decision of the court or economic court (forced disbandment). As a rule, termination of activity requires the decision approved by the predominant majority (two thirds or more) of shareholders.

After reorganization or self-disbandment of a non-profit organization (excluding business-associations in a form of entrepreneurs` associations), its property is not distributed among its shareholders and has to be transferred to legal successors who are not subjects of entrepreneurship.

II. Procedure of legalization of business associations

Legalization (official recognition) of entrepreneurs` associations is obligatory and is carried out through its registration or notice on its foundation. In case of legalization through the state registration, a business association receives a status of a legal entity and will be able to open accounts in banks on behalf of its own.

The Justice Ministry of Ukraine legalizes business associations with international or all-Ukrainian status, as well as the branches of foreign business associations. Local justice departments, as well as executive organs of local self-governance legalize business associations with local status (including those in a form of enterprises` associations) by their location.

Officials from legalization organ bear administrative responsibility for violating terms of registration or requiring documents for registration that are not stipulated by the legislation.

Activity of organizations that are not legalized or were disbanded by force by the court decision is against the law. Managers of such organizations bear administrative responsibility, and in case of administrative fine charged repeatedly during one year they may be also subjects of criminal responsibility.

2.1. Normative acts determining the legalization procedure

Except the Law on Associations of citizens (N2460-???) and based on it special laws on certain categories of public organizations (e.g. employers), the legalization of business associations as public organizations, their unions or branches are regulated by decrees of Cabinet of Ministers of Ukraine on approval of the Regulation On procedure for legalization of associations of citizens N140 of 26.02.1993; and On procedure for collecting and sizes of fees for registration of associations of individuals N143 of 26.02.1993. The procedure for registering branches, departments, representatives and other branches of public (non-governmental) organizations of foreign states are determined by the Decree of the Cabinet of Ministers of Ukraine N145 of 26.02.1993. The Decree of the Cabinet of Ministers of Ukraine N382 of 30.03.1998 approved the Regulation on procedure for the state registration of charitable organizations. Legalization of business associations as associations of enterprises are regulated by laws on entrepreneurship (N 698-???) and on enterprises (N 887-???), as well as the Decree of the Cabinet of Ministers of Ukraine on approval of the Regulation on the state registration of subjects of entrepreneurial activity N 740 of 25.05.1998.

2.2. Documents to be submitted for legalization

List of these documents is not the same for business associations of various legal forms or different territorial status.

For legalization, all business associations and their branches should submit documents on providing legal addresses. If such address is given by a legal entity, it may be a guarantee letter to the organ of legalization on providing a legal address and making agreement on use of relevant premises after state registration of a business association. An individual, who is the owner of premises and who may be a shareholder of a business association, submits an application certified by a notary and signed by all individuals of a full legal age, who are registered in the apartment or a house and who confirm absence of objections, and the certificate ? 3 from the housing committee.

2.2.1. Public organizations that are legalized through the notice (type 1)

Based on the article 17 of the law 2460-???, business associations in a form of public organizations (except international ones), their associations and branches may be legalized by a written notice according to their territorial status. The notice should be sent by the registered letter to the Ministry of Justice of Ukraine, local justice departments, and executive committees of villages, small towns, city councils of peoples` deputies.

This notice should contain the same information as in the below application on registration of public organizations, and information on its founders. Registration fee in legalization through the notice is not paid, and the registration certificate is not issued. The legalized through the notice business association is included in the book of registries of public organizations that is maintained by their relevant organ of legalization.

2.2.2. Branches of foreign business associations (type 2)

The registration of departments, subsidiaries and other branches (except representative offices) with the Ministry of Justice of Ukraine requires the following documents:

- Resolution of the relevant management organ of foreign business association on establishing a branch;
- The registration documents (a charter) of foreign business association;
- Copy of a document on legalization of business association in the foreign state;
- Charter or regulation on the branch;
- Information on managers' composition of the branch (last name, first name and patronymic name, permanent residence place, year of birth, position or occupation, telephone number).

When registering, a representative of the foreign business association has to submit copies of registration documents and documents on its legalization in a foreign country, as well as a letter of attorney from the management organ to the manager of a representative office indicating additionally his/her citizenship and powers.

In addition to a certified by a notary application from the manager of representative office for registration, the originals of all mentioned above documents have to be legalized in the established order in consulates of Ukraine in respective countries or in the Ministry of Foreign Affairs of Ukraine. In addition, the translation of these documents into Ukrainian have to be certified by notaries that significantly increases the costs on legalization of representative offices of foreign business associations in Ukraine.

2.2.3. Public organizations that are legalized through registration (types 3, 4, 5)

Registration of public organizations requires the following documents:

- Application of at least three capable persons whose signatures are certified by a notary and containing the name, purpose of creation, legal form and location of management organs of a business association;
- Charter (regulation) in two copies;
- Minutes of a foundation meeting of founders or their representatives containing the resolution on establishing an organization, adopting its registration documents, electing or appointing members of management organs of business association and assignment to one or several participants to carry out its legalization;
- Information on founders (last name, first name and patronymic name, year of birth, place of permanent residence; for legal entities: full name, location and a copy of a document on legalization);

- Information on members of management organs indicated in the charter (last name, first name and patronymic name, year of birth, residence place, position or work place).

The application is attached by information on local branches of business association if there is (name, last name, first name and patronymic name of the manager, number of members, location), and on their legalization certified by minutes of foundation meeting of branches and signature of the executive manager of business associations.

International public organization has also to submit the properly legalized by consulates of Ukraine in foreign countries documents certifying the expansion of its activity in the territory of these countries (letters of attorney, other liabilities, minutes, copies of documents on legalization etc). Like for association with all-Ukrainian status, "the expansion of the activity in the territory of Ukraine" means for international business association the need to submit for legalization the information on branches in the majority of Ukraine's regions, in other words in 14 oblasts and/or cities of Kyiv and Sevastopol.

The law requires from the registration organs the compulsory registration of branches of public organization if its registration documents envisage such registration.

2.2.4. Peculiarities of legalization of unions of public organizations (type 4)

Legalization of unions of public organizations is same as for public organizations. Such union additionally submits a resolution of management organs of public organizations-members on their entrance to the union.

2.2.5. Peculiarities of legalization of employers` organizations (type 5)

In order to register employers` organizations, one should submit the same documents as for public organizations. Although, there are significant differences. Minimal number of founders of employers` organizations with the local status constitutes ten persons. Part of the minutes of the foundation meeting of the employers` organization is the **registry of persons holding a share in it**, where, in particular, there is information certifying a status of employer and the fact of using hired labor. This information is certified by a personal signature or a signature of a representative authorized by legal entity.

2.2.6. Charitable organizations (type 6)

In order to register charitable organizations, one should submit the same documents as for public organizations. However, the branches may create only registered all-Ukrainian and international charitable organizations (art. 7 of the law 531/97).

2.2.7. Associations of enterprises (type 7)

In order to register business associations as associations of enterprises, one should submit the following documents:

- a foundation agreement (minutes of the foundation meetings of founders or their representatives), containing the same information as listed in the section on public organizations;
- a charter (if it is stipulated by the foundation agreement or law);
- a registration card that is at the same time an application for the state registration;
- a document certifying the payment of fees by shareholders to the statutory fund (if any) in a size stipulated by law

2.3. Duration of registration procedures

Registration of business associations, both public and charitable organizations, as well as branches of foreign business associations may last for two months from the date the documents mentioned in the legislation were submitted.

Additional 10 days are added to that period for notifying founders on repeated registration or rejection in registration. Note that the resolution on rejection in the registration has to be published by the organ of legalization in mass media (art. 9 of the law 531/97, art. 14 of the law 2460-???)

In compliance with the Law on Entrepreneurship, registration of business associations as associations of enterprises has to last no longer than five working days, but may take place also within one day.

2.4. Size of registration fee and other compulsory fees in legalization of business associations

All business associations legalized through registration have to pay registration fee. Its size is determined by the Cabinet of Ministers of Ukraine, and by the middle of the year 2001 it constitutes:

- 1) public organizations, unions of public organizations and organizations of employers:
 - international – 5 non-taxed minimal incomes of citizens (hereinafter – non-taxed minimal incomes) and 500 USD or equivalent of this amount at the rate of the National Bank of Ukraine to the payment date;
 - all-Ukrainian – 20 minimal non-taxed incomes;
 - inter-oblast, republic in Autonomous Republic of Crimea, oblast, city in Kyiv and Sevastopol (including branches) – 10 non-taxed minimal incomes;
 - inter-raion, raion, city, rural, small towns (branches included) – 5 non-taxed minimal incomes;
- 2) branches of foreign business associations – 500 USD or equivalent of this amount in UAH at the rate of the National Bank of Ukraine to the date of payment;
- 3) charitable organizations:
 - international and all-Ukrainian – 10 non-taxed minimal incomes;
 - inter-oblast, republic in Autonomous Republic of Crimea, oblast, city in Kyiv and Sevastopol, inter-raion, raion, city, rural, small towns (branches included) – 5 non-taxed minimal incomes;
- 4) associations of enterprises – 7 non-taxed minimal incomes (21 non-taxed minimal incomes for speeded up registration within one working day).

Making amendments and changes to registration documents requires charges in amount of 30% of the registration fee, and for issuing a duplicate of a registration certificate (including branches of foreign business associations) – 10% of this amount.

2.5. Repeated registration

As a rule, repeated registration of business associations takes place in case of change of its name and legal form in the order established for registration of the respective type of the organization.

Repeated registration is necessary in case when changes of form of ownership by associations of enterprises or expansion of activity of public organizations to the territory of foreign countries. Business associations should submit documents for repeated registration within one month after making the above changes.

Requirements to repeated registration in case of other changes in registration documents may be considered to be groundless, if this is not directly stipulated by the legislation. For example, charitable organizations twice were subjects of repeated registration, first on the basis of adopting the Law on Charitable organizations in 1997, and later on because of making amendments to the Decree of the Cabinet of Ministers of Ukraine on non-profit tax from citizens in 2000.

2.6. Rejection of registration

The registration organ has the right to inspect information indicated in these documents. The registration of business association may be rejected if its name, registration or other documents submitted for registration contradict with requirements of the legislation of Ukraine. The resolution on rejection in registering should contain the grounds for such refusal. A complaint in a court may be made on this resolution. The registration organ informs on rejection in registration of associations of citizens in mass media, and absence of such notice may be a separate ground for appeal against this rejection in court (art. 16 of the law 2460-???).

2.7. Annulment of the registration

This is rather complicated procedure envisaged for certain types of business associations. Thus, a resolution on the state registration of the charitable organization may be annulled in the court in case of establishing by the registration organ the fact of falsification of the foundation documents. (Art. 8 of the Law 531/97).

The grounds for abolishment of registration of association of enterprises are regulated with more details on the basis of the court decision or economic court: recognizing as invalid or such that contradict with the legislation, their registration documents; implementing activity that contradicts with the registration documents and legislation; not timely (over seven days) notice on change of its name, legal form, form of ownership and location, being recognized as a bankrupt (in cases envisaged by the legislation); failure to submit tax declaration, other financial reports documents to the tax service organs within one year.

2.8. Termination of the activity through the forced disbandment

Liquidation of business through the forced disbandment may be carried out on the basis of the decision of the court by its location and by submission of the legalization organ or prosecutor on violation of legislation. In case of forced disbandment of business association in a form of association of enterprises the basis has to be the decision of the corresponding economic court.

These violations may start already in the process of legalization. So, after receiving a certificate on registration, the business association has within one month to fulfill lots of procedures related to registering it in other organs.

In particular, these are local state department of statistics (identification code), tax militia (a note on the charter), state tax administration (code of tax payers – no later than 20 days after receiving a state registration!), department of the bank (opening temporary account. And after producing a stamp and a permanent account, which during three days needs to be reported to both organs of tax inspection, and Pension Fund), an organ of permits system of the Ministry of Internal Affairs (permits on production of stamps), Pension Fund, Fund of Social Insurance against temporary incapability and Fund of Social Insurance against unemployment.

When these procedures are not followed, managers of business associations may be charged administrative fines by both legalization organ, and local tax administration, and, nowadays in addition to them, also by pension fund or social insurance fund. These charges along with availability of minutes on administrative violation may become a basis for further sanctions against business associations and its managers in case of repeated insignificant violation during a year. Therefore, time and complete fulfillment of procedures of legalization is significantly important for activity of business associations overall.

STATUS OF SHARE HOLDERS AND MANAGEMENT ORGANS OF A BUSINESS ASSOCIATION

I. Shareholders of business association

Previously we have mentioned that business associations in Ukraine may have only those legal forms that stipulate the existence of natural persons and/or legal entities-members. Members of non-profit organizations have equal rights, and members-founders have special rights only on specific issues (for instance, they appoint members of the supervisory council in charitable organizations). Therefore we will not separate founders from members. But do always shareholders of business association are only members? Analysis of the current legislation shows that not only members, but also employees, volunteers and other respective organizations have certain rights and duties concerning the participation and management of business associations.

1.1. Members of business associations

From the legal point of view, since the members of business association do not have corporate rights for the property, it is hard to differentiate them from buyers of one-time services of business associations, or donors that give donations and receive reports on its activity or fulfill free of charge duties of, let's say, members of the board. It would be correct to consider as members of business associations those persons, who provide them with resources in exchange to services of business association (not remuneration of their labor!) and? **at the same time** participate in the activity of its management organs. It complies with the requirements of the legislation saying that main issues of the activity of business associations should be solved at the meeting of all members or their representatives. However, such participation is a voluntary one and often is not fixed, like in case with public organizations. Therefore there is a feeling that membership in business associations cannot be determined from the legal point of view, and some organizations claim to have several thousands of members, which is hard to check by documents. It is clear that it can have no influencer on their public impact, but respected business associations should rely on fixing it in documents – either through making an official registry of members either in organizations of employers, or in register of fees payment determined by a business association.

To certain extend, legislation of Ukraine regulates composition of members of business association. Members of associations of enterprises may not be state enterprises, enterprises of coal mining industry and energy sector. Members of charitable organizations may be capable individuals, foreign citizens and persons without citizenship, as well as legal entities, except organs of state administration and local self-governance, and budget institutions and enterprises that are subordinated to them. Membership of legal entities in public organizations is not determined clearly, although the laws on certain types of public organizations refer to legal entities. Thus, organizations of employers can have among their members owners of enterprises regardless of their ownership form, type of activity and sector, or an authorized by them body. Individual entrepreneur, who hires employees, may be an employer, and, respectively, a member of a relevant organization.

1.2. Rights and duties of members

In particular, the law of Ukraine on employers` organizations envisages certain guarantees for members of similar organization that were applied also to the status of members of other business associations:

- Entrepreneurs may not be forced to enter business associations or be limited in rights for belonging or not belonging to any business associations;
- Each member of a business association has the right to leave it any time in the order determined by charter;
- Members have equal rights in solving all issues of its activity regardless of their status, property amount, economic performance and other signs;
- Members of business association have the right to receive updated and full information on its activity and get familiarize with the materials on such activity;
- Apply to court for protecting their rights in case of implementing activity of business association that contradicts with the charter (and here the court may determine the date of elections of management organs of business association and/ or terminate the activity of business associations before implementing the court decision. Therefore this norm, from one side, seems to assist in protecting rights of members of business association, and from another, allows to terminate activity of "inconvenient" business associations on legal basis).

However, the legislation does regulate duties of members of business associations except implementation of requirements of the charter and fees payment, if the charter stipulates it. In practice, one may

distinguish several additional most typical duties of members of business associations: implement resolutions of management organs, submit information that is necessary for implementing charter objectives; popularize ideas, goals and activity of the Organization; participate in the activity of business associations personally or through the representative.

One more important issue is the possibilities of a business association member to appeal a decision of its management organs. Only the law on organizations of employers (art. 33) contains special norms concerning the right of its members to appeal to the court if the management board carries out the activity that contradicts with the charter and legislation of Ukraine, as well as violates interests of members of the organization.

II. Management organs

Probably entrepreneurs are rather vulnerable towards imperfect structures and procedures of the management, unlike any other social group. As a rule, they are aware of the need to introduce best procedures in their activities. However, it is not always the case in business associations, sometimes due to lack of personal incentive and responsibility, some times due to poor understanding of specification of procedures of management in non-profit organizations. It is clear that it is hard to insert "the management ABC" in this document, however it is possible to highlight some vital problems and give a hint on how to solve them.

Identifying the structure and procedure of management of business associations in Ukraine is mainly in competence of its charter documents. Thus, the law on associations of citizens almost does not regulate the structure and authorities of management organs. Only the article 23 determines the competence of general assembly of members of business association (public organization) or their representatives, in particular, the right for ownership or property. Also the draft of the new civil code practically evades the management structure and procedure.

Despite the legislation being insufficiently regulated, the three level structure of management of public organizations has been formed in Ukraine, and namely:

- *The supreme organ – **assembly of participants (representatives of member)***, who have the right to approve the charter and amendments to it, elect or appoint members of other management organs indicated in the strategy of whole activity of the organization, approve its programs, solve issues of reorganization or self-disbandment of business association, etc;
- *Collective representative organ that acts permanently – **board, committee, or council***, whose authorities are determined by charter documents;
- *Manager of the organization – **head of the board (president, director)***.

In addition, registration organs, as a rule, require from public organizations with the status of legal entity to create a revision committee or other similar organ that controls the proper use of costs of business association. As for the charitable organization, the legislator stipulated the existence of obligatory administrative and controlling organ of management – supervisory council, whose members are appointed by founders.

In order to ensure the current activity, also the administrative-executive organ may act, and the director or president heads it. The charter also determines authorities of this organ.

Representative offices and branches of foreign business associations personally are managed by the director who was appointed by its management organ and who acts on the basis of the letter of attorney issued by this organ.

The legislation stipulates the personal responsibility of the manager of business association, who has the right to sign financial documents and hire employees, for violating legislation on taxation and labor, and also for overdue registration with state management organs.

III. Committees and other auxiliary organs

Ukrainian business associations often are skeptical about involving their participants or other enterprisers if they do not receive remuneration to the activity of their auxiliary specialized organs. However, many entrepreneurs feel themselves to be competent in some branch, which makes sense for them to participate in business associations in general. If to influence on the policy of business association, such entrepreneurs for various reasons cannot or do not want to, then ability to participate actively in solving certain issues may become a valuable resource both for business associations, and for the shareholder himself.

Due to the committees, the staff employees of business associations improve their awareness with realities in the sector, profession, community or group of entrepreneurs, whose interests are represented by business association. Committees are efficient for associations, representations, incentives, coordination and communication of certain individuals or groups of business associations' members. Committees are also a good school for managers of association.

Disadvantages of these committees are also obvious. These are additional expenses of time and costs for business trips and preliminary preparation. If members consider these expenses to be groundless, work of committees becomes inadvisable. The committees often derange the work schedule caused by lack of coordination of opinions and procedures, nobody wants to happen "in circles" of somebody's decisions. Several leaders in one committee can quarrel with each other. These risks should be thoroughly weighted, but to avoid formality in work of committees.

Committees are distinguished by their function and duration of work. By duration they can be divided into "permanent" and "special". Permanent committees fulfill the current functions or permanent programs of business associations for the undetermined period of time. Special committees tackle one task and when it is solved these committees are disbanded. Sometimes they are called "working groups".

By function the committees can be distinguished as *administrative, project, problem and communication*. However, some committees function in several spheres. Administrative committee determines the organizational procedures related with management, working methods, finances, procedure rules and membership issues. The draft committee researches and recommends principles and methods of work on certain program or direction of activity (e.g. public relations, marketing, advertisement, survey, education, statistics, relations with the government, or employees). Problem committee considers new problems and evaluates expediency of a new direction of activity of business association. Its mission is in capability to analyze carefully proposals, coordinate conclusions and submit relevant recommendations. The communication committee is created as needed, for establishing cooperation with other business associations, government, as well as certain interested groups.

Members of the committee shall possess the following qualities: incentive in achievement of purposes of business associations; being prepared for a free exchange of opinions and recommendations; respect to the established procedures; professional prestige and competence; initiative; capabilities to participate in the work of committee; clear understanding of the need of cooperation with the staff employees of business associations.

The number of the committee has to be possibly minimal, especially if it does not fulfill research functions. The majority of professionals think that acceptable number of the committee is from three to nine members. For the final determining of the committee one pays attention at whether various types of business associations members are presented; succession is ensured, in other words, whether one or several members are working there who previously worked in the committee, and also whether the rotation of members is ensured.

As a rule, the committee members are determined by the approval of the supreme elected manager of business association. Sometimes, the committee's members call a general assembly from the proposed to them list of candidates. Finally, the committee members may be elected or appointed by recommendation from other organs of management or business association members. It is more flexible to determine the procedure of appointment through the procedure rules of business association, but not their charters.

At least one staff employee with the advisory voice has to be present at the meetings of the committee. Such employee has to know well the principles and specific details of work of a business association and committee, as well as topic of the meeting. Reports and recommendations of the committee should be fixed in the minutes that have to be accessible and understandable as much as possible for all members of business association.

IV. Procedure rules in management organs

Procedure rules are extremely important for the management organs of business associations even if they are not written. In the majority of organizations it is not necessary to fix them but if the members or branches are numerous, then it is expedient to adopt separate documents containing the procedure rules: they are changed more often and are more detailed, than they can be written in registration documents of business association.

It is worthy to start with determining dates of opening and closing of meetings of management organs, except the permanent administrative organ. These meetings may be continued or shifted, or temporarily interrupted and renewed later within the period determined by relevant management organ. It is

obligatory to determine the terms of timely notice on time and location of meetings: this rule often is violated in business associations having branches in various regions. After notice in several days before the meeting, one may submit solicitation on including additional items to the agenda. Persons that submit their solicitations may submit along with it also an explanatory note and a draft resolution. Such note is an obligatory foe being included in any new and additional items concerning the financial activity.

The previous agenda of the meeting should include: reports of management organs, all items, consideration of which was approved by previous meetings, all items, including of which was solicited by any management organ, branch, shareholder or its representative; all items that refer to financial activity during the last current and next fiscal year. Participants of the meeting, if other is not stipulated by law, have the right to distribute the items, and namely: to unite the related items in one; transfer it for consideration to other management organs; transfer the item for consideration to the next session, refuse from consideration of the relevant item.

Lots of problems occur in determining the composition of participants of the meeting. As a rule, the members of business association jointly or itsd branches separately may appoint or elect a certain number of its representatives. Some persons may be invited personally for the assistance to participants or the meeting in general (advisors, experts, witnesses, translators, other persons, who are not members of business association etc). The invitees or the present persons at the meeting personally or as observers from organs of the state administration, local self-governance, trade unions or labor collective may not be representatives of other participants of business associations, even if these persons are its members.

Business associations often experience manipulations concerning applications from new participants wit the purpose of crating an artificial majority of voices and making a decision. Following these simple procedure rules will help to avoid it. Each person who wants to become a member of business associations submits an application to the manager of its permanent organ in advance and in acceptable way, which indicates acceptance of the charter obligations, and also a document on payment of entrance or membership fees (if it stipulated). If the permanent organ decides to accept an applicant, then by the request of any shareholder, the supreme management organ has to consider the issue, whether the applicant is capable to fulfill the charter obligations. The permanent organ may also to postpone the consideration of the application till the next meeting of the supreme management organ, and it informs the applicant within certain period of time.

What are the conditions of the validity of resolutions adopted by the assembly? First of all, it is a quorum: the chairman of the assembly may open debaters if a certain number of shareholders or their representatives are present. Adopting any resolutions, except proposals on the procedure, requires the presence of the majority of shareholders or their representatives. This would allow legally scheduling the meeting for another time, and then the resolutions may be valid with the presence of any number of shareholders. The chairman of the meeting as a rule provides the permission to the speech according to the turn of applications. Representatives of management organs may receive this permit beyond the turn for explaining conclusions. If the time or number of speeches is limited by the decision of the meeting, and a shareholder used the proper limits, the chairman of the assembly has immediately to call him for order.

Regardless of the order, submission of any proposals and amendments, the following proposals need to be considered immediately: breaks or closing of the meeting, breaks or closing debates on certain item. The chairman of the assembly immediately makes and announces the resolution on proposals concerning this procedure. As a rule, none of proposals or amendments should be considered, if each shareholder or representative did not receive it at least in twenty-four hours before the meeting. However, the chairman has the right to allow the consideration of proposals concerning the procedure, even if they were received on the day of the assembly. If the proposal or amendment was approved or rejected, it should not be considered repeatedly during the same assembly in a different way than by resolution adopted by the majority in two thirds of participants that are present and participate in voting.

As it was mentioned already, the procedure of coordination of resolutions follows a simple principle: each shareholder of the assembly or its representative has one voice. These procedures are of a great importance for the quality management of business association. While voting they count votes of persons who are present and participate in voting (in other words, do not abstain from fixing their resolution). Voting forms are diverse (verbal, written, by movements etc). Expedient are the speeches on motives of voting in order to formulate the proposal more precisely, as well separate voting on proposals and amendments: the first voted is the amendment that is the most different by content from the initial proposal, it is respectively followed by amendments that differ less from the proposal, and after voting on all amendments, they vote on proposal. Finally, one should count invalid votes and fix the results. Otherwise, any decision may be appealed, which is unsafe for employers` organizations considering the norms of the respective law. Often the number of votes that support various proposals is the same. Then

the proposals on any issues except from elections of officials are considered to be rejected. If votes of persons who are present and participate in elections are distributed equally, then the chairman if the assembly schedules the repeated voting.

The term of authorities of officials as a rule should not exceed three years of the non-stop possession of the same post. Elected officials enter the position or confirm their acceptance right after approval of elections results. Similar rule does not contradict with the right to reelect: officials whose authorities are coming to an end, may be reelected immediately, dive the charter of business association or procedure rules do not determine something else. If the elected official terminates its membership in a business association before termination of its authorities, then on the next assembly of the management board that is competent to elect such person, additional elections of the respective official for the rest of the term of its authorities take place separately.

While electing at the same time several officials sometimes they follow the parity representation (rules contain the list of regions, groups of enterprises or other groups of shareholders who have to be represented in the management organ). Nomination of candidates for filling one position takes place through nominating yourself (no later of the certain period before elections) through notification by letter or other adopted technical tool. If two or several officials need to be replaced through election, then each shareholder of business association may propose such number of candidates that does not exceed the number of positions through notification by letter or acceptable technical tool.

Voting takes place, as a rule, through moves, such as raising hands or shareholders standing up. Each participant may require roll-call vote. Roll-call vote takes place by alphabet or by other order of names (last names) of shareholders, starting with the participant determined by the chairmen of the assembly by casting of lots. Each shareholder or his representative has to indicate in the bulletin "yes", "no" or "abstain", and these responses have to be added to the report of the assembly. Often it is expedient to conduct elections of the officials through secret vote (mail is possible), if the supreme organ of the management does not make the decision, with lack of objections of any from participants of business association or their representatives, not to conduct voting on the agreed candidates for filling one position or several positions.

Elected are candidates who by the first voting received the majority of votes indicated in the charter of votes. If there are no such candidates by the first voting, then in the second voting participate those candidates who received the biggest number of votes. If after the second voting the candidates will not receive the necessary majority f votes, then additional voting takes place on the number of candidates that was indicated by the assembly, and it should not exceed the number of corresponding positions more than twice.

Often business associations have vacancies for various reasons that may harm its activity. Therefore the following rule is useful: if the elected official is not capable to fulfill his duties without breaks during the term indicated by the established term then the relevant organ of the management has to appoint for a vacant position a person who meets all the indicated requirements for the period of incapability of the elected person to fulfill his duties, but no later than before the day of next elections or additional elections. It also allows including to the composition of management organ the persons who represent business association at various events and may receive remuneration without tax problems.

Special rules of the concordance of resolutions are applied, as a rule, for the proposals on amendments to the charter. Most often they require making a previous speech or positive conclusions of the controlling organ, and also qualified majority of votes (two thirds of the general number of participants or even more), in order to avoid unjustified or discriminatory amendments.

It is expedient to determine in procedure rules also the types of documents drafted by business association (drafts and working materials; speeches; applications; recommendations; minutes; resolutions). Permanent organ is responsible for obtaining it, keeping, translating, copying and disseminating. One should also set up margin terms for consideration of documents and terms of responsibility for their violation (apparently, referring to the legislation on appeals of citizens will be insufficient for activity of business associations). Also it is expedient to develop forms of minutes, job descriptions of members of management organs, as well as registration forms for participants.

One more serious issue often causes problems in business associations. One should determine the only organ or person authorized to make on behalf of business association official notices, statements and refutations, submit official versions of documents, send information to mass media and documents with the limited access for shareholders of business association and its management board. Otherwise the opinion of business associations may be identified with o pinion of certain members, moreover if the latter have the best access to the relevant mass media.

Often there are circumstances that require explanation, change or termination of certain procedure rules. It would be good to warn that such actions have nothing to do with assembly where they were adopted: it is better to postpone resolving complicated issues rather to rule the procedure by temporary emotions.

Finally, the procedure rules oblige to warn on predominant force of the status of business association: if the regulation of its charter regulating similar actions of management organs differ from the procedure rules, then regulations of the charter should be applied.

V. Staff employees or volunteers?

Each business association that has to fulfill the permanent work faces many usual and extraordinary issues that require time and certain qualification. And here occurs an eternal dilemma – to hire employees or experts with your own costs or to share the risk with other investors named volunteers? The right solution of this dilemma has a great influence on the activity of business association, as well as its members and clients.

Advantage of the staff employees compared to volunteers is the permanently control from the side of business associations over the process of implementing and quality of works, and in certain responsibility of employees over the failure to fulfill or inappropriate fulfillment of these works. However this requires additional costs not only for salaries, but also relevant taxes and obligatory fees, personnel and financial report. Business association bears normal responsibility for the delay of salaries and payments to the budget. Even if it does not have costs for paying at least minimal salary, fees to Pension Fund and other social funds should be paid for employees anyway. Speaking in other words, budget of the business Association for the remuneration should be not less than 500 dollars per year, even if it has the only staff employee or consultant.

Therefore small or newly created organizations are willing to involve volunteers who instead of salary will gain professional experience (like students) or exchange their time and services for other non-property rights.

It is true though that a legal status of volunteers and volunteers activity was determined only in the Law of Ukraine on social work with children and youth ? 2558 of 21 June 2001. It was the first law to determine in Ukrainian legislation the status of volunteers as persons who carry out *voluntary, charitable, non-profit and motivated activity that is socially useful*.

However, this definition does not cover the legal regulation, let's say, on taxation and social insurance of volunteers. For example both employees, and volunteers who are members of management organs of business association, as well as persons, who act on the basis of the commission contract, do not include in the composition of their taxed income compensation payments: per diem (including for meals) for the period of staying on a business trip; expenses for participation in symposiums and conferences on the main activity of business associations; payments within the limits of depreciation of equipment and other property belonging to them, that is used for business needs. Volunteers and the rest of individuals have the right to receive the target and non-target charitable assistance, as well as aid or prizes (prizes) from any organization one time per year and costing up to one living minimum standard (331 UAH). Often volunteer's activity is related with certain risks, and volunteers may receive also payments on volunteering insurance at costs of business association.

Issue on the status of volunteers in business associations is contradictory. Labor relations have two significant components: payments and subordination to representatives of owner. If the work is for free. And there is subordination like at elected positions in management organs of business association, than labor relations do not occur at all according to the law. The work on elected paid position is not the basis for concluding a labor contract, and disputed on dismissing from such position by the decision of business association management organs that have elected such persons are not the subjects of consideration in the court according to the labor legislation.

In other words, volunteers even at elected paid positions should not make labor contracts if other thing is not mentioned in the charter. However, the law clearly determines that the labor relations occur on the basis of labor contract and in order to conclude it as a rule neither contract, nor decree are needed – it is sufficient to let a person actually to work (instead labor contract may be concluded only in cases and with those categories of employees who are mentioned in laws of Ukraine).

Volunteers' activity as a rule is a subject of norms of such contracts as contracts of commission, fee services, free storage etc. Volunteers should fulfill the service personally. Even if the charter documents of business association or agreement stipulate the right of volunteer to shift the fulfillment of another person (let's say, by the letter of attorney of members-volunteers of management organ), than it will anyway be responsible for full and proper services according to the Ukrainian laws.

According to the current civil code the following rules are applied to the responsibility of volunteers:

- The damage has to be reimbursed by a person who is guilty in it; if the damage is done on the guilt of both volunteers, and business associations, then they have a solidary responsibility against the victim;
- Business association has to reimburse the damage done on the guilt of members of its management organs during the fulfillment by them of their labor or service responsibilities;
- Business association reimburses the damage done to it by illegal actions (like carrying out certain activity without receiving a certain license), and in case of doing a damage by sources of increased safety belonging to them (like auto car);
- When liquidating the responsibility for reimbursement is taken by successors, and when they are absent, then the amount of these payments is capitalized according to the rules of the state social insurance and is considered when liquidating the property of business association.

Considering this, one may distinguish two types of volunteers: persons elected on unpaid elected positions in organs of management of business associations, and also persons that provide unpaid services to business associations or fulfill unpaid works, in other words donors.

It is obvious that before adopting tax and new civil code some issues on legal status of shareholders and volunteers remain unregulated to certain extent. However, this obstacle should not prevent Ukrainian business associations to use the existing legal possibilities for development of membership and voluntary activity as their most important resources.

NON-PROFIT STATUS OF UKRAINIAN BUSINESS ASSOCIATIONS

When a business association decides to register, obtaining the special status of a “non-profit” is not automatically a part of the registration process. Rather, the register of non-profit organizations is maintained separately, by the State Tax Administration of Ukraine (hereinafter – STA), which assigns special non-profit codes under the so-called ‘non-profit criteria structure.’

Within 20 days of the organization’s registration as a legal entity, the association must be registered with the local tax authority at its legal address as a taxpaying entity. Critical to that process are the registration of the business association as a VAT and profit taxpayer. At the same time, the association can apply for non-profit status, to be included in the state register of non-profit institutions and organizations (hereinafter – Register). Obtaining this status determines what types of income will be exempt from profit-tax and, in some cases, from land tax. (As for VAT, the legislation specifies certain types of activities that are exempt; organizations themselves are not given VAT-exempt status.)

It should be noted that if an association complies with requirements of Article 7.11 of the Law of Ukraine “On Corporate Profit Tax” (hereinafter – law 334/94-VR), it can be recognized as a non-profit organization and be eligible for tax exemptions on some parts of its income in line with its four-digit code assigned by the relevant tax authority. Although the registry is maintained by the STA, the code is assigned (and monitored) by local tax authorities responsible for registration of taxpayers.¹

What organizations are eligible to be registered as non-profit organizations?

Those types of organizations that do not fit non-profit criteria under item 7.11.1 of article 7 of Law 334/94-VR are not required to be registered under the Procedure for registration of non-profit organizations. If, however, the organization has been entered into this register, it is assigned the non-profit status under its ID number. Non-profit criteria are defined by STA, while the determination of whether your organization meets those criteria is done by the local tax authorities.

What are the non-profit organization codes assigned to associations?

The previous article on the legal forms of associations (see Legal Analysis #1) mentioned some of the most frequently used codes from among the 15 possible. Following are the codes of associations as non-profit organizations:

- **0005** – charity organization set up under the procedure identified by law for charity activities (the principal laws concerned are the laws on charity and charity organizations, on humanitarian aid, as well as the COMU Decree on the individual income tax);
- **0006** – non-government organizations set up for ecological, educational and research work (recreation or amateur sports activity fall into this category and can hardly qualify as the goal of an association). Both types (0005 and 0006) are empowered to receive the following, exempt from profit tax: funds and property as a non-returnable grant or in the form of goods or services given for free; passive income (for example, interest and dividends); and income from the main type of their activity.
- **0011** – other legal entities whose activities are non-profit, in line with the relevant legal norms (par. “d”, item 7.11.1, article 7 of the law 334/94-VR). These are normally organizations created under the laws regulating the activities of NGOs, mercantile and stock exchanges, trade and industry chambers etc. They can earn passive income as well as income from their main type of operations, which may include providing member services that are identified in the founding documents.
- **0012** – unions, associations and other united groups of legal entities set up to represent the interests of their founders and funded at the expense of one-time or periodic membership dues. They do not engage in business activities, except for passive income (par “e”, item 7.11.1, article 7 of the law 334/94-VR). Such associations can operate based on laws that regulate entrepreneurship and non-government organizations.

What documents are required to register an organization as a non-profit entity?

In order to be entered in the Register, a non-profit organization is to submit or mail the following documents to the local tax authority: registration application form #1-PH; and copies of charter and

¹ STA Order # 355 of 3 July 2000 “On Approval of the Procedure to Identify Criteria Structure of Non-Profit Institutions (Organizations).

other founding documents (these 'founding documents' are described in more detail in Legal Analysis #2).²

How do you fill out the taxpayer's registration application form (#1-PH)?

Form #1-PH "Taxpayer's Registration Application" is to be filled out in one copy. The language and the purpose of the application (*registration, alteration or amendment*) are indicated by an "X" sign in the corresponding box.

1. The ID code is copied from the certificate that proves that the taxpayer has been entered into the Census Bureau (EDRPOU) state register. The ID code of the lead organization is quoted only for subsidiaries. If the taxpayer is not a subsidiary, the respective box should be empty.
2. The name of the legal entity as a taxpayer is also to be copied from the EDRPOU certificate.
3. State the name of the STA body where the non-profit organization is registered.
4. The state registration details are provided as a copy of the EDRPOU state register certificate, including data about the non-profit status criterion assigned and the date of its assignment.
5. The number of employees is shown as the number of association staff at the date of its registration.
6. The charter capital is indicated in UAH (or at the NBU exchange rate as of the date of the capital payment). Most non-profit organizations can skip this line, since generally they do not have charter capital.
7. Bank account numbers and taxpayer's bank ID are provided at the relevant banks as of the date of filling out the application.
8. Address details, including all the requisites of the taxpayer's location: postal code, country, oblast, rayon, city or town, town district, street, building, block, office or room.
9. The details about the manager and the chief accountant: the individual taxpayer ID; last name, first name and patronymics, and contact phone numbers.
10. The tax agency employee who conducts registration is to fill out registration details. These are the signature, last name, first name and patronymics of the employee who input the taxpayer's data into the computer system; and the signature, last name, first name and patronymics of the employee responsible for the taxpayer's registration.

Information about the founding legal entities

This includes the ID code and the names of the founding legal entities as they appear in the EDRPROU register; contact telephones, fax number, the amount and the currency of their share in the charter capital.

The box "Page" shows the page number of group 9 in form #1-PH, if there are more than six founders, and the taxpayer's code. In the absence of founding legal entities, it is necessary to indicate this circumstance in the first box ("Name") of group 9.

Information about physical persons as founders

This includes the ID code of the founders from the State Register of Physical Persons, their last names, first names and patronymics; contact telephones, fax, the amount and the currency of their share in the charter capital. Boxes "Page" and "The Taxpayer's ID code from EDPROU" are filled out similarly to group 9. In the absence of founding individuals, it is necessary to indicate this circumstance in the first box ("Name") of group 10.

What alterations (amendments) should be made in the tax-payer registration application?

In case of alterations or amendments of the data in the registration application, the non-profit organization should submit to the local tax office proper documents with changes highlighted and an additional registration application bearing the words "alterations" or "amendments" within 10 days of the change. The ID code of the non-profit organization does not change when entering alterations or amendments to its registration from. When making changes, a mark is made in Form #1-PH box "Action" (registration, alterations, amendments). One must fill out indicators 1-3 and the boxes that have been altered or amended. At the end of the application from it is necessary to indicate the application submission date, the CEO signature, and a put a seal/stamp. The application is to be verified for completeness and compliance with current regulation and the founding documents.

How is tax-payer re-registration conducted?

For re-registration with executive power bodies or with statistics agencies, the non-profit organization is obliged to submit to its local tax office an addition to its registration application with alterations in line with changes made in its founding documents within 10 days of said changes.

² STA Order # 232 of 11 July 1997 "Provisions of the Register of Non-Profit Organizations and Institutions".

What may be the outcome of the application?

Local offices of Ukraine's STA have the right to verify the data of the documents submitted. As a result, they can decide either to include the organization in the Register or to reject its application. It should be noted that such decisions are largely founded on the text of the association's founding documents. That is why special attention should be paid to the legal formulae of the goals and the forms of funding its operations.

For example, item 7.11.9 of Law 334/94-VR requires that founding documents contain a complete list of the types of activities of a non-profit organization. Therefore it makes no sense mentioning in the association charter that it will engage in "other activities that are in compliance with effective laws" or that it can get "other income" (because of the perception that 'unspecified' means 'unrelated'). It does not mean that associations can only collect membership dues and donations, but providing more specific detail will aid the local tax office to distinguish between activities of legitimate organizations that will protect membership interests from those who use non-profit tax benefits for the purpose of gaining an unfair competitive advantage over other enterprises.

What are the possible forms of non-profit organization's funding?

The code assigned to the various sources of finance is indicated in the relevant box as a corresponding digit: from the state budget – 1; self-financing – 2; at the cost of membership dues – 3; mixed funding – 9. Except for associations (organizations with code 0012), non-profit organizations will be better off indicating a mixed form of funding. As for membership dues, these funds of non-profit organizations should be classified in the same item of the founding documents as "non-returnable financial support grants" – officially, membership dues are tax-free only for organizations with the 0012 code.

What types of funds are regarded as "non-repayable financial assistance"?

According to Article 1.22. of the Law #334/94-VR, non-repayable financial assistance includes the following types of funds:

- A sum handed over to a taxpayer under an agreement of donation or similar agreements that stipulate no compensation or repayment (except budget subsidies) or without such agreements;
- Bad debts made good to creditors after writing them off;
- Outstanding amounts as taxpayers' liabilities toward other entities or individuals, remaining after the period of limitation;
- Loans or deposits granted taxpayers without the date of redemption of the principal sum, except loans under perpetual debentures and bank deposits.

What types of financial assistance are considered non-repayable (granted) and what types of goods (works or services) are regarded as those provided free of charge?

According to Articles 1.23 and 1.24 of the Law #334/94-VR the following is considered goods (services) provided free of charge:

- value of goods provided under donation agreements or other agreements which do not stipulate pecuniary or other compensation for the cost of goods, or are provided without such agreements;
- services provided without any compensation requirements;
- goods transferred to entities or individuals for safekeeping and used by them in their business activities.

We remind you that a written agreement is not required for a business association to claim funds and property as grants/donations, or to claim goods (services) as those provided free of charge. Confirmation by a bank statement, cash receipt or acceptance act is sufficient grounds for such a claim.

What types of income are regarded as passive income?

As stated in different sub-articles of Article 1 of the Law #334/94-VR, passive income includes revenues collected in the form of interests, dividends, insurance payments and compensation, as well as royalty (payments for the use or the right to use objects of intellectual property). It must be stressed that interest amounts do not include payments for the use of property (rent, operational or financial leasing, etc). Therefore such revenues of non-profit organizations are subject to taxation.

What types of activities are regarded as primary activities of a non-profit organization?

Primary activities of a non-profit organization include charitable aide, educational, cultural, scientific and other services to the general public, activities related to the creation of a social self-support system for individuals, as well as other activities indicated in the organization's Statute, which is based on the norms of relative Ukrainian laws on non-profit organizations. As we have already mentioned, the Statute of a non-profit organization must include a complete list of the types of the organization's activities. Primary activities may not include any commercial activities related to the sale of goods (works or services), as specified in Article 7.1.1 of the Law, to individuals other than the organization's founders, participants or members (or their designees).

Can representative offices of foreign non-profit organizations be included in the Non-profit Registry?

A representative office is an official representative of a non-profit organization registered under the law of a foreign country. Such representative offices are subject to obligatory registration with the Ministry of Justice under the Cabinet of Ministers' Decree #145 of February 26th 1993 "On registering procedure for branches, representative offices and other missions of foreign public (non-government) organizations in Ukraine". Therefore, a refusal to grant non-profit status to such offices because they are not legal entities is unreasonable – these offices are registered under Ukrainian legislation. If a representative office is funded entirely by the foreign non-profit organization it may be exempt from registration as an income-tax payer, since in this case it has a non-resident status. The State Tax Administration of Ukraine also does not object to funding received by such organizations from legal entities and natural persons and, if activities of the representative office do not anticipate any profit-making, it can be included in the Registry on grounds of Article 7.11.1 (d) of the Law #334/94-VR.

Can branches of Ukrainian non-profit organizations be included into the Registry?

According to Ukrainian legislation a branch of a legal entity cannot be granted a non-profit status. If an organization that has been registered in Ukraine creates a branch or an enterprise with the status of a legal entity, such a branch or enterprise is not eligible for separate registration as a non-profit organization.

Must non-profit organizations and their branches pay consolidated profit tax?

Yes. Branches, sections, and other detached organizational structures of taxpayers without legal entity status and located within a territorial community other than the original taxpayer's (that is, the parent organization) are subject to profit tax (Article 2.1.3 of the Law #334/94-VR).

If the parent organization creates new branches during the reporting year they must notify local tax authorities in the area where the parent organization and the branch are located. The results of business activities of the newly created branches are taken into account when calculating the consolidated balance, starting from the reporting period when they were created³.

What is retained profit?

Article 7.11.9. of the Law #334/94-VR states that if the revenues of non-profit organizations received by the end of the first quarter of a new accounting year, from tax-exempt sources indicated in Clauses 7.11.2 - 7.11.7, exceed 25% of the gross revenues received during the previous accounting (taxation) period, these non-profit organizations will have to pay profit tax on the retained amount, at a rate of 30% of the excess amount.

How is it calculated and paid?

Inclusion of the above-mentioned tax into the budget is done based on the results of the first quarter following the accounting year, within time limits set for other taxpayers. Here is an example of the calculation in accordance with Article 7.11.9 of the Law:

³ Resolution of the State Tax Administration of Ukraine #175 of April 4th 1998. Recommendations on the procedure for calculating and payment of the consolidated profit tax. Article 2.3

Analyses Regarding Legal Status of Ukrainian NGOs #4

#	A	B	C	D	E	F	G
	Total gross income in 2000	Used for purposes indicated in Statute, in 2000	Used for purposes indicated in Statute, 1 st quarter 2001	Retained amount, as of the end of 1 st quarter 2001 (A-B-C=D)	25% of gross income in 2000	Excess amount	Tax payable at the rate of 30%
1.	8,000	3,000	2,000	3,000	2,000	1,000	300
2.	8,000	4,000	2,000	2,000	2,000	0	0
3.	8,000	5,000	2,000	1,000	2,000	0	0

How is property of a non-profit organization divided, in case of its liquidation?

Article 7.11.11 of the Law #334/94-VR stipulates that, in case of liquidation of a non-profit organization, its assets (including property and property rights) must be transferred to another non-profit organization of the same type, or, remitted to the local budget as property in abeyance. If a business association receives property from a non-profit organization that is going through the legal liquidation process, this property is not included into its taxed income⁴.

Can non-profit organizations be subject to VAT?

Legal entities not engaged in entrepreneurial activity are also subject to VAT (Article 1.2 of the Law #168/97-VR). In other words, both profit and non-profit organizations, under the terms described below, can be payers of this tax. If a non-profit organization transfers ownership right for goods (work, services) and within the last year its volume of taxed transactions exceeded UAH 61,200 (3600 non-taxed minimum incomes of individuals), it must be registered as a VAT-payer. If the organization is engaged in cash sales, it must submit the VAT-payer's registration request no later than 10 calendar days before the sale is to take place, regardless of the sale's volume.

It must be remembered that according to this Law, free transfer of goods (rendering of works or services) is also a sale. In other words, any transaction that occurred under a civil law agreement, is regarded as a sale, including rendering of services (work results) and granting the right to use or manage them.

An association with 'legal entity' status and with sales volume that exceeds amounts set by the law (61200 UAH, as indicated above) falls into the category of individuals who are required to get registered as VAT-payers. The norms of the Law #168/97-VR regarding both tax commitments and tax credit rights apply to such an association. All legal entities and individuals enjoy the right to choose between a VAT-payer and an individual who is not a VAT-payer when buying goods (works, services)⁵.

What is the procedure for revoking non-profit status?

Excluding a non-profit organization from the Registry is done by a decision of the local tax authorities when they determine that an organization has violated the law. However, it is difficult to say what state organ, beside the court, is competent to decide whether the law has actually been violated by the non-profit organization. The only violations that tax authorities are competent to determine are violations of taxation laws. Article 7.11.12 of the Law #334/94-VR says only that the State Tax Administration of Ukraine is authorized to make decisions regarding the exclusion of non-profit organizations from the Registry in case they violate this law or any other legislative acts regulating activities of non-profit organizations.

What documents are required to exclude a non-profit organization from the Registry?

The resolution of State Tax Administration of Ukraine #355 of July 3rd 2000 stipulates that exclusion of a non-profit organization from the Registry, in case it violates the Law #334/94-VR or any other legislative act, is done on the basis of solicitations of state tax administrations of Autonomous Republic of the Crimea, Kiev and Sevastopol. These administrations must submit to the State Tax Administration of Ukraine the following documents:

- a copy of the non-profit organization's petition (form 1-PH);
- a copy of the resolution to include the non-profit organization into the Registry;
- a copy of the organization's Statute;

⁴ Letter of the State Tax Administration #10261/5/15-1216 of December 15th 1999

⁵ Letter of the State Tax Administration #1052/7/16-1217 of January 26th 2001

- well-grounded conclusions with facts of violations of Law #334/94-VR or other legislative acts which regulate activities of non-profit organizations⁶.

How can these decisions of tax authorities be appealed?

Local tax authorities must notify in writing the organization of its exclusion from the Registry. If the organization does not agree with the decision of the local tax administration it can appeal to the State Tax Administration of Ukraine for clarifications. If the taxpayer is not satisfied with the explanations provided by the State Tax Administration of Ukraine, the organization can take an appeal to court⁷.

What are the consequences of exclusion from the Registry?

If a registered non-profit organization is excluded from the Registry, its funds are regarded as profits and are taxed on general conditions (i.e. at the 30% rate). This organization will be subject to taxation from the moment of its exclusion from the Registry. This is especially dangerous for organizations whose legal address is different from the actual address – they can find out about their exclusion too late and will face a serious danger of tax sanctions at the end of the reporting period.

⁶ Letter of the State Tax Administration #14158/7/15-1217 of October 25th 2000

⁷ Letter of the State Tax Administration #4116/7/15-1217 of March 23rd 2000 "About the procedure for registration of non-profit organizations and grounds for their exclusion from the Registry".

THE PECULIARITIES OF SERVICES PROVIDED BY BUSINESS ASSOCIATIONS IN UKRAINE

There is a rather common assumption in Ukraine that nonprofit organizations may not provide services on a fee basis or make money. However, in reality Ukrainian legislation allows nonprofit organizations, including business associations, to attract necessary resources in various ways.

Naturally, one method often used is for business associations to approach their members and other individuals about donations or 'irrevocable aid' within the limits of four percent of the taxed income (at the moment, the size of the tax discount is the same for both enterprises and individuals). However, when you think pragmatically, donating 4 UAH means paying 28.8 UAH in tax, and therefore the donation yields no tax benefit. So, to an entrepreneur, this gift costs eight times more than he or she was prepared to donate in the first place!

The state more and more strictly regulates the legal procedures for attracting resources in the form of voluntary donations and other types of 'irrevocable aid' (cash and in-kind), as well as charitable, humanitarian and international technical assistance (grants). For the most part this control is increasingly exercised through special registers and reporting procedures. Thus, only organizations that are registered in the Register of Recipients of Humanitarian Aid are exempt from paying taxes and customs fees on property and finances identified as a humanitarian aid.

From a legal point of view, the status of one-time or periodic participant fees is not clearly defined for nonprofit business associations. These fees may be considered as irrevocable aid, as they do not remain in the ownership of the participants, nor will the aid (money) return to them in case of membership cancellation or business association liquidation. In this case, associations should indicate in their statutes (except for those with the non-profit code 0012) that they receive income "in a form of irrevocable financial aid and voluntary donations, including participant fees." This may prevent them from rather frequent and possibly unpleasant disputes with tax authorities about their non-profit status.

However, the majority of business associations – according to the international practice and which is proper from the legal point of view – tend to receive participant fees not as donations, but in exchange to its services. Speaking more precisely, in exchange for the right to use the services that are indicated in the association's statutes (because it is unclear exactly which services and how many will be used by each participant). Different business associations have adopted different fee structures. For example, participants may pay:

- i) The same amount of fees, regardless of what services are used;
- ii) The same amount of minimal fees, and then an additional amount for certain services;
- iii) Fees in proportion to their annual profit/income, or number of employees;
- iv) Fees in proportion to certain types of their income (income from export of certain goods or from sales in certain regions or cities, etc);
- v) Fees in proportion to their annual investments.

Each from these approaches has advantages and disadvantages. A flat fee is more acceptable for an association whose members have approximately the same income or use the same number of services. However, a fee of 1,000 UAH, for instance, is not the same for a well-established enterprises and a private entrepreneur. Moreover, some entrepreneurs are unwilling to reveal their financial information, and even more so, these indicators are not stable even in the course of a year, especially it concerns amounts of income and investments. Therefore, often associations have a differentiated fee structure: a minimal entrance fee or one-time fee in order to encourage a certain number of entrepreneurs to join the association; and proportional fees that directly depend on members' characteristics (for example, sales volume in the territory where this business association operates, etc).

A common occurrence recently is for members to purchase debit and discount cards, various mutual guarantees or insurance from certain risks related to entrepreneurial activity instead of paying membership fees. This allows the association to collect fees while retaining the tax benefits. Some associations have even gone so far as to propose collecting fees from members not "upon entrance," but "upon exit" when an entrepreneur violates its status or finally ends its membership (though this must raise certain questions about the ability to collect such fees).

What are other ways of attracting resources available for usual Ukrainian business associations? One may distinguish **four main groups of income exempt from income taxes** for nonprofit associations: Passive income; Operational income (including one-time or periodical fees of participants of associations of legal entities); Loans in cash and in-kind; and Indirect methods of attracting resources.

Passive income

According to Ukrainian legislation, passive income or payments for use of property or the property rights of a business association include interest payments, dividends, insurance payments and royalty.

A business association may receive dividends from its own investments: profit from subsidiary enterprises, shares in business corporations, or income from joint ventures in Ukraine without creating a legal entity. It needs to be said that a tax on dividends is collected *regardless* of whether a business association is a taxpayer of corporate income tax, and the amount of the dividend tax may be a rebate while the income tax contribution is calculated and paid only in the subsequent reporting period.

Considering the low level of development of the Ukrainian insurance market, insurance payments may be an interesting option as a source of income only for a few business associations, although the legislation does allow numerous possibilities for using these payments. In particular, this would include mutual insurance or insurance of property, and insurance for the civil responsibility of association members (for example, along with wage arrears).

Income from interest payments is not limited to calculating interest on bank accounts and deposits, which are the type most business associations are familiar with. The current legislation considers interest calculated on irrevocable financial aid (a non interest bearing loan for a certain period, month or year) to be a debt, which is a profit of neither a business association, nor its creditor. From another side, the use of fixed bank deposits (in the name of the business association) would allow the investor get back the principal, while the business association would receive the other income (interest) as untaxed income.

The term "royalty" covers any payments for using or permitting the use of intellectual property, in particular: copyright and related rights; patents or licenses; registered symbols; signs on goods and services; inventions and scientific samples; industrial samples (for example, design); drawings; software means; secret formulas or processes; and information on scientific and industrial experience (know-how). Payment for an object of intellectual property (transfer in ownership, possession or disposal) is not considered to be a royalty, therefore business associations may not collect income for a sublicense or the resale of samples if they wish to keep their status of a nonprofit organization.

Legislation on copyright and related rights protect the works of science, literature and arts: books, brochures, articles, computer programs; presentations, lectures, speeches, other oral creations; audiovisual creations; paintings and drawings; photographs; crafts; illustrations, paintings, plans, sketches; translations, adaptations, and other reformulations based on which new items are developed; reference books, encyclopedias and anthologies, other collections and compilations of data, if they are a result of a creative work on gathering and compiling content.

Also subject to royalties are unpublicized creations and their independent parts regardless of the genre, volume, and purpose (education, information, advertising, propaganda, entertainment, etc.) and expressed in any form. Unlike the registration of patents, industrial samples and trade marks, the registration of a copyright is a right, but not an requirement.

A royalty for the right to use symbols of business associations registered by the Ministry of Justice (when a business association is a public organization) is very practical. Every business association may register symbols, and individuals or organizations who pay such a royalty may include them among their expenses without paying a value added tax.

Many associations want to know whether they can receive income, without jeopardizing their non-profit status, for training seminars, conferences, or informational materials (such as newsletters, etc). In theory, associations could receive fees for such activity, provided that the fee collected for a training seminar or conference is for the training materials (or conference materials), as those could be considered as royalties for intellectual property created by an individual working for the association. Likewise, if an association promoted an investor or its trademark in its newsletter, or a number of investors and their trademarks, then the sponsorship fees collected from the investor(s) is provided for in the law as a sort of charitable activity.

Operational income

Operational income includes the provision of charitable assistance, enlightenment, cultural, scientific, educational and other related services for public consumption; the creation of a system of social self-reliance; and other types of activities as provided by the charter documents and in accordance with the laws on non-profit organizations. Charter documents should contain a detailed list of the association's activities and therefore it is not advisable to have in these documents phrases like "the business association may conduct other activities and earn other incomes which are not prohibited by law."

State licenses (accreditation) are necessary to render certain services: medical, veterinary, pharmaceutical, security, some design operations, educational services with the issue of official diplomas – a total of 60 types of business activity are now subject to licensing.

Ukraine's current legislation is vague about the conditions of fee-based services provided by business associations. For this reason, most business associations prefer not to take the risk of removal from the non-profit registry and the resulting payment of taxes on all earned income. However, some types of primary activity allow for paid services. For example, the promotion of a trademark or investor (not goods and services!) is a type of charitable activity, and payment for such advertising will be an income from the organization's primary activity. Also, payments for the use of a business association's property (for example, computers) are allowed, providing the fees are not in excess of the relevant depreciation charges.

Loans

Loans (cash or in-kind, such as property, equipment) to associations are provided for by legislation that allows for the return of property or money over a certain period of time, with no interest, but with due regard for depreciation (wear and tear) or indexation of their value. Besides the aforesaid gratis financial aid, 'loans' would also include contracts for the free use of property, operational leasing (on condition of the lessor paying depreciation charges and, as appropriate, an insurance contribution) and free storage. It should be kept in mind that non-profit business associations registered as charities cannot get credits (loans bearing interest) or use their property as collateral.

Social marketing and indirect methods for raising funds

These methods are defined as indirect because, when they are used, the investors provide price reductions or resources not to a business association directly, but to its volunteers or donors (thereby encouraging donations). Such activity is beneficial from the perspective of expanding the sales (of the investor) and does not increase the investors' tax obligations. Among the efficient indirect methods for raising funds are:

Samples. Investors are often interested in promoting samples of their products, and business associations that have many members or clients can be of help in this business. Sample distribution and other presale activities can account for an additional two percent of a company's taxable income. These activities include sample distribution by mail; delivery; during events organized by business associations; use of packaging; use of other media (catalogs, descriptions or pictures).

Coupons. Coupons are documents that entitle you to discounts for goods or services from certain sellers for a certain period of time. As a rule, coupons are placed in publications, postal advertisements, on packages or inside them. These methods have already been developed well in Ukraine; the distribution of publications with coupons at various events of business associations can be used as an example.

Bonuses and points. These are compensation schemes that entitle you to get other goods or services free of cost: if the purchase of certain goods or services exceeds a minimum amount (say, 100 UAH), the buyer receives some additional goods or, say, an invitation to a charity performance.

Contests. The rules of participation in contests stipulate that something must be done on prior conditions; they are regulated by the current civil code and regulations adopted by contest organizers. As questions may arise in respect to nonmonetary prizes, it is sensible to award goods whose value exceeds an untaxable amount (currently, it is a gift worth up to 331 UAH presented to any person within a year).

Long-term programs. A reward, in the form of discounts on goods and services (also in the form of coupons, points or bonuses), is provided according to the time a person spends on volunteer activity or participation in other events of a business association; these rewards can also be referred to as purchases over a certain period (for example, a month or year). Voluntary insurance of volunteers and investors by third parties can also be included among these fund-raising methods.

Special events. The list of such events is long: from one-time events (performances or exhibits) invitations to which are only extended to those people who invested some money in the activity of a business association, to the celebration of city days or holding of periodic sessions of a business association attended by noted personalities or influential people as well as by its investors.

Among the less popular methods of social marketing today are:

- 1) the issuance of an association's own "currency" or other internal tokens of a promissory nature (including debit or discount cards, stamps etc.);

- 2) transfer of receivables by businessmen to their business associations;
- 3) sale of reports and other official publications of a business association;
- 4) refund of arbitration costs to business association members.

Can paid services be rendered directly, not through subsidiaries or other enterprises?

This question arises for most business associations. It should be mentioned that earning an income for services delivered by units not having the status of a legal entity or, for example, through agents or franchisers), is regarded under Ukrainian tax laws as the business activity of non-profits.

The right to conduct business for the purpose of achieving statutory goals is directly provided by the charity law (Art. 20, Part. 1). Both the Constitution (indirectly) and the new Civil Code that has passed the second reading (directly), guarantee the right of every legal entity to engage in the business activity indicated in its charter. The very existence of such activity, though, is often used by tax authorities as a pretext for excluding a business association in the non-profit registry. The definition "primary activity" is given in the Law on Company Profits Tax (Para. 7.11.13) "on default": only credit unions and pensions funds are not allowed to sell their services to nonmembers, and nothing is said about whether other, for instance, social organizations can do it.

Business associations' incomes from an activity other than primary activities are taxable at the rate of 30% with an allowance for the costs related to earning the income (less the sums of excess of expenses over receipts) and depreciation charges. But, more often than not, tax authorities simply exclude those organizations from the non-profit registry if they earn income from non-primary activities. This is why only some 40% of social and charitable organizations registered in Ukraine are granted non-profit status. The rest of the organizations (those NOT on the non-profit registry), just as common enterprises, can take the following opportunities:

Option 1: registration of a business association as a single tax payer

Advantages: a wide choice of types of activity; additional payment of only excise tax; the right to choose the method of VAT payment (6% of profit and VAT amount or 10% of profit inclusive of VAT amount) which is good, providing that types of activity are released from VAT; simplified fiscal and accounting reporting.

Disadvantages: participation of legal entities who are themselves are not single tax payers, is limited to 25% votes (statutory capital or shares); status of a single tax payers needs to be renewed on a quarterly basis; there are restrictions on the amount of profit – currently up to a million UAH a year.

Option 2: establishment of subsidiaries

Advantages: there are no restrictions on the establishment of enterprises; there are no requirements for a minimum statutory capital; there is no property accountability for the liabilities of an enterprise unless otherwise provided by the founding documents or contracts (guarantees); continuous external control; the possibility of consolidated profit tax payment providing that the subsidiaries are registered with other tax offices than the owner business association (profits and expenses are calculated jointly for a business association and its subsidiaries).

Disadvantages: charitable organizations can set up enterprises solely for carrying out statutory tasks, and all incomes of the charitable organization from their activities must be spent on charity; distribution of dividends is not stable; dividends are taxable at the time of distribution; it is hard to secure credits and external investments.

Option 3: participation in association of enterprises

Advantages: the possibility of securing untaxed credits and investments; preservation of organizational and financial independence; associations of enterprises that only earn passive incomes and represent the interests of the members can be recognized as non-profits.

Disadvantages: registration of associations of enterprises requires the Antimonopoly Committee's approval; minimum control over the activities of association members; an association itself is an enterprise, and participants cannot interfere in its daily operation; when a nonprofit business association is reorganized or liquidated, its property cannot be transferred to participant enterprises.

Option 4: participation in business partnerships

Advantages: there are no restrictions on the participation of a business association; there is no requirement for a minimum amount and/or stake in the statutory capital; the possibility of securing credits and investments; the possibility of engage in activities which are not connected directly with statutory goals; there is no cross-interest status if a stake in a partnership's statutory capital is below 20% or is not the biggest among the partnership participants.

Disadvantages: minimum control; need for the contribution of a part of statutory fund (whose amounts equal 100-1,250 minimum salaries); accountability for the liabilities of partnerships with no statutory fund; unstable distribution of dividends even when there is a profit; inadequate legislative safeguards of corporate rights in Ukraine; the complexity of the sale or assignment of own stake to third parties.

A business association may transfer its assets to enterprises as:

- an owner's contribution to the statutory capital or other corporate rights of an subsidiary or other enterprise (shares);
- nonbank credits (collateralized credits; commodity credits);
- purchase by an enterprise of the property of the owner association under contracts which do not provide it with corporate rights (buy/sell, financial leasing); transaction costing is based on average market prices;
- property provided free of cost, donations by entities and individuals (taxable at the common rate of a profit tax given the enterprise is not a single tax payer);
- payments for the use of intellectual property and other intangible assets (royalty);
- promissory securities (bonds, saving certificates, promissory notes, loan notes etc.);
- transfer of property under contracts that do not provide an enterprise with an ownership right (commission etc.).

A business association may earn incomes from an enterprise as:

- dividends from an enterprise's property right (shares, statutory capital) as well as part of assets when an enterprise is liquidated;
- gross income of an enterprise which is a single tax payer, less the amount of this tax;
- dividends from joint activities with an enterprise (joint implementation of charitable programs);
- purchase of goods from an enterprise on conditions of commodity credit;
- establishment of endowments (capital funds of cash or other liquid securities incomes from which are not taxed, providing they will be spent on charity within 12 months);
- movable and immovable property purchased on the basis of rights other than ownership right (for free use, loan, safekeeping etc.);
- an owner's consent for the transfer of an enterprise's property to other non-profits or individual recipients of charity.

So the legislation of Ukraine regulates rather particularly, although with obvious restrictions, the opportunities of rendering services and earning untaxed incomes by business associations. But there are certain risks involved as far as these activities in Ukraine are concerned. On the one hand, there is the threat of loosing the status of a non-profit due to the one-sided interpretation of legislation by tax authorities; on the other hand, business associations practically have no tools of control over subsidiary and other enterprises which, with the exception of enterprises of social organizations of disabled persons and participants in Chernobyl NPP cleanup efforts, do not enjoy any privileges as to the transfer of a portion of profit to business associations. This is why, in most cases, it is sensible to choose the independent provision of services and the use of nontraditional forms of cooperation with private donors or consumers.

REPRESENTATION AND PROTECTION OF BUSINESSMEN RIGHTS BY BUSINESS ASSOCIATIONS

Constitutional and legislative guarantees

The Constitution of Ukraine sets forth important principles as well as the right of everyone to conduct a business activity which is not prohibited by law (Art. 42). This article recognizes abuse of monopolistic position in the market, illegitimate restriction of competition, and unfair competition as inadmissible. What is more, access to courts is guaranteed to protect rights and freedoms directly on the basis of the Constitution (Art. 8).

Also, the Constitution guarantees economic and ideological diversity (Art. 15); equal protection of the law and equality of constitutional rights (Art. 24); the right to familiarize oneself, in government and local government bodies, with information about oneself access to which is not limited (Art. 32); freedom of thought and free expression of views and convictions (Art. 34); freedom to form and join social organizations and labor unions which enjoy equal protection of the law (Art. 36); the right of citizens to take part in the conduct of public affairs, to freely elect and to be elected to government and local government bodies as well as have equal access to service in these bodies (Art. 38); the right personally or collectively to appeal to government and local government bodies as well as to their officials (Art. 40). It should be noted that nobody can be coerced into doing what is not provided by law (Art. 19) -- something, in particular, a number of public officials of different levels resort to.

Set forth are also the principles that guarantee the protection of infringed rights of citizens, for instance, the right to appeal against decisions in court, acts or omissions to act of government and local government bodies, or their officials, including in international judicial tribunals and bodies of international organizations a participant in which Ukraine is (Art. 55); the right to recover, for the government's account, financial and moral damages caused by unlawful decisions, acts or omissions to act of government and local government bodies, or their officials in the performance of their duties (Art. 56); ineffectiveness of legal and regulatory enactments that were not brought to the notice of the public in accordance with procedure established by law (Art. 57); and the right to legal aid and free selection of an advocate of one's rights (Art. 59).

Taken together, these principles of the Constitution, Ukraine's laws adopted on their basis and other legal and regulatory enactments constitute the legal norms for representation and protection of businessmen rights by business associations. Obviously this activity is more effective when enterprises do not simply expect certain services from business associations, but also join relevant public initiatives. A businessman can turn to a law firm which will represent him and protect infringed rights. However, businessmen often run into similar problems. A law firm can win a case, but in Ukrainian law it is difficult to set a precedent which is mandatory in examining analogous cases. It is very difficult for a law firm to put claims of different businessmen together into one case.

At the same time, a business association, which its members have entrusted with representing their interests, may hire the same law firm to protect the infringed rights of business association members. This will help distribute risks and costs among the businessmen while the decision passed by a court or some other government body will be applicable to an individual business association irrespective of the number and composition of its members.

Also, a business association can represent and protect the rights of its members as a matter of precaution, for instance: prevention of the passage of decisions by local government bodies or administrative authorities, which may prove to be discriminatory against all or some business association members.

According to the State Committee for Regulatory Policy and Entrepreneurship, 48% (!) of grievances received from businessmen in 2000, concerned demands of government and local government bodies that payments which were not provided by law, be made for social and other local needs¹. These and similar violations of Art.9 of the Constitution is probably a mass problem and calls for the coordinated protection of businessmen rights.

At the same time, the representation or protection of rights that businessmen often understand as the lobbying of their "specific" interests, is more often than not ineffective from the perspective of objectives of a business association. Should a business association help, for instance, some of its members secure

¹ "One Hundred Thousand" Magazine; issue 19-20. Kyiv, January 2001

an order to carry out municipal improvements, the other members will not get such support because the association cannot obtain two orders for the same job.

So a businessman`s "specific" interests can objectively conflict with the same interests of other association members that are capable of doing a similar job. But all members are interested in their association seeking order procedures which are most acceptable to them, in particular on the basis of the Law on the Procurement of Goods, Works and Services with Public Funds, # 1490-?? of Feb.20,2000.

The representation and protection by business associations of rights of their members and other businessmen in relationships with government and local government bodies can have different forms. They can conventionally be divided into three large groups: relations with public and government agencies; representation and protection in courts; lobbying.

Submission of information requests on behalf of members or a business association proper

Business associations are entitled to file a written request for provision of any official document. Information requests can be individual or collective, irrespective of whether such document personally concerns the applicants, except for information containing state secrets or whose use is restricted. A request should indicate the full name of an association, the documents being asked for, whether the information should be verbal or in writing and the address a reply should be delivered to. The information is to be made available within one month. A denial to comply with an information request (partially or completely) should be in writing and contain the following data: full name of the official issuing the denial; denial date; denial causes; denial appeal procedure.

The provision of information can be deferred also on the basis of written notice. The latter should give, in addition to the aforesaid details, reasons for which the required document cannot be made available within the period provided by law, and a particular date at which the request will be complied with. As a rule, government agencies use as an excuse such "technical reasons" as the lack of copying equipment, paper and so on. Therefore it is advisable to keep your technical facilities in readiness because those agencies are entitled to ask for reimbursement for copying and delivery costs. Information can be provided verbally or in writing, on tape or photographic film; business association representatives may study official documents or copy information from them.

Replies to information requests and applications of businessmen and other individuals

Obviously members or other businessmen have on many occasions made various verbal and written requests of every business association. Irrespective of whether or not an association`s founding documents indicate such an activity as consulting or legal aid, the business association is required to provide replies to requests on general terms, i.e. in the same way as government and local government agencies do, and maintain a register of requests. More often than not, this method is effective in encouraging the businessmen to independently assert their rights on the basis of a better knowledge of facts and their procedural capabilities. Also, most associations declare the right of their members to receive information regarding the activity of such associations and therefore replies to such requests is a type of statutory (primary) activity of nonprofit organizations.

Submission of proposals (criticism), applications, grievances, and petitions to government and local government bodies

This right of business associations is embodied in the laws on associations of citizens, charitable organizations etc., and the relevant procedures are regulated based on the Law on Submissions of Citizens (# of Oct. 2,1996). It should be noted that proposals (criticism) relate to activities of relevant authorities whereas applications or petitions are filed to seek assistance in the exercise of the applicant`s rights, recognition of such rights or redressing of infringement of the applicant`s rights by third parties. Grievances relate to the restoration of rights or protection of infringed rights of the applicant, irrespective of who infringed on these rights.

Anonymous submissions, i.e. those providing incomplete or false information about the applicant, are not subject to consideration, but the applicant may demand the nondisclosure of information about himself. Prosecution for submissions is prohibited. The applicant is answerable, though, for the reliability of the other data in such submissions, and may be punished in accordance with civil legislation (for instance, for moral damage or debasing of business reputation, recovery of costs related to the verification of misleading information). Submissions with respect to which the appropriate agency is not authorized to make a decision or which do not contain all necessary data, are returned to applicants within 5 or 10

days respectively. And decisions per se should be passed within 15-45 days, but normally within one month. The applicant should be given written notice about any decisions, delays in their passage or referral of his petition to another agency.

The same rules also apply to the submission of the said documents to law-enforcement agencies (courts, prosecutor's offices, the Interior Ministry, the Security Service of Ukraine).

There is no universal formula as to the use of this method: in one case, the submission of a petition to a higher government agency that may later pass it on to the lower agency or even to the violator of the rules, or to several bodies with a different jurisdiction, will only take time, and in another case, it may compel the officials to verify facts more carefully or make a fair decision.

Unofficial reports and reviews of the status of exercise of the right to business activity

It is also an effective tool of influence upon undesirable decisions or practices of government agencies. Such reports are mandatory in the activity of the many international organizations in which Ukraine is a participant. For instance, an official report on the status of human rights in the UN is to be supported by a NGO's report. But the very fact of making public such reports or reviews regarding violation of specific businessmen rights, can produce a certain effect on government agencies, investors or international institutions.

Public hearings and public examination of issues related to the right to business activity

Art. 13 of the local government law provides for the right of territorial communities to hold, at least once a year, public hearings on local issues, i.e. meetings with deputies of local councils and officials of their executive bodies. Proposals resulting from such public hearings are subject to consideration by local governments. These proposals are especially effective when they are preceded by an all-round public examination, on the part of a business association and experts enlisted by it, of issues pertaining to the exercise of the right to business activity by its members.

Constitutional solicitations or submissions regarding the interpretation of Ukraine's laws

Ensuring the supremacy of the Constitution and bringing all legal and regulatory enactments and Ukraine's international treaties into compliance with it is the objective of the Constitutional Court of Ukraine (Art. 147 of the Constitution). If the constitutionality of laws or other legal enactments can be appealed against on the basis of solicitations through national deputies, local government bodies or other authorities as provided by the Constitution, then the official interpretation of such enactments for the purpose of asserting the rights of a legal entity or an individual can be sought by any business association and its members.

The solicitation procedure is governed by the Law on the Constitutional Court of Oct.16, 1996. Among other things, the solicitation should provide justification for the need for official interpretation of a legal and regulatory enactment or some of its provisions. All documents are to be submitted in three copies, and the consideration period should not exceed six months from the date of adoption of a decision about the beginning of examination of a constitutional case.

Promulgation of information in the mass media; arrangement of communication campaigns addressing the protection of rights of business association members or separate businessmen groups

Business associations may found or participate in communication relations, relevant mass media (Art. 13 of the Law on Associations of Citizens # 2460-??? of June 16,1992) and news agencies as well as engage in publication activities if it is provided by their regulating documents. There are lots of useful materials as to the conduct of effective PR campaigns that can provide solid support for assertion of rights of associations or their members.

As far as law goes, however, one should bear in mind that the promulgation of information with limited access may entail serious sanctions against its authors and the media. False information or denigration of name or business reputation can be ground for a claim for moral damages (Art.7 and 404-1 of the Civil Code) on the part of third parties. Mass media as such are considered those whose circulation is over a thousand copies, and the amounts of claims for moral damages that were paid in 1998-2000, constituted UHR. 5 - 20,000, although, according to the law, their maximum amount is not limited and the minimum one cannot be less than 5 minimum wages.

The same applies to the promulgation of false information about a business association or its members (say, some businessman is accused of breaking the law) by media, specifically on the basis of Art. 49 of the Law on Information and Art. 49 of the Law on Television and Broadcasting.

On the other hand, the promulgation of information in computer networks falls under Art. 31 of the Constitution which guarantees everyone privacy of correspondence. *Exceptions can only be established by a court as provided by law in order to prevent a crime or to find the truth in investigating a criminal case unless information can be obtained otherwise.*

Legal aid in civil, administrative, and criminal case

Formal requests filed by business associations or their members with authorities, often do not produce the desired result. In this case, reference to the court is the most effective method of protection of rights. Courts can regulate literally all legal relations (Art. 124 of the Constitution) and have no right to refuse accepting a petition to sue or a grievance for the reason that they can be prejudged according to the laid-down procedure.

Businessmen are often unwilling to personally go to the law because of the lack of knowledge of legislation, pressure of work, business trips etc. It is in cases like these that business associations can act like proxies and be instrumental in asserting its members' rights. To this end, the relevant statements need to be incorporated in the founding documents and a power of attorney needs to be provided by a businessman. Bear in mind that a businessman does not necessarily have to be a business association member; it is enough for him to sign a power of attorney in accordance with articles 114 and 115 of the Civil and Procedural Code. Citizens may have this power of attorney certified not only through a notary, but in their house maintenance office or at the place of business. The power of attorney authorizes a business association representative to conduct all legal proceedings regarding a certain civil or administrative case. Unless the text of a power of attorney has special provisos, the representative cannot partially or completely renounce a claim, admit a claim, change the subject of a claim, make an amicable settlement, delegate his powers to another person, appeal against a court decision, submit a writ of execution or receive adjudged property and funds.

As a rule, statements of claim and grievances against commission or omission of public officials are subject, in courts of general jurisdiction and claims in economic courts, to a tax at a fixed rate or in proportion to the amount of a claim.

Business associations can advocate rights in criminal cases as well. According to the Constitutional Court's decision of Nov. 16, 2000, # 13-??/2000, a suspect or defendant may engage, as counsel for the defense, not only a lawyer but any other person having a legal education who is entitled to provide legal aid personally or on the instructions of a legal entity. Any detainee has the right to see his lawyer within 24 hours at the latest after the detainment.

Submissions to international bodies (European Court for Human Rights etc.)

Regrettably, court decisions do not always satisfy business associations and their members, or cases take a long time to be tried being referred from one court to another. But it is not the reason for giving up the protection of businessmen rights. Operating on the international level, specifically within the framework of the European system of protection of rights, are a number of framework and special conventions ratified by Ukraine that can apply to businessmen (the Orgus Convention on access to information, participation of the public in decision making and access to justice on environmental issues of 06.26.1998.; the Convention on the transborder impact of industrial emergencies of 03.17.1992, and so on).

The main mechanism for rights protection at this level for business associations is an appeal to the European Court against a government agency or an official that has infringed on any of the rights set forth in the European convention for protection of human rights and basic freedoms that became effective for Ukraine on 09. 11.1998, ?s well as protocols to this convention. The procedure for filing the appeal is detailed in many manuals but it should be noted that, within the convention's framework, an appeal like this may be accepted within 6 months following the appeal court's decision or a regular cassation; there is no need to await a decision of the Supreme or Constitutional Court, the President, the Prosecutor General etc.

Some cases are settled on the basis of an amicable settlement by the parties due to the European Court's notification of the relevant government agency about acceptance of an appeal for consideration. This, for instance, helped register a social organization in Sumy *oblast* which for 20 (!) months had unsuccessfully appealed against the executive committee's refusal. But Ukrainian applicants also seek compensation for infringement of their rights. The most recent of such decisions (of 05.03.2001, # 46144/99) awarded the total amount of over UAH 380 thousand in damages to 13 residents of Lviv *oblast*. So the representation and protection of rights in international forums is a practicable and beneficial thing.

Court of arbitration (arbitrages)

In many cases, business associations can act as judges on their own thanks to the court of arbitration system. These nongovernmental bodies, permanent or temporary, are known to be an effective, flexible and inexpensive tool for protection of businessmen rights in economic disputes. Business association members can take advantage of it not only in their foreign economic activity but also on a day-to-day basis, save settlement of labor disputes (a case in point can be a situation when a businessman is also, for instance, the CEO of a stock company).

Association members can, for instance, make written agreements (so-called arbitration agreements) regarding settlement of disputes between them by arbitrators to be appointed by the association or by businessmen themselves from among its representatives. The arbitration regulations are set forth in Appendix # 2 to the Civil and Procedural Code of Ukraine. Among its important statements are those saying that adjudications must be free of cost (meanwhile, businessmen are paying membership fees !) and tax exempt. But the judges are not bound down by the legal proceeding rules set by the Civil and Procedural Code (Par. 10). Also, if the parties fail to execute a decision of the arbitration court of their own free will, it can be enforced on the basis of a writ of execution of the district (city) court in the place where the arbitration court passed its decision (Par. 17). To update the adjudication procedures, one can use the well developed rules of the Stockholm or other acknowledged international arbitrages.

Insurance, mutual insurance and reinsurance of property, responsibility, legal costs of business association members

Most businessmen probably know how difficult it is to find the money to assert their rights with bank accounts being blocked or property seized as a tax or civil legal pledge. Also, most economic disputes require the payment of a tax. In a situation when the future expenses are hard to determine (amounts of claims for moral damage, for instance, sometimes reach millions of hryvnias), it is very important to have the appropriate insurance. A business association can act as an insurance agent of insurance companies on the basis of an agency contract (Part 7, Art. 15 of Law of Ukraine On Insurance # 85/96) or, together with other businessmen, individuals and legal entities, exercise the right to establish a mutual insurance society (Art. 14, Law 85/96 and Decree of the Cabinet of Ministers # 132 of 02.01.1997 regarding the Interim Regulation on Mutual Insurance Societies).

Arrangement of public events (meetings, demonstrations etc.)

The relevant rights are provided by the legislation on associations of citizens and other organizational and legal forms of business associations. But it is advisable to indicate an activity like this in the founding documents as well. The point is that that the decree of the Presidium of the Supreme Council of the USSR on the procedure for meetings, street processions and demonstrations that was passed on July 28, 1988 and is still in effect, does not regulate those events that are staged according to charters of civil society organizations.

As a rule, decisions about events are adopted by meetings of business association members or its board and they identify the form, venue, timing of an event as well as the authorized persons acting for the association. The main condition that must be met in organizing public events is to deliver or mail written notice to local authorities within at least 10 days or another period established by the authorities. In addition to the above information and information on authorized persons, the notice should also indicate the goal, routes and the anticipated number of participants.

Not later than 5 days before a public event, the government body should notify the applicants of its decision in writing. Refusal or a proposal to stage the event at some other time or in some other place can be appealed in court. Illegal are attempts of any authorities or persons to intervene with events being organized according to the laid-down procedure, or demand fees for any services connected with the events (police protection, cleaning, illumination and so on). Breach of the laid-down procedures for public events, though, may entail administrative responsibility and, if the violation is repeated during the year, criminal responsibility with respect to their organizers (penalties amounting to 20 untaxed incomes of individuals to 400 minimum salaries or reformatory work up to one year). Any damage done during public events is remedied as provided by the Civil Code. Therefore such events should be staged in full compliance with legislation.

Participation in political activities

It is an open secret that some business associations are either strongly affiliated with political parties and blocs or seek to influence election or other political processes. This is only natural, but sometimes creates

more problems than advantages for a business association. For instance, there often arises the issue of taxes on the assistance provided by charities or labor unions that are conducting a publicity campaign of candidates running for elective office. In this connection, the Finance and Banking Affairs Committee of the Verkhovna Rada explained in their letter # 06-10/64 of 02.01.2001, as follows: "According to Par. 3, Art. 5 of Decree of the Cabinet of Ministers # 13-92, an organization cannot be considered a charitable one as long as it gives any financial support or publicity to candidates for elective offices, in compliance with the legislation on the election of the President of Ukraine, local government bodies etc. *The idea of "publicity" for a political party or an individual does not rule out the possibility of canvassing for such candidates in accordance with the Constitution and laws of Ukraine*". But all boils down to one thing: compliance with the laid-down restrictions on donations and other support of separate candidates or parties.

The initiative to hold a local referendum that is regulated by the Constitution and the Law on National and Local Referendums of 07.03.1999, can also belong to a business association's political activity. However, for lack of space here we cannot discuss in detail the relevant procedures for setting up action groups, canvassing, signature collection, making decisions on conducting a referendum or not, and appeal against such decisions.

Although a local referendum can cause, for instance, the early termination of powers of the relevant local council and its chairman or adoption of a local socioeconomic development program, it cannot be held to address tax or budget issues.

Lobbying for legal and regulatory bills in government and local government bodies

The Law on Employer Organizations (identified, incidentally, as social ones) already directly regulates the social partnership procedures regarding the development and implementation of state social standards and guarantees. The relevant procedures underpin the Law on State Social Standards and State Social Guarantees (# 2017-??? of 10.05.2000) and the Law on State Forecasting and Formulation of Socioeconomic Development Programs (# 1602-??? of 03.23.2000).

Among the basic principles of state prediction and formulation of social development programs is the principle of *glasnost*, i.e. public access to forecast and programmatic documents of socioeconomic growth, and the principle of equality that lies in the observance of rights and consideration of the interests of business entities of any type of ownership (Art. 2, Law # 2017-???). At the same time, the state social standards are always taken into consideration in formulating national and subnational socioeconomic programs (Art. 2, Law # 1602-???).

Art. 3 states that the establishment of state social standards is based on the principles of *social partnership; glasnost and public control during their development and implementation*.

Of importance is the rule that control over compliance with the legislation on state social standards and state social guarantees is exercised with the involvement of social organizations and independent experts on the principles of *glasnost* (Art. 25). Also, the Decree of the President of Ukraine on streamlining the activity of government agencies on the issues of information provision to the public of Feb. 17, 2001, orders the regional, as well as Kyiv and Sevastopol city state administrations to periodically hold Public Communication Days with the participation of leaders of these bodies as well as weekly "hot lines" on regional TV and radio channels to address burning socioeconomic issues and enlist the Knowledge Society, Prosvita Society and other social organizations, including on a contract basis, in communication activities on a broad scale.