

## Nonprofit Status Spelled Out

By Daniel J. Rothstein

Two recently enacted federal laws — “On Public Associations,” and “On Charitable Activities and Organizations” — fill many gaps on the legal status of nonprofit organizations.

Most foreign nonprofit organizations operate in Russia as foreign entities, i.e. through a local representative office. The law on public associations is primarily concerned with Russian entities, but it also governs the activities of local representations of “foreign noncommercial non-governmental associations.”

The law on public associations does not allow a foreign entity to found a Russian public association. At least three individuals must act as founders. For clear identification of its sponsorship, however, a foreign nonprofit organization would rather be named as founder.

Also, the law seems to hold a public association's officers personally liable for its obligations in some cases, which might deter representatives of foreign nonprofit organizations from acting as founders of Russian affiliates.

Public associations must serve “socially useful” goals, but the state's ability to judge which aims are useful is limited in that public associations have the right to operate without state registration. The associations can, however, register with the Justice Ministry or its local counterpart.

Four different types of entities are described under the law on public associations: “foundations” established for charitable, cultural, educational or other “socially useful” purposes; “institutions,” typically providing social services; mass social or political “movements” and membership-based “organizations,” created to further the interests of members. The functions and structures of these four organizational forms

overlap somewhat, and it will be unclear in many situations which form to choose.

A public association must disclose basic information to the public. Also, the governmental registering body has the right to send representatives to events conducted by a public association.

While these requirements may be considered normal for large organizations that will presumably seek tax exemptions and other privileges, in the post-Soviet context they will still seem ominous to many of those affected. The Civil Code apparently contemplates private foundations,

which might require less public exposure. There are no federal laws on private foundations, but Moscow legislation can be adapted to such an organization.

Both laws allow commercial activity, as long as profits are used to support primary social or charitable activities. Further, both laws mention that tax benefits can be granted to public and charitable organizations, but do not themselves grant benefits. Under current tax legislation, public associations and charities

can receive exemptions from profit tax only by creating separate subsidiaries for commercial activities, which is a cumbersome structure. Also, such organizations are still subject to excess-wage tax and many other generally applicable taxes.

Some foreign nonprofits will probably raise their profile by registering a Russian public association, but others will prefer to use the less-intrusive Moscow legislation, wait for federal legislation on private foundations, or continue to operate as foreign entities. More encouragement is needed in the form of broader tax exemptions for not-for-profit and charity-related activities.

*Daniel Rothstein, a partner at Rothstein & Shaw, has practiced law in Moscow since 1990.*

