

**MODEL PROVISIONS FOR LAWS
AFFECTING PUBLIC BENEFIT ORGANIZATIONS**

Copyright © 2002 International Center for Not-for-Profit Law – ICNL
All rights reserved

This publication was made possible through support provided by the International Center for Not-for-Profit Law through funding provided by the Office of Democracy and Governance Bureau for Europe and Eurasia, U.S. Agency for International Development, under the terms of Award No. EDG-A-00-01-00002-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development or the International Center for Not-for-Profit Law.

Publisher

International Center for Not-for-Profit Law
733 15th Street, NW Suite 420
Washington DC 20005 USA

For the publisher

Please contact LEON IRISH

Design and layout

MIRKO BANJEGlav

ISBN 0-9717651-1-1

Printed by

TISKARA ŽUPAC, Zagreb, Croatia

MODEL PROVISIONS

FOR LAWS AFFECTING PUBLIC
BENEFIT ORGANIZATIONS



International Center for Not-for-Profit Law

TABLE OF CONTENTS

LAW ON PUBLIC BENEFIT ORGANIZATIONS	1
Preamble	1
Chapter I	1
Chapter II	5
Chapter III	9
Chapter IV	11
Chapter V	13
Chapter VI	15
Chapter VII	15
OTHER SELECTED PROVISIONS NEEDED	
FOR EFFECTIVE PBO REGULATION	17
LAWS ON NOT-FOR-PROFIT ORGANIZATIONS (NPOs)	17
FISCAL LAWS	19
ADMINISTRATIVE LAWS	20
<i>NOTE ON PUBLIC PROCUREMENT AND GRANTS</i>	21

LAW ON PUBLIC BENEFIT ORGANIZATIONS*

PREAMBLE

In order to increase the role of Public Benefit Organizations (PBOs) in society, to promote their public benefit activities, to foster transparency and accountability, and to provide guidance to the government for using public benefit organizations in procurement of services for the benefit of the general public, the [Parliament of Country] enacts the following:

While some countries have a tradition of preambles, others do not. Even where no such tradition exists, however, a law that regulates a completely new area, or one that has not been regulated for decades, may well utilize a preamble in order to introduce the subject matter and the general principles, which can then be applied in interpreting the law.

The above preamble is based in part on the Hungarian law on PBOs (1997). While it is appropriate to include language in a preamble to a PBO law that encourages partnerships between the government and PBOs, it would not generally be appropriate to mandate by law that governments form partnerships with PBOs.

CHAPTER I

GENERAL DEFINITIONS

Article 1 Public Benefit Activity

A Public Benefit Activity is any lawful activity that supports or promotes public benefit by supporting or promoting one or more of the following:

* This document was developed during 2000-2001 by a group of experts in Central and Eastern Europe convened by the International Center for Not-for-Profit Law. It may also be relevant to countries in other regions of the world.

- (a) Amateur athletics,
- (b) Arts,
- (c) Assistance to, or protection of physically or mentally handicapped people,
- (d) Assistance to refugees,
- (e) Charity,
- (f) Civil or human rights,
- (g) Consumer protection,
- (h) Culture,
- (i) Democracy,
- (j) Ecology or the protection of environment,
- (k) Education, training, and enlightenment,
- (l) Elimination of discrimination based on race, ethnicity, religion, or any other legally proscribed form of discrimination,
- (m) Elimination of poverty,
- (n) Health or physical well-being,
- (o) Historical preservation,
- (p) Humanitarian or disaster relief,
- (q) Medical care,
- (r) Protection of children, youth, and disadvantaged individuals,
- (s) Protection or care of injured or vulnerable animals,
- (t) Relieving the burdens of government,
- (u) Religion,
- (v) Science,
- (w) Social cohesion,
- (x) Social or economic development,
- (y) Social welfare,
- (z) Any other activity that is determined by the Public Benefit Commission to support or promote public benefit.

The above list contains virtually all of the Public Benefit Activities recognized in one or more countries in Central and Eastern Europe, but no list can be comprehensive. The list may be too extensive for any particular country. What is most needed is that the list be interpreted and applied to promote activities that are beneficial to the public. Any list of Public Benefit Activities, of course, should reflect the needs, values, and traditions of the country in question. Further, no list of Public Benefit Activities should be closed, for the needs and values of any society change and evolve. See Art. 1(z). Finally, it is important to note that

indicators of whether an organization will or will not qualify for Public Benefit Organization (PBO) status are provided by Art. 2.4 and 2.5.

Article 2

Public Benefit Organization

2.1 A Public Benefit Organization (PBO) is any Not-For-Profit Organization (NPO) that is:

- (a) registered under [*relevant laws*];
- (b) organized and operated principally to engage in Public Benefit Activities, as defined in Art. 1; and
- (c) certified as such by the Public Benefits Commission.

The Model Provisions presume that NPOs are defined in and registered under other laws, and that those other laws include a prohibition on the distribution of profits. Most typically, NPOs will be either foundations or associations. It is possible, though, for countries to define other types of persons as NPOs (e.g., institutes not-for-profit corporations). There is no need to exclude any particular kind of NPO from the possibility of qualifying as a PBO.

An organization is “organized” principally for public benefit if the purposes and activities permitted by its governing documents limit it to engaging principally in Public Benefit Activities. An organization is “operated” principally for public benefit if its actual activities are principally Public Benefit Activities. “Principally” may mean more than 50% or virtually all, depending on the context and the country. There are different ways of measuring whether the “principally” test, as used in this article, has been satisfied (e.g., portion of expenditures, portion of staff time, portion of facilities, etc.). The exact definition and method of measurement could be specified in a country’s law, or it could be left to the Public Benefit Commission to define. Note, that defining and interpreting terms such as this argues strongly for a specialized commission to oversee the PBO sector (as opposed to other possibilities, discussed in reference to Art. 3 below).

2.2 Determination whether an NPO is organized and operated principally to engage in Public Benefit Activities will be based on the NPO’s certification application and activities, if any.

- 2.3 Qualification for public benefit status will be based on whether the NPO's application, subsequent reports, and other information, taken as a whole and considering all facts and circumstances, indicate that the NPO is organized and operated principally to engage in Public Benefit Activities.
- 2.4 Factors to be taken into account in determining that an NPO is organized and operated to engage principally in Public Benefit Activities generally include:
- (a) That the NPO provides significant benefits
 - (i) to the public-at-large, or
 - (ii) to a targeted class of beneficiaries, where
 - (A) the class is disadvantaged relative to the population as a whole, or
 - (B) there is a significant value to the community in providing special benefits to the targeted class.

Note that this factor constitutes a significant limitation on what constitutes a PBO. This factor means that it is not sufficient for an organization to engage in a Public Benefit Activity as listed in Article 1. It should also provide significant benefits, either to the public at large or to a targeted group under the conditions specified above. Thus, by combining this article with Article 1 (x), for example, the Public Benefit Commission should determine that an organization that promotes economic development only in a prosperous area would not qualify as a PBO. One that promoted economic development in a disadvantaged region of a country, however, or even in a whole country if the entire population can be deemed "disadvantaged," would be eligible for PBO status.

- (b) That the NPO provides significant goods and services at or below cost;
 - (c) All other factors indicating that the NPO is organized and operated principally to engage in Public Benefit Activities.
- 2.5 Factors to be taken into account in determining that an NPO is not organized and operated to engage principally in Public Benefit Activities generally include:
- (a) That the NPO targets a closed or otherwise limited class of beneficiaries, particularly one that includes persons affiliated in some way with the organization or its staff;

- (b) That the nature and extent of the NPO’s economic activities indicate that the NPO is not merely advancing its not-for-profit purposes but is instead organized and operated principally for a commercial purpose;

The purpose of this factor is to ensure that what is essentially a commercial business not be afforded the protection of PBO status. If the economic activities advance the public benefit purposes of the NPO, however, they should not be deemed a negative factor. See Article 13 and the accompanying note.

- (c) That the NPO regularly engages in the sale of goods or services at a price above cost; and
Selling goods and services in substantial amounts at prices that exceed cost is often an indicator that an NPO is in reality a commercial business.
- (d) That the NPO provides unreasonable compensation or other special benefits to its employees or other persons affiliated with the organization.

The terms “reasonable” or “unreasonable,” or their functional equivalent, are often defined in other laws. For example, in a specific country “unreasonable compensation” might mean “compensation that is more than 30% above the average compensation paid in that country to people who have similar jobs.”

CHAPTER II

PUBLIC BENEFIT COMMISSION

Article 3 Establishment and Composition

A Public Benefit Commission (Commission) is established in this law as an independent administrative body composed of representatives of the government, the PBO community, and the public.

The Model Provisions establishes a Public Benefit Commission. The Commission acts as the certification, oversight, and sanctioning authority. The Commission should receive an annual budget appropriation

necessary for the fulfillment of its duties. A key benefit of unifying these various authorities in a specialized commission is the quality as well as consistency of decision-making that is brought to the process by commissioners who are experts on PBOs.

Other possibilities of entities that may serve as the certification authority include (1) courts, (2) line ministries, each within its area of expertise (e.g., health, education, sport), (3) one specific ministry (e.g., justice). Either (1) line ministries or (2) one specific ministry could exercise the oversight authority. However, none of these options provides the efficiency or consistency and quality of decisions provided by a specialized commission.

The administrative law of the country will, of course, regulate the establishment and operations of the Commission. Many essential features of the Commission are not addressed in the Model Provisions because different solutions will be appropriate for different countries. For example, a specific Commission size needs to be stipulated. In general, the Commission should be of medium size (perhaps between six (6) and twelve (12) Commissioners), allowing for both broad representation of interests and efficiency.

Also, the specific composition of the Commission, terms of service of Commissioners, and the process through which they are selected are not specified. Again, there are many possible solutions; the one most appropriate for a particular country should be selected and included in that country's PBO law.

An interesting approach to the Commission size and composition is presented in the Moldovan Law on Associations (1996/97). The Moldovan Commission consists of nine (9) persons, of whom three (3) are appointed by the President, three (3) by the Parliament and three (3) by the Government. At least one of each of the three sets of three (3) appointed members must be a representative of a PBO and must not simultaneously be a civil servant, a government official, or a Member of Parliament.

Under other approaches there might be no parliamentary representation on the Commission, but instead an equal number of government and PBO representatives. Whatever approach is used, however, there should be PBO representation, either through an appointive process or by selection through a democratic process administered by the PBO commu-

nity. The presence of PBO representatives protects against repressive or discriminatory decisions and increases the confidence of the public.

The length of terms for the Commissioners serving on the Commission should generally be between two (2) and six (6) years. The term should be long enough to assure experience on the Commission, but short enough to prevent stagnation or entrenchment of interests. To ensure continuity, terms should be staggered. It may be appropriate to put limits on how many consecutive terms may be served by an individual.

Article 4 Certification Authority

- 4.1 As the certifying authority, the Commission shall:
 - (a) certify PBOs;
 - (b) decertify PBOs in accordance with Article 10;
 - (c) maintain certification files of PBOs as required in Arts. 4.2 - 4.4;
 - (d) issue forms, instructions, and model documents; and
 - (e) provide advice and training to PBOs.
- 4.2 PBO certification files shall be maintained at a central registry. The files shall contain the application documents filed by each certified PBO and a register of all PBOs that are certified.
- 4.3 The register and the certification file of each certified and decertified PBO shall be open to public inspection during ordinary business hours. Any person may request, in person or by mail, a copy of any entry in the register or any documents in a certification file. No more than a reasonable charge may be made for such copies. The requested copies, or a written decision explaining the reasons for the denial of the request, shall be furnished within thirty (30) days of request. All files may also be made available through the Internet.
- 4.4 Any organization that has been decertified shall be removed from the register, but the file, including the decision on decertification shall be retained and made available to the public.

Article 5
Oversight authority

- 5.1 As the oversight authority, the Commission shall:
- (a) issue regulations and interpretations;
 - (b) monitor and enforce compliance with this law and Commission regulations;
 - (c) receive and review reports;
 - (d) subject to the limitations of Art. 5.2, investigate possible violations of this law and regulations by a PBO by examining its books, records, premises, and activities during normal business hours;
 - (e) provide PBOs with appropriate support and training; and
 - (f) serve as a liaison between PBOs, the government, and parliament on PBO issues.
- 5.2 A PBO that is being investigated in accordance with Art. 5.1(d) may refuse access to its books, records, or premises if it believes that the investigation is improper or is a violation of its rights or the rights of any other person. In order to proceed with the investigation, the Commission must then seek enforcement from a court of competent jurisdiction, which shall have the power to impose sanctions for abusive investigations or frivolous refusals to cooperate.

This provision, of course, must be applied in accordance with the criminal and administrative law of the country.

Article 6
Sanctioning authority

After a written notice of non-compliance has been given and an adequate opportunity to correct any defect has been provided, the Commission, as the sanctioning authority, may:

- (a) sanction a PBO with a fine of up to [*a stipulated amount of money*] for violation of, or non-compliance with, any provision of this law;
- (b) sanction a PBO with a fine of up to [*a stipulated amount of money*] for violation of, or non-compliance with, a valid Com-

- mission regulation; or
- (c) suspend or decertify a PBO in accordance with Art. 10.

CHAPTER III

PBO CERTIFICATION

Article 7

Documents to be Filed

Any organization seeking status as a PBO shall file the following documents with the Commission:

- (a) a copy of the organization's founding act and statutes;
- (b) a copy of all documents filed in connection with the registration of the organization as an NPO; and
- (c) a completed application form stating
 - (i) the public benefit purposes, for which the PBO is organized and operated;
 - (ii) all of the principal activities that the PBO will engage in; and
 - (iii) any economic or political activities that the PBO may engage in.

Article 8

Certification and Refusal to Certify

- 8.1 The Commission shall issue to a PBO a written PBO certification or a written decision denying certification within sixty (60) days of receiving an application for certification, unless the Commission properly requests, in writing, further information or clarification.
- 8.2 Upon receipt of further information or the requested clarification, the Commission shall issue either written PBO certification or a written decision denying certification within:
 - (a) the number of days remaining in the original sixty (60) day time period for issuing a decision; or
 - (b) ten (10) days of receipt of the further information or requested clarification, whichever is greater.

- 8.3 An organization shall acquire PBO status upon certification.
- 8.4 If certification is denied, the Commission shall issue, together with the written denial, a detailed written explanation of the grounds for denial of certification.
- 8.5 Certification may be refused only for any of the following reasons:
- (a) The certification application is materially incomplete;
 - (b) The applicant organization does not meet the qualification requirements of Art. 2; or
 - (c) The applicant organization has committed a serious violation or repeated violations of:
 - (i) this law;
 - (ii) other laws; or
 - (iii) regulations.

Article 9 Default Certification

If the Commission fails to make a decision on the certification of an organization as a PBO prior to the expiration of the time limit(s) provided in Art. 8, the organization shall be automatically entitled to certification as a PBO. In the event of automatic certification, the Commission shall issue the customary written PBO certification, and the organization shall be entered into the registry in the ordinary manner.

Article 10 Decertification

- 10.1 A PBO may choose to decertify at any time by filing with the Commission an application declaring that, pursuant to its rules of governance, the Governing Body has, by resolution, decided to decertify.
- 10.2 Subject to Arts 6 and 10.3, the Commission may suspend or revoke PBO certification only if there is substantial and credible evidence that the PBO has committed a serious violation or repeated violations of:
- (a) this law;

- (b) other laws; or
- (c) regulations.

- 10.3 The Commission may suspend or revoke PBO certification only after it has given reasonable notice to the PBO and given it an opportunity to correct the defect responsible for the Commission's decision to suspend or revoke PBO certification.
- 10.4 Decertification occurs pursuant to Art. 10.1 when a PBO files its intent to decertify, or, pursuant to Art. 10.2, when the Commission issues a written notice of decertification to the organization.
- 10.5 Decertification terminates all PBO benefits but does not terminate any obligations, including those with respect to monies or assets obtained while the organization was a certified PBO, nor does it terminate reporting requirements covering any such monies or assets or any period of time during which it was a certified PBO.

Thus, a PBO cannot escape the responsibilities imposed by this law by decertifying. Note that decertification in no way affects an organization's status as an NPO, only its status as a PBO.

CHAPTER IV

PBO GOVERNENCE

Article 11 Governing Body

- 11.1 A PBO shall be governed by a Governing Body of at least five (5) members, three (3) of whom are not related to each other. The Governing Body of a PBO shall have ultimate responsibility for its policies and financial affairs. Except as otherwise provided by the Commission, incompetent individuals, those who have not yet attained the age of sixteen (16), and persons who have been convicted of a felony within the ten (10) years prior to their proposed beginning date of service, are not eligible to serve on the Governing Body.

- 11.2 The Governing Body shall meet at least once a year to fulfill its obligations, including reviewing and approving the assets, liabilities, income, expenditures, and programs of the PBO for the past year and the anticipated assets, liabilities, income, expenditures, and programs for the upcoming year.
- 11.3 The Governing Body of a PBO shall not delegate:
- (a) its duties under this Article; the election of its officers;
 - (b) the process by which its Founding Instrument or Statute can be amended; or
 - (c) decisions to merge, split up, dissolve, or decertify the PBO.

Article 12
Supervisory Body or Audit Committee

- 12.1 A PBO, the revenues of which exceeds [*a stipulated amount of money*] for the most recently completed fiscal year, shall also have a Supervisory Body or an Audit Committee, no member of which shall be an officer or employee of the PBO. The Supervisory Body or Audit Committee shall have access to all books, records, and information concerning the activities of the organization, and shall be responsible for determining at least annually whether the organization is in compliance with the requirements of law and of the organization's founding act, statutes, and the resolutions of its Governing Body.

Note that the creation of a Supervisory Body or an Audit Committee is required only of larger organizations, as an additional internal check on their activities and operations.

- 12.2 The Supervisory Body or Audit Committee shall report its findings at least annually to the Governing Body. If the Supervisory Body or Audit Committee discovers serious irregularities, which, after reasonable written notice, the Governing Body fails to correct or prevent, it shall report the irregularities to the proper governmental authority.

CHAPTER V

PBO OPERATIONS

Article 13 Economic Activity

A PBO may engage in economic activities, but only so long as economic activities unrelated to Public Benefit Activities do not constitute the principal activities of the PBO.

It is permissible for a PBO to support its Public Benefit Activities with revenue earned from economic activities, that is, revenue generated by the sale of goods or services. Related economic activities – those that advance the public benefit purposes of the organization – should be allowed, for often conducting economic activities is the most effective way to carry out public benefit activities. Some economic activities that are unrelated to a PBO’s principal purpose may also be allowed, especially if any profits are used to support the public benefit activities of the organization. However, allowing unlimited economic activities unrelated to the principal purpose of the organization is inconsistent with PBO status and may lead to tax evasion or unfair competition between PBOs and the for-profit sector.

The Model Provisions allow a PBO to engage in any legal economic activities while ensuring that the organization does not conduct unrelated economic activities as its principal activity.

Article 14 Public Policy and Political Activities

- 14.1 A PBO may engage freely in research, education, publication, and advocacy with respect to any issue affecting the public interest, including criticism of the policies or activities of the state or any officer or organ thereof. It may also express its views on any issue or policy that is or may be debated or discussed in the course of a political campaign or election.
- 14.2 A PBO may not engage in fundraising or campaigning to support or oppose any political party or candidate for appointive or

elective public office, nor may it propose or register candidates for elective public office.

A strong dedication to complete freedom of expression would argue for no limit whatsoever on political speech and advocacy by PBOs. The Model Provisions take the position that resources of PBOs should not be used to support specific political parties or candidates. One reason for this approach is to prevent evasion of laws governing political parties and elections. There should definitely be no prohibition or limitation, however on a PBO's right to publicly advocate in favor of or against any cause, to criticize the policies or actions of the government, or to provide information in support or opposition to particular solutions to social questions.

Article 15 Fundraising

Any person who engages in public fundraising on behalf of a PBO may be required by any person being solicited to demonstrate that the organization is a registered PBO and to give an accurate description of its purposes, the percentage of its income expended on overhead and fundraising activities, and that person's authority to engage in solicitation on behalf of the organization.

The purpose of this provision is to assure that members of the public who are asked to make a contribution to a PBO have available to them information relevant to deciding whether to contribute. The approach taken in Art. 15 avoids the cost, delay, and rent-seeking behavior that often characterizes a governmental licensing scheme.

Article 16 Books and Records

Each PBO shall maintain accurate and complete books and records of its financial activities in accordance with accepted accounting standards and shall adopt a reasonable record retention policy with respect to both its financial and non-financial books and records.

It would be appropriate for the Public Benefit Commission to promulgate record retention rules, accounting standards, forms, and instructions.

Article 17
Audit Requirement

A PBO, the revenues of which exceed [a stipulated amount of money] for the most recently completed fiscal year, shall be required to have an independent audit of its finances.

CHAPTER VI

PBO REPORTING

Article 18
General Reporting and Transparency Requirement

- 18.1 A PBO, the revenues of which exceed [a stipulated amount of money] for the most recently completed fiscal year, shall file activity and financial reports with the Commission and the appropriate fiscal authorities. The reports shall also be made available to the members of the public, upon request, for no more than a reasonable charge.
- 18.2 A PBO that is subject to the audit requirement of Art. 16 shall file a copy of the audit as part of its financial report.

In order to foster the growth of the PBO sector, it is important not to overburden small PBOs with cumbersome reporting requirements. Thus, the Model Provisions includes no external reporting requirements at all for very small PBOs and an independent audit report only for very large PBOs. Commission regulations will determine the form and content of the reports.

CHAPTER VII

MISCELLANEOUS PROVISIONS

Article 19
Liquidation

- 19.1 In the event of a voluntary or involuntary liquidation of a legal person certified as a PBO, the Governing Body of the PBO shall

submit a plan of liquidation to the Public Benefits Commission. The plan shall include appropriate provisions ensuring that any assets remaining after the discharge of all debts and liabilities be distributed to another PBO to be used for purposes similar to those of the liquidated PBO.

- 19.2 No distribution of assets can be made except pursuant to the plan of liquidation approved by the Commission.

Article 20
Effect on Other Laws

This law repeals [*cite laws to be repealed*].

Article 21
Effective Date and Transition Period

This law shall take effect on [*date*]. Organizations having a status under prior laws similar or equivalent to PBO status shall have one (1) year following the effective date to seek certification as a PBO under this law. Any such organization that fails to seek certification under this law, after specific notice to it and a reasonable opportunity to do so, shall cease to have PBO or any similar or equivalent status thirty (30) days after the expiration of the specific notice period, unless it has, by then, filed its PBO certification application.

OTHER SELECTED PROVISIONS NEEDED FOR EFFECTIVE PBO REGULATION

LAWS ON NOT-FOR-PROFIT ORGANIZATIONS (NPOs)

Refusal to Register

Registration may be refused by [*the registering body*] if the name prepared for the organization is identical to that of any registered organization, any other person or legal entity, or any public body, or is so similar that confusion would be created in the mind of the public in [Country].

Thus, without the permission of the holder of the name, an organization could not register as the Vaclav Havel, Coca Cola, or Ministry of Justice Foundation.

Failsafe Provisions When it is Impossible to Obtain a Quorum

1. In the case of an organization governed by its Members, if after proper notice, there is not a sufficient number of Members of the Organization at the scheduled Annual General Meeting of Members to constitute a quorum, a second notice shall be sent out for a meeting to be held at a reasonable time and place but no sooner than ten (10) days later. Whatever number of Members shall be present at the rescheduled meeting shall constitute a quorum for the conduct of all business for which no special quorum is required.
2. In the case of an organization governed by a Governing Body rather than all of its Members, if by reason of death, incapacity, resignation, or other good cause, it is impossible to obtain a quorum for a meeting of the Governing Body, the members who are present at a meeting scheduled at a reasonable time and place and after proper notice shall constitute a quorum for the purpose

only of electing enough additional directors so that a quorum exists for the conduct of other business.

Duties and Liabilities of Officers, Governing Body Members, and Employees

1. Officers, Governing Body members, and employees of an NPO shall:
 - (a) execute their responsibilities to the organization with care, diligence, and prudence;
 - (b) exercise loyalty to the organization;
 - (c) maintain confidentiality of the organization's non-public information; and
 - (d) ensure that the organization obeys applicable law and abides by its statutes, rules, and resolutions.
2. No person who is an officer, Governing Body member, or employee of a PBO shall be personally liable for the debts, obligations, or liabilities of the PBO, but each shall be liable individually to the PBO or any affected third party for willful or grossly negligent performance or neglect of his or her duties.

Prohibition on Personal Benefit

The assets, earnings, and profits of an NPO shall be used to support the purposes of the NPO and they shall not be distributed, directly or indirectly, to any person. This section does not preclude reimbursement of reasonable expenses or payment of reasonable compensation to any person for work performed for the NPO.

Conflicts of Interest

1. A conflict of interest is any interest, purpose, or concern of a person that is or may be inconsistent with the interests, purposes, or concerns of an NPO.
2. If any person performing services for, or exercising any authority on behalf of an NPO, including any officer, Governing Body member, or employee of an NPO, has a conflict of interest, that person

shall disclose the nature and possible effects of that conflict of interest to the Governing Body of the NPO.

3. Except as provided in (2) above, a person with a conflict of interest shall not participate in the discussion or decision of any matter involving the NPO as to which he or she has a conflict of interest.
4. Any transaction between an NPO and an affiliated organization, or between an NPO and its officers, Governing Body members, or employees shall be prohibited unless the Governing Body determines after reasonable investigation that the transaction is in the best interest of, and fair and reasonable to, the organization and that the organization could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

FISCAL LAWS

Income Tax

A PBO shall be exempt from taxation on all of its income.

Under this provision, income received by a PBO from fees, donations, grants, government contracts, or membership dues would not be subject to income taxation. In addition, the income from economic activities earned by a PBO will also be exempt from income taxation.

Customs Benefits

Goods, supplies, and equipment imported by a PBO and (i) consumed by it in connection with Public Benefit Activities, (ii) used by it for at least three (3) years for Public Benefit Activities, or (iii) distributed free of charge in connection with Public Benefit Activities, shall be exempt from customs duties.

Donor Benefits

1. Donations or contributions by an individual or a business entity to a PBO that engages exclusively in Public Benefit Activities, or which are restricted for use for Public Benefit Activities, shall be deductible from taxable income in the computation of income taxation in an amount of up to:
 - (a) fifty (50) percent of taxable income for individuals; and
 - (b) ten (10) percent of taxable income for business entities.

Some countries allow individuals to claim deductions for contributions to PBOs for up to 100% of their income; others permit deductions only up to a very small percentage of income. It is difficult for individuals to make large gifts, such as gifts to create an endowment or to provide a major facility for a PBO, unless the limit is fairly generous. Fifty percent is a middle-ground position that will encourage donations to support public benefit activities. Few companies contribute more than ten percent of their profits to PBOs, so the suggested limit is adequate.

2. The amount of any donor deduction shall be reduced by the value of any goods or services received by the donor as a result of his or her contribution.

ADMINISTRATIVE LAWS

Appeals

Decisions of the Commission, including but not limited to refusal to certify an organization as a PBO, the imposition of a sanction, or decertification may be appealed to a court of competent jurisdiction, which shall be entitled to examine the factual and legal basis for the Commission's action or proposed action.

NOTE ON PUBLIC PROCUREMENT AND GRANTS

Organizations shall not be ineligible to participate in public procurement because of their status as PBOs. Some areas of procurement may be reserved exclusively for PBOs. Special PBO grant procedures may be instituted when the governmental purpose is uncertain or less capable of being defined precisely at the outset.

