

Non-Profitable Organizations



PKE Consultants Limited

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Introduction

A non-profitable company / organization may be incorporated in the form of either a private company limited by guarantee or in the form of a foundation. In whichever case, provided that the said company or foundation (as the case may be) is granted approval by the Council of Ministers for its treatment as a 'charitable foundation', the income of such a charitable organization of public interest is exempted from taxation.

Non-Profitable Organisation in the form of a private company limited by guarantee

Such a non-profitable company/organization in the form of a private company limited by guarantee (registered as a non-profitable organization) is treated as every company in the sense that it falls under the provisions of the Companies Act (Cap. 113).

The difference distinguishing the usual type of a private company, namely the private company limited by shares, from a private company limited by guarantee lies in the liability of the shareholders (members in the case of a private company limited by guarantee) of each type of company. In particular, the liability of the shareholders of a private company limited by shares is limited by the company's Memorandum to the amount, if any, unpaid on the shares respectively held by each of the shareholders.

On the other side, companies limited by guarantee 'provide' limited liability to their members; in particular, the liability of the members of such a company is limited to the undertaking of contributing (an amount respective to the amount each of the members guaranteed) to the company's assets in case the company is wound up. It is worth to note that, as regards companies limited by guarantee, there is no minimum quota that a member is obliged to guarantee. However, it should be noted that (a) previous member(s) of the company may also be liable to contribute to the company's assets upon the winding up of the latter but such an obligation of an old member extends only to the amount of it guaranteed and for debts incurred while it was a member in the company.

On that basis, a private company limited by guarantee may serve the purposes of a non-profit company / organization that may be, among others, a charity, club, society, professional body or trade association / union. To this end, the key elements of a non-profit company / organization (that must be included in the Memorandum of Association of the company) are the following:



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- a) The company is incorporated with regards to the promotion of trade, art, science, religion, beneficence or for any other charitable purpose or for any collateral or supportive purpose.
- b) All the profits (if any) and/or any other income must be given for the promotion of the objects of the company.
- c) The payment and/or distribution of any dividend to the member(s) of the company is strictly prohibited.

Non-Profitable Organisation in the form of a Foundation

On the other hand, a non-profitable company/organization in the form of a foundation, in the scope of the Law on Societies and Foundations (Law 57/1972), is defined as the allocation of assets for a specific purpose. Such a foundation has to register (in the respective Register) its Act of Incorporation containing its name, purpose, seat and allocated property as well as the names and addresses of the members of its management. The founder(s) is(are) liable to transfer the allocated property from the outset of the incorporation of the foundation.

According to the provisions of the Law on Income Tax (Law 118(I)/2002), donations to such approved charitable organizations (incorporated in either form) may be qualified for deduction for tax purposes. However, whether the donors may be able to deduct the amount of donation(s) made in the form of charities to the approved charitable organizations, it is a matter falling under the tax laws of the jurisdictions from which donation(s) is/(are) coming from.

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