



Kyrgyz Republic

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation

Five main social issues addressed by these organizations: Primary and High School Education, Health and Medical Research, Basic Needs, Youth and Family, Religion

Average time established by law to register a philanthropic organization: 0-30 days

Average cost for registering a philanthropic organization: US \$50

The cost of registration of an organization is quite low and, as such, is not an obstacle for registration. The time for registration is also not too long; officially, organizations—once all registration documents are submitted—should register an applicant within a fixed, short time period.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government

Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.2	3.3	3.0	3.0	2.5	3.18

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.5

Registration of philanthropic organizations is legally governed by the Law on Non-commercial Organizations (1999). There is no restriction to form a PO and also in terms of the purpose of a PO. Basically, there are no impediments for registering a non-commercial organization. The law does not have restrictions on possible founders of a legally registered organization. The law distinguishes three types of non-commercial organizations—a foundation, a public association, and an establishment.

The Law on Non-commercial Organizations stipulates that “legal entities and individuals having legal capacity may be founders of a non-commercial organization, regardless of the place of registration of legal entities and citizenship of individuals” (art. 2). There is no stipulation in the law of a minimum of capital or assets needed for establishing a non-commercial organization. The list of documents for establishing an organization is not overly excessive—usually it is the name and the address of an organization, the list of owners, the value of its assets, the text of the charter, the names and contacts of the leaders of an organization, and a few others. There are some required follow up procedures, but they are also not overly complicated—for example, registering with the Pension Fund, with the tax authorities, as well as with the statistics committee.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0

The structure of a non-commercial organization is not prescribed in a very detailed way in the law, at least in regard to such forms of non-commercial organizations as public associations and establishments. In regard to the structure of the latter, the law approaches it in a very general way by stating that the structure of governance is decided by an organization itself. In regard to the public association, it is stipulated that the highest authority rests with a general meeting of its members and other governance structures are decided by the organization, as well. The law is a little bit more prescriptive in regard to the governance structure of public foundations, and it mandates this type of non-commercial organization have a board, which is basically a collegium of senior staff, as well as an oversight board that is composed of external people. Overall, the structure of an organization is not mandated very precisely.

The laws that regulate the creation and operation of philanthropic organizations (The Law “On Philanthropy and Charitable Activity” and the Law on Non-commercial Organizations) do not interfere with the content of their activities, except from vague stipulations that they must operate within the law. Non-commercial organizations do not have restrictions to choose who to cooperate with and

how, either with local and foreign civil society organizations. There are also no restrictions on the use of social media or on any other forms of communications. Reporting requirements are clear and, as any other legal entity, a registered non-commercial organization has to report to the tax authorities and to the Pension Fund in regard to their payments. Those organizations that are engaged in commercial activities for nonprofit purposes should also be specially registered with the tax authorities, and their reporting is more complicated than it is for those who do purely nonprofit activities. Even so, these complications are less cumbersome than those for business enterprises, although there have been complaints that non-commercial organization should not be treated like businesses.

Question 3: To what extent is there government discretion in shutting down POs?

Score: 4.0

The governing bodies of non-commercial organizations have legal possibilities to voluntarily dissolve an organization, however, the procedure is quite complicated and, in fact, not many organizations have closed. That is why some surveys find out that the number of registered, non-commercial organizations on paper far exceeds those that are actively working. Part of the reason for this is that the procedure to dissolve an organization is complex, although it is relatively the same for all types of organizations.

Involuntary dissolutions are not a common practice in recent times. In cases of involuntary termination, there is a possibility to appeal to the court. Even during the worst political periods of post-soviet Kyrgyzstan, involuntary dissolution was not usually practiced by the government. In recent years, this is even less common.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.5

Article 208 of the Tax Code allows for corporations and individual entrepreneurs to have 10 percent of their taxable income to be transferred to a charitable organization, as well as to organizations of sports and culture, regardless of the form of their property, and this amount can be deducted from the overall annual income. According to the Tax Code, a charitable organizations is a “non-commercial organization (a) created and carrying out charitable activity in compliance with the legislation of the Kyrgyz Republic on non-commercial organizations and charitable activity; (b) not participating in the activity on production and/or sale of excise goods and gambling business; (c) not participating in the support of political parties or election campaigns” (CFM 2017).

While this is stipulated in the laws, it is almost never practiced. This regulation does not work and is the result of various reasons, among them, the large portion of the economy that functions as shadow economy, the unwillingness of companies to deal with tax authorities, the distrust of companies

toward non-commercial organizations, and the widespread practice of providing support directly to beneficiaries bypassing nonprofit organizations. There is also a limitation in regard to what counts as charitable, which makes difficult for the tax incentives to come into force. Furthermore, individual tax returns are prepared and submitted by their employers. This does not create incentives for individuals to connect their charitable activities to the taxation system. Also, charity often tends to be informal and not systematic.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 3.0

In many regards, non-commercial organizations are treated as commercial entities, and pay the same kinds of taxes (same tax rates) as commercial entities. They have to pay the same tax rate as for-profit firms if they engage in nonprofit commercial activities. Putting CSOs on par with commercial firms in this regard makes sustainability of many nonprofit organizations quite difficult to achieve. According to the law, charitable organizations are exempt from income tax, Value Added Tax (VAT), and sales tax. However, this does not function well in practice because it is very difficult to sustain a charitable organization due to the legal stipulations requiring these organizations to devote 98 percent of their budgets to operational activities. It is difficult to run an organization with just 2 percent of administrative costs. Non-commercial organizations tend to register themselves as public foundations or public associations, and legally they do not have access to these tax benefits. The Tax Code stipulates that the profit of charitable organizations, as well as some organizations whose members are persons with disabilities, is not taxable (Article 212). There are also provisions that goods and services provided by charitable organizations are free from VAT (Article 251), as well as from sales tax (Article 315). These provisions do not include a wide range of non-commercial organizations, and, as it was previously discussed, the possibility to be counted as a charitable organization is quite low.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 3.0

There is almost no practice within Kyrgyzstan of sending donations abroad. There are however, some regulations limited in scope and only apply to donations related to natural disasters and emergency situations (Article 178 of the Customs Code).

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 3.0

The Customs Code does not specifically state anything in relation to an organization's purposes except Article 178, which states that there could be special customs regimes for "goods transported across the customs border and designated ... for giving to philanthropic nonprofit organizations for these goals ..." (these goals, meaning preventing and elimination of the consequences of natural disasters or other emergency situations, or to give to those who suffered from natural disasters or other emergency situations). As observed, there is no special treatment for philanthropic organizations. In general, non-commercial organizations are treated in a similar manner as other entities when they receive funding/financing from abroad. There are no additional costs in this regard. There is the possibility of getting exemption from paying a profit tax if the funding was designated as a grant (rather than a contract) and if it is transferred to a legal entity and not to an individual.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.0

In general, the political environment is quite favorable for non-commercial organizations that are engaged in charities, and the government's attitude toward philanthropic organizations is quite favorable. The major limitation philanthropic organizations face is the lack of institutional capacity to engage with the government in partnerships. Due to difficulties of operating such organizations, there is a prevalence of informal, charitable activities, and a formal philanthropic sector does not exist in Kyrgyzstan. Charitable organizations are few in number and do not have a significant volume of operations to be politically recognized by the government.

Policy processes are not regularly inclusive when it comes to the development of the philanthropic sector. Public hearings or other forms of consultations with stakeholders are occasionally organized, but often some of the initiatives toward the sector are not to stimulate its growth, but rather to control these organizations. These controls may specifically target the freedom of philanthropic activities by drafting counter-money laundering laws, which include heavy reporting procedures for non-commercial organizations. The recent intensification of negative, political rhetoric against human rights organizations has also come alongside praise to "non-political" segments of the nonprofit sector, yet there are no policy efforts to engage philanthropic organizations. In general, the current economic situation and lack of incentives for formal charitable contributions are impediments for the sustainability of philanthropic organizations.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 3.0

The government does not have an explicit policy to support philanthropic activities, or the nonprofit sector. Although one of the departments of the presidential administration has the title of "Department on Ethnic, Religious Policies and Interaction with Civil Society," there is no formal policy toward civil society. On the contrary, civil society organizations often become targets of bills created to restrict their activities; for example, the draft law on foreign agents (aimed at regulating foreign funded non-commercial organizations engaged in policy activities). This bill was discussed in the parliament and eventually rejected. Since 2010, seven similar bills have not been passed through so far.

Donors' support to philanthropic organizations is not controlled, although in many regards donor agencies work closely and coordinate their activities with the government, including the selection of the causes to be funded. The government, in the last few years, began its own funding of non-commercial organizations (called state social order), but the funding is very limited and the selection process of awardees is not transparent. In the 2016 Corruption Perception Index (by Transparency International) Kyrgyzstan ranked 136 out of 176 countries worldwide.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 2.5

In general, support to those in need is perceived to be of high importance. However, the forms of support vary and, quite often, people tend to support organizations in their own hometowns. The support of schools, infrastructure projects, orphanages, and other sites in places where people were born is valued in society. This is especially the case for people in rural areas who succeeded in their lives elsewhere and are expected to give back to their home communities. Besides, there are small local philanthropic activities to support talented youth, charity activities, and people with disabilities. Those who are engaged in philanthropic activities are mostly young, middle class professionals. These nascent initiatives are not yet widespread neither in terms of breadth of coverage nor in terms of funding amounts. The reason for this limited growth of philanthropy is the small size of the middle class, the prevalence of irregular and unofficial support, and the distrust in civil society organizations as effective means to reach out to potential beneficiaries. As one of the surveys (2006) of leaders of CSOs shows, more than 80 percent of funding comes from foreign sources.

On one hand, there is a lack of financial incentives, and on the other hand, there is a widespread perception that it is more efficient to give directly and informally to those in need. There is also a continued perception shared by some groups in society that CSOs tend to be western and foreign-funded entities created just to "get grants." This public perception makes philanthropy through civil society organizations very difficult. Overall, the lack of financial incentives to donate, the small number of middle class donors, and the lack of a widely shared, positive social perception of philanthropy are barriers to the development of the sector.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

In general, philanthropic activities in the Kyrgyz Republic are mainly informal. Many needs often related to medical and humanitarian causes, basic needs, and so on, are quite effectively fulfilled by this form of activities since they do not often require a systematic approach. This informal philanthropic sector is supported by non-systematic giving. This sector persists mainly due to the lack of philanthropic organizations, and the lack of public trust in non-commercial organizations. One more systematic approach that is emerging is driven by Islamic giving. The rise of religiosity and requirements by Islamic canons to give to the poor at times increases charitable donations to religious institutions.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- Parliamentary elections of 2015;
- Accession to the Customs Union/Eurasian Economic Union in 2015; and
- Rejection of the draft law on non-commercial organizations as foreign agents in 2016.

Future development trends in the philanthropic landscape

An emerging form of philanthropy in recent years is collecting funds through social media for various ad hoc purposes. The most recent example was a plane crash that hit the village near the airport in the beginning of 2017 prompting massive public charitable giving.

There were a number of activities promoted through social media, and this trend has become increasingly present. The use of technology is on the rise and, specifically, the use of technology for philanthropic purposes may affect trends in the formalization of the sector. The growth of religious giving is an increasing trend in philanthropy. Mostly it happens during the *Eid al Fitr*, a religious holiday that emphasizes charitable activities. However, this trend strengthens informal philanthropy and gives more importance to religious organizations. There are some ongoing instances of formalization of the presence of religion in the laws, e.g. Islamic banking. The increasing presence of religion in society and state affairs would further affect the independence of the philanthropic sector in the future.

Three key recommendations to improve the environment for philanthropy

- To change the law on philanthropic organizations allowing philanthropic organizations to be able to use a more substantial portion of income for administrative costs;

- To increase tax deductions for contributions to POs; and
- To develop a governmental strategy to support the nonprofit sector.