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CIVIL SOCIETY INSTITUTE



“Strengthening the Legal Framework for Citizen Action through Freedom of Association” Project

Study of the Civil Code Provisions Governing the Status of Non-Profit Legal Persons

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1. Introduction

1.1 Brief Annotation

The present document is a final report of the study into provisions of the Civil Code governing the status of non-profit legal persons, prepared by the “Civil Society Institute”.

The main goal of this study was to analyze the provisions of the Civil Code governing the status of non-profit legal persons.

Pursuant to the goals of the study, an optimal research design has been elaborated, which included quantitative research of the representatives of non-profit legal entities and qualitative research of tax authorities’ representatives, the latter aided with in-depth interview methods. Accordingly, quantitative research targeted those non-profit legal persons who undertook initial state (tax) registration or registered change in status following amendments to the Civil Code (14 December 2006), while qualitative research covered interviews in 6 tax inspection agencies.

The scope of the research encompassed city of Tbilisi and large regional cities of Georgia, namely Batumi, Telavi, Kutaisi, Gori and Rustavi.

The study was conducted in the period of February – March 2008.

Goals, methodology, results’ analysis, interpretation and major findings can be found in corresponding chapters below.

1.2 Goals and Object of the Study

Goals of this study encompass research into practical application of the provisions of the Civil Code governing the status of non-profit legal persons, as well as identification of problems related to their practical application. The study focused exclusively on the provisions that came into force as a result of amendments of 14 December 2006; the following issues were researched:

1. Internal organization schemes of non-profit legal entities (membership-based, membership-neutral);
2. Incorporation and registration documents of non-profit legal persons;
3. Governance (management) systems of non-profit legal persons and rules of their formation;
4. Procedures for initial and change-of-status registration of non-profit legal entities, including their shortcomings;
5. Establishment of branches (representations) non-profit legal persons, initial and change-in-status registration, including shortcomings;
6. Desirable amendments to the Civil Code.

1.3 Research Methodology

In accordance with the goals of the study, an optimal study design has been elaborated, which includes quantitative research of the representatives of non-profit legal entities and qualitative research of tax authorities' representatives. Various methods of data collection have been applied in order to obtain qualitative and quantitative information. In particular, data collection methods included face-to-face interviews with representatives of non-profit legal persons, while representatives of tax authorities have been subject to in-depth interviews.

Several meetings on organizational and other issues were held in preparation for interviewers' group. Interviewers also underwent a pilot survey.

1.3.1 Quantitative research

1.3.1.1 Method

Quantitative (descriptive) method is a method of research that produces accurate statistical data. This method enables the researcher to perform statistical measurement and analysis of research indicators (variables, parameters, links and correlations).

1.3.1.2 Technique and tools

Pursuant to the goals of the study, half-structured questionnaires were elaborated for quantitative research.

Face-to-face method of interview has been used in the study. Interviews were conducted with the use of special structured and half-structured questionnaires. Duration of the questionnaire comprised 20-30 minutes on average. Questionnaires included both closed-type and open questions, the latter being coded and processed separately.

Following completion of field assignments, the results were entered into and processed by specialized statistical software (SPSS 13.0). Based on the results of the statistical analysis, a final report of the study has been prepared.

1.3.1.3 Target Group and Selection Design

As a part of the study, 100 non-profit legal entity representatives were interviewed. Interviews involved organization leadership and/or other responsible persons.

Databases received from the Revenues Service of the Ministry of Finance of Georgia were used for the selection of non-profit legal persons. In line with the goals of the study, databases include exclusive information on legal entities that underwent primary or change-in-status registration after 15 December 2006.

At the first stage of the study, initial databases obtained from the Revenues Service underwent reworking and clean-up procedures, since databases did not include regional and city identifiers.

Database has been localized into regions; major cities and regional centers were singled out. Data on organizations registered in urban and rural areas have also been separated. Incomplete records found in initial processing were either corrected or deleted from the database altogether.

In accordance with the data obtained from the Tax Department, 2080 non-profit legal persons are registered in Georgia nowadays. Out of these, 1887 are registered in cities, 193 – in rural areas. 879 organizations are registered in Tbilisi. Regionally, many of these organizations are found in Imereti (236) and Samegrelo (225). Based on information obtained from the tax agencies, following amendments to the Code, majority of non-profit legal persons (77%) underwent initial registration for the first time, while the remaining 23% underwent change-in-status registration. It is noteworthy that 5.3% of newly established organizations also underwent change-in-status registration.

Table 1 – Regional distribution of non-profit legal persons¹

Region	City	Village	Total
Adjara	96	6	102
Guria	57	25	82
Imereti	236	19	255
Kakheti	113	28	141
Mtskheta-Mtianeti	25	2	27
Kvemo Kartli	81	14	95
Racha-Lechkhumi	32	4	36
Samtskhe-Javakheti	71	23	94
Samegrelo	225	12	237
Shida Kartli	72	54	126
Tbilisi	879	6	885
Total	1887	193	2080

Table 2 – Distribution of non-profit legal persons among major cities

City	Number
Tbilisi	879
Kutaisi	116
Batumi	70
Gori	45
Telavi	33
Rustavi	30
Zugdidi	123
Ozurgeti	26
Akhaltikhe	21

¹ All data found in tables reflect only the number of non-profit legal entities who underwent initial or change-in-status registration after amendments to the Code (14 December 2006).

Poti	18
Ambrolauri	10
Mtskheta	6
Other cities	510

In accordance with the goals of the study, respondent selection design has been set in a manner that ensures maximum coverage of major cities. Non-profit legal entities registered in rural areas have been excluded from the selection databases. Total selection pool has been set at 100 units (non-profit legal persons). Study area comprised 6 major cities: Tbilisi, Kutaisi, Batumi, Gori, Telavi and Rustavi. Overall number of entities registered in six major cities stands at 54.6%. Total selection pool has distributed among these cities in the following manner:

City	N - absolute numbers	n - selective numbers
Tbilisi	879	50
Batumi	70	20
Kutaisi	116	16
Gori	45	6
Telavi	33	4
Rustavi	30	4
Total	1173	100

The selection process of non-profit legal persons has been randomized. Interviewers were given both core and reserve lists. Reserve lists were set in random order. After completing the core list, the interviewer moved on to the reserve list and interviewed individuals in consecutive order as set in the list.

Weighted coefficients were formed for the final aggregation of data. Weighted means enabled us to restore general average proportions.

1.3.1.4 Statistical tests used

In order to determine fidelity of indicators' frequency distribution in variables under research, Pearson Chi-Square was used, while the fidelity of variables of average indicators was measured with the use of the Student T-Test.

The fidelity of data is measured in a 0.05 asymptotic scale. In other words, variances in data distribution are statistically relevant if the variance between data is less than 0.05 ($P < 0.05$). Statistically relevant variance means that the difference within the framework of a given study can be generalized to a general average with fidelity of 95% (taking into account selection variances and variance coefficients), while statistically negligible variance means that the trends identified in the study (frequencies' distribution, central tendencies indicators – average, mode, median – and others) are attributable to specific selection (are occasional) and no such variances are possible in reality.

1.3.2 Qualitative research

1.3.2.1 Method

In-depth interviews were used in the study, meaning that qualified interviewers conducted face-to-face non-structured interviews of the respondents. The said method is used to perform in-depth study of views and attitudes of the respondent on the subject matter.

1.3.2.2 Technique and tools

In-depth interviews were held with pre-selected respondents. In-depth interviews were conducted by the Civil Society Institute staff on the basis of a Guide prepared with a view to the goals of the study. Due to the volume/specific nature of the subject matter, duration of each interview averaged at approximately 50 minutes.

Following completion of in-depth interviews, detailed account of interviews has been created and used subsequently for elaboration of the final report of the study.

1.3.2.3 Target group

In line with the goals of the study, focus has been made on analyzing views of the tax authorities' representatives on the subject matter. In order to ensure thematic compatibility with quantitative analysis, qualitative research involved tax inspection agencies of those cities in which quantitative research took place. In particular, in-depth interviews were conducted with representatives of Tbilisi, Rustavi, Telavi, Batumi, Kutaisi and Gori tax inspections. Six interviews were held in total.

2. Major findings

The following major trends and proposals were uncovered as a result of the study:

Overall, both non-profit legal persons and representatives of tax inspection agencies are in favor of the regulations governing the status of non-profit legal entities, as formulated by amendments to the Civil Code. However, the study demonstrated a number of practical and legal shortcomings, which, in the opinion of the respondents, shall be remedied in order to improve of the legal status of non-profit legal persons, as well as raising practical efficiency of tax authorities.

The study revealed essential findings and trends related to practical application of the provisions governing the status of non-profit legal persons. Similarly, common proposals as to improvement of the existing regulation have been identified by respondents.

The study uncovered the following trends and proposals:

- ⇒ Heads and other responsible staff of non-profit legal entities are very poorly informed of internal organization forms and incorporating (registration) documents of their

organizations. More than a quarter of all respondents (28%) are not aware of the type of internal organization of their entity. It is also to be noted that a major fraction of respondents is not aware of the nature of incorporating and registration documents kept by the organization. A significant portion of the respondents states that they do not possess incorporating and registration documents that are necessary for registration. The aforesaid leads us to the conclusion that significant number of respondent organizations does not pay sufficient attention to categorization and file-keeping of internal documents related to the status of the organization.

- ⇒ A substantial portion of the respondent legal persons have an incorporated by statute. However, in accordance with the current edition of the Civil Code, non-profit legal persons (with certain exceptions) are not required to have a statute.
- ⇒ Regulations for formation of governing bodies are vague and non-standardized within a substantial part of non-profit legal persons. The most common type of governing (managing) body within non-profit legal persons is the board. Councils also play an important role in governance of organizations. An average term of functioning/authority for governing (managing) bodies of non-profit legal persons is around 4 years.
- ⇒ In four-fifths of organizations (86%), governing (managing) bodies and governing positions of non-profit legal persons are set by the statute, although governing acts like an act of establishment (65%) and application for registration (69%) are common as well.
- ⇒ In general, for registration purposes, tax authorities require non-profit legal persons to submit of documents that are provided by law. However, in some cases, tax inspection agencies require applicant non-profit legal entities and their branches to produce documents that are not explicitly required by the Code.
- ⇒ Many respondents are of the opinion that the reduction in number of documents required for registration of non-profit legal persons and/or their branches is desirable. Required notary approval for a number of documents shall be dropped as well.
- ⇒ In the opinion of tax inspection representatives, the law is not sufficiently clear as to which documents are required to be submitted by non-profit legal entities in cases of change in status, as well as which changes require them to do so; this leads to problems in procedure and delays in registration of changes in status. Accordingly, majority of the respondents believe that it is necessary to define those changes in the registration data of non-profit legal persons and/or their branches that are subject to re-registration, as well as specific documents to be produced.
- ⇒ Very few non-profit legal entities have branches; on such cases, the parent entities are reluctant to deal with the official registration of branch offices. Therefore, branches are rarely registered. A portion of the respondents advocates for abolishing the requirement for registration of branches of non-profit legal entities registered in Georgia. Moreover,

even if such requirement is still legally enforceable, it is necessary to further streamline the branch registration procedures by limiting the number of documents required for its registration.

- ⇒ Despite that fact that a 3-day time limit for registration of non-profit legal persons and their branches is fully acceptable either for the tax authorities or for the non-profit legal entities, both parties draw attention to insufficiency of 2-day term for rectifying application shortcomings and feel that this term should be extended. Respondents note that application shortcomings cannot be possibly remedied within 2 days.

3. Results, Analysis and Interpretation

This chapter presents the results of the study, their analysis and interpretation. Each of the conclusions stated below is based upon statistical data received in the study.

3.1 Description of non-profit legal persons

3.1.1 Internal organization of non-profit legal persons and incorporating (registration) documents

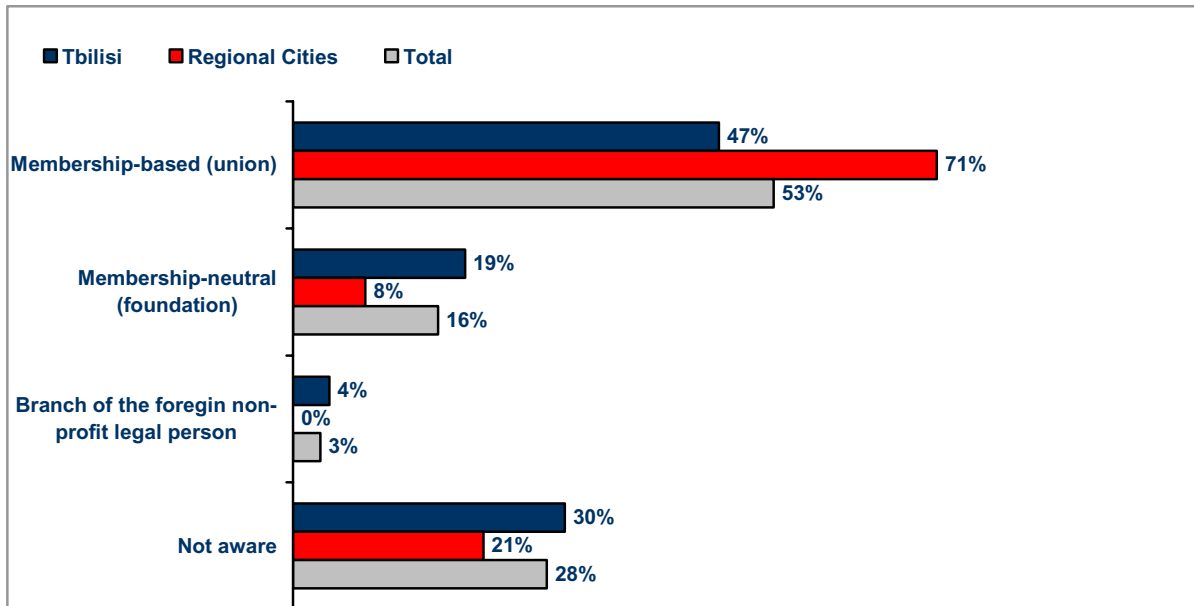
Types of internal organization

Until the amendments to the Civil Code of December 2006, the law provided for 2 forms of legal organization for non-profit legal persons, namely, a union and a foundation. Following amendments, non-profit persons cease to be officially categorized into these two. Nevertheless, legal entities may opt for internal organization based on membership or choose to be independent of membership (i.e. to be membership-neutral). One of the goals of this study was to determine the preferred mode of organizational establishment for non-profit legal persons in the aftermath of the Civil Code amendments.

Within the research area, every second non-profit legal person is legally and organizationally established as a membership-based union (53%), while the so-called foundations constitute mere 16%. One has to note that, compared to Tbilisi, respondent organizations interviewed in regional cities are more often established as the so-called union (47% and 71% correspondingly). As to the foundations, the portion of those in Tbilisi outnumbers those in the regions twice as much and stands at 19%, while the regional cities account for 8.3% (Figure 1).

It is also noteworthy that the level of awareness by organization leadership as to specific type of internal organization is alarmingly low. As the study results demonstrate, respondents in one-fourth of organizations (28%) are not aware of the type of internal organization of their entities. In this respect, the trends prevalent in Tbilisi and the regions are similar.

Figure 1 – Internal legal-organizational form of non-profit legal persons



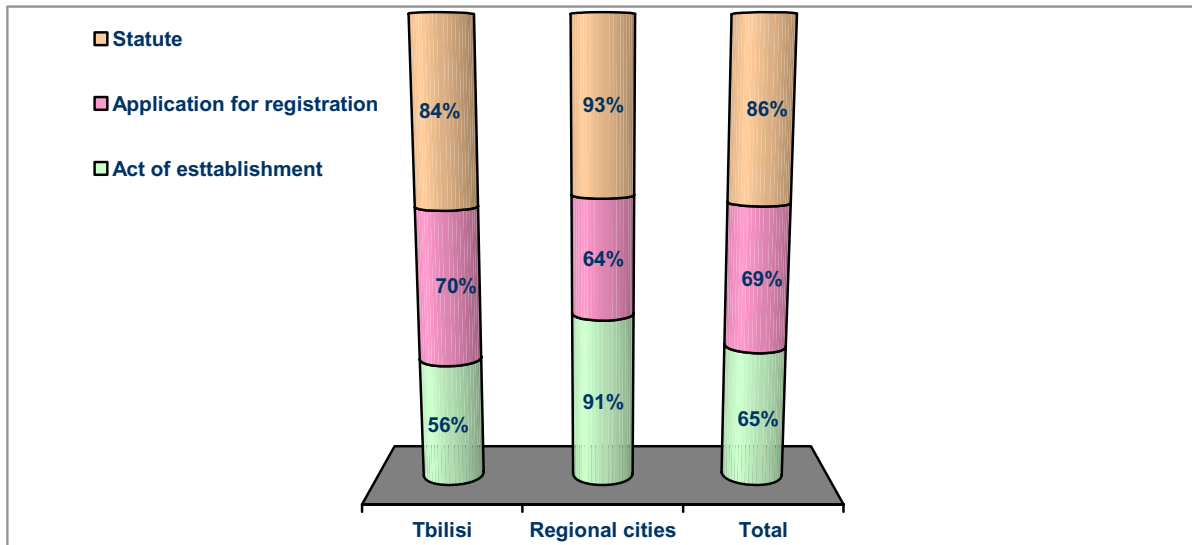
Incorporating documents

According to the Civil Code, a required incorporating document of the non-profit legal person is an Act (Protocol) of establishment, while the registration additionally requires an Application for registration. The Civil Code, with a number of exceptions, does not require existence of a statute as an incorporating document. Nevertheless, non-profit legal entities are free to choose whether to have a statute.

The study demonstrated that, despite not being obligatory by law, 86% of respondent non-profit legal persons do have a statute (Tbilisi – 84%, regional cities – 93%), which defines the governance system within the organization and deals with other internal issues. Notably, all organizations that are legally obliged to have a statute are incorporated by one. (11 such organizations, namely sports federations and creative unions, took part in the study).

Seven out of ten respondent non-profit legal entities (65%) note that they have an act of establishment (protocol, mayor’s order, Sakrebulo decree, etc.), while 69% of organizations keep an application for registration. These results lead to three different conclusions. Namely, respondent organization representatives a) are not aware that such documents are or were available at the organization, b) organization did have such documents, which are not available anymore (lost, mismanaged, etc), c) tax inspection agencies are in gross breach or the law by not requiring non-profit legal entities to produce an act of establishment and application for registration.

Figure 2 – Incorporating documents



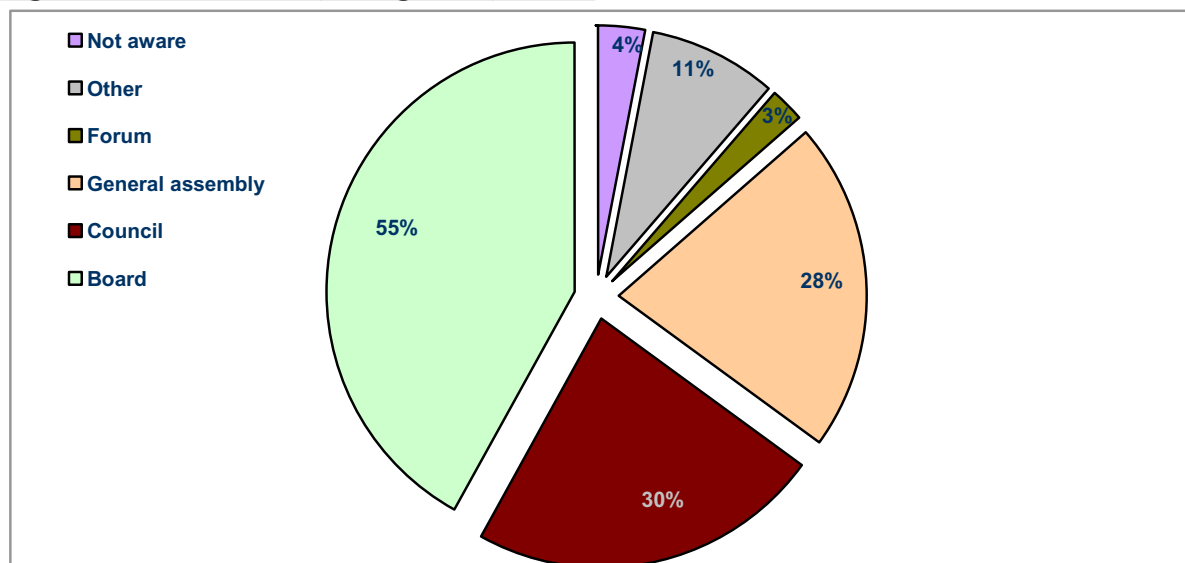
3.1.2 Governing (managing) bodies, their formation, functions and terms of authority

Governing (managing) bodies

In contrast to the prior provisions of the Civil Code, new regulations do not provide for a specific list of governing (managing) bodies that are obligatory for non-profit legal persons. While non-profit legal person is at liberty to define its body exercising governing functions, it is important that this should be registered with tax inspection agency in due time provided by law. The study revealed most common governance (management) solutions within non-profit legal entities. Pursuant to the current revision of the Civil Code, non-profit legal persons shall define terms for authority of governance (management) bodies on their own accord.

As the study results demonstrate, boards and councils represent most common governing (management) solutions within respondent non-profit legal persons. Every second respondent non-profit legal entity is governed by the board (55%). In contrast to regional cities, a large majority of non-profit legal persons incorporated in Tbilisi favors board governance (Tbilisi – 64%, regions – 29%), while in regions councils represent the most common governing authority (regions - 49%, Tbilisi - 24%). One has to note that councils do mostly operate within non-profit legal persons (kindergartens, libraries) established by local self-governance authorities (Figure 3).

Figure 3 – Governance (management) bodies



4% of respondent representatives of non-profit legal persons are not aware of governing (managing) bodies of their organizations.

Data on typical models of governing bodies hold particular interest. Both foundations and unions were addressed in this study. According to the results, unions typically favor the following governance models:

1. board;
2. board and general assembly;
3. council.

Unions are most commonly governed by boards, the second most common option is parallel operation of board and the general assembly, with the third most common occurrence is the council.

As for the foundations, these types of organizations are unquestionably preoccupied by a single type of governing body, namely, the board.

Terms of authority and formation

Previous edition of the Civil Code, in contrast to the current provisions, defined the rules as to terms of authority and formation for the governing (managing) bodies of non-profit legal persons. One of the goals of the study was to identify established practice against the present liberal background of the Civil Code.

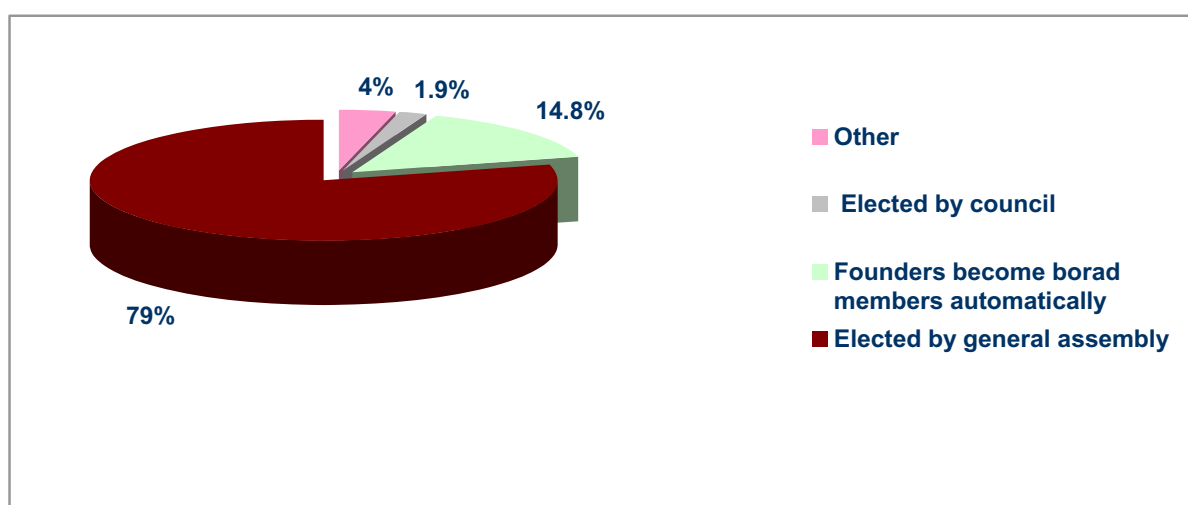
As the study results demonstrated, terms of authority for governing (managing) bodies of non-profit legal entities, including both boards and councils, average at 4 years. However, 26% of those legal persons that have councils provide for unlimited terms of authority for the latter, while in 6.7% of the cases no term of authority is defined.

The study focused on identifying and analyzing formation of governing bodies within non-profit legal persons in the research area. Various governing bodies within respondent organizations are formed differently. Below are different rules of formation for each for each type of governing body with a description of the most common modes of formation.

Board

The most common rule of forming boards is their election by the General Assembly of all members of the organization (79%). Founders also play a major role in the formation of the board (14.8%). Other methods of board formation are less common (Figure 4).

Figure 4 – Board forming methods²



As for the foundations, a major contribution to board formation vests with assembly of founders, the general assembly being an important contributor too (due to scarcity of data, quantitative assessment of indicators is not feasible).

General assembly of members (founders)

As far as the general assembly is a governing body within a mere fourth of organizations (28%), data available do not allow us to perform a quantitative analysis of its forming options (only 23 organizations involved in the study have such governing authority). Nevertheless, a number of trends were made visible: forming of a general assembly occurs where new members unite to hold an assembly, while membership is expanded in mostly two ways: 1) attaining membership by the decision of the board; 2) attaining membership by the decision of the general assembly.

² The sum of the data exceeds 100% due to the fact that several answer options were available.

Council

In non-profit legal persons, the council is formed from the core staff naturally (26%) (the study frequently came across teaching councils, which were formed of teachers themselves). Another common mode of forming a council is its election by organization staff (11%). Other forms are less common and rarely found. (Due to the scarcity of data, analysis of dedicated data for foundations and unions is impossible, since research identified only 30 organizations that are governed by councils).

Functions of governing (managing) bodies

The study identified main functions of governing (managing) bodies of non-profit legal persons. Functions of each body are listed below separately.

Main functions of the board:

Main functions are similar for unions and foundations and include the following:

1. Organizational governance;
2. Developing organization's strategy;
3. Developing and adopting proposals as to amendments to the statute (incorporating document) of the organization;
4. Election/appointment of the Head of the organization and other persons;
5. Enforcement of decisions adopted by the general assembly;
6. Fundraising/donor attraction;
7. Drafting organization's budget;
8. Elaborating programs/projects of the organization;
9. Control over organization's leadership;
10. Deciding upon administrative issues of the organization;
11. Granting organization membership and dealing with issues of membership termination.

Main functions of the council:

Main functions of the council within a union are the following:

1. Organizational governance;
2. Developing organization's strategy;
3. Drafting organization's budget;
4. Election/appointment of the Head of the organization and other persons;
5. Fundraising/donor attraction;
6. Elaborating programs/projects of the organization;
7. Control over organization's leadership.

In contrast, foundation's council exercises the following functions only:

1. Drafting organization's budget;
2. Fundraising/donor attraction;
3. Developing organization's strategy.

The study uncovered other functions of the council; however, their relative share is rather negligible and represents mostly isolated cases.

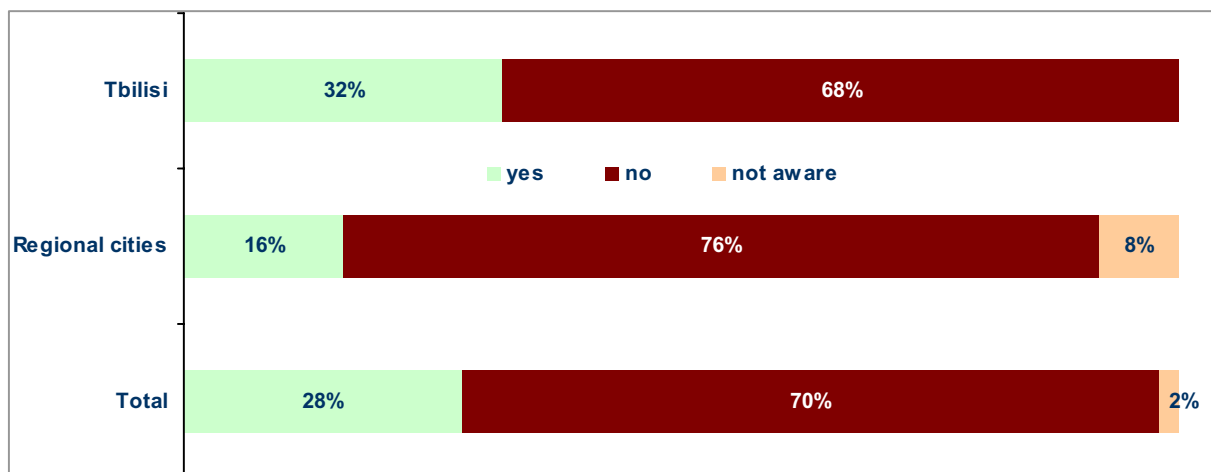
General assembly of members (founders)

Main functions and obligations of general assembly in organizations under research are the following: approval of organization’s strategy, election of organization’s managing bodies (board, council) and their control, participation in strategic projects of the organization, etc. (note: due to the scarcity of data, more in-depth analysis of the latter and their quantitative analysis are not feasible).

Consultative bodies

There are mostly no consultative bodies within non-profit legal persons (70%). Various consultative bodies are more prevalent in non-governmental organizations operating in Tbilisi (32%) in contrast to the region-based organizations (16%) (Figure 5).

Figure 5 – Availability of consultative bodies



3.1.3 Persons responsible for governance of non-profit legal person and their appointment/election

Persons responsible for governance

According to the current edition of the Civil Code, the list of persons responsible for organization’s governance and representation shall be explicitly defined within non-profit legal person.

Analysis of the system of official positions holding governance functions within non-profit legal persons is of particular interest. This issue reveals certain differences between unions and foundations.

The most common hierarchy within unions is the following:

1. Chair of the Board;

2. Director – Deputy Director;

3. Chair – Deputy Chair.

A large portion of organizations incorporated as unions share the most common one-tier hierarchy of a single chair of the board, the next most common option being a scheme of a director with deputy director.

As for the foundations, they also most commonly incorporate one-tier governance hierarchy headed by the director. Three most common hierarchy models for the foundation include:

1. Director;

2. Director – deputy director;

3. Chair of the board.

Term of authority

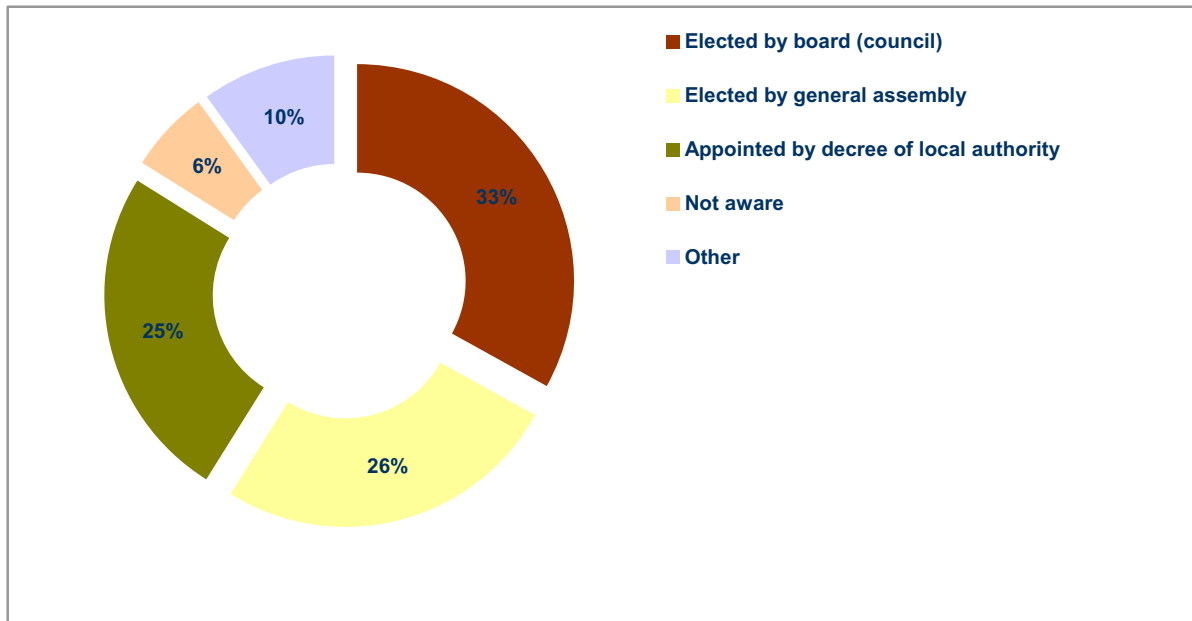
As the study demonstrated, election/appointment of the persons responsible for governance and representation is for a 4-year term on average in majority of organizations (existing variances between Tbilisi and the regions are statistically unreliable, meaning that the trends are similar). It shall be noted that in 42% of the cases, the term of authority for the persons responsible for governance and representation is indefinite. In particular, 28.6% of the respondents noted that appointment/election to governing positions is for indefinite term, while in 13.3% of the cases terms of authority are not defined altogether.

Appointment/election

As the study demonstrated, persons responsible in their official capacity for governance and representation are frequently elected/appointed by the board or council (33%), with election of the governing officer by general assembly also being of high occurrence (26%).

The study covered a large number of educational institutions, which contributed to rather high percentage of appointment or election of governing officers by the decrees of the local self-governance authorities (25%) (Figure 6).

Figure 6 – Appointment / election



Non-profit legal entities incorporated organizationally as unions mostly opt for the following mode of election/appointment of persons responsible for governance and representation:

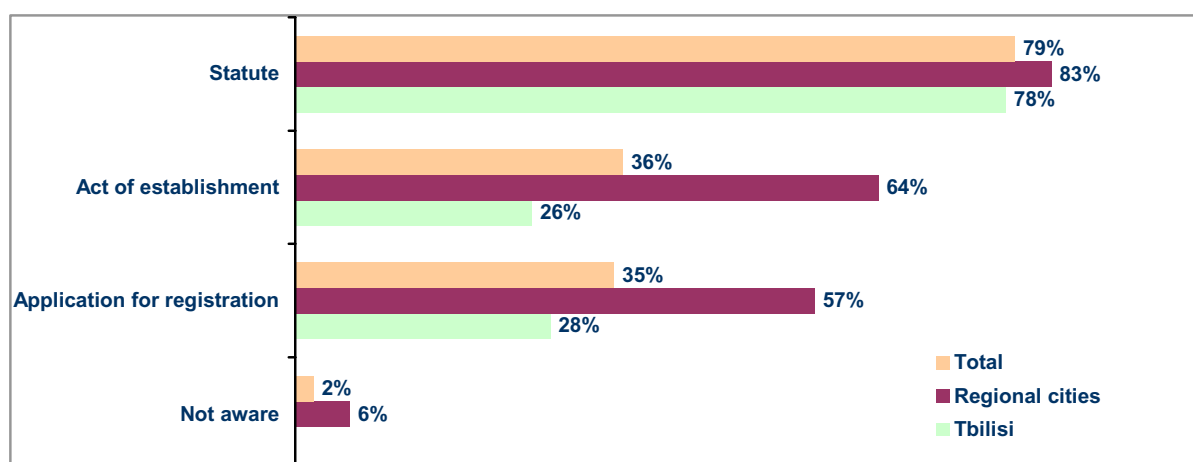
1. Elected by board/council – 35%
2. Elected by general assembly – 29%
3. Appointed by decree of local self-governance authority – 28%.

In foundations, governing officers are appointed/elected by the board (due to scarcity of data, quantitative analysis is not feasible).

3.1.4 Documents defining governance (management) systems

The study demonstrated that status, functions, rights and obligations of governing (managing) bodies and governing officers at non-profit legal persons are scattered among a number of incorporating documents. In four-fifths of respondent legal entities these issues are regulated by the statute (79%); however, other governing acts can be found in many cases, such as act of establishment (36%) and application for registration (35%). Notably, the latter two types of acts (act of establishment and application for registration) are more common in organizations based in regional cities than in Tbilisi: where act of establishment is available at 64% of local organizations, it is true only for 24% of those based in Tbilisi. (Figure 7)

Figure 7 – Documents setting governance (management) systems



3.2 Main problems and recommendations identified as a result of the study

The study envisaged application of two methods – quantitative research method that focused on interviews of non-profit legal persons’ representatives and the qualitative method focusing on interviews with tax authorities. The said design of the study enables us to research views from both sides on the subject matter.

As the quantitative research demonstrated, amendments to the Civil Code governing the status of non-profit legal persons had a favorable impact on their operation. 80% of newly established organizations note that they haven’t encountered any problems during initial registration. Organizations that underwent certain changes in status after amendments to the Code are also in favor of the amended regulations.

Qualitative research revealed that tax inspection agencies are generally appreciative of the currently applicable procedures for initial and change-in-status registration of non-profit legal entities. Nevertheless, they also draw attention to certain shortcomings and deficiencies of the current edition of the Civil Code. The study singled out major problems with registration procedures for non-profit legal persons and their branches.

Extracts from the Civil Code

1. Documents necessary for the initial registration of non-profit legal persons

- “Initial registration of a non-profit legal person is performed by tax inspection agency having jurisdiction in the place of residence of the legal person. The following documents are required to be produced for the registration:
- Application for registration in special format, certified by notary;
- Act of incorporation of non-profit legal person (protocol of incorporation), certified by notary;
- National sports federations, property rights collective management organizations or professional unions – registration requires a statute certified by notary (production of statute is not obligatory for other non-profit legal entities);

- *Proof of payment of registration fee;*
- *Sample of signature to be used by person(s) with governance and representation authority in business relations;*
- *Notice of residence of non-profit legal person (legal address) – meaning production of duly concluded contract for the use of premises, approved by signed consent of property owner and certified by notary.*

2. Documents necessary for registration of changes in status of non-profit legal person – “change-in-status registration is performed by tax inspection agency having jurisdiction at the place of residence of the legal person. The following documents are required to be produced for the change-of-status registration:

- *Application for registration in special format, certified by notary;*
- *Act (protocol) of decision by the authorized person on introducing change(s), certified by notary;*
- *National sports federations, property rights collective management organizations or professional unions – registration requires revised version of the statute certified by notary;*
- *Document certifying authority of person(s) to govern and represent the non-profit legal person, certified by notary;*
- *Proof of payment of registration fee;*
- *In case of change in residence (legal address) of non-profit legal person - notice of new residence (legal address).”*

3. Documents necessary for the initial registration of branch office - “Registration of a branch of non-profit legal person is performed by tax inspection agency having jurisdiction in the place of residence (legal address) of the branch. The following documents shall be produced for registration:

- *Application for registration in special format, certified by notary;*
- *Decision by non-profit legal person on establishment of a branch;*
- *Copy of the document certifying registration of non-profit legal person (registration certificate), certified by notary;*
- *Decision on appointment of the head of the branch or letter of entitlement for the person to carry the authority of branch governance;*
- *Document certifying payment of registration fee;*
- *Sample of signature to be used by person(s) with governance and representation authority in business relations.*

4. Documents necessary for registration of changes in status of the branch – change-in-status registration is performed by tax inspection agency having jurisdiction at the place of residence (legal address) of the branch. The following documents are required to be produced for the registration:

- *A new and duly completed application for registration, certified by notary;*
- *Act (protocol) of decision by the authorized person (body) on introducing change(s), certified by notary;*
- *Document certifying authority of person(s) to govern and represent the branch, certified by notary;*
- *Proof of payment of registration fee;*

- In case of change in residence (legal address) of the branch - notice of new residence (legal address).”

5. Registration time limits – “The tax inspection agency shall decide on registering or declining registration of the non-profit legal person and/or its branch within **3 business days**. In case where application documents are incomplete, the tax authority shall grant the applicant a maximum of 2 days to rectify the shortcoming in accordance with the law of Georgia. Where the shortcomings are not rectified within this term, the registration authority is entitled to decline registration.”

Request for registration documents not required by law

Despite the fact that the Civil Code lists the documents required for initial and change-in-status registration of non-profit legal persons and its branches in an exhaustive manner, both quantitative and qualitative analysis revealed that the tax authorities tend to require production of documents that are not legally necessary for the registration. In particular:

1. 16% of respondents in quantitative analysis noted that, during initial registration of their organization, tax inspection agencies asked them to produce a written contract on the use of premises, certified by notary. At the same time, the Civil Code does only require the production of a simple written contract. Certain fraction of respondents in the qualitative analysis stated that, during initial registration of non-profit legal entities, production of notary-certified contract on the use of premises is required only in cases where an owner of property is an individual.

“Where an owner of premises in question is an individual, registration requires production of notary-certified contract on the use of premises. However, if an owner of property is a legal person, its stamp on the contract is deemed sufficient and registration by notary isn’t necessary.” Senior inspector of Services Unit at the tax inspection agency

2. Qualitative research demonstrated that, in a number of cases involving registration of a branch, tax inspection agencies require production of a written notice from the State Register on parent non-profit legal entity (i.e. the founder of the branch). However, the Civil Code does not envisage such requirement.

“A non-profit legal person willing to register its representation shall produce a written notice from the State Register on the legal entity registering the branch, i.e. the parent non-profit legal person.” Senior specialist of Services Unit

Initial registration of non-profit legal person

Majority of tax inspection agencies agree that the Civil Code does list all documents required for the initial registration of non-profit legal person in an exhaustive and correct manner. In their opinion, the Code defines the list of required documents for a purpose, therefore, no changes are necessary in this respect.

“There are neither legal nor practical problems encountered by organizations during initial registration” Senior inspector of Services Unit

Majority of participants in the quantitative research and a fraction of qualitative research respondents were of the opinion that, despite the major streamlining of registration procedures as a result of amendments to the Civil Code, a further simplification is necessary. This includes reduction in number of documents necessary for the registration of non-profit legal person. In particular, notary certification of the owner's consent for the use of premises and a written contract on the use of premises are major concerns.

"Members of the public express their dismay at the volume of documents to be produced. Of course, we explain the reasons for requiring these documents."
Senior inspector of Services Unit

"I believe that the registration procedure will be further streamlined if there is no requirement for notary certification of owner's consent to the use of property"
Senior inspector of Services Unit

Change-in-status registration for non-profit legal persons

90% of respondents to the quantitative research haven't amended their registration data following amendments to the Civil Code (14 December 2006). While the scarcity of data does not enable us to perform a quantitative analysis, the trends suggest that these amendments are largely connected with changes in title of the organization. Quantitative research data do not allow for specific conclusions; however, data from the qualitative analysis lead to certain conclusions. Tax inspection agencies believe that the legislation governing change-of-status registration should be improved. In particular:

1. The Civil Code explicitly defines changes in registration data of non-profit legal person that require obligatory registration in tax inspection authorities. However, the Code fails to identify specific documents required for each type of changes, but rather sets for a general list of documents. In the opinion of tax inspection agencies, the Civil Code should provide for a specific list of documents for each type of change in status.

"The Code should explicitly define documents required to be produced for each specific change in status". **Senior inspector of Taxpayer Services Unit**

2. According to the Civil Code, change-in-status registration of non-profit legal persons requires submission of a new, duly completed application for registration, which should be certified by notary. Tax inspection agencies are of the opinion that requirement for notary certification of an application shall be abolished, leading to major streamlining of registration procedure.

"At the same time, it is desirable that the law does not require the application for registration of change of status to be certified by notary". **Senior inspector**

"No certification by notary should be required during change-in-status registration". **Senior inspector of Services Unit**

3. In the process of initial and change-in-status registration of non-profit legal persons, tax authorities shall be furnished with an application form approved by the Minister of Finance of Georgia. In registering change in status, legal entity is obliged to produce new and duly

completed registration application, which includes the field requiring information on founders of the organization. Respondents view the requirement of producing ID data of founders as a problem for change-in-status registration, due to the fact it is difficult to collect and fill in ID data of the founders within registration time limits imposed by the law. Therefore, it is desirable that entry of data into the said field should not be required for change-in-status registration.

Registration of a branch of non-profit legal person

The quantitative research demonstrated that an absolute majority of non-profit legal entities who established branches (representations) do not undertake their official registration in tax inspection authorities. Only a small fraction (12%) of respondent non-profit legal persons has operating branches (12 organizations in total), while only one of these has been registered with tax inspection agency. Therefore, data related to initial and change-in-status registration of branches can be analyzed by qualitative methods. Qualitative research identified the views of tax inspection authorities as to registration of branches of non-profit legal persons, as well as certain shortcomings in this process. In particular:

1. Tax inspection agencies note that branches of non-profit legal entities incorporated in Georgia do not have separate legal personality, do not conduct independent bookkeeping and are not individual taxpayers, therefore, their state registration at tax inspection agencies is unnecessary. Branches of foreign non-profit legal persons are a different story: respondents reiterate that their state and tax registration is absolutely necessary, since they represent independent subjects in taxation relations and pay taxes individually.

2. Similar to change-in-status registration for non-profit legal persons, the Civil Code does not explicitly define specific documents required for each specific change in status. In the opinion of tax authorities, this leads to problems both for taxpayers who often submit incomplete documents and for tax inspection authorities who encounter procedural difficulties. Therefore, respondents agree that it is necessary to define specific lists of required documents for each specific case of change in status of the branch.

3. Absolute majority of respondents from tax inspection agencies draw attention to one particular flaw in the Civil Code. In particular, the Civil Code does not require production of notice on place of residence (legal address) of the branch of non-profit legal person during initial registration (such notice includes consent of the owner of property and/or contract on the use of premises), while such notice is required for registering the change in residence (legal address) of the branch. Respondents believe that, similar to initial registration of the branch, no requirement for production of notice shall in exist in cases of registering change in status.

4. Tax inspection authorities state that no certification by notary should be required for registration application concerning registration of change in status of the branch. This would significantly streamline change-in-status registration for the applicant.

“No certification by notary should be required for application for registering changes in status. Notary certification should be obligatory only in cases of initial registration”. **Senior specialist of Services Unit**

Registration deadlines

Both quantitative and qualitative researches suggest that deadlines for registration of non-profit legal persons and their branches are respected and there are no particular problems in this regard. Tax authorities state that the 3-day time limit set by the Civil Code is entirely sufficient for completion of all procedures and they manage to complete registration ahead of time. In the opinion of the participants to the quantitative study, even though the registration procedures are significantly streamlined, it is desirable to have even shorter deadlines for registration; however, there are no major problems with existing ones, too.

*“We register non-profit legal persons and their branches (both initial and change-in-status) even ahead of a 3-day time limit.” **Senior Inspector of Taxpayer Services Unit***

*“Registration is performed in shorter terms than set by law” **Senior Specialist of Services Unit***

*“3-day term set by law for registration is adequate and there are no problems in this regard. Registration is completed the next day.” **Senior Inspector***

*“Three business days are required for registration of non-profit legal persons and their branches (both initial and change-of-status). There are no problems with this. We try our best to keep these deadlines. No problems were encountered yet in this regard.” **Senior Inspector of Services Unit***

Pursuant to the Civil Code, tax inspection agency assesses the comprehensiveness of submitted documents and their compliance with the requirements of the law. In cases where application for registration is incomplete and/or is not accompanied by required documents, tax inspection agency grants the applicant a maximum of 2 days in order to remedy the shortcomings (no further extension envisaged by the Code). In the opinion of tax inspection authorities, 2-day time limit for rectifying shortcomings is indeed a very short one. Accordingly, applicants are unable to rectify their shortcomings and tax inspection agencies are forced to refuse registration. Respondents agree that the 2-day time limit should be extended.

*“The 2-day limit set by law is very short and shortcomings cannot be remedied in this time, which forces us to decline registration” **Senior inspector***

*“We set a 2-day deadline for correction of shortcomings. If no action is taken within this term, registration agency decides to refuse registration” **Senior Inspector of Services Unit***

*“When coming across certain shortcomings, the biggest problem is the deadline. In particular, respondents complain that the maximum of 2 days set by the Civil Code is very short. The applicant (concerned person) is unable to remedy the shortcoming in time. Otherwise, there are no other problems in identifying shortcomings.” **Respondent Services Department***