

## CHAPTER 9: DEFINITIONS IN USE OVERSEAS

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Within the variety of overseas parliamentary and legislative regimes, there is a reliance on similar basic principles in determining the nature of charitable or 'public benefit' organisations and purposes.

### Common law countries

In general, those countries with a common law tradition continue to rely on the common law definition of 'charitable purposes' to determine the charitable status of organisations. None of the major common law countries has attempted a statutory definition of 'charity' or 'charitable purposes'.

To the Committee's knowledge, Barbados is the only common law country that has enacted a statutory definition of 'charitable purposes'. In the Barbados *Charities Act*, which commenced in 1980, 'charitable purposes' is defined by means of a non-exhaustive list covering 26 main purposes and 14 amplifying sub-headings (see Attachment E.1 to Appendix E). The list closely follows that set out in the Goodman report (see Appendix F).

Notwithstanding that the major common law jurisdictions have not attempted to define 'charity' or 'charitable purposes', several have made specific legislative modifications to 'charitable purposes'. For instance, many of the Canadian Provinces, New Zealand and many of the 50 States of the United States have legislated to modify the definition of charity with respect to the regulation of charitable fundraising or charitable trusts. New Zealand and the United Kingdom have legislated to remove any doubt that the provision of recreational facilities for social welfare purposes is a charitable purpose.

South Africa has inherited a legal system, which is a combination of Roman-Dutch law and English common law. In 2000, South Africa legislated to introduce a new concept of a 'public benefit organisation', replacing previous references to religious, educational and charitable organisations in its tax legislation. Broadly speaking, a public benefit organisation is defined as one that carries on 'public benefit activities', which are determined by the relevant Minister having regard to 'the needs, interests, and wellbeing of the general public'.<sup>1</sup> The currently published draft list of public benefit activities is substantially similar to the common law scope of charitable purposes. For

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<sup>1</sup> *Income Tax Act 1962*, s 30.

example, it includes activities such as ‘the care, treatment or rehabilitation of the sick, disabled or those otherwise physically or mentally challenged’ and ‘the provision of basic human necessities to the poor’ (see Attachment E.4 to Appendix E).

## Civil law countries

Many of the civil law jurisdictions give special benefits or recognition to not-for-profit entities which are assessed as providing a benefit to the general community.

In most of the civil law countries in Europe the regulation of not-for-profit entities is generally based on the legal structure or legal personality of the entity rather than its purposes or objectives. Most countries distinguish between associations and foundations. An association is an organisation formed voluntarily for a purpose agreed by its members and stated in its founding articles. A foundation is an endowment, with no members, established to pursue particular purposes. For the most part, foundations are more closely regulated than associations.

Favourable treatment, usually in the form of tax benefits, is accorded to those not-for-profit entities which are assessed as providing a ‘public benefit’ to society. The meaning of this expression varies between countries but the activities covered are broadly similar. For example, the German General Tax Code differentiates between charitable or public benefit purposes (that promote the wellbeing of the public at large), benevolent purposes (that support individuals who are unable to care for themselves) and church-related purposes.

A number of countries from the former centralised economies of central and eastern Europe have recently established new legislation relating to not-for-profit entities. Unable to rely on their own legal systems for precedent, they have attempted to adopt a ‘best practice’ approach drawing from both common law and civil law provisions. Appendix E provides details of the approaches followed in Hungary, the Russian Federation and the City of Moscow for defining public benefit or charitable activities. The Russian Federation, for example, defines ‘charity activities’ by reference to a non-exhaustive list of ‘charity purposes’ that includes ‘social assistance and public welfare’ and ‘facilitation of activities in the spheres of education, science, culture, arts, enlightenment and personal spiritual growth’.

Appendix E also outlines the provisions in six Asian countries under which special recognition is given to not-for-profit entities, which provide a public

benefit. Japan, for example, has recently enacted legislation to promote the development of not-for-profit activities 'freely performed by citizens to benefit society'. The not-for-profit activities specified in the Japanese legislation are very similar to those purposes currently regarded as charitable under the common law meaning of charity.

