

HOW TO MAKE A DONATION IN RUSSIA

The current publication is prepared by the International Center for Non-for-Profit Law Russia LLC Office jointly with legal department of CAF Russia.

In recent years social activity of Russian citizens and organizations has increased, they are ready to support socially relevant and charitable initiatives financially.

This booklet reviews legal aspects of making donations within the territory of the Russian Federation.

Text of the booklet is based on legislation of the Russian Federation as of November 1, 2008.

The goal of this publication is to provide review of legislation, regulating relations, associated with making and receiving donation. We draw attention of all interested persons that they need to consult a lawyer before undertaking activities related to donations.

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If you are willing to make a donation please be aware that you may:

DONATE

- property, money or right belonging to you
- only for purposes of public utility
- to any person in Russia or organization registered in Russia
- on basis of an agreement
- obtain information about utilization of the donation

GENERAL PROVISIONS

Donation- is giving an object or a right in goals of public utility, including those in the sphere of education, science, health care, culture, physical education and sports (excluding professional sports), art, archive, social assistance (support), human and civil rights and freedoms.

The issues related to donations in the Russian Federation are regulated by the Civil Code of the Russian Federation (hereinafter referred to as CC RF), Federal Law “On charitable activities and charitable organizations” (hereinafter Law on Charity), Federal Law “On procedure of establishment and utilization of endowment of non-commercial organizations (hereinafter – Law on Endowment).

Various designations are used in the above named laws for persons making donations and persons accepting donations (in CC RF: donator and donee, in Law on Charity: benefactor and beneficiary, in Law on Endowment: donor and recipient of income from endowment). In this review the designations of “donor” and “beneficiary”/“recipient” are used.

SEVERAL REQUIREMENT OF CHAPTER 32 OF CC RF, APPLIED TO DONATION AGREEMENT:

- **refusal of donee to accept the gift:**

The donee has the right to refuse from gift at any moment prior to transfer of the donation to him/her. In such case agreement is considered cancelled;

- **prohibition of gift:**

on behalf of minors and of legally incapacitated citizens, by their legal representatives; employees of medical treatment, social protection facilities and other similar facilities by citizens who are undergoing treatment, living or being educated in those facilities, by spouses or relative of such citizens;
by government and municipal authorities employees, in connection with their official capacity or in connection with officiation of employment duties by them;

- **limiting gift:**

legal entity, to whom the object belongs to based on the right of operating control or operational management, has the right of gift by approbation of the owner, if it is not otherwise stipulated by the law; gift of property, being in joint ownership is permitted by approbation of all of the joint owners..

- **refusal to execute the agreement, containing a pledge to transfer an object or right to the donee in the future.**

Peculiarities of making a donation to political parties are not reviewed here.

Donation is a type of gift. According to Clause 1, Article 572 of CC RF according to gift contract one party (the donator) transfers or undertakes to transfer to the other party (the donee) free of charge an object or property right into ownership.

According to Clause 1, Article 582 of CC RF gift of an object or a right in publicly relevant goals is recognized as donation. Therefore almost all of the requirements of Article 32 of CC RF are applied to donations, except for requirements of Article 578 of CC RF of cancellation of gift and Article 581 of CC RF of legal succession in case of promise of gift.

WHICH LAW IS TO BE FOLLOWED WHEN CONCLUDING DONATION CONTRACT BETWEEN A RUSSIAN AND A FOREIGN ORGANIZATION: RUSSIAN LAW OR FOREIGN LAW?

Interaction of Russian organizations and citizens with foreign organizations and citizens generates collision of foreign and Russian laws pertaining to determination of law, applicable to arising contractual relationships. States have in their legal system a series of regulations, so called conflicts rules, which allow resolution of conflicts between organizations and citizens of home and foreign state. Russian conflict rules are contained in Section VI "Conflict of Laws" of Part III, CC RF. Conflict rule indicates law of which state is applicable to a given legal relations.

a) General Issues

In compliance with Clause 1 Article 1202 of CC RF personal law of a legal entity is the law of the country where the legal entity is established. According to this criterion legal entities are considered to be foreign if they are established according to the law of a foreign state. In conformity with Clause 1 of Article 1195, CC RF personal law of an individual person is the law of the country, the citizenship of which is held by the said person.

When foreign law is recognized as the personal law of a legal entity or a foreign citizen then certain issues arise pertaining to legal status of such legal entities or foreign citizens in Russia, including conditions of their access to certain types of activities. According to a general rule, in conformity with Clause 1 of Article 2, CC RF foreign citizens possess within the territory of Russia the same amount of civil rights and obligations as Russian citizens and legal entities.

For instance, CC RF does not directly name foreign legal entities as possible beneficiaries of donations. But taking into consideration Law on NGOs, determining procedure for establishment (registration) and activities within the territory of the Russian Federation of structural subdivisions of foreign noncommercial nongovernmental organizations and modes of property establishment for NGOs, foreign NGOs having their representative and branch offices in Russia, can act as beneficiaries of donations according to the Russian law.

b) Definition of applicable law to donation contract concluded with foreign citizen or foreign organization

According to Article 1210, CC RF parties when concluding donation contract or later may choose on basis of joint agreement the law which will be applicable to their rights and obligations related to the contract. The choice of applicable law by the parties made after concluding the contract has retroactive effect and is considered valid from the moment of concluding the contract, in case of absence of damage to the rights of third parties.

Contracting parties may also choose applicable law for the contract in its entirety or to its separate parts. The parties are accorded the right to choose law of their home state or any foreign state and also to indicate use of current international treaties.

In addition to this it is possible to define in the donation contract which law is to guide the parties in case of arising disputes and courts of which country are to consider the said disputes.

For instance in donation contract with a foreign foundation it is stated that in case of arising disputes the parties will be complying with the legislation of the donor's country, as well as all disputes are to be resolved in the court of the foreign state.

Choice of applicable law is not an obligation for the parties. In case there is no agreement of the parties on the law applicable to the contract than the law of the country to which the contract has closer connection is used (proper law of the contract). The proper law of the country is considered to be, if otherwise does not follow from the law, conditions or nature of the donation contract or aggregation of circumstances of the case, the law of the country where the is the permanent place of residence (permanent place of stay) or the main location of activities of the party implementing the part of the contract performance which has decisive significance for the contract content. In conformity with Clause 3 of Article 1211, CC RF according to the general rule such party in the donation contract is the donor. For a beneficiary based in Russia this means the following: in case the concluded donation contract with a foreign organization (without structural subdivisions based in Russia) the applicable law is not specifically determined in the contract, than to such contract foreign law is to be applied, that is the donor's law.

c) Confirmation of credentials of foreign organizations' representatives

According to a general conflict rule, provided in Clause 3 of Article 1202, CC RF, a foreign organization is not allowed to cite limitation of its legal power of its agency or representative for concluding the transaction, unknown for the law of the country, where the agency or the representative has concluded the transaction with exception of cases when it is proven that the other party of the transaction was aware or was to be aware about the said limitation. It follows that a Russian noncommercial organization or a citizen are not obligate to take efforts to find out about any particular limitation of legal authority of the representative of a foreign organization or for instance of its head, this obligation is solely that of the foreign organization. Otherwise the foreign organization will be obligated by the court to perform the contract.

Quite often in order to implement certain activities representative of a foreign organization is given a power of attorney. Russian noncommercial NGOs and citizens should take into consideration that according to Article 1217 of CC RF such conditions of the power of attorney as term of validity and basis of termination of power of attorney are determined by the law of the country where the power of attorney was issued.

For instance, power of attorney was issued for a representative of a French charitable organization via fax. There is no date of issue in this power of attorney. As long as relations of representation arose within the territory of France then the presence of authorization and correctness of document execution must comply with the norms of the French legislation rather than Russian. The French Civil Law does not contain indication that in case of absence of date of issue the power of attorney is rendered void.

It is also important to note that ignoring conflict rules determining the law of the country applicable to the contract by Russian noncommercial organizations entering into contract relations with foreign organizations may affect activities of Russian noncommercial organizations or even place them in a disadvantaged position in comparison with the foreign party of the contract. In addition to the above application of conflict rules will contribute to greater trust of foreign organizations and citizens to the Russian law as well as ensuring safety of their funds, donated for development of the social sphere.

GOALS OF DONATION

In Clause 1 of Article 582, CC RF it is indicated that donation is only done for goals of public utility. Neither in CC RF, nor any other current legislation of the Russian Federation do not define the notion of "goals of public utility", in this connection it is necessary to analyze the Constitution of the Russian Federation as well as other main legislative acts which use the notion of "donation".

One of the goals of the Constitution of the Russian Federation is proclamation and consolidation of importance of

- activities of citizens and their associations of public importance. It follows from Article 39 of the Constitution of the Russian Federation that the state encourages charitable activities of individual persons and legal entities, which means that charity is an activity of public utility. Therefore the following goals of charitable activities are of public utility (Article 2 Law on Charity):
- social support and protection of citizens, including bettering of financial conditions of low-income citizens, social rehabilitation of the unemployed, handicapped and other persons who are due to their physical or intellectual peculiarity, or other circumstances are not able to independently exercise their rights and lawful interests;

- preparation of population to overcoming consequences of natural disasters, ecological, industrial and other catastrophes, to prevention of accidents;
- provision of help to victims of natural disasters, ecological, industrial or other catastrophes, social, national and religious conflicts, victims of repressions, refugees or forced migrants;
- contributing to strengthening of peace, friendship and harmony between peoples, prevention of social, national and religious conflicts;
- contributing to strengthening of prestige and role of family in the society;
- contribution to protection of motherhood, childhood and fatherhood;
- contributing to activities in the spheres of education, science, culture, art, instruction, spiritual development of individuals, contributing to activities in the sphere of disease prevention and health protection as well as promotion of healthy lifestyles and bettering of moral and psychological state of citizens;
- contributing to activities in the sphere of physical education and mass sports;
- environment and wildlife protection;
- protection and proper maintenance of buildings, installations and territories that have historical, religious, cultural or environmental significance and of burial sites.

In conformity with Clause 2, Article 2 of Law on NGOs (Federal Law of January 12, 1996 #7-FZ “On noncommercial organizations”) noncommercial organizations may be created for attaining the following goals:

- social,
- charitable,
- cultural,
- educational,
- scientific and managerial, as well as for attaining the goals of:
- citizens’ health protection,
- development of physical education and sports, satisfaction of spiritual and other nonmaterial needs of citizens,
- protection of rights, lawful interests of citizens and organizations,
- disputes and conflicts resolution,
- provision of legal assistance,

as well as other goals of attaining public good.

The notion of “public good” in essence is a synonym of “public utility”.

Consequently, goals listed above and other non-listed goals of activities of noncommercial organizations are recognized by the legislation as those of public utility. This means that donation is a free of charge transfer of property into ownership of noncommercial organization in order to be used within the framework of activities specified in the charter that is activities of public utility.

In Law on Endowment one of the ways to establish endowment is its creation on basis of donation. Article 3 states directly that establishment of endowment and utilization of income from the endowment is to be used for purposes of the following spheres:

- education,
- science,
- health care, culture,

- physical education and sports (excluding professional sports), art, archive keeping,
- social assistance (support).

Consequently, going back, the above mentioned goals for establishment of endowment are of public utility, as donation is made for attaining of the said goals.

Therefore, on the basis of legislation the above list of goals, recognized as having public utility by the Russian state. The list of such goals is not closed. If free of charge transfer happens for the purposes not listed above but both parties consider those goals to be of public utility, then two choices exists: 1) either to formalize the transaction not in the form of donation, 2) or prepare arguments for tax authorities and the court that the goals of the transaction are of public utility and conclude an donation contract.

WHO CAN MAKE DONATIONS

Donor – individual persons and legal entities.

Based on the content of Article 32 of CC RF and Article 4 of Law on Charity donors may be both individual persons (irrespective of citizenship), and legal entities (irrespective of the place of their establishment and main activities).

WHO CAN RECEIVE DONATIONS

Gift to commercial organizations along with the following noncommercial organizations is not a donation: consumer societies and unions, housing cooperatives, horticultural, gardening, garage and building societies and homeowner associations.

Based on the content of Article 32 of CC RF and Article 4 of Law on Charity, both individual persons and legal entities may act as beneficiaries; however Article 582 of CC RF specifies that donations may be made to:

- citizens,
- medical treatment facilities,
- orphanages, social protection and other similar facilities, charitable,
- scientific and educational establishments, foundations, museums and other cultural institutions, public and religious organizations,
- other noncommercial organizations, if such a budget source as donation is stipulated for in the law.
- The state and constituent entities of the Russian Federation: republics, territories, regions, federal cities as well as urban and rural settlements and other municipal formations.

RIGHT OF BENEFICIARY

Donation beneficiary at any point prior to transfer of property to him/her has the right to refuse acceptance of the donation. In such cases the donation contract is considered to be cancelled.

WHAT MAY BE DONATED

In compliance with Clause 1 of Article 582, CC RF an object or a right may be donated (property rights including intellectual property).

Article 130 of CC RF stipulates that objects are subdivided into movable and real.

The following refer to real objects (real property, realty) land plots, subsoil plots and buildings, structures, unfinished construction sites, as well as aircrafts and seagoing vessels, inland navigation vessels and extraterrestrial objects subject to registration.

Objects not classified as realty, including money and securities are recognized as movable property.

Under “rights” property rights are understood, including intellectual property, such as exclusive artistic copyright. It is necessary to pay attention to the fact that transfer of property into ownership, awarding with ownership, use and dispose of any object of property right on preferential rights do not amount to donation in the sense of Article 582 of CC RF, in connection with the fact that in conformity with Clause 1 of Article 572 CC RF in case of cross-transfer of an object or a right, or a cross-obligation a contract is not recognized to be that of gift, and consequently that of donation. According to Clause 2 of Article 170, CC RF PΦ such contract is void.

Law on Endowment stipulates that donation for the purposes of establishment or addition to endowment may be made only in the form of monetary funds. Therefore, donor while taking a decision of making a donation must take into consideration not only provisions of CC RF, but also limitations set out in Law on Endowment.

PUBLIC COLLECTION OF DONATIONS IN MONEY-BOX

Among noncommercial organizations such a mode of fund-raising is popular as public collection in money-box. The Russian legislation does not regulate such collection of donation specifically. However in the course of their activities noncommercial organizations developed their own approach to formalizing such public events.

As a rule money boxes are used by noncommercial organizations in order to collect donations from citizens. It is important to take into consideration however that some noncommercial organizations, including their subdivisions (branches, representative offices and affiliates) can not implement public collection of donations within the territory of the Russian Federation. In compliance with Clause 3, Article 14 of the Federal Law of December 10, 2003, #173-FZ “On currency regulation and currency control” such actions are recognized to be currency operation. Citizen of the Russian Federation – resident may transfer monetary funds in the form of donation to a foreign person – non-resident only using his/her own bank account.

Before starting collection of donations noncommercial organization makes a written statement on purposes of donations collection for an undetermined pool of persons that is indicating all necessary conditions of donation contract, and places this information on the money-box. Noncommercial organization may accept monetary funds only in domestic currency of the Russian Federation; acceptance of funds in foreign currency requires presence of a special license. Therefore on the money-box there should be written information about impossibility to accept monetary funds in foreign currency.

In order to formalize such event as public collection of donations it is necessary to:

1. Develop and approve provision for public collection of private donations (it can be a section from a provision on implementation of a certain program or any other similar document), within the framework of which collection of private donations is to be held, indicating purposes and conditions of further use of collected donations.

2. To issue an order (decree) of executive body of the noncommercial organization about the start of the action of collection of private donations (or about the beginning of regular collection of donations). The order shall contain exact addresses of money-boxes locations, organizations where the money-boxes are located, the beginning and end dates of the action of collection of private donations (frequency of money-boxes unsealing), reference to the approved program, appointed staff, responsible for the event, members of the committee present at boxes unsealing. No less than three persons other than organizations staff are to be present during unsealing, apart from organization's staff representative of organization where the boxes are located may be present, along with people having authority and good record in the sphere of activities relevant to those of the noncommercial organization.

3. Conclude agreements with organizations, in whose premises the money-boxes are located. This agreements should detail in particular conditions for ensuring safety of the boxes, obligation of the premises owner to promptly inform the noncommercial organization in case of damage or loss of money box, indicate the procedure of access to the premises of noncommercial organization's representatives.

4. To produce money-boxes, if possible using durable materials, the design of which should make possible installation of a seal and a possibility to withdraw the collected funds.

5. To place detailed information about the purposes and conditions of funds collection on money-boxes (including the mentioning of impossibility to provide documents confirming the donation to the donors), as well as all of the contact details of the noncommercial organization.

6. To issue power of attorney signed by the head of the organization to the authorized staff members of noncommercial organization; the power of attorney should indicated full name of the staff member, his/her powers, address and phone number of the organization.

7. To ensure monitoring of money-boxes of the noncommercial organization in the course of donations collection.

Upon completion of collection term unsealing of the box is done in the presence of committee accompanied with signing Certificate of Money-Box Unsealing. Prior to unsealing the committee members are to certify that the money-box is not damaged and the seals are intact. The Certificate shall contain the number of the money-box, location, date of unsealing and the total amount of funds collected. The Certificate is signed by all members of the committee and is approved by the head of non-commercial organization. The collected amount of donations indicated in the Certificate is entered in to the cashier's office or in the course of one day to the bank clearing account.

After monetary funds obtained as the result of donation collection are entered into the clearing account the accountant records shall reflect those funds as intended funds receipt in the form of donation for previously designated in the provision about the donation collection.

It is important in view of this type of event to express gratitude to persons who participated in the collection of funds.

The final action of noncommercial organization in the course of donation collection is publication of report about compliance with designated purpose for the funds use.

PUBLIC COLLECTION OF DONATIONS VIA CELL PHONES

How to formalize it correctly?

Recently donation collection via text messages has become widespread in the noncommercial sector. The general requirements for the collection action are similar to those of the money-box collection. However in this case there is an intermediary between the donor and noncommercial organization – beneficiary that is cellular network operator, who has the license to cell phone services in a given region. The operator provides services for the noncommercial organization of technical support of the private donations collection on the basis of a contract. As a rule the cost of the operator's services is defined as a share from each donation which is transferred by sending a text message by cell phones subscribers – donors. Joining of donors to donation contract is implemented through sending a text message with a code word to a phone number indicated by the operator.

The total amount of funds that arrived to the operator's account is an intended funds receipt – donation for the noncommercial organization. The cost of operator's services shall be a intended expenditure. It is necessarily taken into account while compiling program's budget (or any other similar document) and is reflected in the budget item of expenditures for the operator's services in the report on specially designated funds expenditure.

FORM OF DONATION CONTRACT

In case when an individual person acts as a donor the donation may be made in oral form, for instance in the form of symbolic transfer (transfer of keys etc.) or in the form of transfer of documents of title to the beneficiary, excluding the contract containing promise of future gift which is to be executed in writing.

In such case it is necessary to pay attention to the fact that according to Article 1234, CC RF contract of alienation of exclusive right for result of intellectual activity and license contract are executed solely in writing.

As well as donation contract for establishment of endowment is executed in writing.

If a legal entity is the donor and the amount of donation exceeds five minimum earnings amounts or the donor promises to make a donation then donation contract is to obligatory be executed in writing. In such case it is necessary to pay attention that the donor and the beneficiary apart from the donation contract need not conclude any other contract of intent.

Gift or donation of property is also subject to state registration (Clause 3, Article 574, CC RF). Requirements of general part of law of obligation of CC RF provides for the contract in writing may be concluded by executing one document signed by all parties as well as by exchange of two documents using mail, telegraph, teletype, telephone, electronic and other communications, which allow to establish positively that the document originated with a party of the agreement (Clause 2, Article 434).

Contract in writing is considered to be observed if according to Clause 3, Article 438 of CC RF written proposal to conclude the contract is accepted by the other party within the term, established for its acceptance, and the accepting party undertook activities for complying with the indicated contract conditions (shipping of goods, provision of monetary funds etc.), if otherwise is not provided for by the law, other legal regulations or not indicated in contract executed in writing.

According to Clause 1, Article 256 of CC RF property, acquired by spouses in the course of the marriage is their joint property and in conformity with Article 35 of Family Code of the Russian Federation a transaction

performed by one of the spouses as disposition of joint property of spouses can be recognized by court to be void based on absence of consent from the other spouse, but only upon his/her demand and only in those cases when it is proven that the other party of the transaction was aware or should have admittedly been aware about lack of consent of the other spouse for executing of the said transaction. Consequently in case when individual person is the donor, who is part of a registered marriage, then in order to avoid dispute donation contract shall better be executed in writing and a written consent of the donor's spouse shall be obtained for the donation, for instance in the form of his/her signature on the contract.

It is necessary to take into consideration that in case realty is donated than according to Clause 3, Article 35, of Family Code of the Russian Federation in order for one spouse to conclude a transaction for disposition of realty and of a transaction that requires notary certification and (or) registration according to the procedure established by the law, it is necessary to have a notary-certified confirmation of the other spouse's consent.

It is also necessary to point out that according to the current Russian legislation the right applicable to the form of transactions with foreign organizations, is determined by a general conflict rule, which is contained in Clause 1, Article 1209 of CC RF. This conflict rule subordinates the form of transaction to the place where it is made. This means that if the donation contract is concluded within the territory of the Russian Federation then its form is to comply with requirements of the Russian law. In case when donation contract is concluded in a foreign state it is to comply with requirement of the law of the said state. However it is important to remember that a transaction made abroad can not be considered void for reasons of not complying with the form, in case when requirements of the Russian law are fulfilled (Clause 1 Article 1209 CC RF). Therefore, requirements of the Russian law to the form of transactions allow execution abroad of transaction the form of which does not comply with the requirements of law of the state where it is made.

RIGHTS OF DONOR

Article 582, CC RF the following donor's rights are established:

1. Donor may determine goals and procedure of use for the donation.
2. Donor, his/her heirs or other legal successors have the right to change the purpose of the donation.
3. Donor, his/her heirs or other legal successors have the right to cancel donation if such donation is not used according to purpose designated in donation contract.

Law on Endowment in addition to the above indicated rights provides for the following rights:

1. Donor, his/her heirs or other legal successors have the right to obtain information about establishment of endowment, income from the trust management of the endowment as well as about use of endowment-generated income, whereto the donor contributed monetary funds.
2. Donor, the amount of whose donation exceeds 10 percent of balance-sheet value of property making up endowment on the last reporting date has the right to demand to include him/her or their representative in the composition of the board overseeing use of endowment.
3. In case when noncommercial organizations' endowment is established using donation of a single Donor, financial plan of the noncommercial organization is to be coordinated with the said Donor, if donation contract does not require otherwise.

Legal risks of concluding donation contract or what should the parties of the contract be forewarned about.

When concluding donation contract civil, tax and other risks arise for the parties:

I. Civil risks.

1. Noncompliance with the written form of donation contract entails it being void in case when:

- Donor is a legal entity and the amount of donation exceeds five minimum earnings amounts (in conformity with Paragraph 2 Article 5 of the Federal Law of June 19, 2000 #82-FZ "On minimum earnings" the amount of donation should exceed 500 rubles
- contract contains promise of a future donation (Clause 2 Article 574, CC RF).

Noncompliance with requirements of civil legislation about state registration of realty donation contract also entails it being void (Clause 3, Article 574, CC RF).

2. Apart from the above donation contract is considered void if it contains the promise of the Donor to donate all of his/her property or a part of his/her property without indicated the exact scope of donation in the form of an object or right (Clause 2, Article 572, CC RF), as well as in the case when donation contract provides for transfer of donation to the beneficiary after Donor's death (Article 3, Article 572, CC RF).

3. When use of donation in compliance with the purpose indicated by its Donor becomes impossible due to the changed circumstance and it is not otherwise stipulated by the law, in this case according to the regulations of CC RF donation may be used for other purposes only with agreement of the Donor, and in case of death of the citizen-Donor or liquidation of the legal entity - Donor – upon court decision. Use of donation in breach of the purpose designated by the Donor or change in the said use entailing breach of the above cited rule authorizes the donor, his/her heirs or other legal successors have the right to cancel the donation (Clause 5, Article 582, CC RF).

Therefore, consequence of noncompliance with the Donor's will, who designated purpose of the property donation or breach of the established procedure for changing the purpose of the donation amount to court order cancelling donation upon demand of the Donor, his/her heirs or other legal successors have the right to.

II. Tax related risks.

1. Depending on this or that tax qualification of free of charge transfer of property the risk of its recognition or non recognition of it as taxable for beneficiaries, both for legal entities and individual persons. It is discussed in greater detail in the section "Tax consequences of concluding donation contract».

2. Unauthorized use of donated property by a tax-payer is recognized by the Tax Code of the Russian Federation (hereinafter referred to as TC RF) as his/here non-sale income either in the full amount of the donated property or in its part and tax on income is imposed (Clause 14, Article 251, TC RF). Apart from that for the amount of arrears fees are charged (Article 75, TC RF) and fine is imposed (Article 122, TC RF).

III. Currency and other risks.

1. B In case of obtaining a donation from a foreign organization, foreign citizen or a stateless person in the amount of more than USD 5,000 at foreign currency exchange rate set by the Bank of Russia on the date of concluding the contract, Russian noncommercial organization needs to formalize transaction passport, the procedure for which is set out in Section II of Regulations of the Central Bank of the Russian Federation of June 15, 2004 #117-I. Responsibility for breach of the exchange legislation of the Russian Federation and of regulations of currency regulation bodies is provided for in Article 15.25, Code of Administrative Violations of the Russian Federation (hereinafter- CAV RF), according to which implementation of unlawful currency transactions that is execution of transactions prohibited by the legislation of the Russian Federation entails imposition of an

administrative fee on citizens, officials and legal entities (beneficiaries) in the amount from three forth to one amount of the sum of the unlawful currency transaction.

2. Money laundering legislation prohibits Russian banks from opening anonymous bank accounts (Clause 5, Article 7, The Federal Law of August 07, 2001 #115-FZ “On counteraction to money laundering and financing of terrorism” (hereinafter – FZ on money laundering). In case when donation is received from abroad in the amount equal or exceeding 600,000 rubles from an account (deposit), open for an anonymous owner, then such an money transfer operation is subject to obligatory monitoring by the state authorities, about which these authorities are notified by the bank (Sub-Clause, 3 Clause 1, Article 6, FZ on money laundering).

3. Foreign noncommercial organizations, their subdivisions may not implement collection of private donation within the territory of the Russian Federation. Such actions are designated as currency transaction according to Clause 3, Article 14, the Federal Law of December 10, 2003 #173-FZ “On currency regulation and currency control”. According to this law, individual person – resident may donate monetary funds to legal entity – non-resident (subdivisions of foreign noncommercial organizations within the territory of the Russian Federation are meant) in the form of donation through their personal bank account.

TAX CONSEQUENCES OF CONCLUDING DONATION CONTRACT

A) tax consequences of donation contract for its beneficiaries

TC RF contains a list of incomes which are not calculated into taxable base for the tax on income of organizations (Article 251, TC RF) or for the individual income tax (hereinafter referred to as - individual income tax) (Article 217, TC RF). In case of an incorrect tax qualification of property transferred free of charge, an organization or an individual person may incur the risk of its recognition as income and consequent taxation through income tax of organizations (24 %) or income tax of individual person's income (13% - for Russian tax residents and 30% for persons who are not Russian tax residents).

In order to avoid such risks organization – taxpayer needs to qualify the free of charge transferred income based on the essence of the transaction if its applicable as donation, recognized as such in compliance with the Russian legislation (Sub-Clause 1 Clause 2 Article 251 TC RF). Otherwise if a gift contract is concluded then everything which is to be transferred according to the gift contract is recognized as non-sale income and is subject to income tax (Sub-Paragraph, 8 Paragraph, 2 Article 250 TC RF).

Therefore in order to obtain income tax exemption it is necessary that the property transferred free of charge (objects, monetary funds, property rights) to noncommercial organization complied with all of the main characteristics of donation listed in Clause 2, Article 251, TC RF and Article, 582 CC RF. Donation is classified by TC RF as receipt of funds of intended use for implementation of charter-based activities and maintenance of noncommercial organization. As is indicated in Letter of Administration of the Ministry of Taxation in the city of Moscow of January 22, 2003 #26-12/4743 notions of “maintenance of noncommercial organization” and implementation of charter-based activities” are not equivalent. Expenses of maintenance of noncommercial organization include salaries of administrative, executive and other staff, implementing charter-based activities, business travel expenses, office supplies, premises rent, expenditures on maintenance of buildings and premises, expenses on maintenance and use of vehicles, expenses for publication of report on activities and use of property, expenses for acquisition of capital assets etc.; expenses for implementation of charter-based activities include directing of intended funds on attaining goals indicated in the charter of the noncommercial organization. Taxpayers - beneficiaries of the indicated funds for intended use are obligated to maintain separate accounting of income (expenses) received (incurred) within the limits of specifically intended funds.

When receiving donation individual persons, recognized as taxpayers of individual person's income tax by TC RF, may use tax exemption in case when property transferred to them free of charge complies with conditions listed in Article 217, TC RF. For instance, related to individual persons individual income tax is not required in case of the following free of charge receipts (donations may be classified as such incomes as well):

- extraordinary financial assistance in the form of charitable help (in monetary or in-kind form), provided by Russian and foreign NGOs registered in accordance with the established procedure (foundations, associations) in compliance with the legislation of the Russian Federation on charitable activities in the Russian Federation (Paragraph 4, Clause 8, Article 217, TC RF);

- income received by orphaned children and children-members of families below poverty level from charitable foundations, registered in accordance with the established procedure and from religious organizations (Clause 26, Article 217, TC RF) etc.

Therefore depending on certain conditions of provision of donations no individual income tax payment obligations arise for individual persons.

B) tax consequence of concluding donation contract for donors

On the federal level tax break is established only for donors – individual persons. It is the so called social deduction on individual income tax (Sub-Clause 1, Clause 1, Article 219, TC RF). Tax exemptions for donors – legal persons are not established on the federal level. Donors – legal persons as previously make their donations from their net profit that remains after payment of income tax. However TC RF left it at the discretion of regional authorities to provide tax exemptions in the part of lowering rate of income tax transferred to regional budgets. That is income tax rate; due to be paid into budgets of constituent entities of the Russian Federation can be decreased for certain categories of tax payers, philanthropists for example by 4%, but no lower than 13.5% (Clause 1, Article 284, TC RF). Currently such tax exemptions for donors – legal entities are in force in the city of Saint-Petersburg, Moscow and Samara Regions.

It is also important to note that social deductions on individual income tax for individual persons (including individual entrepreneurs) can be utilized only in case when free of charge receipt is transferred in the form of monetary funds and to the following beneficiaries:

- 1) Scientific, cultural, educational, health care and social welfare organizations partially or fully financed from the corresponding budgets (such organizations are budgetary or autonomous institutions established by the Russian Federation, administrative divisions of the Russian Federation, by municipal formations in order to implement managerial, social and cultural, scientific and technical or other functions of noncommercial nature);

- 2) Physical educations and sports organizations, educational and preschool institutions, having obtained funds for purposes of physical education of citizens and support of sport teams;

- 3) Religious organizations which obtained donations for implementations of charter-based activities.

In such cases taxpayer – individual person may deduct from the taxable income the amount directed for charitable purposes but no more than 25% of aggregate income obtained in the fiscal period.

In order to obtain the deduction the taxpayer needs to file with the domiciliary tax inspection an application along with tax declaration and copies of documents confirming expenditures for charity in the preceding fiscal period, (Sub-Paragraph 2, Clause 1 Article 219 and Article 229, TC RF).

Taking into consideration the practical focus of this booklet attached are sample donation contracts. The attached contract samples are exemplary and may be used as basis for drafting specific documents. However it is important to remember that each donation contract is to be drafted taking into consideration specific conditions and peculiarities of donation.

Donation Contract
(with donor – individual person)

(city)

(date)

_____, _____ date of birth, address _____
_____, (passport _____, issued _____
_____. ____ r.), hereinafter referred to as Donor, of the one part, and _____
_____, hereinafter referred to as Beneficiary, represented by _____

_____, acting on the basis of Charter, of the other part, entered into contract about the following:

1. _____ Donor transfers into ownership free of charge, and Beneficiary accepts as donation property _____, evaluated by the parties as (_____) rubles. Transfer of _____ is indicated in the register list which is integral part of this contract.
2. _____ Donor's ownership of the assigned under the current contract is established by documents of title.
3. _____ Donation of the property indicated in this contract is conditioned by its use in conformity with a specified designation.
_____ is to be utilized _____ in the interests of _____ and Beneficiary is to provide access to _____ for the above mentioned purposes.
4. The fact of transfer of goods by the Donor and their receipt by the Beneficiary is confirmed by the Certificate of Donation Transfer, signed by both parties.
5. The Donor informs the Beneficiary that he/she does not have a spouse who could lay claim on the property assigned and also states that there are no limitations (encumbrance) whatsoever related to the property assigned. (In order to confirm his/her consent for assignment of said property under the current contract the Donor's spouse signs the contract under the Donor's signature. The Donor transfers property free of any ownership rights and claims of third parties, who might not have been aware about them on the date of concluding the contract. Prior to concluding this contract the property assigned is not sold to anyone, is not mortgaged, is not disputed or arrested.
6. If use of donated property in conformity with designation indicated by the Donor becomes impossible due to changed circumstances, in such case the property may be used otherwise only after Donor's approval in writing. In case of the Donor's death utilization of property for purposes not previously designated is to be implemented only upon court decision.
7. Utilization by the Beneficiary of donated property outside of scope of use designated by the Donor in this contract or changing the designated use through breaking the rules, indicated in Paragraph 5 of this agreement entitles the Donors or his/her heirs to demand cancellation of donation.
8. Contents of Articles 209, 213, 223, 572, 582 of the Civil Code of the Russian Federation and legal consequences of this contract are known to the parties.
9. This contract is executed in to original parts, one part for each party.

EXECUTION CLAUSE

Beneficiary

Donor

Title of the Party

Full Name

Permanent Address

Date of Birth

Passport Details (series, date of issue,
Issuing authority)

This is to certify my consent for my spouse's (full name)
entering into this contract and assignment of property listed
above in the form of donation.

(date).

(signature and full name)

**Certificate
Of Donation Transfer
Attached to Contract #___ of (date)
Between _____ (name of organization)
and full name**

it is necessary if an object is donated (not monetary funds)

This is to certify that according to donation contract # ___ of (date) the Donor transferred into ownership free of charge property in the form of donation

And the Beneficiary accepted the following property: _____
(denomination of property, model, brand, serial number).

The above named donation was transferred and will be utilized for the following purposes
(indicate the purpose of public utility).

EXECUTION CLAUSE

Beneficiary _____ Donor _____

Title _____ Full name _____

DONATION CONTRACT ИМУЩЕСТВА
(with Beneficiary – individual person)

(city)

(date)

_____ (name of the organization), hereinafter referred to as Donor, represented by its _____, acting under _____, of the one part and citizen of. (state) _____ (full name), hereinafter referred to as Beneficiary, of the other party, jointly referred to as the Parties entered into the following contract (hereinafter Contract):

1. The Donor within the framework of their charitable activities transfers free of charge (undertakes to transfer free of charge) into ownership in the form of donation the property indicated in Paragraph 2 of the current Contract and the Beneficiary undertakes to accept the said donation and utilize it for the purposes of _____ (indicate purposes of public utility).

2. The following property is transferred in the form of donation: (denomination of property, model, brand, serial number) If the register list of property is large it is attached to the contract in the form of Addendum.

3. _____ The Beneficiary accepts the donation to the address: _____ no later than (date).

4. The fact of property transfer by the Donor and its acceptance by the Beneficiary is certified by Transfer and Acceptance Certificate, signed by both parties.

5. Donation may be cancelled by the Donor in case of breach of paragraph Clause 1 (intended use of the donation) and of Paragraph 3 (term of donation acceptance) of the current Contract.

6. In case of donation cancellation due to breach of intended condition the Beneficiary is obligated to return the donated property to the Donor.

7. Authorized representatives of the Donor are entitled to hold audits of proper use of the donation within the term of two years from the date of signature by the Parties of this contract

The Beneficiary ensures access of authorized representatives of the Donor to the donated property. The Beneficiary is to be notified about such audits 5 days prior in writing.

8. Modification and cancellation of the Contract are possible:

- upon Parties' consent;
- in cases provided for in the current Contract;
- on the grounds and according to the procedure provided for in the legislation of the Russian Federation.

9. Disputes arising between the Parties of the current agreement are to be resolved in the court at the Donor's location as determined by the legislation of the Russian Federation.

10. This contract is executed in to original parts, one part for each party.

EXECUTION CLAUSE

Donor

Beneficiary

Title of the Party

Full Name

Permanent Address, Date of Birth

Passport Details (series, date of issue,

Issuing authority)

phone number

Individual taxpayer's number (INN) if there is one

Donation Transfer and Acceptance Certificate

Attached to Contract # __ of (date)

Between _____(name of the organization)

And (full name)

it is necessary if an object is donated (not monetary funds)

This is to certify that according to donation contract # of (date) within the framework of their charitable activities the Donor transferred into ownership free of charge property in the form of donation

And the Beneficiary accepted the following property:_____

(denomination of property, model, brand, serial number).

The above named donation was transferred and will be utilized for the following purposes

(indicate the purpose of public utility).

EXECUTION CLAUSE

Donor

Beneficiary

Title

Full name

Donation Contract #

(with beneficiary – noncommercial organization for program/project financing)

_____, hereinafter referred to as the Donor, represented by its Directory, acting under the Charter of the one part and, _____, hereinafter referred to as the Beneficiary», represented by its Director, acting under the Charter of the other part entered into the following Contract:

1. _____ the Donor transfers to передает Beneficiary free of charge donation – monetary funds in the amount of _____ for program/project _____, implemented within the framework of Charter-based non-commercial activities of the Beneficiary.

The program and the budget are attached to the Contract.

2. _____ Donation is transferred to the following Beneficiary's account:

Settlement account # _____

Bank

Correspondent account

Bank Identification Code

Payment's designation: ____.

3. _____ The amount of first installment is

and is transferred by the Donor to the Beneficiary's account within the term of 30 days from the date of this contract countersignature.

4. The remaining part of the charitable donation is transferred to the Beneficiary's account within 10 days after the Donor's receipt of expenditure report but no earlier than _____.

5. The Beneficiary undertakes to use the received monetary funds strictly in compliance with the purpose indicated in Paragraph 1 of this Contract.

6. This Contract is valid from the moment of its signature by both Parties till _____

7. Modification and cancellation of the Contract is possible upon the Parties' agreement. The beneficiary has the right to refuse acceptance of donation at any moment. In such case the Contract is considered to be cancelled.

This contract is executed in to original parts, one part for each party.

EXECUTION CLAUSE

Donor

Beneficiary

Title of the Party

Title of the Party

CONTRACT #

About funds of intended use– donation

(city)

(date)

_____, hereinafter referred to as the Benefactor, represented by _____, acting under the Charter of the one part and _____ hereinafter referred to as the Beneficiary, represented by _____, acting under the _____ of the other part, jointly referred to as the Parties, entered into the following agreement:

1. SUBJECT MATTER OF THE CONTRACT

1.1. _____ the Benefactor transfers and the Beneficiary accepts funds for intended use - donation (hereinafter referred to as Donation) for implementation of the Program _____, implemented within the framework of the non-for-profit activities of the Beneficiary.

Goal of the Program- _____

1.2. _____ The total amount of donation is _____ (currency name).

2. PROPER USE OF DONATION FUNDS

2.1. Donation funds will be used by the Beneficiary for Program implementation

2.2. The Benefactor recognized expenditure of donation funds to be proper use if it complies with the budgetary items, indicated in the Budget of Donation Expenditures (Attachment #1) and is done within the term indicated in Section 4 of this Contract

2.3. Transfer of donation funds from one budgetary item to another within the Budget of Donation Expenditures is allowed only in cases when the transferred amount does not exceed 0 (ten) percent of total Budget amount. In cases when it is necessary to transfer funds the total amount of which exceeds the above indicated limit or when creating a new Budgetary item the Beneficiary is to inform the Benefactor promptly (within two weeks from the date of such necessity of transfer arose) and in writing and to obtain his/her/their written approval.

2.4. After completion of the Program implementation the Benefactor confirms proper use of the funds by written approval of Beneficiary's reports.

3. REPORTING ON DONATION

3.1. Registration of expenditures of donation funds is done in compliance with the rules of accounting and cash payments established by the Russian legislation.

3.2. Reporting on donation consists of report (interim and final) on Program realization which has narrative part (information about events and results and financial part (information about expenditures)

3.3. Financial part of the report is to be signed by the Director and Chief Accountant of the Beneficiary.

3.4. Authorized Representative of the Beneficiary has the right to hold audits of intended expenditure of the donation.

3.5. _____ Report on the Program is submitted to the Benefactor no later than _____

Reports on the Program are submitted to the Benefactor according to the following schedule:

- Interim report for the period from ___ to _____ - no later than
- Final report for the period from ___ to _____ - no later than

4. TERM OF THE PROGRAM IMPLEMENTATION

4.1. The program is to be implemented from ___ to

5. PROCEDURE OF DONATION PAY OUT

5.1. Donation is to be transferred to the Beneficiary's account within 7 (seven) work days from the date of countersignature of this Contract. The amount of donation is to be transferred to the Beneficiary's account in rubles according to the exchange rate of the Central Bank of the Russian Federation (CBRF) on the day of transfer within 7 (seven) work days from the date of countersignature of this Contract.

5.2. Payout of the donation is to be done by the Benefactor in 3 stages:

- first stage – in the amount of ____ (____) US dollars is transferred to the Beneficiary's account in rubles at CB RF exchange rate on the date of transfer within (seven) work days from the date of countersignature of this Contract.;

- second stage – in the amount of ____ (____) US dollars is transferred to the Beneficiary's account in rubles at CB RF exchange rate on the date of transfer no later than _____;

- third stage - in the amount of ____ (____) US dollars is transferred to the Beneficiary's account in rubles at CB RF exchange rate on the date of transfer no later than _____

6. MODIFICATION OF DONATION TERMS

6.1. All modifications and addendums to this Contract are to be deemed valid if there are executing in writing and countersigned by representatives of both Parties.

7. TERMINATION OF CONTRACT

7.1. The Contract is terminated upon performance of their obligations by both Parties.

7.2. While terminating the Contract the Beneficiary is obligated to submit to the Benefactor for approval the reports on donation expenditure according to procedure detailed in Section 3 of this Contract. In case when Beneficiary still has unexpended monetary funds he/she/they are entitled to use the funds for Charter-based non-for-profit activities.

8. DONATION CANCELLATION

8.1. Donation may be cancelled in case of breach of conditions provided for in Section 2 "Proper use of Donation Funds" of this Contract.

8.2. Benefactor notifies the Beneficiary about donation cancellation in writing.

8.3. Consequence of donation cancellation is reimbursement of all/part of the donation funds not used according to the intended of the donation.

9. MISCELLANEOUS

9.1. Beneficiary confirms that all of the tax payments specified in the Russian legislation are taken into consideration by he/she/they and undertakes full responsibility for tax payments for the donation funds.

9.2. The Parties shall settle any dispute or disagreement arising hereunder by negotiation. Should the Parties fail to come to terms in this manner, the dispute shall be referred to the Arbitration Court of Moscow to be resolved pursuant to the Russian Federation law.

9.3. This Contract is executed in two original parts equal in validity, one part for each Party.

9.4. This contract is considered lawful and comes into force from the date of its signature by authorized representatives of both Parties.

9.5. Regulations of the legislation of the Russian Federation are applied to all other legal relationship not regulated in this contract.

9.6. Integral part of this Contract is:

1) Budget of Donation Expenditure (Attachment №1).

10. EXECUTION CLAUSE

Beneficiary

Benefactor

Title of the Party

Title of the Party

to contract on fund of intended use - donation

/ of (date)

Concluded by _____ and _____

Budget for Donation Expenditure (Rubles/US dollars)

Expense Item	Total
Salaries (including Unified Social Tax)	
Rent	
Telephone, fax, Internet	
Postage expenses	
Total:	

Beneficiary
Name of the Party

Benefactor
Name of the Party

ENDOWMENT DONATION CONTRACT

(city)

(date)

(full name of legal entity or full name of person)

In the person of _____ (capacity and full name), acting under _____, _____ (Charter, Power of Attorney, Statute), of the one part, hereinafter referred as Donor, and in the person of _____, acting under the Charter, of the other part, hereinafter referred to as Beneficiary, made this contract about the following:

1. Donor transfers to Beneficiary free of charge - _____ monetary funds (donations) for establishing endowment _____.

2. Beneficiary establishes endowment, uses it, distributes income on the endowment in favor of _____, implementing activities in the sphere of culture.

3. The amount of donation for establishment of endowment according to this contract is _____ (currency designation).

4. The funds provided according to this contract are to be expended solely for establishment of endowment целевого _____.

5. Beneficiary is to maintain account records in compliance with requirements of the Russian legislation, provide access to Donor's representative to all documents related to establishment of endowment.

6. Funds transfer to Beneficiary's account is performed on the basis of current contract no later than 10 (ten) days from the date of signature.

7. The term for which the endowment is established is 10 (ten) years.

8. _____ In case when, within a year's term from the starting date of establishment of endowment _____ the total amount of donation does not amount to 3,000,000 (three million) rubles, the transferred donation, will be directed to implementation of charter-based noncommercial activities.

9. The Donor has the right to obtain information about establishment of endowment, income from the trust management of the endowment as well as about use of endowment-generated income.

10. Donor, the amount of whose donation exceeds 10 percent of balance-sheet value of property making up endowment on the last reporting date has the right to demand to include him/her or their representative in the composition of the board overseeing use of endowment according to the procedure and under conditions provided for in the Law on Endowment of the Russian Federation.

11. The Donor has the right to demand cancellation of donation for establishment of endowment when it is not used according to the designation determined in Paragraphs 2 and 4 of this Contract.

12. In case of dissolution of endowment in cases provided for by the law, the remaining part of the property formerly being part of the endowment is to be utilized for the following purposes:

13. Modification and dissolution of the contract is possible in case of both Parties' agreement. Agreement about modification or dissolution of the contract is executed in writing.

14. Beneficiary has the right at any moment to refuse acceptance of the donation, notifying the Donor about the refusal in writing. In such case the Contract is deemed dissolved.

15. The Donor has the right to demand cancellation of donation for establishment of endowment only after forwarding a warning in writing to the Beneficiary notifying about the necessity to utilize the donation, transferred for the purposes of establishment of endowment according to the intended indicated in the donation contract, or about the necessity to eliminate within the reasonable term of violations incurred. In case when the Beneficiary does not eliminate the violations the Donor has the right to dissolve the Contract at any moment.

The current contract is done in two copies, one party each and is effective from the date of signature.

Beneficiary

Donor

Title of the party

Title of the party

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