

Legal Summit of the Americas 2015

Strengthening Civil Society

Identifying and Overcoming Legal and Other Obstacles to Civil Society

The three tracks of the Legal Summit of the Americas 2015 are interwoven and inter-related: improving civil society, assuring honest government, and enhancing the legal profession.

The Vance Center and its partners have spent the last ten years promoting the Pro Bono Declaration of the Americas, through adoption, publication, and implementation.

Should we now do something along the same lines to strengthen civil society? How would we work together to as legal professionals to identify the greatest obstacles to the function of civil society and develop a plan to work together to achieve concrete steps to overcome those obstacles?

What is civil society?

Broadly speaking, when we talk about “civil society”, we are referring to all groups of people, other than governments and businesses, working together to achieve a purpose. Civil society includes not-for-profit organizations, and also a breadth of informal and formal organizations, both large and small, including families, churches, hospitals, clubs, trade unions, interest groups, arts, cultural and religious organizations, civic and developmental associations, issue-oriented movements, the media, and research and educational institutions. The hallmark of these groups is voluntary association, autonomous from the state and independent of profit-motive.

The concept of civil society dates to Aristotle's Politics, where it refers to a ‘community’, characterized by a shared set of norms and ethos. Alexis de Tocqueville focused on the relationship between civil society and democratic political society, which is a continuing theme in discussions about civil society. Some have argued that civil society organizations facilitate a more informed citizenry, who make more educated voting choices, participate in politics, and could hold government more accountable as a result.

Now, civil society is a focus of proponents of social and economic change. In “How are Civil Society Organizations Important for Development?” Anirudh Krishna observes that through promoting coordinated public action among their members and other citizens, civil society organizations have an important role in promoting and protecting democracy and economic development and poverty reduction. Organization of citizens into groups allows the citizens better to influence government behaviour. According to Krishna, civil society organizations are important for mobilizing social capital, including networks, norms and social trust, to facilitate coordination and cooperation for mutual benefit.

Some political and social elements may facilitate the growth of civil society. These include a legal infrastructure that permits the formation and funding of civil society organizations (including tax rules that allow citizenry tax deductions for contributions to civil society organizations and laws that permit contributions to civil society organizations from abroad). By way of background materials, we have provided you with a survey of some of the laws that impact the formation and funding of civil society organizations in Argentina, Brazil, Chile, Colombia, Mexico and Uruguay.

Well developed legal protections for freedom of assembly, freedom of press, and individual rights of free speech and enforcement of those protections are also important for the growth of civil society.

Also, cultural norms and preferences clearly impact the development of civil society.

Questions for consideration:

What would you do in your country to strengthen civil society?

- **What are the biggest obstacles to the function of civil society in your country and what could people do to overcome these obstacles?**
 - Are there legal obstacles to the development of civil society?
 - Is the legal infrastructure for the formation of organizations and ensuring favourable tax treatment of contributions adequate?
 - Is the legal infrastructure for the protection of freedom of assembly, freedom of the press, and freedom of speech adequate?
 - If the legal infrastructure is sufficient, does enforcement of laws need to be improved?
 - Are there cultural norms that impact the development of civil society?
 - Is there a culture of participation in civil society in your country, both in terms of contribution of time and money?
 - What role does transparency and public confidence (or the lack thereof) play to develop and strengthen civil society in your country?
 - Should the different players in civil society look for better ways to attract the active participation of lawyers in their activities and to promote lawyers' active involvement generally?
- **What should lawyers be doing to support the improvement of civil society as discussed above?**
 - As lawyers, what is our responsibility and obligation towards supporting civil society? What are the different roles we can play?
 - What are the obstacles (institutional, cultural, ideological or otherwise), that prevent lawyers from promoting civil society?
 - What ideas do you have to enable lawyers to positively impact civil society in a meaningful way?

NOT-FOR – PROFIT ORGANIZATIONS IN ARGENTINA

The following chart includes a summary of the main aspects related to Civil Associations, Foundations and Mutual Entities in Argentina. Besides the foregoing, there are other specific not-for-profit organizations (NPO) which normally enjoy tax benefits but lack legal personality and are more rarely used, such as, simple associations, civil entities, and religious associations. Moreover depending on the specific activity performed by each civil association, foundation or mutual entities, special regulations could apply.

	Civil Associations	Foundations	Mutual Entities
Applicable Laws/Regulations	Civil Code Articles 30-50	Law 19.836 as amended	Law 20,321 as amended
Constitutionally protected?	Yes, indirectly	Yes, indirectly	Yes, indirectly
Enjoy legal personality?	Yes	Yes	Yes
Main Purpose	Contribute to the common good by providing benefits to society or a given group, without a profit-seeking purpose.	Provide a benefit to the society or to a given group, without a profit-seeking purpose. Typically they directly address a specific need, for example, medical assistance or aid to disabled people.	Main purpose is to benefit their members (and their families) by providing, medical aid, subsidiaries, loans, insurance, cultural events, education, etc.
Permitted Activities	May engage in economic, commercial or business activities as a mean of	May engage in certain business activities as a mean of supporting it's public benefit	Are free to undertake any economic activity.

	<p>supporting it's public benefit activities.</p> <p>May engage in legislative and political activities.</p> <p>To enjoy tax exemption, current law provides a non-exhaustive list of qualifying purposes: welfare, public health, charity, beneficence, education and instruction, science, literature, arts, trade union and those of physical or intellectual culture.</p>	<p>activities.</p> <p>May engage in legislative and political activities.</p> <p>To enjoy tax exemption, current law provides a non-exhaustive list of qualifying purposes: welfare, public health, charity, beneficence, education and instruction, science, literature, arts, trade union and those of physical or intellectual culture.</p>	<p>May engage in legislative and political activities.</p>
Restrictions	<p>Tax-exemption status prohibits certain activities, such as gambling, horse racing, public shows and similar activities.</p> <p>Certain types of associations, such as unions, may not engage in commercial and industrial activities.</p>	<p>May not engage in commercial nor industrial activities.</p> <p>Tax-exemption status prohibits certain activities, such as gambling, horse racing, public shows and similar activities.</p>	<p>No restriction, so long as it devotes it's income and propriety for the social interest named in its statutes.</p>

Membership	Membership Organization (regulated according it's by laws).	Non-Membership Organizations	<p>Membership organizations. Members pay a periodic fee or contribution.</p> <p>Eligibility for membership is based on profession, age, gender, or like circumstances, but not on race, creed or ideology.</p>
May own property?	Yes	Yes	Yes
Directors remuneration	May be remunerated. To obtain tax exemption, the governing body and auditing committee may not be compensated at a rate exceeding 50% of the annual average of the three highest salaries for administrative staff.	No. Board member cannot be compensated in order to receive tax exemption.	May be remunerated. To obtain tax exemption, the governing body and auditing committee may not be compensated at a rate exceeding 50% of the annual average of the three highest salaries for administrative staff
Are directors/management personally liable?	<p>In the case of negligence or willful misconduct of the management, in actions that exceed the duties and authorizations granted by the organizational documents, or that causes a harm to the association, management could be personally liable.</p> <p>In case of willful misconduct, such responsibility shall be joint among those who</p>	<p>In the case of negligence or willful misconduct of the management, in actions that exceed the duties and authorizations granted by the organizational documents, or that causes a harm to the foundations, management could be personally liable.</p> <p>In case of willful misconduct, such responsibility shall be joint among those who</p>	Management shall be jointly liable for the administration and investment of the mutual funds, and personally liable for any fine imposed due to the violation of law No 20,321 or resolutions passed by the governmental authority.

	participated in the decision. Liability shall be several in the case of negligence.	participated in the decision. Liability shall be several in the case of negligence.	
Who can control of NPO's?	No restriction. May be a for-profit organization or foreign entity	No restriction. May be a for-profit organization or foreign entity	No restriction. May be a for-profit organization or foreign entity
Governmental Authorities controlling NPO's	Inspector General of Justice (IGJ) in Buenos Aires or the competent Legal Entities Directorate in the provinces (if varies), Dirección de Personas Jurídicas and the Admnsitración Federal de Ingresos Publics (Afip)	Inspector General of Justice (IGJ) in Buenos Aires or the competent Legal Entities Directorate in the provinces (if varies), Dirección de Personas Jurídicas and the Admnsitración Federal de Ingresos Publics (Afip)	National Institute of Cooperatives and Social Economy (INAES), National Registry of Mutual Entities and the Admnsitración Federal de Ingresos Publics (Afip)
Reporting Requirements	- Annual filing before the IGJ informing name of directors and providing copy of meeting minutes that approve financial statements.	-During the first three years it must file a report (annually) before the IGJ informing about the activities made in fulfillment of their purpose. - Annual filing before the IGJ informing name of directors and providing copy of meeting minutes that approve financial statements.	-Depending on the activities the mutual entity does, their reporting requirements vary, for example, mutual entities that extend loans to its members have stricter controls, in particular in connection to money laundry prevention. - In anticipation to each annual meeting mutual entities must file before the governmental authority all the relevant documents that shall be treated in such annual meeting.

Dissolution/Liquidation	Requires a process. Remaining net assets must be transferred to an NPO recognized as tax-exempted. If bylaws do not specify the destination of the assets the National Congress shall do it.	Requires a process. Remaining net assets could be transferred to a public entity or another NPO. The Governmental Authority must approve the assets destination.	The INAES oversees the involuntary dissolution and distribution of assets. Law does not address the issue of assets distribution upon dissolution.
Tax Exemptions			
When do they apply?	After obtaining a tax exempted status from the relevant authority. Not automatic	After obtaining a tax exempted status from the relevant authority. Not automatic	After obtaining a tax exempted status from the relevant authority. Not automatic
Income Tax (federal)	Exempted	Exempted	Exempted
VAT	Exempted for services received. In general the sale of goods made by an association is not exempted from VAT.	Exempted for services received. In general the sale of goods made by a foundation is not exempted from VAT	Exempted for services received. In general the sale of goods made by a mutual entity is not exempted from VAT
Property tax	Yes, but it varies depending on the Province in which the property is located.	Yes, but it varies depending on the Province in which the property is located.	Yes, but it varies depending on the Province in which the property is located.
Minimum Deemed Income Tax	Exempted	Exempted	Exempted
Tax on bank accounts	Could be exempted or subject to a reduced rate.	Could be exempted or subject to a reduced rate.	Could be exempted or subject to a reduced rate.
Donations	Donators who are tax payers may deduct qualifying donations up to 5% of the	Donators who are tax payers may deduct qualifying donations up to 5% of the	Not exempted.

	taxable base. Restrictions apply.	taxable base. Restrictions apply.	
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NOT-FOR-PROFIT ORGANIZATIONS IN BRAZIL

The Brazilian Civil Code (Law 10,406/2002) provides for two traditional forms of not-for-profit organizations (NPO), to wit: associations and foundations¹. An association is a self-governed and voluntary private legal entity formed by at least two persons for one or more non-profitable purposes. A private foundation is a NPO private legal entity with an endowment. Additionally, NPOs are eligible to obtain one or more government special designations and qualifications to receive specific tax benefits, as well as access public funding.

The following chart includes a summary of the main aspects of NPOs in Brazil. The first part of the chart describes the characteristics of associations and foundations. The second part of the chart describes the main special designations - i.e., Public Interest Civil Society Organization (OSCIP), Social Organizations (OS), Entity of Federal Public Interest, and Beneficent Social Assistance Entities. The third part contains brief information about tax exemptions.

GENERAL LEGAL FORMS		
	Associations	Foundations
Applicable Laws/Regulations	Brazilian Civil Code (Title II, Chapter II)	Brazilian Civil Code (Title II, Chapter III)
Constitutionally protected?	<p>Yes. The Brazilian Federal Constitution (Article 5, XVII-XXI) provides expansive protection for the right of freedom of association, including guarantee against state interference.</p> <p>Also, the Brazilian Federal Constitution exempts educational and social assistance NPOs from taxes on their revenues, assets, and services (Article 150, (VI)(c) and para. 4).</p>	<p>There is no specific protection for foundations, but other generic protections and guarantees may apply.</p> <p>Also, the Brazilian Federal Constitution exempts educational and social assistance NPOs from taxes on their revenues, assets, and services (Article 150, (VI)(c) and para. 4).</p>

¹ In 2003, the Brazilian Civil Code was revised to include religious organizations as a new type of organization. We will not address religious organizations in this analysis.

Enjoy legal personality?	Yes	Yes
Main Purpose	Associations must have one or more non-profit purposes, regardless of their nature (i.e., the purpose does not need to be philanthropic - it can be directed to a particular group). Associations are constitutionally prohibited from pursuing paramilitary purposes.	<p>Foundations must serve public benefit or public interest purposes. According to the Brazilian Civil Code, these purposes must be within one of the following general areas:</p> <ul style="list-style-type: none"> (i) social assistance; (ii) culture, defense and preservation of historical and artistic heritage; (iii) education; (iv) health; (v) food and nutrition security; (vi) environmental defense and conservation and promotion of sustainable development; (vii) scientific research, development of alternative technologies, modernization of management systems, production and dissemination of information and technical and scientific knowledge; (viii) promotion of ethics, citizenship, democracy and human rights; and (ix) religious activities.
Permitted Activities	May engage in economic, commercial or business	May engage in economic, commercial or business

and Restrictions	<p>activities, provided that such activities do not constitute the primary purpose of the organization. No profits or income may be distributed by organization with tax-exempt status. Any surplus must be used to carry out the non-profit purpose of the organization. Further, the revenues resulting from economic, commercial or business activities must be fully applied in Brazil to carry out the organization's purpose.</p> <p>May engage in legislative and political activities (except if the association is qualified as OSCIP, as explained below).</p> <p>The association's bylaws may impose additional restrictions.</p>	<p>activities, provided that such activities do not constitute the primary purpose of the organization. No profits or income may be distributed by organization with tax-exempt status. Any surplus must be used to carry out the non-profit purpose of the organization. Further, the revenues resulting from economic, commercial or business activities must be fully applied in Brazil to carry out the organization's purpose.</p> <p>May engage in legislative and political activities (except if the foundation is qualified as OSCIP, as explained below).</p> <p>The foundation's bylaws may impose additional restrictions.</p>
Membership	Membership Organizations (regulated according its bylaws).	Non-Membership Organizations
May own property?	Yes	Yes
Directors/officers remuneration	<p>The remuneration of NPO's officers and board members is not prohibited by the Federal Constitution or by the Brazilian Tax Code. However, in order to benefit from tax-exempt status, the remuneration of officers and directors is subject to certain conditions.</p> <p>For instance, social assistance associations may pay salaries to their officers, provided that such officers effectively participate of the association management and the remuneration is within the</p>	<p>The remuneration of NPO's officers and board members is not prohibited by the Federal Constitution or by the Brazilian Tax Code. However, in order to benefit from tax-exempt status, the remuneration of officers and directors is subject to certain conditions.</p> <p>For instance, foundations may pay salaries to their officers, provided that such officers actually participate of the foundation management and the remuneration is within the limits paid in the foundation area. In this context, salaries paid to an</p>

	<p>limits paid in the organization region. In this context, salaries paid to an organization's statutory officer do not prevent the tax exemption, as long as: a) the remuneration of the statutory officers is less than 70% of the limit established for Federal Executive branch employees; and b) the total amount paid by the entity to its officers does not exceed five times that value. Also, statutory officers may not be a spouse or a relative (up to the third degree) of founders, partners, directors, counselors, benefactors or equivalent of the organization. Finally, the law expressly allows for the remuneration of (i) non-statutory officer that is an employee; and (ii) statutory director or officer who is cumulatively employed by the same organization, provided that there is compatibility of working hours.</p> <p>Other restrictions or provisions on directors / officers remuneration may apply in case of special designations granted by the government. For instance, organizations designated as OSCIPs are specifically allowed to remunerate officers who effectively work in the management of the entity, or who provide specific services, provided that the officers must be paid the market average rates in the organizations' area of operation.</p>	<p>organization's statutory officer do not prevent the tax exemption, as long as: a) the remuneration of the statutory officers is less than 70% of the limit established for Federal Executive branch employees; b) the total amount paid by the entity to its officers does not exceed five times that value. Also, statutory officers may not be a spouse or a relative (up to the third degree) of founders, partners, directors, counselors, benefactors or equivalent of the organization. Finally, the law expressly allows for the remuneration of (i) non-statutory officer that is an employee; and (ii) statutory director or officer who is cumulatively employed by the same organization, provided that there is compatibility of working hours.</p> <p>Other restrictions or provisions on directors / officers remuneration may apply in case of special designations granted by the government. For instance, organizations designated as OSCIPs are specifically allowed to remunerate officers who effectively work in the management of the entity, or who provide specific services, provided that the officers must be paid the market average rates in the organizations' area of operation.</p>
Are directors/management personally liable?	In case of negligence or willful misconduct of the management, in actions that exceed the duties and authorizations granted by the organization documents, or that causes harm to the association,	In case of negligence or willful misconduct of the management, in actions that exceed the duties and authorizations granted by the organization documents, or that causes harm to the foundation, management

	management could be personally liable.	could be personally liable.
Who can control of NPO's?	No restriction. May be a for-profit organization or foreign entity.	No restriction. May be a for-profit organization or foreign entity.
Governmental Authorities	<p>The organizational documents of the association must be registered with the Notary Public Office of Legal Entities Registration of the city where its head office is located.</p> <p>Registration or supervision of other governmental authorities may apply in case of special designations granted by the government.</p>	<p>The founder(s) must submit to the Attorney General's Office (<i>Ministério Público</i>) the draft deed of incorporation, bylaws, and information about the assets that will form the endowment. Upon receiving the Attorney General's approval, the founder(s) must register the organization documents with the proper Notary Public Office of Legal Entities Registration. Once registered, the Attorney General's Office has oversight authority over the foundation's management.</p> <p>Registration or supervision of other governmental authorities may apply in case of special designations granted by the government.</p>
Reporting Requirements	<p>No general requirement. Special reporting requirements may apply to ensure tax benefit status or special and/or designations.</p> <p>For instance, all organizations qualified as OSCIP or holding a Federal Public Interest status must register with the National System of Entities Qualified by the Ministry of Justice the Ministry of Justice and submit annual financial and activity reports. OSCIPs that faithfully provide their accounts once a year may obtain a "Certificate of Regularity," which is necessary for the execution of "<i>Termos de Parceria</i>" with the government and needed to benefit from fiscal incentives.</p> <p>A NPO legal entity with Federal Public Interest</p>	<p>No general requirement. Special reporting requirements may apply to ensure tax benefit status and/or special designations.</p> <p>For instance, all organizations qualified as OSCIP or holding a Federal Public Interest status must register with the National System of Entities Qualified by the Ministry of Justice the Ministry of Justice and submit annual financial and activity reports. OSCIPs that faithfully provide their accounts once a year may obtain a "Certificate of Regularity," which is necessary for the execution of "<i>Termos de Parceria</i>" with the government and needed to benefit from fiscal incentives.</p> <p>A NPO legal entity with Federal Public Interest status</p>

	status must annually report on its activities to the Ministry of Justice.	must annually report on its activities to the Ministry of Justice.
Dissolution/Liquidation	<p>An association may be dissolved (i) by decision of its members; (ii) according to provisions set forth in its organizational documents; or (iii) involuntarily, by judicial order.</p> <p>The members of the association may include in the bylaws (or decide by resolution) that, in case of dissolution, all members will be reimbursed the funds given to the organization. Any additional assets remaining upon dissolution must be transferred to a NPO named in its bylaws or, in case of omission, by resolution to a municipal, state, or federal organization with similar purposes.</p> <p>Other provisions may apply in case of special designations granted by the government. For instance, the bylaws of special designation organizations must include a provision saying that if the organization is dissolved or has its designation revoked, all assets acquired from the government must be transferred to another organization with the same designation and similar aims. In addition, the assets managed by OSs under the <i>Contrato de Gestão</i> (Management Agreement) are public property, and must revert to public administration at the time of the organization's dissolution.</p>	<p>A foundation may be dissolved if its purposes become illicit or impossible to achieve or if it reaches the end of its definite term. Any assets remaining upon dissolution must be transferred to a NPO with similar purposes.</p> <p>Other provisions may apply in case of special designations granted by the government. For instance, the bylaws of special designation organizations must include a provision saying that if the organization is dissolved or has its designation revoked, all assets acquired from the government must be transferred to another organization with the same designation and similar aims. In addition, the assets managed by OSs under the <i>Contrato de Gestão</i> (Management Agreement) are public property, and must revert to public administration at the time of the organization's dissolution.</p>

SPECIAL DESIGNATIONS					
	Public Interest Civil Society Organization <i>(Organização da Sociedade Civil de Interesse Público, or OSCIP)</i>	Social Organizations <i>(Organizações Sociais, or OS)</i>	Federal Public Interest Entity <i>(Declaração de Utilidade Pública)</i>	Social Assistance Beneficent Entity enrolled in the National Council of Social Assistance <i>(Entidade Beneficente de Assistência Social inscrita no Conselho Nacional de Assistência Social)</i>	Social Assistance Beneficent Entity with Social Assistance Beneficent Certification <i>(Entidade Beneficente de Assistência Social detentora do Certificado de Entidade Beneficente de Assistência Social, or CEBAS)</i>
Applicable Laws	Law 9,790/1999	Law 9,637/1998	Law 91/1935	Law 8,742/93	Law 12,101/2009
Permitted Activities and Restrictions	Activities limited to the following: (i) promote social	Activities limited to the following:	Activities limited to the following: (i) promote	Activities limited to the following: (i) promote social	In order to obtain the Social Assistance Beneficent Entity

	<p>assistance programs;</p> <p>(ii) promote cultural activities and the protection and maintenance of historic and artistic patrimony;</p> <p>(iii) promote free education;</p> <p>(iv) promote free health care;</p> <p>(v) promote food aid programs and nutritional education programs;</p> <p>(vi) promote sustainable development and environmental protection programs;</p> <p>(vii) promote voluntary work;</p> <p>(viii) promote social and economic development and fight poverty;</p> <p>(ix) carry on not-for-profit experiments regarding new patterns for social production activities and</p>	<p>(i) promote education;</p> <p>(ii) promote scientific research;</p> <p>(iii) promote technological development;</p> <p>(iv) promote environmental protection and preservation; and</p> <p>(v) promote cultural activities and health care.</p> <p>No profits or income may be distributed by the OS. Any surplus must be used to carry the non-profit purpose of the organization.</p> <p>The law does not expressly prohibit political or legislative activities by social organizations. However, the nature of their structure, their</p>	<p>education;</p> <p>(ii) carry out scientific research, cultural activities, or non-discriminatory philanthropic activities.</p> <p>No profits or income may be distributed by the Federal Public Interest Entity. Any surplus must be used to carry the non-profit purpose of the organization.</p> <p>The law does not expressly prohibit political or legislative activities by the Federal Public Interest Entities. However, the nature of their structure, their purposes, and the activities they undertake may</p>	<p>assistance to families in need, mothers, children, youth, and people with disabilities;</p> <p>(ii) promote and develop rights;</p> <p>(iii) promote citizenship;</p> <p>(iv) address social inequalities;</p> <p>(v) enhance social and popular movements; and</p> <p>(vi) promote leadership capacity.</p> <p>No profits or income may be distributed by the organization. Any surplus must be used to carry the non-profit purpose of the organization.</p>	<p>Certification, a NPO must be considered a charitable, social assistance, educational or health organization.</p> <p>The permitted activities include the same activities of Social Assistance Beneficent Entity plus the activities that can be exercised by OSCIPs.</p> <p>The organization may not directly or indirectly distribute among any of its members, participants, partners, advisors, employees, or donors any surplus or revenues, dividends, bonus, and/or assets, for the functions or activities assigned to them by their</p>
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	<p>alternatives for production, commerce, employment, and credit systems;</p> <p>(x) promote the creation and consolidation of legal rights and free legal services;</p> <p>(xi) promote ethics, peace, citizenship, democracy, human rights and other universal values; and</p> <p>(xii) study, research, and develop new technologies and disseminate scientific and technical knowledge regarding the activities mentioned above.</p> <p>OSCIPs may not distribute any surplus revenues, dividends, bonuses or assets derived from the performance of their activities to any of their members, participants, advisors, directors, employees, or donors. Accordingly, an OSCIP must use all of its assets and income to</p>	<p>purposes, and the activities they undertake may implicitly keep them from engaging in political issues.</p>	<p>implicitly keep them from engaging in political issues.</p>		<p>bylaws.</p>
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	<p>pursue a relevant public purpose.</p> <p>OSCIPs may not take part in political campaigns under any circumstances or support political parties or politicians in any way.</p>				
Governmental Authorities	Designation granted by the Ministry of Justice	The OS designation is granted on a discretionary basis by the federal government upon the advice and approval of the Ministry or supervisory /regulatory entity in charge of the field of activity of the relevant NPO.	The Federal Public Interest designation is granted by the Ministry of Justice.	The entities must enroll with the relevant municipal council of social assistance.	The CEBAS designation is granted to NPOs with activities in the fields of health, education, or social assistance, by the Ministry in charge of the corresponding field.
Additional comments	A <i>Termo de Parceria</i> (a special form of contract) may be entered between OSCIPs and governmental entities, allowing the OSCIP to receive public funds or other support to perform public interest projects.	<p>The designation OS can be granted to any NPO created to privatize the administration of a public asset (e.g., laboratories, monuments, museums, transportation, public companies, and public universities).</p> <p>The activities of OSs are strictly regulated</p>	The Federal Public Interest status of a NPO may be revoked by the Ministry of Justice if the entity ceases to promote its purposes, or if it distributes income or assets, or fails to report on its activities for three	An entity with this designation may apply for government subsidies and some types of tax exemptions on imports. In addition, an entity with this designation may enter into special agreements with	The CEBAS designation is a designation that can be granted concurrently with one of the previous designations.

		<p>and always depend on a specific concession from the government. The grant of the right to manage a public company or asset is formalized through a management agreement (<i>Contrato de Gestão</i>).</p> <p>An OS that does not comply with the requirements of its management agreement may be disqualified or terminated after the respective administrative procedures are followed.</p>	consecutive years.	the government to obtain public funding.	
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TAX EXEMPTIONS	
General comment	In Brazil, tax benefits depend on the nature of the NPO's activities rather than the nature of the organization itself (i.e., its legal form). The NPO may be exempted in federal, state and/or municipal levels.
Constitutional Tax Exemption	The Brazilian Constitution establishes that the federal government, states, Federal District and municipalities are not allowed to tax NPOs engaged in education and social assistance. In order to be eligible, the NPO cannot distribute profits and must demonstrate, through valid accounting records, that all its expenditures were related to its statutory purposes. Provided that the requirements are met, the NPOs

	need merely to declare that they are eligible for the exemption before the Federal Revenue Service.
Income Tax - <i>Imposto de Renda</i> (federal)	NPOs may be fully exempted, provided that they comply with relevant requirements.
Social Contribution on Profit - <i>Contribuição Social sobre o Lucro</i> (federal)	NPOs may be fully exempted, provided that they comply with relevant requirements.
Social Integration Program Contribution - <i>PIS</i> (federal)	NPOs may be subject to reduced rate.
Social Security Financial Contribution - <i>COFINS</i> (federal)	NPOs may be subject to full exemption or reduced rates.
Social Welfare Contribution - <i>Contribuição Previdenciária</i> (federal)	NPOs may be subject to full exemption.
Work Accident Fund Contribution - <i>Contribuição para Acidente do Trabalho</i> (federal)	NPOs may be subject to full exemption.
Import Tax - <i>Imposto de Importação</i> (federal)	Social assistance and educational NPOs are given special treatment on payment of the Import Taxes on products imported for their activities.
Industrialized Products	Social assistance and educational entities' industrialized products are fully exempted, provided that the

Tax - <i>IPF</i> (federal)	products are for the use of the entity or free distribution to their students or assisted persons.
Credit, Exchange and Insurance Operations Tax - <i>IOF</i> (federal)	No exemption.
Rural Real Estate Tax – <i>ITR</i> (federal)	Full exemption for rural real estate of social assistance and educational entities, provided that the real estate is used to pursue the entity's purpose.
State and Municipal Taxes	State and municipal governments may grant NPOs exemptions from state and municipal taxes.
Donations	<p>NPOs with Federal Public Interest, OS, or OSCIP designations may receive tax deductible grants from corporate donors.</p> <p>There are several different laws addressing deductions of donations for philanthropy (e.g., involving contributions to cultural projects, sports projects, child protection projects, elderly protection projects, etc.)</p>

Non-profit Regulatory Framework Chile

The following chart will focus on the regulatory framework and certain tax exemptions applicable to non-profit organizations (“NPOs”) in Chile. Its main purpose is to give the reader a general view going from the broad protections granted at a constitutional level to the specific laws and regulations governing their incorporation and structure, management, reporting requirements and winding-up procedure.

	Non-profit Corporations	Charitable Foundations
Regulatory Framework		
Applicable Laws/Regulations	<ul style="list-style-type: none"> • The Constitution of the Republic of Chile (the “Constitution”). • Chilean Civil Code (the “Civil Code”). • Law No. 20.285 on Transparency and Access to Public Information. • Other specific laws. 	<ul style="list-style-type: none"> • The Constitution. • Civil Code. • Law No. 20.285 on Transparency and Access to Public Information. • Other specific laws.
Constitutional Protection	<p>The Constitution, in its first article, includes two key provisions intended to support Chilean civil society:</p> <ul style="list-style-type: none"> • “The State recognizes and defends the intermediate groups through which society organizes and structures itself and guarantees them the necessary autonomy to fulfill their own specific objectives;” • The State has the duty “to further the 	<p>The Constitution, in its first article, includes two key provisions intended to support Chilean civil society:</p> <ul style="list-style-type: none"> • “The State recognizes and defends the intermediate groups through which society organizes and structures itself and guarantees them the necessary autonomy to fulfill their own specific objectives;” • The State has the duty “to further the

	<p>harmonious integration of all sectors of the Nation and to ensure everyone the right to participate in the national life with equal opportunities.”</p> <p>Moreover, the Constitution establishes several basic rights concerning civil society, such as freedom of association, right of assembly, and freedom of thought and information, amongst others.</p>	<p>harmonious integration of all sectors of the Nation and to ensure everyone the right to participate in the national life with equal opportunities.”</p> <p>Moreover, the Constitution establishes several basic rights concerning civil society, such as freedom of association, right of assembly, and freedom of thought and information, amongst others.</p>
Legal Entity/Person ¹ .	Yes.	Yes.
Main Purpose	The pursuance of non-profit common interests of a <u>group of individuals</u> joining forces to achieve such purposes.	Managing a specific <u>pool of assets</u> and making grants from those assets to unrelated organizations, institutions, or individuals for scientific, educational, cultural, religious, or other charitable purposes.
Permitted Activities	All those charitable activities not conflicting with their main purpose.	All those charitable activities not conflicting with their main purpose.
Restrictions	General legal restrictions such as those relating to morals, public order and the security of the State.	General legal restrictions such as those relating to morals, public order and the security of the State.
May own Property?	Yes.	Yes.
Directors Remuneration	None.	None.
Management and Liability	Management of both charitable foundations and corporations is conducted through a board of directors. Such directors have the same level of liability as those directors of a	Idem.

¹ According to Article 545 of the Chilean Civil Code: “A legal person is a fictitious person capable of exercising rights and contracting civil obligations and of being represented legally and extra-legally.”

	business corporation. They should use the same diligence an ordinary man would use when conducting his own business.	
Who can Control NPO's?	No restrictions.	No restrictions.
Governmental Authorities Controlling NPO's	No restrictions.	No restrictions.
Reporting Requirements	<p>The Ministry of Justice is responsible for overseeing NPO's. The Ministry may require reports from NPO's , including minutes, accounts, annual reports, accounting ledgers, inventories, remunerations and reports discussing their activities.</p> <p>Organizations that receive tax deductible donations must keep a "Record of Donation," including the donor's name, the amount of the donation, and its purpose.</p> <p>They must also prepare an annual report of the status of income received in the form of donations and a description of how those resources were used. The report must be submitted to the ministry of Justice within the first three months of the year.</p>	Idem.
Dissolution/Liquidation	<p>According to Article 559 of the Civil Code, a corporation will be dissolved:</p> <ul style="list-style-type: none"> (a) On the expiration date set forth in the by-laws; (b) By resolution adopted by two thirds of the corporation members, after a report approving the dissolution is issued by the 	According to Article 564 of the Civil Code, "Charitable foundations are extinguished when the pool of assets managed by the foundation ceases to exist."

	<p>Ministry of Justice;</p> <p>(c) By judicial resolution, issued by a court of law.</p> <p>Once the entity has been dissolved, the by-laws may provide for the disposal of its assets.</p> <p>The predominant position in Chilean legal doctrine holds that an organization's by-laws may not provide for the distribution of assets among its members, since they would be gaining a profit or benefit in contradictions with the essence or nature of the non-profit nature of the corporation. Each institution, therefore, should designate a beneficiary institution in its by-laws satisfying a series of requirements.</p>	
TAX EXEMPTIONS		
When do they apply?	Chilean NPO's are subject to the same tax regime as any other corporation, and, therefore, have to pay income taxes and any other tax or levy if the activities or services provided are taxable in accordance to the Chilean Tax Laws. However, there are a few exceptions mentioned below.	Chilean NPO's are subject to the same tax regime as any other corporation, and, therefore, have to pay income taxes and any other tax or levy if the activities or services provided are taxable in accordance to the Chilean Tax Laws. However, there are a few exceptions mentioned below.
Income Tax	<p>As mentioned before, NPO's are subject to income tax, but the reality is that, as a general rule, NPO's don't generate taxable income, so they end up not paying any income taxes.</p> <p>Notwithstanding the foregoing, Income Tax Law provides an exemption from income tax to those NPO's which, according to their by-</p>	<p>As mentioned before, NPO's are subject to income tax, but the reality is that, as a general rule, NPO's don't generate taxable income, so they end up not paying any income taxes.</p> <p>Notwithstanding the foregoing, Income Tax Law provides an exemption from income tax to those NPO's which, according to their by-laws,</p>

	laws, have as a main purpose the assistance to those in need. The process to get such exemption requires a filing before the Ministry of Finance and the issuance of a special Decree by the Ministry.	have as a main purpose the assistance to those in need. The process to get such exemption requires a filing before the Ministry of Finance and the issuance of a special Decree by the Ministry.
Special Tax on Donations	<p>According to Law Decree No. 824 “<i>Ley Sobre Impuesto a la Renta</i>”, donations made to NPO’s are not considered as taxable income, and, therefore, are not subject to income tax.</p> <p>However, donations are subject to a special regime which sets forth a progressive tax that can reach up to 25%, depending on the amount to be donated.</p> <p>There are certain donations that are exempt from such special tax, such as (amongst others)²:</p> <ul style="list-style-type: none"> (a) Those made with a unique purpose of charity, the diffusion of instruction or the advancements of science; and (b) Those made exclusively for a public purpose and approved as exempted by the President of Chile. 	<p>According to Law Decree No. 824 “<i>Ley Sobre Impuesto a la Renta</i>”, donations made to NPO’s are not considered as taxable income, and, therefore, are not subject to income tax.</p> <p>However, donations are subject to a special regime which sets forth a progressive tax that can reach up to 25%, depending on the amount to be donated.</p> <p>There are certain donations that are exempt from such special tax, such as (amongst others):</p> <ul style="list-style-type: none"> (a) Those made with a unique purpose of charity, the diffusion of instruction or the advancements of science; and (c) Those made exclusively for a public purpose and approved as exempted by the President of Chile.
VAT	<p>If NPO’s enter into activities taxed with VAT (sale of assets and provision of services), then they will have to pay such tax.</p> <p>Notwithstanding the foregoing, there are special exemptions such as:</p>	<p>If NPO’s enter into activities taxed with VAT (sale of assets and provision of services), then they will have to pay such tax.</p> <p>Notwithstanding the foregoing, there are special exemptions such as:</p>

² Numbers 5 and 6 of Article 18 of Law N° 16.271, “*sobre Impuestos a las Herencias, Asignaciones y Donaciones.*”

	<p>(a) Educational establishments (only for certain specific scenarios);</p> <p>(b) Benefits generated by the sale of entertainment tickets (cultural, artistic scientific, musical poetic, dancing and singing events); and</p> <p>(c) Benefits generated by sports events.</p>	<p>(a) Educational establishments (only for certain specific scenarios);</p> <p>(b) Benefits generated by the sale of entertainment tickets (cultural, artistic scientific, musical poetic, dancing and singing events); and</p> <p>(c) Benefits generated by sports events.</p>
Property Tax	Only those NPO's specified in Law No. 17,235 are exempt from the real estate tax.	Only those NPO's specified in Law No. 17,235 are exempt from the real estate tax.
Donations	There are incentives for donations to non-profits specializing in education, culture and the arts. The donor is entitled to a tax deduction of up to 5% of the donor's taxable net income.	There are incentives for donations to non-profits specializing in education, culture and the arts. The donor is entitled to a tax deduction of up to 5% of the donor's taxable net income.

NOT-FOR – PROFIT ORGANIZATIONS IN MEXICO

The following chart includes a summary of the main aspects related to the main Civil Associations, Charitable Institutions (*Instituciones de Asistencia Privada*) and Foundations in Mexico¹, which are the main not-for-profit organizations (NPO) in such jurisdiction. Besides the foregoing, there are other NPO's which normally enjoy tax benefits but are for limited purposes, like sport associations, neighbors associations, parent teacher associations, among others.

	Civil Associations	Private Aid Institutions (“<u>IAPs</u>”)² <i>(Instituciones de Asistencia Privada)</i>
Applicable Laws/Regulations	Civil Code of the Federal District (the “ <u>CCDF</u> ”).	<i>Ley de Instituciones de Asistencia Privada para el Distrito Federal</i> (Law of Private Aid of the Federal District) (the “ <u>LIAPDF</u> ”).
Jurisdiction	Local	Local
Enjoy legal personality?	Yes	Yes
Main Purpose	Any lawful purpose that is not-for profit.	Any activity or set of actions comprised in the LIAPDF definition of “Social Aid” (<i>Asistencia Social</i>), aimed at enhancing mental and physical

¹ Due to Mexico's Federal system, each state regulates the incorporation rules, obligations and rights of entities incorporated therein, however, federal tax laws recognize such local entities and allow them to enjoy tax benefits. In this chart, when analyzing local legislation, we will focus on Mexico City's laws.

² The LIAPDF distinguishes among “Foundations” and “Associations”, however, those differences are minimal and when applicable, it will be duly noticed in this chart.

		characteristics, as well as economic and social capabilities (<i>características patrimoniales y sociales</i>) of families, individuals or vulnerable social groups at risk, that as consequence of their situation of disadvantage, neglect or physical, mental, wealth related (<i>patrimonial</i>), legal or social dysfunction, cannot help themselves or aren't in a position to exercise their rights.
Permitted Activities	To enjoy tax exemption, the Income Tax Law (Federal) provides an exhaustive list of qualifying purposes.	<p>To enjoy tax exemption, the Income Tax Law (Federal) provides an exhaustive list of qualifying purposes.</p> <p>The LIAP allows for the IAPs to carry out all the necessary activities to obtain funds, including organizing raffles, lotteries, collections, etc.</p>
Restrictions	<p>Lawful purposes.</p> <p>(It could be argued that if its members are foreigners, the association shouldn't engage in political issues, as there's a constitutional restriction for foreigners to involve in political matters).</p>	May not discriminate against people to whom they are rendering services.

Membership	<p>Associations are regulated according to the association's by-laws, however, the following rules apply:</p> <ul style="list-style-type: none"> (i) The condition of associate (member) cannot be transferred to a third party; (ii) A member may voluntarily separate from the association with 2 months' notice; (iii) Members may only be excluded from the association because of the conditions previously established in the by-laws; and (iii) Members that are excluded or voluntarily separated from the association lose their right to their contribution. <p>The members (or associates) are the ones who manage the association and may take decisions regarding it; however, third parties may contribute, but only members (associates) may vote on the association's general assemblies (main decision-making body of the association).</p>	<p>Members have to provide the foundation's assets since its incorporation, and such assets have to be devoted for Social Aid (for Foundations).</p> <p>Members pay a periodic fee or personal contribution (for Associations).</p>
May own property?	Yes	<p>Yes, but they are only allowed to have the real estate necessary to carry out their object.</p> <p>The LIAPDF provides that property donated to IAPs</p>

		cannot be taken away by their founders and that Mexico's City government may not, under any circumstance, occupy IAPs; property.
Directors remuneration	Yes The CCDF is silent regarding this issue, but federal tax law s cap at 5% of the donations received, the administrative expenses of the association.	May be remunerated, but administrative expenses may not exceed 25% of the funds destined for Social Aid. (Federal tax law s cap at 5% of the donations received, the administrative expenses of the association.)
Are directors/management personally liable?	The CCDF is silent regarding this issue.	No. They are not personally liable for those obligations acquired by the Institution, but they may be held responsible for civil and criminal liabilities that result from the exercise of their position. Employees of IAPs responsible for the management of funds, have to provide a bond.
Who can control of NPO's?	No restriction; even for-profit entities may control a NPO.	No restriction, but the LIAPDF includes some restrictions to be a member of an IAP's <i>patronato</i> (board). Public servants, members of the <i>Junta de Asistencia Privada</i> , legal persons and employees of the institution, may not be part of an IAP's <i>patronato</i> (but this doesn't mean that for-profit legal persons may not found an IAP).
Governmental Authorities controlling NPO's	No. Civil Associations are governed by a general assembly formed by its members. Each associate is entitled to one vote in the general assembly .Admission of new members is regulated in the association's by-laws and has to be decided by the association's general	Each IAP has its own <i>patronato</i> (decision making board), but are supervised by the <i>Junta de Asistencia Privada</i> , a governmental agency formed by members of the government and particulars, that has authority powers.

	assembly.	
Dissolution/Liquidation	In case of dissolution of the association, each member is only entitled to its contribution. The remaining assets shall be transferred to another association or foundation with a similar purpose of the extinguished one.	<p>IAPs cannot be declared bankrupt, nor are entitled to the benefits of bankruptcy and liquidation proceedings.</p> <p>IAPs may only be extinguished by resolution issued by the Directive Board of the <i>Junta de Asistencia Privada</i>, and such resolution may be challenged before an administrative court.</p> <p>The remaining assets of an extinguished IAP, shall be used as its founders had previously agreed, or in case there wasn't any previous agreement, those assets shall be transferred to the IAPs elected by the Directive Board of the <i>Junta de Asistencia Privada</i>.</p>
When do they apply?	<p>For Federal Taxes: After obtaining the capacity of "Authorized Donee" (<i>Donataria Autorizada</i>).</p> <p>For Local Taxes: Does not apply.</p>	<p>For Federal Taxes: After obtaining the capacity of "Authorized Donee" (<i>Donataria Autorizada</i>).</p> <p>For Local Taxes: After obtaining recognition, and being incorporated as an IAP, by the <i>Junta de Asistencia Privada</i>.</p>
Income Tax (federal)	Exempted	Exempted
VAT (federal)	Free services are exempted from this tax (some restrictions apply).	Free services are exempted from this tax (some restrictions apply).
Property tax (local)	N/A	Exempted

Donations	<p>For Federal Taxes: Donors who are tax payers may deduct qualifying donations up to 10% of the taxable base. Restrictions apply.</p> <p>Donations of goods from abroad are exempt from the Foreign Trade Tax (but they should still comply with imports regulations).</p>	<p>For Federal Taxes: Donors who are tax payers may deduct qualifying donations up to 10% of the taxable base. Restrictions apply.</p> <p>Donations of goods from abroad are exempt from the Foreign Trade Tax (but they should still comply with imports regulations).</p>
Reporting Requirements	<p>For Federal purposes:</p> <ul style="list-style-type: none"> (i) Publish annually the uses and ends of the received donations; (ii) if applicable, publish annually, the activities in which the association was engaged, to influence the amendment or adoption of legislation; (iii) Make available for the general public, all the information in connection with its authorization as a <i>Donataria Autorizada</i>, documents evidencing the uses and ends of their funds, documents evidencing the fulfillment with tax regulations. (iv) Notify the Ministry of Finance about cash (or gold or silver) donations for over \$100 thousand Mexican Pesos (US\$6,000 aprox). (v) Notify the Ministry of Finance about transactions with related parties. 	<p>For Federal purposes:</p> <ul style="list-style-type: none"> (i) Publish annually the uses and ends of the received donations; (ii) if applicable, publish annually, the activities in which the association was engaged, to influence the amendment or adoption of legislation; (iii) Make available for the general public, all the information in connection with its authorization as a <i>Donataria Autorizada</i>, documents evidencing the uses and ends of their funds, documents evidencing the fulfillment with tax regulations. (iv) Notify the Ministry of Finance about cash (or gold or silver) donations for over \$100 thousand Mexican Pesos (US\$6,000 aprox). (v) Notify the Ministry of Finance about transactions with related parties.

	<p>For Local Purposes: N/A.</p>	<p>For Local purposes: File before the Junta de Asistencia Privada, the annual budget, which may not change without authorization in more than 10%.</p> <p>Submit to the <i>Junta de Asistencia Privada</i> monthly financial statements and audit them, if so required by tax laws.</p>
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NON-PROFIT ORGANIZATIONS IN URUGUAY

Uruguay does not have a legal framework that comprehensively regulates non-profit organizations (“NPOs”). NPOs are regulated mainly by Article 21 of the Civil Code of 1868, decree law 15.089 issued during the dictatorship regime and law No. 17.163 of 1999.

Civil associations (*asociaciones*) and non-profit foundations (*fundaciones*) are the predominant legal forms used by NPOs in Uruguay. The table below sets forth the main legal features of civil associations and non-profit foundations under Uruguay’s regulatory framework.

	Civil Associations	Non-Profit Foundations
Applicable Laws/Regulations	Article 21 of the Civil Code of 1868, decree law 15.089 and law 19,149.	Article 21 of the Civil Code of 1868, decree law 15.089, law No. 17.163 of 1999 and law 19,149.
Constitutionally Protected?	Not directly protected. Entities that have as their main purpose the provision of education or the engagement in cultural activities enjoy certain tax benefits under article 69 of the constitution. (<i>See “Tax Matters” below</i>).	Same.
Legal Personality?	Yes, pursuant to article 21 of the Civil Code.	Same.
Definition/Main Purpose	Civil associations are voluntary associations of people for a non-for profit purpose. The gathering/association of a group of persons is the defining characteristic of civil associations.	Non-profit foundations are organizations whereby persons or entities contribute capital, assets or certain economic rights for a non-profit purpose. The contribution of capital/assets is the distinctive characteristic of non-profit foundations.
Permitted Activities	Civil associations are allowed to engage in any activity as long as the purpose is a non-profit and legal one.	Same.
Restrictions	None.	None.

Property Ownership	Not restricted.	Not restricted.
Directors remuneration	May not be compensated.	May be compensated.
Directors/Management Personally Liable?	Yes.	Yes, but law 17.163 specifically states that the members of the board that are compensated, shall have a higher degree of responsibility than those who are not.
Who can Control/Beneficially Own NPOs?	No restriction. May be a for-profit organization.	Same.
Oversight of NPOs	Ministry of Education (<i>Ministerio de Educación y Cultura</i>). The Ministry of Education oversees the creation, dissolution and liquidation of civil associations. In order to become a legal entity, the Ministry of Education needs to approve civil associations as such.	Same.
Dissolution/Liquidation	Overseen by the Ministry of Education.	Overseen by the Ministry of Education. Dissolution process requires the administration board to designate three liquidators. The bylaws or organizational documents can provide how assets are to be liquidated, or otherwise the Ministry of Education shall decide where the remaining assets of foundations are to be distributed.
Tax Matters - General	Civil associations do not enjoy general tax exemptions. However, entities whose main purpose is education or cultural activities, enjoy tax exemptions under article 69 of the constitution. Such entities can apply for exemptions with the tax authorities, since tax benefits are not automatic and are closely monitored by tax authorities.	Same.
• Income Tax	Exempted for entities that have as their main purpose the provision of education or the	Same.

	engagement in cultural activities.	
• VAT	Exempted for entities that have as their main purpose the provision of education or the engagement in cultural activities.	Same.
• Property tax	Exempted for entities that have as their main purpose the provision of education or the engagement in cultural activities.	Same.
• Donations	<p>There is a 'special donations system' that enables donors to deduct corporate income tax (IRAE) only if they donate to a limited list of institutions, set forth in article 358 of law 19,1949.</p> <p>The organizations listed in law 19,149 include certain named organizations/institutions (including, but not exclusively, NPOs) engaged in the provision of health services, education, social integration/rehabilitation and other social services.</p>	Same.
Reporting Requirements	No specific reporting requirements.	Same.