



Brazil

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QUICK FACTS

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

Five main social issues addressed by these organizations: Arts and Culture, Basic Needs, Housing and economic development, Religion, Other: Associations of employers and of professionals

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

Average cost for registering a philanthropic organization: US \$100

The above-mentioned cost does not include lawyer and accountant fees, which a PO incurs in the process of registering with the local Registro Civil de Pessoas Juridicas (Registry of Legal Persons) and, also, with the Brazilian Tax Authority.

Government levels primarily regulating the incorporation of philanthropic organizations: Other: Judiciary, which oversees the local Registros Civis de Pessoas Juridicas (Registries of Legal Persons)

Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.3	3.0	3.0	3.5	3.0	3.37

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

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

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

Score: 4.0

Individuals may freely gather to act collectively and are not required to incorporate as a legal entity. Non-institutionalized social movements are generally recognized as legitimate by the State.

Incorporating an association is relatively easy, and there are two main initial costs involved in this process, the first of which are attorney fees. Brazilian legislation requires that an association's bylaws are signed by an attorney, and in the State of Sao Paulo the Bar Association recommends a minimum of roughly US \$1,400 in fees for this kind of work. The second set of costs is registration fees, which are reasonable and amount to around US \$100 in Sao Paulo (although this amount may be higher because of accountant fees, which are usually required in the registration process with the Brazilian Tax Authority). Incorporating a foundation requires additional approval from the Ministerio Publico (the General Attorney's Office). The registration process usually takes no longer than two weeks for nonprofit entities, although registering with the Brazilian Tax Authority—a precondition for opening a bank account—takes on average a further 30 days.

Associations and foundations are registered in one of several Registries of Legal Persons, which are overseen by the Judiciary. Registries are, therefore, politically independent. The control that they provide is predominantly bureaucratic, and the interpretation of the applicable legislation—mainly the Civil Code—may vary among Registries. POs' information from Registries are, however, neither integrated nor publicly available online.

Finally, there are no significant restrictions as to who may serve as a founder, and foreign persons are allowed to participate as long as they have a legal representative in Brazil. However, law n. 6.815, from 1980, determines that, if more than half of the associates are foreigners, an association may only operate in the country if it has been authorized by the Ministry of Justice.

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

Score: 4.0

In general, Brazilian legislation does not interfere in the structure and governance of a PO. The Civil Code only defines a minimal set of topics that need to be covered by the organization's bylaws (such as purposes, requirements for admission and exclusion, sources of financing etc.), and leaves it to the organization to establish the content of these provisions. In the case of associations, however, it should be noted that the Civil Code mandates that the dismissal of administrators and the changing of bylaws must be approved by the General Assembly.

There is no significant restriction on the kinds of activities that a PO may perform, and they are free to communicate and collaborate with other organizations both in Brazil and abroad. It should be highlighted, however, that in the case of POs that have tax immunity status—which are those POs that work in the fields of education, health, or social support—the Tax Code requires that they must apply their funds exclusively within the country.

Additional requirements apply only if a PO decides to apply for some special legal status, such as that of “Oscip” (Public Interest Civil Society Organization), “OS” (Social Organization”) or “Cebas” (Charity). The decision to pursue such statuses is entirely voluntary, and the possession of such a status grants tax benefits and/or access to state financing.

With regard to reporting, however, the Brazilian system is chaotic. Brazil is a federal state, and it is not unusual that a PO may be required to submit multiple reports to the local, regional, and national government simultaneously—sometimes even to different agencies within the same government level. All this bureaucracy is one of the main burdens that POs must bear in Brazil.

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

Score: 5.0

POs are free to voluntarily terminate their own operations without government approval. In the case of foundations, approval from the Ministerio Publico (the General Attorney’s Office) may be required. They can also be involuntarily dissolved by the government. Fortunately, though, there is no government discretion in shutting down POs in Brazil. Furthermore, compulsory termination may only be determined by the Judiciary after a fair trial, and such instances are exceedingly rare. If a PO is involuntarily terminated, its assets would most likely be transferred to another PO with similar purposes or, more rarely, to the state, if a comparable PO cannot be found.

The Brazilian Constitution incorporates freedom of association as a fundamental right and expressly prohibits government from interfering in the functioning of POs.

II. Domestic Tax and Fiscal Issues

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

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

Score: 3.0

Only corporations have tax incentives to donate directly to POs without government interference. Worse, such incentives do not apply to all corporations, but only to those that adopt a specific—and more complex—tax regime. Furthermore, donations may only be deducted up to the limit of two percent of the corporation’s operational profit. This benefit used to be limited to organizations that were officially certified as a public interest PO at the federal level, but law n. 13.204, from 2015, eliminated the requirement of previous certification and, therefore, extended the incentive to most POs.

Another category of tax incentives are those available to donors contributing to PO projects approved by the government. At the federal level, such incentives are available in the fields of culture, sport, cancer prevention and treatment, and people with disabilities. Both individuals and corporations have access to these more attractive tax incentives, which allow qualified donors to receive tax credits up to 100 percent of the donation, subject to a ceiling of 6 percent or less of the due tax.

Finally, donations made to state funds that provide financial resources to POs are also eligible to receive some limited tax incentives. Such funds usually distribute their resources to POs working with children and younglings, and that provide care for the elderly. Again, up to 100 percent of the donation may return in the form of tax credits, subject to a ceiling of 6 percent or less of the due tax. It should be stressed that, generally, tax law in Brazil does not distinguish donations made for private purposes from those made for public purposes. Both types of donations are subject to the same regional level ITCMD tax, which is levied on donations and inheritance. Additionally, only a few states provide tax exemptions for POs, and even tax-immune POs need to go through bureaucratic procedures in order to have their special status recognized. This is a clear disincentive to donors in the country.

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

Score: 3.0

POs that work in the fields of education, health, and social support are exempt from taxes (including, in some cases, social security taxes), but this right—which is enshrined in Brazil’s Constitution—is often conditioned upon the successful completion of various bureaucratic procedures within each of the relevant federative entities. For example, to be officially recognized as immune from the ITCMD tax in the state of Sao Paulo, a PO needs to have previously obtained one of four certifications listed on a directive from the state government’s Finance Department. Moreover, this process needs to be repeated every four years (until November 2016, this had to be done every two years). Such requirements, besides being burdensome, are inadequate and unconstitutional. In the case of organizations that work in fields other than education, health, and social support, the situation is even worse, as every year they have to go through two procedures within two different agencies.

Organizations that work in certain fields, such as human rights or environmental protection, are particularly dependent on such tax exemptions from federal, regional, or local legislation, which naturally vary within the country. Nonetheless, all POs are exempt from federal income taxes, regardless of the field in which they work.

III. Cross-Border Philanthropic Flows

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

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

Score: 3.0

As indicated above, tax-immune POs are not allowed to apply or donate their funds to destinations outside of Brazil, according to the Brazilian Tax Code (an impediment that does not apply to those POs that do not enjoy the same status). On the other hand, the sending of cross-border donations by individuals and corporations is not subject to government approval and does not face further restrictions. Consequently, the only risk involved in the process of sending cross-border donations is tax-related, rather than government-related.

While individuals and corporations do not face hurdles or impediments, they are not eligible to receive tax incentives on contributions made abroad.

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

Score: 3.0

Contributions from abroad do not need to be approved by any government agency in order to be received or used. Nonetheless, the reception of foreign contributions depends on the successful execution of an exchange agreement—whereby the foreign currency sum is exchanged for its domestic equivalent—which is subject to a small fee levied on financial operations (the so-called Tax on Financial Operations, or “IOF”).

These contributions should not be subject to the ITCMD, the tax on donations, as the Brazilian Constitution requires that special legislation regulates the taxation of donations from abroad—and Congress has not yet issued such legislation. Notwithstanding, states insist on levying the tax in such cases, forcing POs that are not tax-immune to resort to the Judiciary, which in most cases is successful. The issue is presently pending a decision by the Brazilian Supreme Court. There are also several legal precedents that recognize imported in-kind contributions as tax-exempt, particularly those that support activities in the fields of education, health, and social support.

IV. Political and Governance Environment

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

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

Score: 4.0

The philanthropic sector experienced a boom in Brazil in the 1990s, and since then POs have been playing an increasing role in the formulation and execution of public policies. Mechanisms for social

participation have spread through governments at federal, state, and local level. Examples include participatory budgets, public hearings, conferences, and councils on public policies. Likewise, many public utility services are nowadays provided by POs in partnerships with governments, and it is not difficult to come across state hospitals and health centers, scientific institutions and museums, for example, that are managed by POs.

In the period covered by this report (2014-2016), however, the conditions for a healthy and constructive relationship between the government and POs have begun to deteriorate because of the serious political and economic crisis that has hit the country.

On the political side, the left-wing government of President Dilma Rousseff, from the Workers Party, was shaken by a loss of support from the political establishment, as well as a massive corruption scandal. Little more than a year after being reelected in 2014, Dilma was impeached from the Presidency and replaced by her deputy, Michel Temer, from the conservative Brazilian Democratic Movement Party. Many leftist POs and social movements dispute the legitimacy of the new government and, consequently, are not willing to interact with it any longer.

On the economic side, Brazil is facing a huge recession. The country's economy has shrunk more than 7 percent between 2015-2016, increasing unemployment, making fiscal imbalance even more critical and, thus, tremendously reducing the governments' capacity to fulfill its responsibilities.

This context is challenging for philanthropic development in the country. A study by the PO Communities suggests that the total number of social investment has remained stable in 2015, although 64 percent of the monitored companies decreased their social investments in that year.

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

Score: 3.0

After the modernization of the legislation in the late 1990s, the agenda of enhancing the legal environment for POs remained stagnant in Brazil for more than a decade. In 2010, a coalition of leading POs created the Platform for a New Regulatory Framework for Civil Society Organizations with the primary aim of pushing the issue forward. As a result, in 2011, President Dilma Rousseff created a working group to develop proposals for regulatory improvement.

From the myriad of issues that could be addressed (tax problems, for instance), the working group chose to focus on partnerships between POs and the government and, consequently, drafted law to address it. Despite many positive aspects, the drafted law maintained the bureaucratic-formal logic that predominated the relationships between these two actors. In 2014, in the run for reelection, President Dilma embraced that proposal, and after being approved by Congress, it was converted into law n. 13.019, known as the "New Legal Framework for Civil Society Organizations." Due to its flaws, one year later the law was almost completely replaced by law n. 13.204.

Notwithstanding these comings and goings, the final result was positive—both from a legal and a political standpoint—as the law gave renewed recognition to the relevance of POs to the Brazilian democratic development. It is yet to be seen, however, if the new law will result in improved

contractual relations between the government and POs, as well as more state funds directed to the philanthropic sector.

In addition, it is worth mentioning that Brazil still lacks an adequate institutional architecture to regulate POs. This task is presently distributed almost randomly among several agencies at three levels of the Brazilian federation, resulting in confusing, complex, and often contradictory regulation. The philanthropic sector would greatly benefit from the creation of an agency, at the federal level, functionally designed to better fulfill this mission.

V. Socio-Cultural Environment

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

Score: 3.0

Brazil has not yet developed a solid and self-sustaining culture of philanthropy. A recent study conducted by IDIS (the Institute for the Development of Social Investment) found that a third of interviewed citizens did not even know what the word “philanthropy” means, as they were more acquainted with terms like “solidarity” and “charity”. Notwithstanding, IDIS estimates that 45 percent of Brazilians made some type of contribution to social organizations in 2015.

According to Gife, the Brazilian Grantmakers’ Association, only 18 percent of the leading private social investors support independent POs.

The legal framework deserves part of the blame for this situation. As discussed in this report, Brazilian authorities tax donations made to POs at the same rate applied to donations made for private purposes. As a result, donors have little incentive to donate to the more productive—albeit riskier—PO sector. Furthermore, the government’s failure to provide adequate incentives has directed a larger share of the national wealth away from public interest initiatives and organizations. This problem, however, goes beyond the country’s legal system. Civil society faces chronic distrust; Brazil is one of the few countries where people have more trust in corporations (64%) than in non-governmental organizations (62%), according to the statistics of the Edelman Trust Barometer for 2016. Society at large does not know what POs do, and knows even less about how they are managed. Actually, Brazilians believe that it is up to the state, not society as it is more widely considered, to solve their difficulties. As IDIS has pointed out, 66 percent of Brazilians believe that government is responsible for addressing social and environmental problems.

Brazil’s populace needs to better understand and value the importance of POs for democracy and for the development of the country. Efforts toward these understandings are crucial to fostering philanthropy.

VI. Future of Philanthropy

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

Current state of the philanthropic sector

The philanthropic sector has been growing consistently in the last three decades. In 2010, there were approximately 290,000 nonprofit organizations in Brazil. Also, it has become increasingly diverse, with many organizations going beyond the traditional areas of education, health, or social support to tackle more contemporary issues like environmental and animal protection or rights defense. Much of this information is currently available on the online "Map of Civil Society Organizations," released by the federal government in the period of time covered by this report.

Moreover, the sector is relatively well organized through umbrella organizations such as Abong, the Brazilian NGOs' Association; Gife, the Grantmakers' Association; or Cebraf, the Brazilian Foundations' Association. Importantly, organizations like these are increasingly joining forces on issues of common interest, as illustrated by the above-mentioned Platform for a New Legal Framework for Civil Society Organizations.

Despite this, there is still much room for advancing the sector, especially through self-regulatory initiatives. Gife has made interesting steps in this regard, such as the Panel on Transparency and the Governance Indicators.

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

- Enactment of law n. 13.019 in 2014 (the "New Legal Framework for Civil Society Organizations");
- Political crisis, marked by the difficulty in reestablishing a constructive democratic dialogue in the country, and by growing attacks to a progressive rights agenda; and
- Economic recession, with significant reduction of national wealth.

Future development trends in the philanthropic landscape

Gife (the Brazilian Grantmakers' Association) has recently published a series of articles on eight trends for private social investment (see <http://gife.org.br/tag/tendencias/>). Three of them may be highlighted:

- (1) A closer interaction between philanthropy and corporate social responsibility, with companies better aligning private social investment with their own businesses;
- (2) Alignment with public policies, with POs coordinating their efforts to better influence those policies; and

- (3) Promotion of a culture of donation in the country, especially with a view of increasing donations from individuals.

Three key recommendations to improve the environment for philanthropy

- To eliminate the tax on donations (ITCMD) for POs.
- To promote good governance and transparency within the philanthropic sector, mainly by self-regulatory mechanisms.
- To set a federal agency functionally designed to foster the philanthropic sector and ensure adequate state regulation over it.