



# The Index of Philanthropic Freedom: Selected Country Reports

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## Background on the Index of Philanthropic Freedom

In 2015, the Hudson Institute’s Center for Global Prosperity (CGP) published the first edition of the *Index of Philanthropic Freedom* (IPF). The IPF, which scores and ranks 64 countries on their enabling environments for philanthropy, is based on the detailed responses of country experts to a seven question survey produced by CGP in consultation with survey design experts. CGP grouped the seven question survey into three sections that address key elements of philanthropic freedom. The fourth section is a narrative on the country’s philanthropic environment.

**Section One: Regulations on Civil Society Organizations**--Questions one through three cover laws and regulations governing civil society organizations on their formation, operations, and dissolution. CSOs refer to a wide range of groups including community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.

**Section Two: Regulations on Taxes**--Questions four and five concern the tax incentives and barriers to giving and receiving domestic donations.

**Section Three: Regulations on Cross-Border Flows**--Questions six and seven cover barriers and incentives for both giving and receiving cross border donations

**Section Four: Socio-Cultural Philanthropic Background**--These unscored narratives provide the socio-cultural context of philanthropic giving in each country.

This document provides 21 of the 64 country expert reports received by the Center for Global Prosperity. The remaining 43 reports can be accessed and downloaded by visiting the Interactive Map of Philanthropic Freedom on our website (<http://www.hudson.org/research/11259-the-interactive-map-of-philanthropic-freedom>). To download a specific country report, hover over a colored country and click the hyperlink “view country report” located at the bottom of the box.

2015 Index of Philanthropic Freedom: Ranks and Scores of Selected Countries

Country	Overall Rank	Overall Score	CSO Score	Tax Score	Cross Border Score	Q 1	Q 2	Q 3	Q 4	Q 5	Q 6	Q 7
Australia	13	4.2	4.9	4.0	3.8	5.0	4.8	5	4.5	3.5	4	3.5
Brazil	33	3.6	4.3	3.0	3.5	4.0	4.0	5	3	3	3	4
China	52	2.7	2.1	2.4	3.5	2.2	2.1	2	2.5	2.3	3.5	3.5
Colombia	26	3.8	3.9	3.9	3.6	3.1	4.0	4.7	4.3	3.4	3.5	3.6
Egypt	60	2.2	2.0	2.5	2.0	2.0	2.0	2	3	2	2	2
India	46	3.2	3.5	4.0	2.1	3.0	3.8	3.8	4.1	3.8	2.2	1.9
Jordan	39	3.3	3.3	3.0	3.5	3.0	4.0	3	3	3	3	4
Kenya	42	3.2	4.2	3.5	2.0	3.5	4.0	5	4	3	2	2
Mexico	22	3.8	4.0	4.0	3.5	4.0	4.0	4	4	4	4	3
Pakistan	44	3.2	3.3	3.5	2.8	3.6	3.0	3.4	4	3	2.9	2.6
Portugal	15	4.2	4.3	4.0	4.3	4.0	4.5	4.5	4	4	4.6	4
Romania	17	4.1	4.3	3.5	4.5	4.0	5.0	4	3	4	5	4
Russia	50	2.9	2.4	3.1	3.3	2.5	1.7	3	3.2	3	2.5	4
Senegal	32	3.6	4.2	3.1	3.6	4.2	4.3	4.2	2.9	3.3	3.6	3.5
South Africa	29	3.7	4.0	4.0	3.0	4.0	4.0	4	4	4	3	3
Spain	12	4.3	4.5	4.0	4.4	4.0	5.0	4.5	4	4	4.7	4
Tanzania	23	3.8	4.1	4.0	3.4	4.0	4.0	4.2	4	4	3.4	3.4
Turkey	47	3.1	3.3	3.0	3.0	3.5	3.2	3.2	3	3	3	3
Ukraine	31	3.7	4.3	3.2	3.5	4.2	4.4	4.3	3	3.3	4.3	2.7
United Kingdom	14	4.2	4.7	4.0	4.0	5.0	4.0	5	4	4	4	4
United States	2	4.7	4.7	5.0	4.5	4.0	5.0	5	5	5	5	4



## Section One: CSO Formation, Operation, & Dissolution

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

The federal, state and territory laws of Australian jurisdictions permit individuals to act together through unregistered associations and organizations for lawful purposes. Each jurisdiction offers one or more forms of incorporation for nonprofit associations with reasonable administrative requirements, although for those associations operating in multiple jurisdictions there are moderately costly reporting burdens.

Reviewer  
Score

5.0

In some jurisdictions, there are restrictions on the capacity to set up or be an officer in organizations. Those with serious recent criminal records, subject to bankruptcy, with mental incapacity or children are often excluded. There are generally no minimum capital or asset requirements that would deter association formation. While documentation for association varies between jurisdictions the requirements are clear and reasonable, usually with nominal registration fees. The time taken for registration is between 2 and 15 business days and the cost depending on jurisdiction is generally between A\$100 (75 USD) and A\$500 (380 USD).

The registration process for basic incorporation is reasonably efficient, and is conducted with due process in a timely fashion with appropriate rights of review and appeal. However, there is room for improvement as evidenced by recent progress in streamlining business incorporations in the federal jurisdiction by not requiring filing of constitutions and on-line filing.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

The structures and governance of CSOs are relatively flexible and do not overly constrain the internal affairs of organizations. Some organizations which are designed for small simple associations have preset governance rules, such as all governance committee members having to be elected by the members or certain officers having to be resident in the jurisdiction. The activities of CSOs are not restricted for lawful activities, but political parties, workers' unions and financial/banking enterprises are subject to special rules and regulation, often in relation to governance. There is virtually no restriction on cross sector collaboration, participation in networks or use of the internet and social media.

Reviewer  
Score

4.8

While reporting requirements are clear and predictable in most cases, there are different reporting requirements for different forms of incorporation and jurisdictions. CSOs that operate in more than one jurisdiction (particularly in relation to fundraising or charitable gaming) are burdened by inconsistent and often incoherent reporting requirements. Many jurisdictions have recently moved to develop graduated reporting requirements and there are efforts being made to develop more meaningful and consistent reporting across legal forms and

jurisdictions through the Australian Charities and Not for Profits Commission (ACNC). Two State jurisdictions are currently in discussion with the ACNC to harmonize reporting requirements, but the outcome depends on the incoming government's ability to pass legislation that would abolish the ACNC as it promised prior to election.

### Question Three: To what extent is there government discretion in shutting down CSOs?

The governing bodies of corporate CSOs are able to voluntarily terminate their CSOs; this is regulated by law and generally supervised by the superior courts of the jurisdiction of incorporation. Charitable trusts have perpetual existence and any change to their objects or existence is supervised by the courts and the relevant Attorney General. The English doctrine of cy pres is applied to charitable trusts whose objects are completed or frustrated and the courts supervise the transfer of assets to the nearest other purpose in the jurisdiction. Subject to constraints such as public notice, due process and judicial supervision, involuntary termination is available when it appears that the organization has ceased to operate. In non-charitable organizations the constitution usually provides a guide for the treatment of surplus assets. If the organization has been the recipient of tax concessions, the constitution requires that assets be passed on to an organization with a similar tax status. If the organization has not received tax concessions, the assets may be divided amongst any remaining members or, if the organization has none, the assets are transferred to the government. Courts are usually involved only if there is a dispute or no distribution clause.

Reviewer  
Score

5

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

There is a system of tax deductions for taxpayers, both individual and corporate, for those donations made to Deductible Gift Recipients (DGRs). The minimum amount is A\$2.00 (1.75 USD) and there is no ceiling for individuals or corporate taxpayers, apart from having sufficient taxable income to claim the tax deduction (i.e. there is no provision for a donation to create a tax loss). A serious limitation is that the class of DGRs is restricted by the Income Tax Assessment Act 1997, being only a sub-class of organizations that would be considered charitable in other common law jurisdictions. As a result, only about half of all registered charities are DGRs. DGRs are made up of a large number of sub classes of specifically defined organizations or parts of organizations. For example, donations to schools are not deductible generally, but funds used to finance school buildings and properties are donation deductible, as are scholarship funds. Furthermore, donations for overseas aid are only deductible if used in a nation approved by the minister, and donations for churches are generally not deductible unless they are used to provide religious instruction in government schools or for poverty relief. It is also worth noting that there are many individually named organizations in the tax legislation that Parliament has granted donation deductibility and

Reviewer  
Score

4.5

which fall outside of the aforementioned classes, which are a result of the political process. The Australian Tax Office (ATO) administers each of the sub classes of DGR through its control of the application for endorsement process, which is subject to due process with internal reviews and external judicial supervision.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

While the recipients of tax deductible donations are restricted for individuals seeking tax deductible gifts, corporate donations and sponsorships are not subject to boundaries. Only about half of all registered charities have donation deductibility status (DGR) for gifts from individual taxpayers. The major group of these bodies which are not donation deductible are religious and educational bodies (other than universities) that do not have a primary purpose of relieving poverty. To gain DGR status they are required to conduct their donation deductible activities in a separate fund or entity.

Reviewer  
Score

3.5

There are provisions that allow donations to be spread over several tax years, and allow them to be made in the form of property, trading stock or shares. Finally, in some circumstances, such as the entry fee for a fundraising dinner, the amount is called a contribution (rather than a gift) and the part which is determined to be a gift can be deducted.

## Section Three: Cross-Border Philanthropic Flows

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

There are few restrictions or taxes on incoming donations to nonprofit organizations. Imported goods are subject to customs duties and/or Goods and Services Taxes, but wide ranging exemptions are generally available. Application for such exemptions is made at the time of importation to the customs authorities. Critically, no advance approval is required for cash grants received from outside Australia. Customs duty rates vary and depend on a number of factors including the type of goods and country of origin, but are generally not regarded as a barrier. Foreign currency transfers over A\$10,000 (approximately 8,336 USD) are also subject to reporting requirements by financial institutions.

Reviewer  
Score

4

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

While there are few restrictions on cross-border philanthropic flows—apart from being unable to claim income tax exemption or donation deductibility status—traditionally Australian nonprofit organizations cannot be income tax exempt unless they are operated principally in Australia, are prescribed as exempt in the Income Tax Assessment Regulations 1997 or are Deductible Gift Recipients (DGRs). While both income tax exempt

Reviewer  
Score

3.5

entities and DGRs are subject to ‘in Australia’ special conditions, different thresholds apply. Recent court decisions have also raised doubts about the proper application of the ‘in Australia’ special conditions. Charities can now be found to pursue their objectives principally ‘in Australia’ if they merely pass funds in Australia to another charitable entity that conducts its activities overseas. The publicly funded taxpayer concession was primarily meant to be used in Australia for the broad benefit of Australians, and not passed on through entities and spent overseas. These provisions are the subject of a proposed legislative amendment being considered by the Assistant Treasurer, and are subject to a degree of controversy which may make passage through the upper house of Parliament difficult.

A special category of DGRs (Overseas Aid Gift Deduction Scheme) is allowed to operate overseas and is covered by a number of appropriate integrity requirements. There are four such requirements which must be met, and an applicant must demonstrate that they are: 1) a public fund; 2) a charity registered with the ACNC or operated by such a charity; 3) established by an organization declared by the Minister for Foreign Affairs to be an “approved organization”; and 4) be established and maintained solely for the relief of people in a country declared by the Minister for Foreign Affairs to be a developing country. These requirements are necessary to ensure that this taxpayer funded concession is directed to the causes that it was donated for, and is not at risk of being misdirected to inappropriate and unauthorized operations. However, these requirements are difficult to meet, in terms of both substance and process.

The process of becoming an overseas aid fund is lengthy and involves two distinct steps. The first is applying for approved organization status through the government agency AusAID. Once AusAID has determined that the applicant has met all seven criteria, it recommends to the Minister for Foreign Affairs that the organization be declared an approved organization. The Minister then advises the Treasurer of the approval. Following approval, the second step begins. The ATO assesses the application for DGR endorsement and if it determines that there is a public fund in place established exclusively for the relief of persons in certified developing countries, the ATO will seek approval for the fund from the Assistant Treasurer. Once approved, the Assistant Treasurer publishes a notice in the Commonwealth Government Gazette declaring the overseas aid fund approved. In an efficiency audit of the process, the Auditor General determined that it can take 18 months or more to complete, although AusAID estimates the timeframe as 9 to 12 months. The Auditor General found that timeliness is affected by requiring approvals through two Ministers, and that as a result of this protracted process, some lawyers are advising their clients not to pursue endorsement under this category. This appears to be reflected in the numbers. As of 31 October 2012, there were 218 overseas aid funds, representing just 0.75 per cent of all active DGRs.

## Section Four: Socio-Cultural Narrative

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In 2012-13 total giving in Australia amounted to \$8.614 billion, representing eight percent of total sector income and 0.57% of GDP. Of this giving total, \$3.993 billion came from donations, bequests and legacies; \$863 million from businesses; \$474 from trusts and foundations; \$1.381 billion from sponsorships, and \$1.9 billion from other fundraising.



Australian's are also generous with their time and in 2006–07, 4.6 million volunteers worked with NFPs; these people had a wage equivalent value of A\$15 billion.

The complete absence of an estate tax since 1976 with philanthropic exemptions, a narrow range of tax deductible gifts, a limited pool of eligible recipient organizations (particularly the absence of religion causes from deductibility) and a tax regime with only modest incentives for gift giving are the primary fiscal issues currently facing CSOs. While the tax incentives introduced since 2000 have contributed to a more generous attitude towards philanthropic contributions, they are not the only influence.

Social-cultural influences also have a part to play in explaining the level of giving and current philanthropic trends. Australia is a relatively young nation with its origins as a distant penal colony for Britain. The British culture of the time—which promoted giving that was private, unplanned, and dispersed—is clearly evident in early Australia. This culture has blended with the country's traditional reliance on the state—itsself a result of the historical role played by the state in governing the former penal colony—and has fostered a philanthropic culture lacking in independence and self-reliance. This colonial history of Australia stands in stark contrast to the experiences of early American settlers, whose flight from European government control engendered a strong belief in self-reliance and an ever-present suspicion of government control and provision. These beliefs seem to have in turn fostered in America a strong streak of public giving linked to personal prestige and which is planned and generous. Furthermore, apart from a period of gold discoveries between the 1850s and 1880s, Australia never experienced levels of early wealth accumulation by a few families or corporations comparable to those in the United States. In some respects, Australia's socio-cultural origins are almost diametrically opposed to the United States'.

Despite this early socio-cultural environment, philanthropic activity has been trending upward, particularly since 2000. Australian governments at all levels now display more characteristics of their American—rather than European—counterparts, particularly when responding to pressing social issues and community service provision. Giving is starting to be more planned with the creation of family and local community foundations, payroll giving and bequests, and has been accompanied by the professionalization of those who can advise on such matters. Significant individuals are becoming less hesitant about making public their major giving activities and this behavior is gradually being normalized. The greater accumulation of wealth by families and corporations in Australia is also gradually allowing a sustainable philanthropic tradition to emerge.

Charities remain near the top of trusted institutions in Australia. To date, there have been only a few scandals to tarnish the image of philanthropy and dent the trust displayed in foundations, trusts, charities and the sector more generally. The level of transparency in Australia's philanthropic sector has dramatically increased, and has led to—and been furthered by—the creation of the Australian Charities and Not for Profits Commission, a central charity regulator that has induced greater public scrutiny of foundations and the sector.



## Section One: CSO Formation, Operation, & Dissolution

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

Individuals may freely gather to act collectively and are not required to incorporate a legal entity. Non-institutionalized social movements are generally recognized as legitimate by the State, as is exemplified by the recent decree n. 8.243, from May 23, 2013, which defines civil society as “institutionalized or non-institutionalized social movements” for purposes of participation in the governmental decision-making process.

Incorporating an association is relatively easy, and there are two main initial costs involved in this process, the first being 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 1,500 USD in fees for this kind of work. The second set of costs is registration fees, which are reasonable and amount to around 150 USD in Sao Paulo. Incorporating a foundation requires approval from the *Ministério Público*, the General Attorney’s Office. It is important to note that while there are no minimum capital requirements for foundations, the *Ministério Público* is increasingly choosing to evaluate whether or not a foundation’s assets are compatible with its stated purposes. 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.

CSOs—both associations and foundations—are registered in one of several Registries of Legal Persons, which are overseen by the Judiciary. These Registries are, therefore, politically independent. The control that the Judiciary provides is predominantly bureaucratic, and the interpretation of applicable legislation—mainly the Civil Code—may vary among Registries. Information on CSOs contained in this registry is, however, neither integrated nor publicly available online.

There are no regulations restricting the purposes of an association. In the case of a foundation, the Civil Code provides that they can only be established for religious, moral, cultural or social support purposes. In practice, however, this provision has not hindered the establishment of foundations for other purposes, such as environment protection. 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.

Reviewer  
Score

4.0

### Question Two: To what extent are CSOs free to operate without excessive government interference?

In general, Brazilian legislation does not interfere in the structure and governance of a CSO. 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 are no significant restrictions on the kinds of activities that a CSO 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 CSOs that have tax immunity status—which are those CSOs 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 CSO 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.

Reviewer  
Score

4.0

With regard to reporting, however, the Brazilian system is more chaotic. Brazil is a federal state, and it is not unusual that a CSO 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 CSOs must bear in Brazil.

### Question Three: To what extent is there government discretion in shutting down CSOs?

CSOs are free to voluntarily terminate their own operations without government approval. They can also be involuntarily dissolved by the government. Fortunately, there is no government discretion in shutting down CSOs in Brazil. Furthermore, compulsory termination may only be determined by the Judiciary after a fair trial, and such instances are exceedingly rare. The Brazilian Constitution includes freedom of association as a fundamental right and expressly prohibits the government from interfering in the functioning of CSOs. If a CSO is involuntarily terminated, its assets would most likely be transferred to another CSO with similar purposes or, more rarely, to the state if a comparable CSO cannot be found.

Reviewer  
Score

5

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Only corporations have tax incentives to donate directly to CSOs without government interference. Worse, such incentives do not apply to all corporations, but only those that adopt a specific—and more complex—tax regime. This benefit is limited to organizations that are recognized as a public interest CSO at the federal level. Furthermore, donations may only be deducted up to the limit of 2% of the corporation’s operational profit.

Reviewer  
Score

3

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

Finally, donations made to state funds that provide financial resources to CSOs are also eligible to receive limited tax incentives. Such funds usually distribute their resources to CSOs that work with children and younglings and/or provide care for the elderly. Again, up to 100% of the donation may return in the form of tax credits, which are subject to a ceiling of 6% 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 CSOs, and even tax-immune CSOs 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 Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

CSOs that work in the fields of education, health and social support are exempt from taxes, but this right—which is enshrined in Brazil’s Constitution—is often contingent upon the successful completion of various bureaucratic procedures within each of the relevant federative entities. For example, to be recognized as immune from the ITCMD in the state of Sao Paulo, a CSO needs to receive public interest status and be recognized as a charity by the Federal Government. Such requirements, besides being burdensome, are inadequate and unconstitutional. Moreover, this process needs to be repeated every two years. 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.

<b>Reviewer Score</b>
<b>3</b>

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

## Section Three: Cross-Border Philanthropic Flows

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

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 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”). Such contributions are also subject to the ITCMD, a tax on donations, just like all domestic contributions. There are also several legal precedents which recognize imported in-kind contributions as being tax exempt, particularly those which support activities in the fields of education, health, and social support.

Reviewer  
Score

3

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

As indicated previously, tax-immune CSOs are not allowed to apply or donate their funds to destinations outside of Brazil according to the Brazilian Tax Code. 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.

Reviewer  
Score

4

## Section Four: Socio-Cultural Narrative

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Brazil has not yet developed a solid and self-sustaining culture of philanthropy. According to the Brazilian Grantmakers’ Association, only 27% of the private sector’s charitable contributions in the country go to independent CSOs. The remaining 73% of contributions remain largely within the private sector itself, where they fund social projects executed either by the companies themselves or by institutes created by—and linked to—them.

The legal framework deserves part of the blame for this situation. As discussed in the report, Brazilian authorities tax donations made to CSOs 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—CSO sector. Furthermore, the government’s failure to provide adequate incentives has directed a bigger 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 (70%) than in CSOs (62%), according to the most recent statistics of the Edelman Trust Barometer. Society at large does not know what CSOs do, and knows even less about how they are managed. As a result, the public is generally unable to distinguish good organizations from bad ones. It is therefore likely that more transparency at the organizational level, and in the sector as a whole, could help to reverse this scenario. In addition, Brazil’s populace needs to better understand and value the importance of CSOs for democracy and for the development of the country. Efforts in these directions are crucial to fostering philanthropy in the country.



## Section One: CSO Formation, Operation, & Dissolution

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

The situation of CSOs and other philanthropic actors in China has seen little change over the past decade. Since 2012, however, the sector has been undergoing a massive reform of its registration procedures. As a result of the reforms, many philanthropic CSOs can be easily registered in some provinces, although it is still unbalanced in different areas. For instance, while some provinces like Canton and Zhejiang possess relatively open registration processes, others such as Gangsu or Qinghai impose complex and onerous registration requirements on applicants. On average, however, it usually takes between one and three months to register a CSO in China and costs between 50,000 RMB (8,000 USD) and 300,000 RMB (48,400 USD) depending on the location and whether the registration is applied for at the municipal or provincial level. Furthermore, Chinese law technically provides citizens with the right to appeal a registration denial, although the government has infringed upon this right on more than one occasion.

Reviewer  
Score

2.2

Unfortunately, CSOs pursuing human rights, civil liberties, and other political issues are still largely prohibited. Furthermore, the law is still unclear as to whether or not unregistered CSOs are legal, which has resulted in a chilling effect on civic engagement. Additional legal uncertainty stems from the ambiguous role of CSOs in China's legal code. While CSOs concerned with human rights and political issues are clearly illegal, philanthropic and recreational CSOs have, on occasion, been tolerated largely due to the fact that such organizations are not easily categorized in the Chinese legal tradition. For those organizations that China tolerates, the government focuses on attempting to make them more professional, consistent, independent, apolitical, and more transparent. Despite government efforts to modernize China's civil society, however, most Chinese CSOs are slow to change and few have the organizational capacity necessary to implement sorely needed changes.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

Although China's administrative apparatus places very strict limitations on the internal governance of CSOs—including setting the number of board members and requiring a compulsory audit every year—regulators are not very efficient and frequently fail to implement these requirements. As a result, Chinese CSOs are relatively free to govern themselves as they see fit. Chinese regulators are also lax in their handling of the various reporting requirements associated with CSOs, which lack clarity and predictability.

Reviewer  
Score

2.1

CSOs are permitted to contact and cooperate with colleagues in civil society, business and government within the country, but cooperation with foreign entities is restricted, and CSOs wishing to work with international entities must provide advance notice of their intent to the Chinese government. Similarly, CSOs wishing to attend international conferences may—depending on the content of the conference—have to seek and obtain the permission of the government before they can attend. And while CSOs are no more restricted in their use of the internet and social media than most Chinese citizens, they are nonetheless only permitted to access the same heavily censored version of it.

### Question Three: To what extent is there government discretion in shutting down CSOs?

CSOs can either be voluntarily terminated by a decision of its governing body, or involuntarily terminated by a government administrative decision. At present, the power of China’s various administrative and bureaucratic actors exceeds the power of its judicial system. Consequently, involuntary termination is a relatively trivial affair for state actors, and can be easily executed without being subjected to checks and balances. Although some CSOs have resisted—and indeed the frequency of resistance seems to be growing—Chinese law currently provides no effective avenues for appeal or redress, and has no role for judicial supervision.

**Reviewer  
Score**

**2**

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

China maintains only modest tax incentives for donors, which has done little to incentivize giving. While individual donors can claim a deduction of up to 30% of taxable income, such deductions are only attainable if the donation is a “public benefit contribution” made to certain, government-qualified organizations. Similarly, enterprises can deduct up to 12% of charitable gifts from their tax bill. Critically, these lackluster incentives ensure that the real utility for donors is found not in minimizing their tax bill, but rather in forging social networks and enhancing their reputations.

**Reviewer  
Score**

**2.5**

Although China’s government is dependent on its relatively high tax rate to fund itself, there are signs that China’s tax code may be liberalizing. Indeed, many Chinese CSOs were happy to see that reform of China’s tax policy will be coming according to a report of the Third Party Committee Conference (中共中央全面深化改革的决定). While the exact date of the reform is unknown, the report when coupled with evidence of increasing activity in the registration authority indicates that tax reform is likely to be considered and will come soon.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Although restrictions are looser in some cities—most notably Guangzhou and Beijing—government involvement in the financial conduct of CSOs is still a major obstacle that impedes CSO development. While CSOs can be exempted from income taxes, they must be granted an exemption privilege by the government and explicitly included on the list of exempt organizations. This privilege is exceedingly difficult to obtain, and the process that it requires is unclear, unpredictable, and heavily influenced by the politics of the applicant. As a result, only those CSOs with strong connections to either the government or government officials receive exemptions. Even if a CSO does manage to receive an income tax exemption, however, it is still subject to China’s other taxes including its relatively high property tax.

**Reviewer  
Score**

**2.3**

## Section Three: Cross-Border Philanthropic Flows

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

There are few serious regulations that impede cross-border donations from entering China. And luckily, those that do exist are not particularly effective. As a result, many cross-border donations enter China with minimal, or even no, government supervision. A notable exception does, however, exist if the donation originates from the United States. In such cases, donations are scrutinized not by the country’s tax administration, but rather by its internal security apparatus.

**Reviewer  
Score**

**3.5**

Given the Chinese economy’s outward orientation, it should come as no surprise that the fees associated with receiving donations are relatively minimal. Other than paying standard bank fees, incoming donations are not subject to customs taxes or other costs. Unlike many of the other regulations that impact CSOs, the laws that regulate cross border transactions are clear and competently implemented.

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

There are no regulations preventing individuals or legal entities from sending donations abroad. If, however, contributions are sent through a Chinese bank, they are subject to standard banking and transaction costs. Nonetheless, Chinese citizens are free to donate to any country they wish, and the Chinese government does not attempt to discourage giving to any particular countries—although such contributions are ineligible for tax incentives. At present, no special tariffs or customs are levied on donations and in-kind donations may be eligible for some temporary tariff exemptions.

**Reviewer  
Score**

**3.5**



## Section Four: Socio-Cultural Narrative

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From the public's perspective, philanthropy is, on the one hand, a progressive force that pushes forward a desperately needed social transformation, but on the other hand, it is often seen as corrupt, fraudulent, and almost narcissistic. This latter set of beliefs has been compounded by the general lack of social trust in China. In general, people are especially unlikely to trust those philanthropic actors that are associated with the country's communist party and have instead turned toward the concept of civic philanthropy.

China has a long history of—and has been heavily influenced by—its culture of charitable activities. The country's strong connection with Buddhism, Islam and Christianity, has permeated much of Chinese civic philanthropy with a distinctively religious or spiritual component. Confucian beliefs on the importance of family and ancestral worship also play a very important role in prompting charitable activities at a more immediate neighborhood level. As a result, religion and education are almost inextricably intertwined with Chinese philanthropy, and the health of these two sectors serves as an important indicator of China's philanthropic activity. For China's Buddhists, charity is essential to ensuring the welfare of the next generation, which has resulted in a philanthropic outlook that is decidedly long-term. For Chinese Muslims, much of their giving is premised on the religious obligation to contribute 10% of income for charitable purposes. For China's young men and women, the education system is particularly influential, and has imparted the value of charity and voluntarism. While these various influences are not always effective, they are essential to understanding the motivations of Chinese charity.

CSOs are still relatively new things in post-communist China, but they are being quickly accepted and are proliferating with ever-increasing speed. Although some still question the capacity of CSOs to resolve many of the problems in Chinese society, most welcome them, and eagerly anticipate a future where they can play a larger role.



## Section One: CSO Formation, Operation, & Dissolution

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

Colombians are free to form unregistered groups and—if such is their will—incorporate as separate legal entities. Both freedoms of reunion and of association are constitutional, real and effective. The country has an active civil society that participates in the public sphere through civic actions and solidarity initiatives that either fuel social movements or crystallize as juristic persons engaging directly in the development of the country. If cause and purpose are lawful, the Civil Code authorizes legal incorporation under two archetypes of juristic persons: a foundation or a corporation. Foundations are structured around donated equity capital—an endowment—while corporations are structured around associated individuals. Similarly, while for-profit corporations are governed by the Commercial Code, not-for-profit corporations, also known as associations, are regulated by Civil Law.

Reviewer  
Score

3.1

CSO juristic persons must give themselves organic statutes that contain both articles of incorporation and governing bylaws. The Registrars public function is delegated to private Chambers of Commerce in 57 cities—out of 1000 municipalities—which have a window of service for processing CSO paperwork. Certain CSO activities relating, for instance, to health, childcare or finance, do require governmental approval for both incorporation and statutory reform. Overall, no minimum amount of capital or assets is required at the time of establishment, not even for foundations. Formation costs are low and the document verification process of the Chamber of Commerce is expedient. Although a private body and seemingly apolitical, the Chambers of Commerce in Colombia are also part of a revolving door between the business and political sectors; whereby individuals transition from State to Private sectors and vice versa. Additionally, in at least two cities, the government has declared the elections to the Chambers' board null and void due to corruption linked to certain corporations and associated philanthropic foundations.

Regarding the incorporation process, it merely consists of reviewing the basics of the applicant—usually its name and governance structure—and it usually takes between three and five days to obtain a "certification of existence and legal representation". After obtaining the certificate, newly created entities are provided with a temporary Taxpayer Identification Number that is later confirmed personally in the Fiscal Authority's office and which provides a Unique Tax Register and an authorization to invoice. Taken together, this process is neither particularly lengthy nor onerous, and can be completed with minimal difficulty.

Note: Delegating the public incorporation and registration of legal entities to a private organization like the Colombian Trade Organization and its 57 branches is certainly not a system as sound, solid and extensive as that of other countries which do so through the local authorities of the State. However, and by comparison with other countries, the original score was higher because the Colombia State, not even in through it's more authoritarian

governments, has restricted the freedom of association of civil society willing to legally incorporate as a new and separate entity.

## Question Two: To what extent are CSOs free to operate without excessive government interference?

Other than requirements for lawfulness, identification and governance structures, the Colombian government generally has no ab initio control over the incorporation of CSOs. Legal personhood is granted automatically by the private Chambers of Commerce. Some types of activities, however, require governmental approval even though this is generally a formality. Ex-post State control is also nebulous, both formally and materially, so opportunities for official interference are minimal to nonexistent or diffuse to the point that a legal provision may merely and vaguely refer the organization to "the competent authority for inspection and oversight" without being able to precise it. Oversight, if any, is more topical and functional than organic and structural. Instances of government interference with worker unions have been largely eliminated, although claims for real and effective participatory governance of CSOs and assembly for protest have increased at both the local and national level. Agencies of control are diverse and include the Electoral Council, Superintendencies, the Family and Welfare Institute and residually the offices of the country's various Governors. However, because the control exercised by diverse governmental agencies is imprecise and inconsistent, CSOs are just as likely to be subject to the intense discretionary inspection of a public servant as they are to never come across requests for accountability. Whether attributed to negligence or liberality, Colombians enjoy an ample civic space for structuring and running NPOs.

Reporting requirements, however, have grown and become increasingly uncoordinated. This general increase has also been accompanied by specific city-level initiatives designed to approach and organize the nebula of CSOs. The city of Bogota, for example, has been gathering information on the NPOs under its residual control since 2006, and the Mayor intensified it in 2013 by creating a sub-national superintendence of juristic persons. Simultaneously, the National Government created a single social merchant and nonprofit registration system known as RUES, and delegated its control to the private sector as represented by the Chambers of Commerce. Compliance under this system requires CSOs to update their registration information annually and to pay a corresponding fee—proportional to assets—for renewing its inscription in the registry. Non-compliance with RUES is not an option for the vast majority of CSOs, as a renewal failure would lead to legal difficulties with contracting, invoicing, and participating in public procurement processes. Thus while a de-listing from RUES does not threaten the legal personality of a CSO, it makes its operations prohibitively difficult. At present, Colombia has no restrictions on communications, nor on national or international exchanges with colleagues through the internet or other mediums.

Reviewer  
Score

4.0

### Question Three: To what extent is there government discretion in shutting down CSOs?

As with any other juristic individuals, Colombian not-for-profits may voluntarily terminate themselves by following the clear procedure set forth by the Civil code detailed in the organizations' statutes. Involuntary dissolution is uncommon, and only occurs after notice has been given and the conclusion of due administrative process. The dissolution decision is reviewable, and if the decision to shut down a CSO is confirmed by the government, then the organization's representatives may take the case to the judiciary.

Reviewer  
Score

4.7

The dissolution and termination of the legal personhood of a CSO may result from a penal case or be meted out as punishment for organizations involved in fraud, money laundering or the financing of criminal activities and terrorism. Even in penal cases, organizations maintain the right to lodge an appeal with a Penal Court to overturn the termination.

In rare cases, the legal personality of a Not-for-Profit organization can be decided by the country's highest courts. One of the most well-known examples of this is the case of the Convivir organizations—cooperative associations created in the mid-1990s. These civil society organizations were right wing associations of armed rural peasants that were legally established to facilitate civil defense against the growing power of the country's guerilla groups. Following a tense and prolonged controversy, they were struck down by the Constitutional Court. Another prominent example is the case of the ex-guerrilla leftist political organization Union Patriótica, which lost its legal personhood in 2002 due to its inability to secure Congressional seats in the legislature. In 2013, however, the High Administrative Court reversed this decision, and restored its legal personality. This Court held that the systematic murdering of most of its leaders during the late 20th century was the effective cause of its earlier inability to win elections and hence revived the organization's legal personality. Aside from these exceptional jurisdictional decisions, legal personality is typically acquired and terminated by voluntary decision of the organization.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Charitable donations are encouraged by various legal provisions, and contributions by both individuals and legal persons may permit the donor to claim a reduction of up to 30% of annual income tax. Furthermore, donations to certain activities like sports, justice and human rights allow a deduction of 125% of its value. Because Colombian law defines donations as bilateral contracts of a gratuitous nature, it is important to have evidence of such agreements, particularly documentation of expression and of acceptance. All the conditions necessary to claim a donation as tax deductible are established in the Tax Code.

Reviewer  
Score

4.3

To qualify for tax incentives, the recipient must be a not-for-profit entity, and it must provide a letter signed by its public accountant or statutory auditor in which the date, mode and value of the donation are certified. The process for claiming a deduction is straightforward for cash donations, which are those made by card, check, payroll deduction or wire transfer. Donations of bonds or other financial products are deducted based upon their market value, and inflation and depreciation are factored into the calculation.

Regarding in-kind donations, most goods and services are subject to a Value Added Tax which is paid by the final consumer and collected and periodically transferred by the seller to the National Revenue and Customs Directorate. The legal process for claiming deductions on such contributions is unclear and the authorities implement existing regulations inconsistently, particularly those regarding public accounting procedures. In practice, products subject to the standard tariff of 16 % are still liable for the payment of VAT despite the gratuity of the transaction. As a result, the donor usually assumes the cost of tax compliance. Additional legal hurdles discourage those willing to make in-kind donations of perishable products and consumer goods to either humanitarian institutions or Food Banks. Despite these difficulties, the relatively high ceiling on income deductions makes it worthwhile for many donors—particularly business corporations—to contribute to CSOs.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Preferential tax treatment is the norm for most Colombian organizations, but confusing regulations governing financing and accounting practices are a known hindrance. While most organizations are able to take advantage of the country's various incentives, the process is complicated by fluctuating legal interpretations and the worrisome extent of private and public corruption in the country's special NPO tax regime.

Reviewer  
Score

3.4

CSOs willing to receive and certify tax deductible donations have to be a Not-for-Profit organization pursuant to the general interest. They must carry out activities related to health, education, culture, faith, sports, tech, science, environment, or justice and human rights. Additionally, they must operate under official oversight, have presented their revenue declaration in the preceding year, and be able to demonstrate that past donations were properly administered through the financial system. Income tax benefits range from exonerations, exemptions or reductions in tariff rates. While the Fiscal Code explicitly lists those CSOs eligible for tax exonerations, tax exemptions are more general and are granted to organizations which reinvest their income in developing their organizational purpose within one year (or more if authorized) and whose programs are open to the community. Otherwise, their net benefit is taxed at the reduced rate of 20% as opposed to the general tariff rate of 25%. This reduction is common for many CSOs, and is the general rule for all solidarity economy organizations in Colombia. Property tax exemptions originally authorized for organizations affiliated with the Catholic Church have also been extended to all Faith-Based Organizations by court order. Just as selling goods or services requires CSOs to collect and transfer VAT, so too are CSOs required to pay VAT on purchases. Similarly, CSOs are not exempted from the payment of financial transaction contributions (GMF), which charges 4

pesos for each 1000 pesos moved within the banking system. NPOs are, however, exempt from the payment of the recently created equity tax (CREE), which is levied on all other legal persons at a tariff of 9%. Nonetheless, they are still obligated to pay payroll-based para fiscal contributions. The local level Industry, Commerce, Advertisement and Boards Tax (ICA) is to be paid by those CSOs that engage in the industrial and commercial production of goods and services.

## Section Three: Cross-Border Philanthropic Flows

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

Cross border donations can face different treatments depending on their nature. Private juristic or physical persons receiving a cross-border donation in cash from a destination abroad must provide supporting evidence of the legal transaction to the bank, which is responsible for processing the transaction, converting the foreign currency to Colombian pesos, and complying with anti-money laundering and anti-terrorism financing standards. Once a transaction has been processed, the bank will usually retain around 10% of the contribution, as a way of pre-empting the payment of income tax. It is worth noting that while capital or currency donations are easier to make than in-kind donations, they depend heavily on the legal status of the foreign donor. When donations are made by a public international legal person—such as a government or multilateral organization—to Colombian national or sub-national public legal persons—such as a ministry or a village—they may receive an exemption from VAT and the payment of GMF. Otherwise, financial cooperation between private foreign CSOs and private national CSOs, is taxed.

**Reviewer Score**  
**3.5**

In-kind donations from abroad must, in addition to the cost of nationalizing the goods in Colombia, pay VAT. However, to facilitate cross border in-kind donations the Presidential Agency for Cooperation—a public entity—uses its public tax-exempt status to serve as a channel to funnel funding from foreign private organizations into the country. This project is done with local CSO partners that check the legality of the foreign contribution and determine its feasibility. It is important to note that this service is only an option and is in no way meant to impose official control on in-kind cross border flows of cooperation. Should an organization choose not to employ the Agency’s services, the costs of receiving in-kind donations are mainly dependent on the capacity of the donor to assume the high costs of transport, customs and taxes.

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

Colombia is a not a high-income country and it faces important challenges regarding peace, equity, justice, and poverty reduction. Therefore, both cash and in-kind donations tend to stay in Colombia, where they are used to support social and institutional investments. Only in exceptional circumstances would donations be destined for causes abroad.

**Reviewer Score**  
**3.6**

As such, most international giving by Colombians is conducted by the government. The international assistance rendered by the Colombian government generally focuses on technical and cultural assistance more than financial aid.

Nonetheless, when humanitarian requests are made through diplomatic channels, the Ministry of Foreign Affairs in concert with the Presidential Cooperation Agency, can send cross-border donations through FOCAI, the country's cooperation and international assistance fund. Calls for private and public donations to foreign populations usually follow after a natural disaster, or during a war or crisis. Such contributions are frequently channeled through an intermediary such as the Red Cross or UNICEF. Any other cross-border donation made by a Colombian individual or juristic person, whether for-profit or not-for-profit, must follow standard international export or wire transfer procedures. As such, both physical and juristic persons need to comply with disclosure requirements and obtain official clearance before items can be shipped abroad. For their part, financial donations are merely regarded as another type of international financial transaction, which in turn requires that they be accounted for in bank records. Lastly, sending physical donations from Colombia to destinations abroad is subject to the same safety and security standards as any other export shipped from Colombia.

## Section Four: Socio-Cultural Narrative

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Philanthropy is not a frequently used term nor does it chiefly reflect Colombia's matrix of values and behaviors. Rather than gravitate towards philanthropy, Colombians tend to express their charitableness by weaving tight support networks with family, neighbors and work colleagues. When it does appear, philanthropy chiefly refers to economic financing offered by established donors such as international NGOs present in the country and multinational and corporate foundations run by their main shareholding families. Foundations devoted to giving and creating opportunities within the realm of the arts, science and justice that are not related to income generation are usually not perceived as philanthropy but merely as NGOs. Hence, in Colombia the general perception of CSOs varies immensely, and is largely dependent on the activity pursued by the organization and its size. As a result, groups advocating for change like minority or grassroots associations for democratic empowerment and human rights' organizations may be perceived by some governmental authorities as uncomfortable or even with suspicion. Conversely, established givers of funds such as high net worth individuals are relatively trusted.

Back in the mid-1990s, Colombia's commercial regulatory framework began to expand and encompass CSOs, subjecting them to sets of rules meant originally for mercantile organizations. This decision was originally made with the intention of cutting red tape and fast-tracking the formation and operation of companies for doing business. This approach was expanded to include nonprofit juristic persons like CSOs and has resulted in an intense marketization of Colombian CSOs. It has also resulted in an increased hybridization of organized citizens' intentions with corporate strategies and the frequent misuse and abuse of CSOs by political interests.

Generally speaking, efforts to improve public transparency and public accountability are not only absent, but moreover, when they are attempted, they generally draw little interest. Indeed, the regulation of CSOs is also largely dependent, not on State action, but rather on

private initiatives of self-certification, self-regulation, self-promotion, and international CSR certifications.

In a context of deep inequality and reduced social mobility, any and all acts of helping or giving funds that result in upward social mobility and/or international visibility are generally welcomed, praised and defended, no questions asked. Hence, CSO activities are easily conducted and can be used to further a variety of aims, whether that be to maximize the image of a company's CSR program or to form populist political programs.

Despite the recent increase in the attention paid to NPOs,—namely for entering governmental covenants, and joining CSR alliances —real and effective efforts to understand the sector are few and far between. With unrestricted space, automatic legal incorporation, income tax incentives, preferential public procurement policies, and minimal accountability requirements and oversight, the Colombian setting is ideal for a dynamic and ever-growing civil society<sup>1</sup> but, also, for abuse.

More specifically, not-for-profit juristic persons used by legitimate civil society initiatives can be abused for self-employment, profit maximization, strategic proselytism and even criminal activities. These abuses can easily cloak themselves in Colombia's tradition of civicism and solidarity. Abuse and corruption can easily take advantage of Colombia's legal system to the detriment of the country's democracy, rule of law and development. In sum, while the legal environment can nurture civil society, it can also breed organizations which are anathema to it, and in so doing take opportunities for participatory governance away from the people, particularly from those who rely on CSOs as their main means of organizing, accessing State services, and political empowerment.

For Colombia, it is important to understand and evaluate Civic Space not only by size but also by quality. This requires recognizing that the degree of liberty and diversity that is available for the formation and operation of CSOs is just as important as the degree of legitimacy and transparency that is secured for the functioning of real civil society organizations. In other words, respecting the space for civil society is as crucial as making sure that all participants in civil society remain oriented towards serving the interests of the citizenry.<sup>2</sup>

It is, therefore, important for the State to approach CSOs not merely as a sociopolitical phenomenon, a fiscal challenge or as a new sector of economic activity, but rather as a unique and nascent subject of regulation.<sup>3</sup> CSOs are standalone juristic persons with correlative rights and duties that can benefit from legal and regulatory analysis and possibly from specific and articulated laws. As with all other organizations, the rule of law is necessary to safeguard and promote organized civil society while simultaneously facilitating its positive impacts on democracy, justice and development.

Since 2012, the Colombian government has attempted to better its regulatory approach to NPOs, primarily through fiscal policy. As stated in a recent government commissioned document intended to support tax reform, the government's goal is twofold: to improve the promotion and protection of CSOs and to reduce the potential for abuse. Key to this approach is the notion of alterity—introduced by Ruiz-Restrepo in 2011—whereby the legal nature for

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<sup>1</sup> ICNL/IJCSL

<sup>2</sup> Washington/ICNL WMD

<sup>3</sup> Bogota/RRA Think-tank – Alteritas Lab Recommendations to the IMF



non-profit juristic persons is defined by their distinctiveness from other types of organizations. The notion of alterity was officially codified in the 2012 tax reform when the Colombian Congress introduced the basic notion of alterity in article 468-3 of the Tax Code as a way to better define the juridical treatment of ill-defined Not-for-profit and Non-governmental organizations. More recently, Law 1739 of 2014, created an ad-honorem temporary commission to study an upcoming structural tax reform that will contain further NPO reform efforts.



## Section One: CSO Formation, Operation, & Dissolution

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

Egypt's Law No. 84 on Associations and Foundations prohibits the formation and operation of an unregistered CSO, and provides for individual penalties for any individual who establishes such a group or carries out its activities. Article 76 provides that establishing a group "to carry out one of the activities of the associations or foundations without following the provisions prescribed in this law," including registration, shall be punished by a penalty of imprisonment of up to six months and an EGP 2,000 fine (approximately 280 USD). Similarly, the law declares that "whoever undertakes one of the activities of the association or foundation before completing its registration" is subject to imprisonment of up to three months, and an EGP 1,000 (approximately 140 USD) fine.

Reviewer  
Score

2.0

In addition, the Ministry of Social Solidarity issued a notification on July 25, 2014, setting a deadline for all "unlicensed" civil society "entities" to adjust their status in accordance with Law No. 84 or be subject to legal investigation with the risk of dissolution. The registration deadline was understood to be an attempt by the Ministry to require all forms of groups—especially those engaged in human rights work, many of which are currently registered as non-profit companies or civil law firms—to register under the more restrictive Law No. 84. Following the expiration of the deadline in mid-November 2014, the Ministry claimed that it would only investigate groups not registered under any law; however the uncertainty created by the registration order has contributed to an increasingly insecure legal environment for CSOs.

Law No. 84 also provides that CSOs must pursue a not-for-profit purpose "in different fields towards the development of society." CSOs are specifically prohibited from pursuing a purpose that involves the following activities: a) the formation of military or paramilitary configurations; b) "threatening national unity, violating public order or morals, or calling for discrimination between citizens on the grounds of race, origin, color, language, religion, or creed;" and c) the exercise of political activity restricted to political parties, or unionist activity restricted to unions. The Ministry may deny a CSO's application for registration if it finds that its purpose comprises one of the aforementioned activities.

The registration process under Law No. 84 is time-consuming and burdensome. Individuals wishing to register a CSO must submit numerous documents containing extensive, detailed information to the Ministry of Social Solidarity. The process for obtaining registration approval is relatively detailed in the law and includes a number of safeguards, though these are rarely followed in practice. Law No. 84 requires that the Ministry respond to a registration application within 60 days; in the absence of a response, the application is considered accepted. The Ministry may reject an application on vague grounds, however, such as if it deems the applicant or its proposed activities to be "threatening national unity, violating public

order or morals,” or engaging in “the exercise of any political activity... restricted to political parties.” The scope and vagueness of these terms gives the Ministry broad discretion in denying registration applications. If it denies an application, the Ministry must notify the founders with a “substantiated decision” in a registered letter with acknowledgement of receipt within the 60-day window. Article 6 of Law No. 84 provides that founders may contest a registration denial before a court; however this provides little protection in practice, as judicial hearings are often subject to long delays.

Human rights groups and those who publicly oppose or criticize the government often face particular difficulty registering. For this reason, a number of human rights organizations in Egypt have registered as private, not-for-profit companies or civil law firms, rather than as associations or foundations under Law No. 84. It is yet to be determined how the Ministry of Social Solidarity’s July 2014 registration directive will apply to these organizations.

Article 1 of Law No. 84 also provides a number of preconditions for founders of an association, and requires that associations be formed by at least 10 persons. This is a large number and may make it difficult for associations to form. Founders may not include persons who were convicted for a crime of “moral turpitude or dishonesty” that involved a penalty of imprisonment, and all must have full legal capacity. Non-Egyptians may serve as founders, but they must have a permanent or temporary residence in Egypt. Judicial/legal persons may also serve as founders, but they must have been established or authorized to conduct activities according to Egyptian law.

The registration process also entails paying a fee of EGP 100 (approximately 14 USD), a reasonable amount that is not likely to deter applicants. Other registration requirements include: a) articles of incorporation, signed by all founders, which per Article 3 of Law No. 84 must include substantial, detailed information about the nature of the association and its founding members; b) a list of the founders’ names, along with their age, nationality, profession, and home address; c) a declaration from each founder that he or she has no conviction in an honor-related crime that included a sentence of imprisonment; d) a deed of occupancy of the association’s headquarters; and e) a proof of deposit for the registration fee. Some of these requirements may be particularly burdensome for aspiring founders of an association, notably the requirement that the association have occupancy of a property. Finally, and other than the registration fee, under Law No. 84 there is no minimum capital or assets required for associations at the time of registration.

## Question Two: To what extent are CSOs free to operate without excessive government interference?

The law imposes detailed and strict structural requirements on Egyptian CSOs and enables extensive government interference in their activities. The government can object at any time to provisions of statutes that it finds to be in violation of the law, or if it determines that there are aspects of the CSO’s founders that do not conform to the law. The law regulates the size of an association’s board of directors (between five and fifteen individuals), as well as the terms of their members, which must not exceed six years. Numerous provisions in Law No. 84 and its Regulations address the internal operation of a CSO,

Reviewer  
Score

2.0

including the composition of its governing bodies and their meetings. The CSO must transmit minutes from any general assembly meeting to the Ministry of Social Solidarity and the CSO's federation within 30 days, and must notify the Ministry of any decisions taken by the CSO's general assembly or its board of directors within 30 days. If the CSO issues a decision that the Ministry "regards to be in violation of the law or its articles of incorporation," the Ministry may ask the CSO to withdraw it, and if it fails to do so within fifteen days the matter goes to administrative arbitration. The government also has full discretion to remove a CSO's board member "for failure to fulfill the nomination requirements." To ensure compliance, the Egyptian government can send representatives to attend any meeting of the CSO's general assembly or its board.

Law No. 84 of 2002 contains broad prohibitions on the activities that CSOs may engage in. The Law and its Regulations provide that CSOs are prohibited from engaging in any activities that are deemed to be "threatening national unity, violating public order or morals, or calling for discrimination between citizens because of race, origin, color, language, religion, or creed." Article 11 of the law also bars CSOs from engaging in "any political activity... restricted to political parties" and "any unionist activity... restricted to unions." The Regulations expand on these provisions slightly, but in broad terms that still give government officials wide discretion to interpret and apply them. Further, if the CSO wishes to work in a new field, not already addressed in its statute, it must first obtain the Ministry's approval. A CSO must also notify the Social Affairs Directorate if the CSO wishes to carry out activities outside the governorate in which the CSO is headquartered. Furthermore, CSOs are prohibited from joining, cooperating with, or becoming affiliated with an organization or individual outside of Egypt unless they first notify the Ministry, and receive no objection within 60 days. Neither Law No. 84 nor its Regulations provide any limitation on the Ministry's right to object to the cooperation.

Some solace can be found in the fact that Law No. 84 and its Regulations do not explicitly constrain CSOs' ability to use the Internet or forms of social media. Indeed, human rights groups and other CSOs in Egypt regularly use blogs, Twitter posts, and other forms of online media to publicize their work. A number of other laws, however, effectively restrict CSOs' freedom of expression, including the Press Law, Publications Law, Telecommunications Law, and the Penal Code. These laws have been the basis for the prosecution of a number of individual activists and bloggers for online content (on charges of, e.g., insulting the President, or engaging in blasphemy). Given the widespread suspicion that the government engages in online surveillance of dissenting groups, such cases likely chill CSO expression and lead many to engage in self-censorship.

Financial and activity reporting requirements for CSOs are relatively straightforward as described in the law. CSOs must maintain at their headquarters: a) a register of revenues and expenditures; b) a bank book, cash book, and petty cash book; c) a register indicating all the property of the association including both real estate and movables; d) a register of donations; and e) files for the preservation of all ownership documents, bills, invoices, and receipts. The Regulations include model forms for the association to use for these purposes. All financial documents must be approved by the Ministry before their use, numbered, and stamped with the association's seal. If the expenses or revenues of an association exceed EGP 20,000 (approximately 2,800 USD), it must submit its account to a government accountant for examination. The accountant's report and its balance sheet must be displayed at a "prominent

and much-frequented” place in the association’s headquarters, at least eight days before a general assembly meeting is held.

### Question Three: To what extent is there government discretion in shutting down CSOs?

Law No. 84 provides for a CSO to voluntarily dissolve through a resolution passed by the organization’s general assembly. The law requires that the resolution include the appointment of a liquidator, his remuneration, and length of the liquidation period. It must be adopted by the general assembly by an absolute majority of the association’s members. The Ministry of Social Solidarity must be notified of the dissolution resolution within one week, and provided with a copy of the general assembly meeting minutes within thirty days. Beyond these requirements, the CSO is generally able to determine the course of its dissolution through its internal governing documents.

Reviewer  
Score

2

According to Law No. 84 and its Regulations, the Ministry of Social Solidarity can also involuntarily terminate a CSO if the CSO has: a) used its property or funds for purposes “other than the purposes [the CSO] was established for;” b) acquired or obtained funds from abroad without prior government approval; c) committed “a serious violation of the law, or of the public order or morals;” d) joined, participated, or affiliated with an organization outside of Egypt without notifying the government beforehand, or despite the government’s objection; e) had as its purpose the attempt or exercise of a prohibited activity (including, inter alia, the exercise of political activities restricted to political parties); or f) collected donations from the public without prior government approval.

There are few meaningful constraints on the government’s power to involuntarily dissolve CSOs under Law No. 84 and its Regulations. The law does not provide, for instance, for a notice or warning to a CSO to cease an offending activity. Under the law, the Ministry may issue its “substantiated” dissolution decision once it has consulted with the General Federation—a quasi-governmental federation of CSOs—and allowed for a “hearing [of the CSO’s] statements.” If the CSO fails to attend this hearing, it is deemed a declaration by the CSO that the Ministry’s complaints are valid. The law provides that CSOs may appeal the Ministry’s decision to the Administrative Court. However, because the permissible grounds for dissolution are so broad, it is in practice difficult for a court to overturn the Ministry’s decision.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Article 13(h) of Law No. 84 provides that donations by individuals or corporations to CSOs registered under Law No. 84 are tax-deductible up to a maximum of 10% of the donor’s annual net taxable income. The tax deduction does not, however, apply to donations and charitable gifts made to unregistered CSOs, nor does it apply to non-Egyptian organizations. Article 23 of the Income Tax Law provides that only donations to “Egyptian

Reviewer  
Score

3

non-governmental organizations and foundations registered in accordance with the provisions of their respective regulatory laws” are eligible for a tax-deductible donation. As a result, the number of CSOs eligible for a tax-deductible gift is more limited in practice. This process is further complicated by the fact that the process for receiving tax benefits is not clearly set forth in the Income Tax Law.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Law No. 84 provides for certain tax benefits to accrue to registered CSOs. These include: a) exemption from registration, booking, and notarization fees for contracts; b) exemption from stamp duties and taxes on printed materials and correspondence; c) exemption from customs tax and other duties on the import of tools, machines, and other equipment, as well as on donations, gifts and monetary assistance from abroad (however this requires approval from the Minister of Social Solidarity and the Minister of Finance and a determination that the objects or funds are “necessary for [the CSO’s] basic activity”); d) exemption from real estate tax; e) a reduction of 25% on the cost of transporting equipment and machines by rail; and f) a special rate for telephones. However, and as with the incentives for charitable giving, the actual effect of these benefits is limited by the difficulty CSOs face in obtaining registration under Law No. 84—and by the fact that many CSOs remain either unregistered or registered in a different form, under a different law, in order to avoid additional government controls. Only CSOs that are registered as associations or civil institutions under Law No. 84 are eligible for the tax exemptions and other financial benefits described above. Accordingly, since many CSOs are not registered under Law No. 84 (either because they are registered as civil companies, law firms, or some other form; or because they are not registered in any form), they are unable to take advantage of these benefits.

<b>Reviewer Score</b>
<b>2</b>

Egyptian CSOs must apply for and obtain prior approval in order to receive tax exemptions on gifts, donations, or aid from abroad. The CSO must submit a form with a description of the donations, per a government form, to the Minister of Social Solidarity. The Minister must make a decision within 15 days and refer the request to the Minister of Finance, who in turn submits it to the Prime Minister. The only limit on the authorities’ discretion in their decision on granting the exemption is that the determination should depend on whether the items to be tax-exempted are “necessary for the association’s activity.”

While CSOs may receive unsolicited donations without prior government approval, they may only solicit and collect donations from private donors with prior approval from the Ministry of Social Solidarity. The law provides that, before fundraising, the CSO must submit an approval request to the Ministry including a) the activity(s) or project to be supported by collected donations; b) the proposed methods for fundraising; c) the requested time period for fundraising; and d) the geographic location for fundraising. The Ministry must respond within 15 days; however, the law does not say what may happen if the Ministry fails to respond, nor does it identify specific grounds on which the Ministry may deny the request. If it approves, the Ministry issues approval authorization in the form of its official stamp or seal on receipt books. Any receipt books remaining after the donation drive must be returned to the Ministry at the

end of the fundraising period to be destroyed by the Ministry, and recorded as such in a report once again signed and sealed by Ministry officials. Lastly, the CSO must submit a final report on the results of the fundraising drive within 60 days after the end of the fundraising period. Critically, any member of a CSO that accepts funds from foreign donors without Ministry approval, or receives private donations without Ministry approval, is subject to harsh penalties including imprisonment and/or a fine, under Law No. 84 and the Penal Code.

## Section Three: Cross-Border Philanthropic Flows

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

There are no customs duties or other taxes levied on a CSO's receipt of donations from abroad. In order to receive funds from outside of Egypt (including from an Egyptian), or from a foreign entity whose representative is in Egypt, a CSO must have prior approval from the Ministry of Social Solidarity. The CSO's request must include a) the name of the donor, his or her country, and office; b) the activity carried out by the foreign person, and its purposes; c) the amount of funds being donated, and d) the method of sending and receipt.

Reviewer  
Score

2

According to the law, the Ministry must respond to the request within 60 days; however in practice this period is usually much longer. The government's right to refuse approval is unrestricted, such that the Ministry may deny receipt on any grounds. Furthermore, Law No. 84 imposes penalties in the case that an individual or entity receives funding from abroad without prior approval: The penalties under Law No. 84 include a maximum of six months' imprisonment and 2,000 EGP (approximately 280 USD) fine, but may also include more severe criminal penalties under the Penal Code. Egypt has prosecuted CSO employees on the basis of these provisions in the past, and in 2013, an Egyptian criminal court sentenced 43 CSO workers to prison for receiving foreign funds without permission. Moreover, in September 2014, Egypt amended Article 78 of the Penal Code provisions related to foreign funding and expanded the legal basis for even harsher penalties—including life in prison—for receiving foreign funds with intent to harm national interests or sovereignty.

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

There are no customs duties or other taxes levied on donations made by individuals to recipients outside of Egypt. While the law does not clearly restrict an individual's ability to send donations abroad, such funding will be subject to restrictions designed to impede support for groups deemed to be "terrorist organizations." Further, any individual member of a CSO registered per the articles of Law No. 84 must undergo the same prior approval process required for the receipt of foreign funds, as discussed in Indicator Question 6. A request must be submitted to the Ministry of Social Solidarity including: a) the name of the donor, his or her country, and office; b) the activity carried out by the

Reviewer  
Score

2

foreign person, and its purposes; c) the amount of funds being donated, and d) the method of sending and receipt. The Ministry must respond to the request within 60 days, and the government's right to refuse approval is unrestricted, such that the Ministry may deny receipt on any grounds. The penalties imposed in the case that an individual or entity sends funding abroad without prior approval are the same as those for receipt: A maximum of six months' imprisonment and a 2,000 EGP (approximately 180 USD) fine, and/or harsher criminal penalties under the Penal Code. Harsh penalties may also be applied if the sending of funds abroad is deemed to harm national interests or undermine Egyptian sovereignty.

Entitlement to tax deductibility can only be granted to corporate bodies in Finland, and cannot be extended to individuals. Organizations promoting science, the arts, and Finnish cultural heritage will be entitled to tax deductions, provided that they adhere to the scope and rules of the tax code. In order to receive tax incentives, a donor must state in his or her tax declaration that the EU or EEA based organization which received their donation fulfills Finnish tax law requirements and is included in the list of accepted organizations kept by the Finnish Tax Administration. The donor has the burden of proof for the donation, and the authority may require translated documents to prove the donation, such as a receipt of the donation.

## Section Four: Socio-Cultural Narrative

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Philanthropy and charitable acts enjoy broad social approval and are widely practiced in Egypt. The important role that charitable giving plays in Egypt's dominant faiths—Islam and Christianity—is often cited as the primary and deeply-rooted driver for individual philanthropy. A national study by the Center for Development Services in 2007 found that Egyptians donated more than \$1 billion every year to public causes—mostly to agencies connected to mosques or churches. The real number was and is likely much higher, however, as charity is traditionally a private matter and public disclosure is thought to diminish its value. By some accounts, the 2011 Revolution made philanthropy even more popular and widely-practiced, and philanthropic initiatives of various types (religious, corporate, and informal) have surged in the years following Mubarak's removal. This, despite indications that Egypt's population as a whole has become more polarized, may reflect new patterns of social and civic solidarity during the transition period, as well as the resilience of popular support for charitable giving.

Religiously-motivated philanthropy is deeply ingrained in the culture and history of Egypt. The religious institutions that dominate social life in both Muslim and Christian communities have long encouraged charitable giving. This includes contributions of individual wealth that are mandatory (such as the Muslim zakat [alms], and Christian ushour [tithes]), as well as voluntary (such as the Muslim sadaqa [sustainable giving]). Historically, charitable gifts in Egypt have focused on direct contributions to needy and disadvantaged members of society. This aligns with the instructions of Islam, which identifies the poor and destitute as a target group for receiving zakat. Particularly in the months and years after the 2011 Revolution, economic woes and a shortage in government-provided social services intensified the need for this kind of giving.

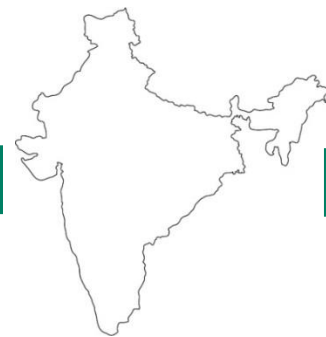
Informal charity initiatives also surged during the post-revolution period. For instance, a number of efforts took the form of donation campaigns waged via social media—Facebook and Twitter—for targets ranging from blood drives to financial support for those injured during the



revolution's fighting. Such initiatives, along with informal forms of volunteerism, are difficult to quantify but broadly reflect social acceptance of philanthropy.

Institutionalized giving, via foundations and CSOs, is less common in Egypt; however the early 2000s witnessed the emergence of numerous private foundations as well as instances of social philanthropy by corporate actors. This trend in institutionalized philanthropy may be facilitated if the political and economic landscape in Egypt continues to stabilize.

Social perceptions of civil society organizations vary widely depending on the type of organization and the nature of work that they do. NGOs are notably viewed with suspicion—in particular those engaging in political and human rights work, and especially those receiving foreign support. Groups that receive foreign government—especially U.S. government—funds, are widely suspected of interfering in Egypt's internal sovereign affairs. In early 2012, a Gallup poll found that 85 percent of the population opposed the United States providing direct financial support to Egyptian civil society groups—up from 74 percent the year before. This suspicion has been fed by public officials and the media, and the narrative has not varied across the various administrations to hold power after Mubarak.



## Section One: CSO Formation, Operation, & Dissolution

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

In India, the law permits individuals to act collectively through either registered or unregistered groups, and does not specifically prohibit the formation and operation of “unregistered” groups. While many organizations start as unregistered groups, they usually register once they reach a stage where growth becomes challenging in the absence of registration. Being registered also confers onto groups a degree of credibility that may aid fundraising, as foundations and companies are generally reluctant to provide funds to unregistered groups. Furthermore, registration also allows organizations to qualify for tax exemptions and allows donors to receive tax deductions. Finally, a CSO can also be established as a trust with a token sum of money—usually around 10 USD—as the ‘trust property’ or as a Society or nonprofit company without any share capital.

Reviewer  
Score

3.0

While the registration process for most Indian organizations is relatively time intensive, if the objects of an applicant are for “charitable purposes”, registration is almost invariably granted. The founders of an Indian CSO may be individuals, a trust, or a company, although a minor or anyone who cannot legally be party to a contract cannot serve as a founder. Unfortunately, participation by foreigners in the founding process is actively discouraged by the rules of the Foreign Contribution Regulation Act (FCRA).

The documents required for registration are simple and standardized. As such, the time-intensive nature of the procedure stems not from the requirements imposed upon CSOs, but rather from a government registration system that is painfully slow.

The registration fees themselves are quite reasonable at about 20 USD and the seemingly high cost of registration is primarily due to the commission that founders usually pay to a professional who does the actual registration work. There is, however, no real need to employ a professional for registration, and many groups only do so to expedite the process and for convenience. Taken together, it usually takes between one and three months to register a CSO.

Unfortunately, Indian law does not include adequate safeguards during the registration process, and notably lacks a fixed time period within which the responsible registration authority must review and decide upon registration. The law does, however, provide a few written grounds on which registration may be denied and authorities generally operate in a politically neutral manner, and provide a written statement justifying their decision. In case of refusal, CSOs also maintain the right to seek redress with a higher authority such as a tribunal or a court of law.

A CSO's governing body's activities are somewhat transparent, and most—though certainly not all—of the bodies have their own website that provides reasonable data and information to the public. There is, however, no requirement for them to do so.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

Indian law allows for sufficient discretion in setting the structure and governance of CSOs. The government's role is one of a "Regulator" and does not act as the "Controller" of the internal policies and governance of a CSO. Under the Income Tax Law and the country's Public Trust laws, "charitable purposes" do not include political purposes, and consequently those organizations wishing to pursue a political object or agenda must register as a political party. Similarly, any objective that could pose a potential threat to the country's sovereignty is considered unlawful. CSOs can only engage only in charitable activities and any economic or business activity—unless incidental to the objects of the CSO—could lead to the loss of tax exemptions. Indian CSOs are also prohibited from investing their funds in shares or stocks, and may only invest in government bonds or deposit them with a local bank.

Reviewer  
Score

3.8

CSOs are permitted to contact and cooperate with colleagues in civil society, business and government sectors, both within and outside the country. CSOs are also permitted to participate in networks and to use the Internet and all forms of social media as they see fit. The government does, however, place conditional restrictions on certain kinds of content, and under the Information Technology Rules 2011 may limit speech that undermines the country's unity.

Reporting requirements are fairly clear and predictable, although they vary among India's various states. For example, while certain states like Maharashtra have a charity commissioner, others do not and are instead regulated only by the tax authorities.

### Question Three: To what extent is there government discretion in shutting down CSOs?

The governing bodies of Indian CSOs are able to voluntarily terminate their operations, although some restrictions and conditions do apply. Generally a trust is required to obtain a court order before it can be dissolved, as they may not be voluntarily or involuntarily terminated. However, charities, societies, and companies can self-terminate by passing a resolution at a General Meeting with three fifths of its members voting in favor of the dissolution.

Reviewer  
Score

3.8

In case of involuntary termination, notice and the opportunity to be heard prior to termination would be given by the courts, which usually—but not always—operate independent of political considerations. Upon dissolution and after having met all outstanding liabilities (if any) the funds of the CSO may be donated to a CSO with similar objects. Assets cannot, however, in any circumstance be distributed among the Board or other members. For

trusts, the order for winding up can only be issued by a civil court. For their part, societies and companies can be wound up following a successful vote from the General Body of Members.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Individuals and corporations are generally eligible to receive 50% tax deductions on donations given to those CSOs which possess an 80G certificate. Even more generous incentives are also available for those that donate to government-managed CSOs, which allow donors to receive a deduction on up to 100% of the donation. Such deductions are not, however, infinite and no more than 10% of the donor's gross total income can be deducted. Additionally, Indian law provides no deductions for in-kind donations.

**Reviewer  
Score**

**4.1**

The Indian tax code also provides a number of specific deductions targeted at certain kinds of giving. For instance, section 35AC of the Income Tax Code provides a 100% tax deduction for contributions made to a CSO project or program if it is focused on rural welfare or slum rehabilitation. Similarly, donations made to certain recognized research institutions may qualify for an extremely generous 175% tax deduction provided that the institutions are approved under Section 35(1)(ii) of the Code.

The process of receiving tax benefits when making donations is quite clear and predictable. When computing an individual's income which is liable to tax, a donor can deduct 50% of the amount contributed to a CSO having 80G tax deduction certificate issued by Income tax. In most cases, no additional certification or proof is needed.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

While the income of a CSO is generally tax exempt, Indian tax law provides CSOs no exemption from property taxes or from VAT. Additionally, certain categories of CSOs offering services—usually related to consulting—are not exempt from service taxes.

**Reviewer  
Score**

**3.8**

To attain tax exempt status, Indian CSOs must apply to the Income tax office to receive a tax exemption certificate known as a u/s 12AA. The process of receiving this certificate is relatively clear, but is frequently subject to inordinate delays. As a result, while the process can technically be completed in a week, it usually takes around four months. This delay is often due to the numerous forms and permits required by the government, and the chronic understaffing of government departments. Generally a CSO which articulates a clear "charitable purpose"—as defined in section 2(15) of the 1961 Income Tax Agreement—in its charter would be eligible for tax exemption, and CSOs whose objects include poverty relief, education, medical relief and any other object of general public utility almost always manage to qualify.

Any CSO whose registration meets the criteria defined under section 12AA of the Tax Code—which is the vast majority of CSOs—is also eligible to receive modest to large support

from private donors. As intimated earlier, registration is of paramount importance for most CSOs, as a registration that complies with the statutes under section 80G or 35AC enables CSOs to respectively qualify donations for 50% and 100% tax deductions.

### Section Three: Cross-Border Philanthropic Flows

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

Foreign contributions received by CSOs in India are regulated under the 2010 Foreign Contribution Regulation Act (FCRA). Such foreign contributions received by a CSO are tax exempt provided that the organization has obtained tax exempt status under the Income tax law. It is important to note that no CSO operating in India whether registered or not can receive foreign contributions without first obtaining the prior permission of the Home Ministry. The Home Ministry will only grant permission if the applicant is registered with the central government and agrees to channel the donation through certain designated banks. The Home Ministry also requires CSOs receiving money from abroad to separately track incoming funds and record how they are used.

**Reviewer  
Score**

**2.2**

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

Every CSO that enjoys tax exemptions is required to use its income for charitable purpose in India only. For a CSO to send funds out of India would require the permission of the Reserve Bank of India and the funds could only be used “for a cause in which India is interested”. To wire or transfer money out of India, banks usually require the CSO to complete a form with the Reserve Bank of India which requires the CSO to note the intended destination and purpose of the funds.

**Reviewer  
Score**

**1.9**

### Section Four: Socio-Cultural Narrative

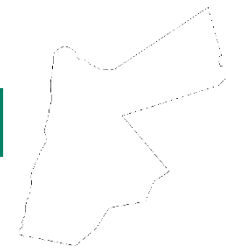
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Philanthropic activity is perceived with mixed feelings in India. On the one hand, there is growth in giving thanks to the country’s steady economic growth. On the other hand the government continues to have a love-hate relationship with civil society.

Giving and volunteering are both part of Indian culture and can be found in many of the country’s foundational and religious texts—some of which are nearly 5,000 years old. Philanthropy is represented in many of the central tenants of Indian culture, and include Daan—or general giving—and various forms of philanthropy such as Anna Daan (feeding the poor), Shram Daan (giving voluntary service), and Vastra Daan (giving clothing and goods).

Giving to religious institutions continues to remain especially popular in India, as does giving to groups concerned with education and health. There is, however, scant support for sports, the arts, and culture.

While CSOs are generally perceived as a positive force in Indian society, they are also seen as often lacking professionalism, transparency, and accountability. Nonetheless, giving and volunteerism will likely continue to grow and the country's philanthropic sector will undoubtedly expand.



## Section One: CSO Formation, Operation, & Dissolution

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

Jordanian CSOs are governed by the Law on Associations No. 51 of 2008 and its amendments—known collectively as the Associations Law. Article 7 of the Associations Law requires that all CSOs be registered at the Associations Registrar within the Ministry of Social Development. Unregistered CSOs are prohibited, and any individual who associates with an unregistered CSO is subject to imprisonment for up to two years according to Article 159(2) of the Penal Code. While the Associations Law does not limit the activities that associations can implement, Article 3(d) does prohibit the registration of associations with “illegitimate” objectives, or objectives that violate public order. Furthermore, the Associations Law prohibits the registration of associations that have political objectives that are within the activities of political parties according to the Political Parties Law. The Political Parties Law, however, does not clearly define political activities or political objectives, which make it difficult to determine whether an association’s activities are considered to impinge upon those political parties. This lack of clarity allows the government broad discretion in refusing the registration of associations on the grounds that they are too political in nature.

Reviewer  
Score

3.0

While the registration process is relatively clear as stated in the law, associations seeking to register face challenges as a result of discretionary implementation of the law by Registrar staff. For example, the law sets a period of 60 days within which the Registrar Council should issue its decision on the registration application. However, this period does not start unless “all” requirements are fulfilled and accepted by the Registrar Secretary. In practice, this includes accepting the association’s objectives by the Registrar Secretary, and requesting further documentation or amendments to the association’s by-laws. This process is prolonged in some cases, and several months may elapse before the registration application is submitted to the Registrar Council for consideration. Consequently, registering an association in Jordan usually takes between three and six months depending on the objective, required documents, and approvals.

Article 8 of the Associations Law imposes a number of restrictions on who can serve as a founder or board member: they must be Jordanian nationals, at least 18 years old, and must not have been convicted of any crime of honor such as sexual harassment or other indecent actions prohibited by the penal code. Furthermore, article 11(d) of the Law requires that associations obtain prior approval from the Council of Ministers if one of the founders is non-Jordanian, or if they seek to register a “closed Association,” which is equivalent to a foundation or philanthropic entity.

The Associations Law does not require a minimum capital requirement for the registration of associations, nor does it impose registration fees. The Registrar board is generally professional, however there have been decisions made by the board for political

reasons. Furthermore, the Registrar board’s denial of a registration application is not required to be justified or based on particular grounds, but can be appealed before the Higher Court of Justice.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

Article 3 of the Associations Law limits the types of associations that can be registered to: a) open-membership associations with a minimum of seven founders, b) private associations with three to twenty founders, c) closed associations with a minimum of one founder, and d) branches of foreign associations. The Law also includes general provisions that set forth the basic structure that associations should have. However, the Regulation on Minimum Provisions of Associations By-laws, which was issued in 2010, contains additional details and requirements related to the operation of associations, such as the role of board members, minimum quorum for general assembly meetings’ validity and resolutions, and provisions of association by-laws. Associations are allowed to perform all activities as long as they do not violate the Law on Associations and other applicable laws. As described in the first Indicator Question, the Law on Associations prohibits associations from implementing activities that violate public order or those which are the purview of political parties.

**Reviewer  
Score**  
**4.0**

The Associations Law and other relevant regulations do not include any restrictions on associations pertaining to their cooperation with other CSOs, or private or government entities—within or outside the country—as long as such cooperation does not violate general framework laws, such as the Penal Code or Jordan’s Counter-Terrorism Law. Associations can also participate in networks, and can use the internet and all forms of social media without restrictions.

The Associations Law requires that associations submit annual financial and narrative reports describing, among other things, their implemented projects and activities, results thereof, funds received, and a list of members. It also requires that associations with an annual budget greater than 2,000 Jordanian Dinars (approximately 2,824 USD) submit an audited financial statement along with the financial report. The Associations Registrar has developed a model by-laws template for associations to adopt, which includes minimum provisions required by the Law. The Registrar has also developed templates for annual reports, which associations are obliged to use to fulfill reporting requirements. However, both templates are largely suitable only for open-membership associations: The templates’ structure makes it difficult for closed associations (foundations) and branches of foreign organizations to complete the forms.

### Question Three: To what extent is there government discretion in shutting down CSOs?

Article 20(b)(4) of the Law on Associations allows associations in Jordan to voluntarily dissolve by virtue of a resolution adopted by two-thirds of the organization’s general assembly. Copies of such resolutions are required to be submitted to the Registrar Board to declare the



dissolution. Because dissolution does not technically change the by-laws of a CSO, it does not require the approval of the government.

Involuntary dissolution of an association is based on a justified decision by the Registrar Board, if a) electing a board of directors for the association becomes impossible after the appointment of a temporary board, b) an association keeps or uses foreign funding without obtaining

prior approval from the cabinet, or c) an association commits the same violation to the Associations Law and other relevant regulations twice, and fails to make a remedy within two months of being notified in writing. Decisions of involuntarily dissolution are not issued by a court, but rather by the Registrar Board. Such decisions can, however, be appealed by the relevant association before the Higher Court of Justice. Fortunately, the Registrar board is competently staffed and there have been no known cases of political interventions in the dissolution process. After dissolution, the assets of a dissolved CSO are deferred to the entity specified in the CSO's bylaws, which should either be a CSO with similar objectives or the societies support fund.

Reviewer  
Score

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## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Article 10 of the Income Tax Law No. 57 of 1985 and its amendments states that only “legal entities pursuing religious, charitable, humanitarian, scientific, cultural, sports or professional causes, verified by the Council of Ministers as eligible” can benefit from tax deductible donations. Therefore, an individual or corporation wishing to provide donations to associations should ensure that such associations are eligible

to receive tax-deductible donations. This can be proven by requesting a copy of the Council of Ministers’ decision, or by checking the Official Gazette, which contains decisions of the Council of Ministers including those on associations’ eligibility to receive tax-deductible donations. Acquiring “tax deductible” status for donations is a process that requires a CSO to address the Council of Ministers in writing, specifying the objectives of the CSO, its activities, and that they are aimed for public benefit. The Council of Ministers then consults with the Department of Income and Sales Tax for its recommendation. This process is not time-bound and lacks clear parameters on which the decision is made. The process can be lengthy and a positive decision is not guaranteed.

There is a cap on the amount of a deduction that can be claimed, and according to the Income Tax Law, deductions cannot exceed 25% of the individual’s or corporation’s taxable income. Furthermore, entities that make donations to CSOs which are eligible for tax deductible donations are not subject to additional supervision by the government other than those stated in the laws that apply to them.

Reviewer  
Score

3

**Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?**

Article 4 of the Income Tax Law No. 57 of 1985 and its amendments exempts all registered associations from income tax and the same applies to any religious, charitable, cultural, educational, sport and health entity of public benefit purposes, and charitable endowments. Article 21 of the Sales Tax Law No. 6 of 1994 and its amendments also exempts purchases made by international and regional organizations operating in Jordan. Article 22 of the same law extends this exemption to any purchases made by orphanages, elderly centers, sports clubs, and cultural clubs. Other entities—including local associations—that wish to benefit from the sales tax exemption must apply to the Council of Ministers requesting an exemption. The request for exemption is a relatively long process that requires time and effort, and, in some cases, the services of an attorney. The Council of Ministers may deny the exemption request, and has broad discretion to do so, as the law does not provide specific grounds for rejecting or accepting such requests. Should a request be denied, organizations lack legal recourse, as the sales tax law does not stipulate the right to appeal a denial.

<b>Reviewer Score</b>
<b>3</b>

The Law on Associations allows CSOs to receive support from private donors. However, if the source of the support is local, the association must report it in its annual reports, and if the source is foreign, the association must obtain approval from the Council of Ministers before it receives the support. The process for obtaining this approval is generally quite onerous, and CSOs are sometimes required to provide translated proposals and specific information on operating costs.

**Section Three: Cross-Border Philanthropic Flows**

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

According to Article 17(b) of the Associations Law, any funding from non-Jordanian resources requires the prior approval of the Cabinet of Ministers. This includes domestic funding and cross-border donations, whether in cash or in-kind. While Article 4 of the Income Tax Law requires that cash donations received from outside Jordan be exempt from income tax, in-kind donations are not exempt from customs duties per the Customs Law No. 20 of 1998 and its amendments.

<b>Reviewer Score</b>
<b>3</b>

To be acceptable, any foreign donation must adhere to the requirements of Article 17 of the Association Law, which mandates that donations a) come from a legitimate source that does not violate public order and public morals, b) not violate the provisions of the Associations Law or the CSO’s bylaws, and c) be spent to serve the purpose for which the donation is given. Broad language such as “public order” and “public morals” allows for government discretion as to whether the source of a foreign donation is permissible. In addition to these conditions, the recipient CSO must apply for the approval of the Council of Ministers, specifying the source of the donation, amount, method of payment, purpose and conditions. The Council should make a decision within 30 days and, in the absence of a decision, the request is considered approved. If

the Council rejects the request, the applicant CSO must return the donation or refrain from receiving it. If a CSO fails to comply with the prior approval requirement, it can be subject to dissolution, monetary fines, or any other additional penalties stipulated in the Penal Code.

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

Cross-border charitable donations can be sent without additional requirements other than those that apply generally to money transfers by the central bank, or border control in the case of in-kind donations. Other than duties specified in the laws of the recipient country, Jordanian laws do not apply taxes or other duties on outgoing donations. However, donations that are sent across borders may not be deducted from income tax. There are no restrictions on activities that may be supported by cross-border donations.

Reviewer  
Score

4

## Section Four: Socio-Cultural Narrative

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Civil society in Jordan is rooted in the tribal system, which is deeply embedded in society and operates alongside the formally established legal system. Tribes in Jordan play a political role, offer an alternative judicial system, and provide services to communities. Indeed, the formal legal system, in defining societies, does not eliminate the tribal concept of “families.”

Many formal civil society organizations in Jordan initially focused on charitable and aid activities. Charitable work has shaped Jordan since the establishment of the Kingdom, and it was regulated by the Law on Associations and Charitable Entities of 1966. Once Jordan acceded to international conventions, such as the International Convention on Civil and Political Rights, some CSOs emerged to raise public awareness in relation to human rights.

Philanthropic activity in Jordan is neither structured nor institutionalized. There is no law that governs philanthropic activity other than general provisions in the Associations Law. However, charitable work is considered a religious and social duty during the country’s religious celebrations, such as Ramadan. There is also a strong social expectation to give during crises involving victims of political turmoil, such as donations to Syrian refugees and Palestinians in the West Bank and Gaza. Philanthropic activity is also practiced in Jordan through Zakat and Waqf, which are forms of charitable giving that are part of Islamic rituals.

Given that philanthropy is not institutionalized, but rather related to certain occasions or events, Jordanians do not differentiate between philanthropy, charity, and volunteer work. They generally believe that charity work may comprise donations to the poor, maintenance of a community mosque, helping an orphanage, or support for a national association implementing a project. The reason that philanthropy work is not institutionalized is related to the fact that such work is embedded in the local community. As previously explained, philanthropy is still considered to be the domain of tribal services, religious practices, and individual voluntary work. The lack of a formal philanthropic sector has also been affected by the Law on associations of 2008, which only partially regulates the establishment of closed associations/foundations. As a result, there have been no attempts or initiatives to adopt a serious legal framework for foundations in Jordan. While there are a number of private

foundations that provide public services, such as public libraries and food banks, these foundations are mostly run by the country's royalty, and usually operate within their own laws. They also benefit from more extensive donations and funding, as well as broader tax and custom exemptions.



## Section One: CSO Formation, Operation, & Dissolution

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

The law in Kenya has various legal and constitutional provisions that uphold the right to act collectively by both registered and unregistered groups. Sections 78 and 81 of the Bill of Rights in the Constitution of Kenya (2010) expressly provide for various rights and freedoms of association which include the right to form, join, or participate in the activities of an association of any kind provided that the group does not engage in unlawful activities or activities that threaten national security.

Reviewer  
Score

3.5

Kenya is also a signatory to various international agreements that uphold the right of association including: the Vienna Declaration of Human Rights; the International Covenant of Civil and Political Rights; and the Africa Charter on Human and People's Rights, which provides that "every individual shall have the right to free association provided that he abides by the law". As a member of the East Africa Community (EAC), Kenya is bound by its Charter that explicitly emphasizes the importance of creating an enabling environment for civil society. In Chapter 25 (Art. 127 – 129), the East Africa Community Treaty explicitly emphasizes the creation of an enabling environment in which civil society can operate, with Article 127 (4) providing that "the Secretary General shall provide the forum for consultations between the private sector, civil society organizations, other interest groups and appropriate institutions of the EAC.

CSOs are not restricted from pursuing any legal purposes as long as these activities are legal and do not undermine national security. Upon registration, CSOs acquire rights and powers like other legal entities with perpetual succession. They are capable of suing and being sued; taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; entering into contracts; and doing anything else that is permissible for a legal entity.

Civil Society Organizations in Kenya exist under a number of legal regimes that include: the NGO Coordination Act No. 19 of 1990, the Trustees (Perpetual Succession) Act (Cap. 164, Laws of Kenya), the Companies Act, and the Societies Act (Cap. 108, Laws of Kenya). Furthermore, some professional associations and organizations such as the Kenya Red Cross Society exist under their own Acts of Parliament.

A newly enacted law, the Public Benefit Organisation Act (2013), hopes to bring different types of CSOs doing public benefit work under one single regulatory regime. The law is intended to enhance and promote better coordination, self-regulation, transparency and accountability in the sector. This law was enacted by Parliament in 2013 and assented to by the President, but it is yet to be operationalized by the relevant Government Ministry.

The registration process is in most cases straightforward and not onerous, save for registrations under the Companies Act. Such registrations are complicated, time consuming, and require competent technical and legal expertise to draw up the memorandum and articles of association. Furthermore, the requirements can vary considerably depending on which of the four organizational forms that a CSO chooses to take: a nongovernmental organization (NGO), a company limited by guarantee, a trust or a society. For NGOs, registrants must file a name reservation form with the NGO Co-ordination board, and submit a proposed constitution, a one year budget, photographs and background information of three executives, and details on proposed activities and income sources. Having done so, an applicant must also pay a KES 11,000 (120 USD) fee if they are a domestic NGO, or KES 22,000 (240 USD) if they wish to be organized as an international NGO. After submitting the necessary documents and fees, most NGOs are usually officially registered in six months. For a Company Limited by Guarantee, an application must be filed with the Registrar of Companies, which is then reviewed by Kenya's National Intelligence Service. Applicants must also pay a KES 30,000 (330 USD) registration fee, and must usually wait up to a year before they receive their Certificate of Incorporation, which serves as their proof of registration.

In the case of Trusts, registrants are not required to have a minimum amount of assets or capital, although they are required to submit a draft Trust Deed articulating the objects and governance of the trust to the Registry of Documents. Once the Registry has approved the Trust Deed and processed the KES 200 (2 USD) fee, a copy of it must then be submitted to the Minister of Lands for the incorporation of the trust. This last step also requires the payment of an additional KSH 12,000 (130 USD) fee. After all the process has concluded, most trusts must wait between three and four months before being officially recognized by the government.

Finally, societies face relatively few requirements. Of the few that societies are subject to, the most important is the need for a minimum of ten members, and the requirement that they be registered within 28 days of their formation, or else face legal censure. To become a society, which are regulated by the Registrar of Societies, applicants must also pay a KES 2,000 (20 USD) fee, although there are no minimum capital or asset requirements at the time of registration. Unlike most other legal forms, applications for societies are required to be evaluated by government authorities within 120 days.

There is no law that restricts who can serve as a founder of a CSO. For example NGOs may be founded by individuals, whether citizens or foreigners, and by legal entities, including states. There are, however, restrictions placed on organizations wishing to become a branch of or be affiliated with foreign political groups. The NGO Coordination Regulations, for example, provides that no NGO can become a branch of, be affiliated with or be connected to any organization or group of a political nature established outside Kenya, except with the prior written consent of the Board, obtained upon written application addressed to the Director and signed by three officers of the NGO. Should an NGO fail to do so, it is guilty of an offence. This provision may be interpreted narrowly and hence serves as a barrier to communication and cooperation. The Societies Act places similar restrictions on societies.

Generally, Kenyan registration officials operate professionally, consistently, and independent of political concerns. However, there have been occasional cases where they have been accused of inconsistency and manipulating the law in order to frustrate some CSOs whose officials are suspected to be antigovernment. Fortunately, and due in large part to the re-

introduction of a multiparty political system, the governing authorities have been more independent and apolitical. Consequently, cases of abuse have become very rare. However, a case emerged recently where the registering body refused to register an organization advocating on LGBT issues, but were ordered to do so after the concerned organization challenged the decision in court.

Furthermore, registration authorities are fairly competent and helpful and provide clearly detailed instructions for registration, reasons for denial, and offer a right to appeal any rejections. Although authorities do maintain a list of possible grounds for denial, some reasons such as “threat to national security” are subjective, broad, and open up room for misuse. Finally, while some laws such as the NGO Act do not specify a time limit within which an application for registration should be processed, they do provide a timeline (14days) to notify an applicant of the refusal for registration.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

The law provides sufficient discretion to groups in setting their internal governance structures, with NGOs and Companies Limited by Guarantee (CLGs) maintaining the least flexibility. While activities of CLGs are subject to periodic review by the National Intelligence Service, the NGO Board places restrictions on amending an NGO’s name and constitution—requiring further approval by the NGO Board. The NGO Board also ensures that NGOs adhere to certain statutory requirements at the time of registration by specifically including information in their constitutions on their governance structure, including: the manner of amending their name, constitution, rules, and the dates for their general meetings. Working closely with the NGO Council—the umbrella body for NGOs in Kenya—the Board has developed a variety of self-regulatory mechanisms and internal governance protocols, such as codes of conduct. These, however, are not mandatory. Furthermore, there is no universal framework for these devices and the Board lacks adequate capacity to enforce these regulations. As a result, NGOs may conduct their internal affairs with little or no constraints.

<p>Reviewer Score</p> <p>4.0</p>
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CSOs do, however, face restrictions on the kinds of activities that they may engage in. All legal structures provide the relevant regulatory bodies with a degree of discretion in their determinations of whether or not a CSO represents a threat to national security. The authorities therefore may reject registration or deregister organizations that engage in unlawful activities or activities deemed to threaten national security. Similarly, the Societies Act empowers authorities to refuse to register a society if such a society is a branch of, affiliated with, or connected to, any organization or association of a political nature that is established outside Kenya.

Despite these restrictions, Kenyan organizations are free to participate in networks and to use the internet and other forms of media as they see fit. Furthermore, the reporting requirements for CSOs are clear and scalable: with organizations being required to provide more or less information depending on the size of their annual budgets. The NGOs Regulations (1992) and the NGO Coordination Act of 1990 clearly state that NGOs must submit their annual returns to the NGO Coordination Board within three months of the end of their financial year in

the prescribed format set out in the schedule to the Regulations. It seeks information regarding finances—for instance, the amount expended on various institutional and project areas, as well as the amount spent on certain fields of activity—collaborating partners, and project and governance details. Expenditures or receipts exceeding KES 1 million (11,000 USD) are required to be accompanied by audited accounts. Similarly, the Societies Act states that books of accounts and lists of all members must be made available for inspection annually. The Act also makes it an offence for a society to fail to keep a register of its members, their names, and the dates of their admission and exit. While these requirements apply to most CSOs, Companies Limited by Guarantee are exempted from filing annual accounts.

### Question Three: To what extent is there government discretion in shutting down CSOs?

Kenyan regulations state that a NGO may not voluntarily dissolve unless it has obtained prior consent in writing from the NGO Coordination Board. The NGO must present a written application seeking consent from the Director of the Board, and the application must be signed by three of the governing officers of the NGO. For companies, the termination process is provided by the Companies Act, which sets forth the procedure for voluntary and involuntary winding up of companies. Once a resolution for voluntary winding up is passed, a declaration of solvency must be made by the directors of the company. The provisions of the Companies Act address the distribution of property and powers and duties of a liquidator, and apply to every voluntary winding up. Involuntary winding up may be undertaken by the High Court or subject to the supervision of the same court.

Reviewer  
Score  
**5**

Similarly, the Societies Act addresses the winding up of solvent and insolvent societies. In the case of solvent societies, the receiver prepares and submits a scheme for the disposal of the societies' assets to the relevant Minister. Once the Minister approves the plan submitted to him or her, the receiver can proceed to distribute the assets accordingly.

All governing bodies maintain the authority to deregister CSOs if they violate the rules or regulations of their respective terms and conditions of registration, undermine national security or can be proved to have participated in unlawful activities under the laws of Kenya. For NGOs, this is made explicit, and Article 16 of the NGO Act provides that the Board may cancel an issued certificate if it is satisfied that; (a) the terms or conditions attached to the certificate have been violated; (b) the organization has breached the Act; or (c) the national NGO Council has submitted a satisfactory recommendation for the cancellation of the certificate.

Prior notice of cancellation or deregistration should, in most cases, be given to an offending NGO. Section 16(1) of the Act states that if the registration

of any organization should be cancelled, registration authorities must send to the organization a notification of intended cancellation taking every reasonable precaution to ensure fairness in the exercise of its discretion. This process is subject to judicial review, and for NGOs, any organization which is aggrieved by the decision of the Board to cancel its operation may, within sixty days from the date of the decision, appeal to the respective Minister. In



addition, the law offers the aggrieved an additional 28 days to appeal the Minister’s decision to the high court. The decision of the high court is final.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Kenyan law does provide incentives for charitable donations, and the Income Tax (Charitable Donations) Regulations published in June 2007, allows individuals and corporations who give cash donations to eligible—tax exempt—civil society bodies to deduct the donation from their gross income before calculating their taxable income. These deductions may be claimed without ceilings for both individual and corporate donors. Unfortunately, the process for receiving deductions is neither clear nor predictable. It also gives the Tax administrators too much discretion on determining who qualifies to receive tax benefits. This makes the process overly bureaucratic and susceptible to manipulation.

Reviewer  
Score

4

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Kenyan law does provide some tax incentives for CSOs receiving charitable donations. Tax exemptions on charitable income are provided for under the Income Tax Act. CSOs must apply to exempt their income from taxes, which mainly consists of donor funds (cash/cheque donations). To grant a Tax Exemption Status to an applicant, the Tax Commissioner has to be satisfied that the applicant has met the stipulated conditions and that the income is to be used either in Kenya, or in cases where the expenditure benefits the residents of Kenya.

Reviewer  
Score

3

CSOs with tax exempt status can also apply for remission of customs duty through the Minister of Finance with respect to goods such as equipment, motor vehicles, vessels and aircraft—though excluding motor vehicles seating more than twenty-six persons, office equipment, stationery and office furniture—which the Commissioner is satisfied are imported by, or consigned to, charitable organizations or are used for the public benefit. The treasury must also give its approval in writing where duties exceed KES 500,000 (5,450 USD). The tax authorities are not particularly combative, and under the EAC Customs Management Act 2005, Ministries in relevant sectors can recommend NGOs for tax exemptions.

Additional relief is provided for by the VAT Act, which provides for remission of tax for taxable goods which are intended for emergency relief purposes, for use in specific areas, and within a specified period, imported or purchased locally by the Government or its approved agent, a nongovernmental organization or a relief agency authorized by the Minister responsible for disaster management.

The process for receiving tax exempt status is not, however, clear or established, and the tax administrative process is both long and tedious. For example although the Finance Act 2012 states that Exemption Certificates should be issued within 60 days of lodging an

application, the process takes considerably longer. Furthermore, there are no rules or regulations that provide legal recourse for the breach of timelines. This difficulty is further compounded by the fact that the commissioner’s powers to revoke a certificate are too wide and sometimes subjective.

Lastly, it is important to note that the exemptions under the Customs & Excise Order 1999 and Income Tax Act on cash donations only apply to charitable organizations which are registered or exempt from registration under the Societies Act or NGO Coordination Act 1990. As such, incentives only apply to NGOs and societies. Donations in forms other than cash or cheque are ineligible to receive incentives.

### Section Three: Cross-Border Philanthropic Flows

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

Cross border giving—though not directly referred to as such—is a very complicated and demanding process governed under multiple legislative frameworks as there is no specific law that governs cross border giving. Some of the laws that affect cross boarder giving include the Income Tax Act, the Central Bank of Kenya Act, the Proceeds of Crime and Anti-Money Laundering Act and the Banking Act. The complexity of the process means that many decisions on whether or not to permit cross border donations are left to the authorities of the regulatory authorities processing the donations. There are multiple reported cases where one agency authorizes clearance of a donation only for another agency to place hurdles. The process is therefore onerous and unclear.

Reviewer  
Score

2

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

Cross giving—though not directly referred to as such—is a very complicated and complex process governed under multiple legislative frameworks as there is no specific law that governs cross border giving. Some of the laws that affect cross boarder giving include the Income Tax Act, the Central Bank of Kenya Act, the Proceeds of Crime and Anti-Money Laundering Act and the Banking Act. The complexity of the process means that many decisions on whether or not to permit cross border donations are left to the authorities of any of the regulatory authorities processing the donations. There are multiple reported cases where one agency authorizes clearance of a donation only for another agency to place hurdles. The process is therefore onerous and unclear.

Reviewer  
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### Section Four: Socio-Cultural Narrative

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In Kenya, philanthropy is defined as the voluntary giving of money, time and skills in support of social causes. Although the term ‘philanthropy’ is relatively new, the practice has existed for many years. Traditional philanthropy has historically been characterized by various

socio-economic and cultural factors such as gender roles, religious beliefs and traditional customs bound by a common belief of comradeship. Operating in the same spirit of philanthropic giving, the pooling and distribution of resources was largely a function of the socio-economic organizations of Kenya's traditional society. This society was, in turn, organized along communal or kinship ties.

Reciprocity stands at the heart of many of these ties, and traditionally giving was—and still is—viewed not only as a benevolent inner disposition towards others, but also as duty at the community level. Individual community members supported social causes so that others could support them should they find themselves in need. These core goals, values, principles and underlying determinants continue to influence local philanthropic activity in most of Sub-Saharan Africa. Kenya's philanthropic culture—particularly at the local level—has also been heavily influenced by the post-independence idea of Harambee. The Harambee ideology sought to mobilize community efforts to build basic infrastructure in the health and education sector to provide children access to primary and secondary education. The concept of Harambee has spread beyond the borders of Kenya as a means of bringing people together for an event to raise funds for a social good in a home country, or community. This idea has been successfully replicated by the Kenyan Community Development Foundation. The Foundation, which is Kenya's first community foundation, uses the Harambee motto to encourage communities to lead in their own development, even as the organization looks for outside funds to supplement community resources. Finally, a great percentage of giving in Kenya is motivated by religious beliefs. Religious teachings have significantly influenced individual giving in Kenya, regardless of the faith practiced. Under Christianity, there is tithing and stewardship; in Islam, there is Zakat and Sadagah; Huququ'llah for the Bahai faith and the tzedakah for Judaism.

Recently, global trends in philanthropy have influenced a generation of philanthropists, and has led to a more organized and institutionalized form of giving. There is a growing trend of setting independent systems and structures for channeling charity, especially for family and corporate philanthropy. For example, dynamics in the relationship between the corporate sector and society more generally is rapidly changing due to the increased need to maximize long term financial success through community investment. These corporate foundations have clear structures, are well administered and are guided by predetermined social investment policies. Although the motives of corporate philanthropy are still heavily debated, its contribution to reducing the effects of poverty is nonetheless appreciated and recognized.

The rise of organized philanthropy can also be attributed to the growing population of wealthy and middle class individuals. However, most giving is still disorganized and is conducted largely as a response to a crisis or in response to personal appeals. Consequently, there are only a handful of foundations and trusts that have good organizational structures guided by their personal values and experiences.

Although philanthropy in Kenya remains largely informal, the country is making deliberate efforts to grow organized philanthropy and publicize the field as a viable contributor to strategic development. Individuals, the media, associations, and international organizations have all made deliberate efforts to enhance a favorable environment for philanthropy in Kenya. Today, CSOs are viewed as key development actors in Kenya and are actively engaged at all levels of development. However, serious reservations have been raised in the recent past

regarding the proliferation of CSOs and their effectiveness. There is a perception that CSOs lack transparency and accountability in their operations and have become vehicles to swindle communities out of much needed donor aid. This negative view threatens the very existence of CSOs as the government is taking advantage of the perception in its efforts to control the sector in the name of protecting the public interest.



## Section One: CSO Formation, Operation, & Dissolution

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

Freedom of association is guaranteed by the Mexican Constitution, with Article 9 stating that “individuals shall be entitled to associate or to gather with others in a peaceful way to achieve a lawful objective”. Therefore, whether it is a community group, a non-governmental organization (NGO), a labor union, an indigenous group, a charitable organization, a faith-based organization, a professional association, or a foundation, a CSO may be legally incorporated according to the applicable law. For faith-based organizations, this law is the Religious Associations and Public Cult Law, while the Labor Law, state-level Civil Codes, and Private Assistance Laws regulate the conduct of labor unions, civil associations and charitable organizations respectively. As a result of this diversity, the requirements and needed documentation vary and are dependent on the type of CSO. Mexican law also requires that the bylaws be notarized before a public notary, who subsequently files the incorporation articles at the Public Registry of Property. Consequently, the process to form a Mexican CSO is completed in an independent and apolitical manner.

Reviewer  
Score

4.0

The law is relatively permissive regarding who may serve as a founder. For NGO or charitable organizations, there are two main legal entities under which an organization can incorporate: as a civil association or as a private assistance institution. If an organization is formed as a civil association, there is no minimum capital or assets required at the time of establishment. If, however, it is formed as a private assistance institution it must be incorporated according to the law, which specifies that public servants may not serve as founders. The process of incorporating at the Public Notary requires reasonable documentation and the payment of a registration fee of between \$600 USD and \$1,000 USD.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

Generally speaking, Mexican CSOs enjoy the freedom to run their internal affairs provided they are in accordance with the requirements associated with their organization type. For instance, a civil association’s supreme governance body is the General Associates Assembly. In addition, a Board of Directors may also be appointed and authorized to represent and manage the organization. Civil associations are even less regulated, and do not have any specifications for their internal governance.

Reviewer  
Score

4.0

Other kinds of organizations, however, such as those incorporated as private assistance institutions are subject to regulations that interfere with their internal governance. Such

organizations, formed by founders and managed by trustees—known in Spanish as Patronato—are supervised or controlled by a government entity at the State level called the Junta de Asistencia Privada (Private Charity Board). Important decisions made by a private assistance institution regarding matters such as creation, dissolution, fundraising, investment, donations, and budgets have to be approved by this local government entity. In this sense, this regulation can inhibit free internal governance. CSOs also have to present their annual reports to the fiscal authority. Each year, organizations authorized to receive tax deductible receipts must also make public general information on the Transparency Section of the Servicio de Administración Tributaria’s (Tax Administration Service) web page. Starting in 2015, the obligation to audit an organization’s financial statements is now voluntary. Organizations that receive public funds and are registered under the Federal Registry of Civil Society Organizations must also present annual reports.

There are no cases of CSOs that have been restricted from participating in networks and organizations and are free to use the Internet and all forms of social media due to the promulgation of the recent Telecommunications Law Reform.

### Question Three: To what extent is there government discretion in shutting down CSOs?

The governing body of a CSO is permitted to voluntarily terminate its activities, dissolve itself as a legal person, and liquidate its assets. In the case of a civil association, the organization’s governing body is also able to voluntarily terminate the CSO. There are several causes for which a civil association may be terminated, including most notably instances wherein the reason an organization was created no longer exists or if an organization has insufficient funds. In the case of a civil association, its governing body has to transfer the remaining assets to another organization with a similar purpose. But if the organization is authorized to receive tax deductible receipts, the assets have to be allocated to another organization with the same status.

<b>Reviewer Score</b>
<b>4</b>

However, in the case of a private assistance institution, the Private Charity Board (Junta de Asistencia Privada) has to declare the termination of an institution either for reasons established by the law, or upon the request of the trustees. Upon dissolution, this government entity proceeds with liquidation of assets and decides which private welfare institution will receive its assets, taking into consideration the founder’s will and the original purpose of the organization. The Private Charity Board itself has a governing body which makes this such decisions through consensus.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

CSOs in Mexico may be entitled to tax incentives depending on the activity pursued. For example, CSOs dedicated to charitable purposes, education, human rights, culture,

environment, or technological and scientific activities are all eligible to be authorized to receive tax deductible receipts. However, not all CSOs that are tax exempt are eligible to receive authorized donee status. For instance, sports, trade unions and religious organizations may not be authorized donees, but can nonetheless be tax exempt. According to a recent provision in the Income tax Law, organizations with an authorized donee status can engage in business activities—a valuable designation for many groups. If the income of such activities is less than 10% of total income, the CSO does not pay a tax on that income. At the local level in some states, charitable organizations incorporated as private assistance institutions are eligible for payroll exemptions. For example, in Mexico City, CSOs are eligible to receive tax exemptions in the form of property and payroll tax exemptions, as well as other local taxes.

Reviewer  
Score  
**4**

As of January 2015, there were 28,829 organizations registered under the Federal Registry of Civil Society Organizations—not including labor unions, cooperatives, and political or religious associations. Furthermore, 7,902 have the authorization to receive tax deductible status. Out of these organizations, around 4,000 have both the authorization to receive tax deductible receipts and have been registered at the Federal Registry. While the Federal Registry allows organizations to apply for Federal Government funds, authorization by fiscal authorities permits organizations to be tax exempt and their donors to receive tax incentives.

At the national level, there is a ceiling on the incentives that can be claimed on such eligible donations and both corporations and individuals are permitted to deduct up to seven percent of their taxable income paid during the fiscal year. The value of in-kind donations can also be included in the ceiling. Donations can be made to organizations that are authorized, including government entities, international organizations, and authorized CSOs. If a donor does not wish to claim a deduction, it may make a donation to any kind of organization legally incorporated for licit purposes.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

The types of CSOs eligible for income tax exemption includes: religious associations; groups involved in formal education, sports, technological or scientific research; unions; chambers of commerce; and associations of professionals, neighbors, or rural residents. The range of CSOs eligible to receive tax deductible donations is, however, considerably narrower. The main activities that are authorized include the provision of aid to: the needy, including medical, psychological, prevention, attention in disasters, intra-family violence, legal, training for employment and funeral assistance; educational institutions; technological or scientific research; support for culture and the arts; environmental protection and the preservation of national treasures; scholarships for studies at certified educational institutions; authorized donees or the government; and to the defense and promotion of human rights. With the last Tax Reform published in December 2013, new social objectives were added to the list of purposes eligible to receive tax deductible receipts and included civic activities and initiatives promoting gender equality and consumer rights.

Reviewer  
Score  
**4**

Unfortunately, to obtain donee status, it is necessary to present a letter from a governmental entity that certifies the nonprofit activities of the applicant. This can be difficult to obtain because—in most cases—there is no designated office for CSO regulation within most governments. Since 2004, the enacted Federal Law on Promotion of the Activities Conducted by Civil Society Organizations has established a wider range of organizations recognized to be of public benefit. Nonetheless, though some activities overlap with the Income Tax Law in terms of tax incentives, others are left out. Therefore the Income Tax Law should be harmonized with the Promotion Law in order for those organizations whose activities fall under the Promotion Law to also be eligible to receive tax deductible donations under the Tax Law.

## Section Three: Cross-Border Philanthropic Flows

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

While Mexican CSOs are allowed to receive cross-border donations, recently enacted anti-money laundering legislation—the Federal Law for Prevention and Identification of Transactions with Funds from Illegal Sources—established new standards requiring donors, both individuals and corporations of either domestic or foreign origin, to provide ample information—such as the identification (ID) of the donor legal representative—to the government—something not previously required.

Reviewer  
Score

4

Regarding tax incentives, only authorized donee organizations are able to receive charitable contributions from abroad without restrictions or extra costs. This status also guarantees that their income from such sources is tax exempt. Mexican law also provides a number of incentives to import in-kind donations, provided they comply with the provisions of the customs laws and related regulations. The Ministry of Finance has simplified the process of obtaining the permits and allows CSOs to complete and submit them online.

Mexico also has a double taxation treaty with the United States under which Mexican organizations can qualify to be equivalent to U.S. charities for tax purposes. This allows U.S. citizens to receive the same tax deductions when donating to qualified Mexican organizations as they would if donating to a U.S. organization.

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

The country's tax law has not been designed to incentivize sending charitable contributions abroad. While private entities in Mexico may receive tax benefits when sending contributions to organizations abroad, they may receive them only if they are donated to International entities to which Mexico is a full member, provided that the purposes for which these organisms were created correspond to the activities authorized to receive tax-deductible donations in Mexico. Nevertheless, Mexico is part of a double taxation treaty with the U.S. under which identical tax incentives are provided on cross boarder donations for certain type of organizations. According to the treaty, deductions can only be claimed by US tax

Reviewer  
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3



payers that derive at least some income from Mexican sources and vice versa. Consequently, while a person is able to send cross-border contributions, in general, it will not be tax deductible. In the case of in-kind donations, they will be subject to customs and duties.

## Section Four: Socio-Cultural Narrative

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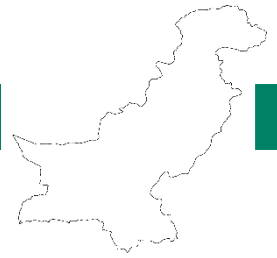
Philanthropy has long been valued by the inhabitants of Mexico, and historically the Catholic Church has encouraged philanthropic activities since Colonial times, and was instrumental in the establishment of welfare institutions as an assertion of religious values. More recently, Mexican citizens have taken a more participatory role in the country's political, economic, and social development. As a result, the numbers of both charities and civil society organizations have grown. In the last decade, organizations dedicated to diverse activities such as human rights, environmental sustainability, research, and civic education have enjoyed particularly rapid growth.

During the 1990s, the sector was particularly instrumental in improving human rights. In Mexico, the nonprofit sector is diverse in both its causes and in its interactions with other sectors, including the corporate and government sectors. However, and despite the many activities of Mexican CSOs, the country's population is not well acquainted with its civil society. As a result, Mexican civil society is currently working to become more consolidated in order to have a greater—and more visible—impact on policy.

The number of CSOs active in the country is rather small considering the large population of the country. According to the official data, the Secretariat of Labor and Social Welfare has 2,682 unions registered with it, while the Secretariat of the Interior's registry identifies 8,054 Religious Associations. As of October 2014, there were there are 27,517 (21,338 Active and 6,179 Inactive) organizations registered under the Federal Registry of Civil Society Organizations. While these statistics are admittedly piecemeal and do not represent the entire scope of Mexican civil society, they are nonetheless valuable as benchmark estimates.

On the other hand, 7,902 organizations—a relatively high share—have the authorization to receive tax deductible status as of March 2014. Out of these organizations, around 4,000 have both the authorization to receive tax deductible receipts and have been registered at the Federal Registry. These organizations are in turn subject to strict fiscal regulation which ensures transparency, enacts regular financial audits and requires organizations to make their information public.

The time it takes to form an organization may vary depending on different factors. However, on average, it usually takes approximately one month to have an organization's name authorized by the Ministry of Economy and to have the articles of incorporation (bylaws) notarized before the Public Notary. After this has occurred, the Public Notary still has to file the document in the public Registry of Property. Only after all of these steps have been completed may the organization then be registered in the Federal Taxpayers Registry and assigned a fiscal ID. However, even after this has been completed, it may take a further three months to be registered at the Federal Registry of Civil Society Organizations and be considered eligible to participate at public funds licitations.



## Section One: CSO Formation, Operation, & Dissolution

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

In Pakistan, individuals are mostly free to form organizations. Generally, the legal framework governing Civil Society Organizations (CSOs) may be divided into several categories. One category regulates registration procedures, internal governance and accountability for CSOs, another pertains to their financing and management, and the last category regulates the reporting mechanisms for communication of details of their operations and employee management to the government. This legal framework creates an enabling environment for CSOs while providing much-needed oversight.

Reviewer  
Score

3.6

Under this legal framework, four types of CSOs can be registered. The registration process itself is moderately cumbersome and requires time and resources. Whichever law they choose to be registered under, CSOs have to follow the regulations laid out in the act or ordinance. CSOs are mostly free to develop their own regulatory frameworks so long as they respect the laws of the country.

Pakistan's registration laws do, however, lack consistency in the usage of terms, requirements and definitions. For example, the different laws have different requirements for the minimum size of membership for registration. There is also a lack of consistency in definitions, such as in the definition of a CSO in the Companies Ordinance 1984 and the Societies Act 1860. In section 42 of the companies ordinance, a CSO is defined as an association formed for "promoting commerce, art, science, religion, sports, social services, charity, or any other useful object", while the Societies Act defines it as "any literary, scientific or charitable purpose." This lack of consistency is found across all registration laws.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

There are no legal barriers that impede an organization's operational activity. CSOs are free to operate according to their approved charter and are subject only to some reasonable restrictions imposed by law. The 1973 Constitution of Pakistan recognizes the right of individuals to associate with others to pursue common goals as an inalienable and fundamental right. Relevant constitutional provisions include: Article 15's Freedom of Movement, Article 16's Freedom of Assembly, Article 17's Freedom of Association, Article 19's Freedom of Speech, and Article 20's Freedom to Profess Religion and to Manage Religious Institutions. Furthermore, CSO registration law does not prohibit CSOs from engaging in political activities or contributing to them. However, the charter of Income Tax Rules 2002 clearly states that CSOs may not propagate the views of any religious sect or political party.

Reviewer  
Score

3.0

The Economic Affairs Division (EAD) of Pakistan is the primary governing body of agencies operating in the country. EAD has formulated a policy for the regulation of CSOs receiving foreign funding and has recently started its implementation. Under this policy, CSOs that receive foreign funds are required to register with the Division. The policy also seeks to regulate the operations of international CSOs by requiring them to sign a Memorandum of Understanding (MoU) with the Division for a period of time of up to 5 years. CSOs are free to participate in networks and use the Internet and all forms of social media for the benefit of general public. However, a few websites—most notably YouTube—are blocked in Pakistan, though this prohibition is extended to all Pakistani citizens and not just CSOs. Depending on their organizational form, CSOs are also free to pursue both member benefit purposes and public benefit purposes. CSOs are not monitored heavily with regards to their activities, networking, and communications or on their cooperation with domestic and international entities.

CSOs are allowed to publish material that is critical of the government. There are, however, some limitations to this freedom, and material that is deemed a threat to religion, amicable relations with other states, decency and morality, security or defense of the state, or the maintenance of public order can be censored. Religion is a particularly sensitive matter in the country as evidenced by the frequent charges of blasphemy which are mostly aimed at persecuting minorities. Lastly, a registered CSO in Pakistan is not allowed to be involved in anti-state or secessionist movements. Due to Pakistan's ongoing operations against terrorist groups in the country, around 50 such organizations are banned in Pakistan, of which 14 are politically oriented while 36 are religious.

### Question Three: To what extent is there government discretion in shutting down CSOs?

Pakistan's CSO registration law clearly articulates the rules governing voluntary dissolution or involuntary termination of CSOs. The Government has the authority to shut down any CSO that is found to be involved in anti-state or prohibited activities, evidence for which is usually generated by the civil and military intelligence agencies in Pakistan, which are active in uncovering the apparent and hidden activities of CSOs. While it is the constitutional right of CSOs (as a legal person or as an association of persons) to appeal a termination decision in the courts, the process for doing so is unclear and rarely attempted. The civil government regulations do not, however, support shutting down a CSO unless there is a clear rationale. A CSO's Board of Governors can also choose to voluntarily terminate its activities. Involuntary termination by a government entity occurs only after a serious violation and/or failure to correct said violation.

Reviewer  
Score

3.4

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Pakistan's tax system has recently undergone—and is undergoing—a series of reforms designed to support a flexible taxation system for all parties including CSOs. Depending on their purpose and the nature of their activities, the government offers fiscal benefits, such as tax exemptions, to CSOs. If a CSO is perceived as a benefit to society and not just a specific segment of society, it qualifies for tax exempt status. However, in spite of this exemption and the possible benefits of registration, the vast majority of CSOs in the country are unregistered. Due to poor implementation, even those CSOs that registered are not monitored as they should be as stated in the legal framework. To overcome this regulatory gap, Pakistan Centre for Philanthropy initiated a certification program for CSOs in 2003 that evaluates the organizations in order to confer a tax exempt status.

Reviewer  
Score

4

In order to incentivize donors and legitimize recipient organizations, the Government of Pakistan allows tax exemptions on taxable incomes. Social contributions are rewarded by providing tax credits to businesses, associations, individuals and recipient organizations under two sections and one clause of the Income Tax Ordinance of 2001as well as Rules 210 and 220 of the same legislation. The sections in question are Section 61, Section 2 (36) and clause 58(3). A list of approved charities that are eligible to receive tax deductible donations and a list statutory exempt charities is provided in Section 2(36) and clause 58(3) in part-I of the second schedule of the legal document. Information regarding the donors of these organizations is provided in Section 61 of the ordinance. All tax exemptions so granted have a specified validity and are renewed after the expiration of their validity period.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

The incomes of CSOs that operate in Pakistan are largely exempt from taxes. The Government of Pakistan recently introduced changes and amendments in the Income Tax Ordinance and, following the passage of section 100C of the Finance Act 2014, a 100% tax credit for CSOs has finally been implemented following its initial introduction with the Income Tax Ordinance 2001. Furthermore, there are some provisions on withholding taxes that can modify the credits claimed depending on the activities engaged in by the CSO. The responsibilities of a CSO as a withholding agent are also provided in the tax law, and Section 159 of the Income Tax Ordinance 2001 articulates the withholding regime for CSO's withholding transactions. These benefits are only available for an approved CSO by the tax authorities.

Reviewer  
Score

3

The 100 percent tax credit is only available to CSOs that fulfill the following criteria: a) their tax return has been filed; b) the tax required to be deducted or collected has been deducted or collected and paid; and c) the withholding tax statements for the preceding tax year have been filed. This tax incentive system has been met with relatively mixed reviews:

while it does promote documentation by CSOs, the process is regarded as onerous and time consuming. In particular, many CSOs find it difficult to meet what they view as an unnecessary demand for documentary compliance pertaining to tax credits.

## Section Three: Cross-Border Philanthropic Flows

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

The Economic Affairs Division (EAD) of the Government of Pakistan has laid out a number of specific guidelines for CSOs that receive foreign funding. EAD is making it mandatory for all CSOs that receive foreign funding to formally inform the EAD of foreign grants and funding. The EAD collects this information to maintain a matrix of donor funding being provided to various entities of Pakistan. The Division also works with the Planning & Development Division of both the Federal and Provincial governments to tally and track donor and government released funds and to support various governmental and non-governmental entities in the country.

CSOs that have a registered bank account in their name are eligible to receive foreign funding. Cross-border charitable donations can be received without additional cost, and similar tax incentives can be obtained for international charitable donations as for domestic donations. Furthermore, while Pakistan does maintain a number of tariffs and customs, imported relief goods and gifts by charitable, educational, scientific, and medical organizations are subject to a tariff rate of 0%. The process to receive charitable donations from abroad is somewhat clear and consistent, requiring a reasonable amount of resources and time. A wide range of activities can be supported through received cross-border contributions.

Reviewer  
Score

2.9

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

While there are certain regulations under which charitable funds can be sent with minimal additional cost, the State Bank of Pakistan usually applies certain service charges on such transactions. Those restrictions that do exist primarily relate to the government's ongoing struggle against corruption, money laundering, and the country's extremist elements. Because of this, outflows of money can at times be a politically sensitive matter, and are primarily regulated by the 2010 Anti-Money Laundering (AML) Act. While some amendments to the Act were made in 2012, its purpose has remained the same: to stop money laundering by requiring banks and other financial intermediaries to conduct their due diligence regarding the identities of their customers. The process to send charitable donations abroad is clear and consistent, but is somewhat onerous, requiring moderate resources and time. There are moderate limitations on the transfer of funds and donations across borders which stem from the need to comply with the due diligence and money transfer requirements as stipulated in the AML Act.

Reviewer  
Score

2.6

## Section Four: Socio-Cultural Narrative

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Philanthropic giving is one of the major sources of development in Pakistan and is seen as a highly respected initiative for supporting deserving and underprivileged populations. Owing, in large part, to Pakistan's social and cultural history, most communities and people in Pakistan make generous charitable donations and aspire to give money to the poor and marginalized. Religious organizations, Madarassas in particular, receive the lion's share of charitable funds.

Since securing its independence in 1947, Pakistan has experienced intermittent periods of strong economic growth. However, the resilience of the economy has, however, been repeatedly tested by exogenous and endogenous shocks and periods of macro-economic instability. Pakistan has, for instance, experienced three major natural disasters during last decade. In the aftermath of these calamities, the government could not do enough to provide relief to its citizens. It was at this time that Pakistan's civil society began to shoulder most of the burden and it played a major role in the rehabilitation of victimized groups. It was a time of great growth for CSOs in Pakistan.

CSOs have, however, faced increasingly negative publicity during the last few decades. One of the reasons for this negative perception is the fact that most CSOs are funded by international donor agencies and that there is little, if any, public accountability in the CSO sector. Additionally, some CSOs abuse the advantage of donations and funding and usually produce sub-standard services. To address this issue, the Pakistan Centre for Philanthropy recently instituted a CSO certification regime for systems evaluation that has been ongoing since 2003. The Centre evaluates CSOs and publishes a directory of credible organizations in Pakistan. The Centre's certification is, in turn, recognized by the government of Pakistan, which provides tax rebates to certified CSOs.

Although public opinion on the activities, productivity and effectiveness of CSOs in Pakistan is relatively tepid, many CSOs have excellent reputations owing to their contributions during the country's disasters and their willingness to be scrutinized and held to account.



## Section One: CSO Formation, Operation, & Dissolution

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

The Constitution of the Portuguese Republic enshrines the rights to freedom of peaceful assembly and freedom of association. Moreover, regarding the right of association, the Portuguese Constitution recognizes that associations may be formed without government authorization, on condition that such associations are not intended to promote violence and their purposes are not contrary to law. Associations are accorded the right to pursue their purposes freely without interference from public authorities and cannot be dissolved by the state or have their activities suspended, except in those cases stipulated by Portuguese law and then only by judicial order.

Reviewer  
Score

4.0

Regarding foundations, they are required to have legal personality and to pursue social interest purposes. By law, private foundations acquire legal personality upon receiving recognition from the competent administrative authority, after which the foundation must register in the national register of legal entities or in the register of private social welfare institutions. Although no minimum capital is required, the Civil Code demands that the administrative authority refuse a foundation's request for recognition if its assets are deemed insufficient for the pursuance of its purpose. This offers said authority considerable discretion. However, the administrative practice of requiring a minimum of 250,000 euros (283,500 USD) has been consistent, and in 2013 this minimum was permanently fixed by a ministerial decree. Nowadays, the competent authority charged with the management of CSOs is the Minister of the Presidency and Parliamentary Affairs, which is not truly politically neutral.

Currently, Portugal's legal framework provides an extremely favorable environment for the formation and operations of associations. With the creation of the Associação na Hora (Association on the Spot) initiative it is now possible to create an association in just one office in a single day at a cost of 200 to 300 euros (230 – 340 USD).

### Question Two: To what extent are CSOs free to operate without excessive government interference?

The Portuguese Constitution does not permit the existence of armed or military associations, militarized or paramilitary-type associations, racist organizations or entities that display a fascist ideology. Provided that they do not run afoul of these requirements, Portuguese organizations are otherwise generally free to pursue whatever purposes they wish.

Reviewer  
Score

4.5

The government does, however, require private foundations to adopt certain governance structures. First, they are required to have a board of directors, an executive committee and a supervisory board. Second, the government also requires that foundations place limits on the terms of the members that serve on the three aforementioned

governance bodies. Third, foundations have to send an annual report and various accounting documents to the Secretary-General of the Presidency of the Council of Ministers within a period of thirty days after these documents have been approved. Furthermore, accounting documents must be subjected to an external audit. Lastly, foundations are also required to permanently disclose a set of documents, including the annual accounts of the past three years, on their websites.

CSOs are permitted to contact and cooperate with colleagues in civil society, business and government sectors, both within and outside the country, without any restrictions. They are also permitted to participate in networks and use the Internet and all forms of social media without any restrictions.

### Question Three: To what extent is there government discretion in shutting down CSOs?

The dissolution of foundations is regulated by law, which also determines the ultimate distributions of a foundation's remaining assets. Foundations are dissolved by the competent authority after communication by the board in one of the following situations: the term is over and the organization has been created for a certain period; one of the situations defined as a cause for dissolution when the foundation was instituted has occurred; or a court decision of insolvency has been issued. Foundations may be dissolved by the competent authority if: its objective has been exhausted or if it is no longer possible; its purpose does not coincide with the real purpose expressed in the constitution or statutes; or they have not engaged in any relevant activity in the three previous years. A Portuguese organization can also be dissolved by a judicial decision if it can be proven that its purpose is systematically pursued by unlawful or immoral means or that its existence is contrary to public order.

Reviewer  
Score

4.5

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Portuguese tax law provides tax incentives for donations made to public-benefit foundations. The current rules are, however, extremely complex. According to the country's income tax law, individual donors can subtract 25% of the amount donated from their total income tax in the respective year in cases where there is no limit on deduction. In cases where there is a limit on deduction, they can subtract 25% of the amount donated, as long as the amount does not exceed 15% of their total income tax in the respective year.

Reviewer  
Score

4

In the case of corporate donors, the calculation of the amount of the deduction depends upon two variables: the majoration—expenses are usually deductible at 100% of its value, but when there is majoration of expenses they are deductible at percentages above 100%; and the limit for the deduction. Corporate donors are not subject to limits on the amount that can be



deducted provided that their donations benefit foundations whose initial assets have been contributed by the state, autonomous regions, or local councils. Similarly, in certain circumstances, there are no limits on the amount of deductions that can be claimed on donations which are contributed to the endowment of private foundations that pursue mainly social or cultural aims. To incentivize these donations, Portuguese corporations are entitled to deduct between 130% and 140% of the amount contributed.

Other kinds of corporate donations are, however, subject to limits. For example, donations made to private welfare institutions or to legal entities of administrative and simple public utility organizations whose main purposes are in the area of charity, assistance, benevolence and social solidarity are considered operational expenses up to a maximum of 0.8% of the turnover. In order to incentivize these donations, Portugal’s tax law allows donors to deduct between 130% and 150% of the amount contributed.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Generally, there are no noteworthy limitations restricting the receipt of support from private donors. Portuguese tax law—namely the Corporate Income Tax Code—exempts CSOs from income taxes if they are: legal entities of administrative public utility; social welfare institutions; or legal entities of simple public utility whose main purposes are in the area of science, culture, charity, assistance, benevolence, social solidarity or environmental protection. These entities of simple public utility need to request and receive formal recognition of their tax exempt status from the Ministry of Finance. This requirement is addressed at the Ministry of Finance and must be accompanied by a set of documents providing information on the organization. It is a relatively easy process, one that leads to an official decision by the Minister of Finance defining the extent of the exemption.

In addition, cultural, entertainment, and sports associations are also exempt from income tax in case of income directly derived from the exercise of a cultural, entertainment or sport activity. Besides income taxes, CSOs benefit from a wide array of exemptions on others types of taxes, such as sales tax and the stamp duty.

**Reviewer  
Score**  
  
**4**

## Section Three: Cross-Border Philanthropic Flows

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

There are few additional taxes on or costs associated with receiving incoming cross-border philanthropic flows. Portugal is a member of the European Union (EU) and its economy is largely integrated with those of the other EU countries. Imported goods are subject to VAT, but a wide range of exemptions are in place, including those pertaining to donations. Imported goods from outside the EU are, however, subject to

**Reviewer  
Score**  
  
**4.6**

customs duty. Additional costs such as banking fees and taxes exist but are similar to other types of financial flows. There is no approval process to receive charitable contributions from abroad, and there are no restrictions on receiving cross-border charitable donations.

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

Portuguese tax law provides tax incentives only for donations that are received by resident foundations. Despite this lack of proper incentives, cross-border charitable donations can be sent with minimal additional costs or taxes, and these are not specific to philanthropic flows. There are no restrictions on sending cross-border charitable donations.

Reviewer  
Score

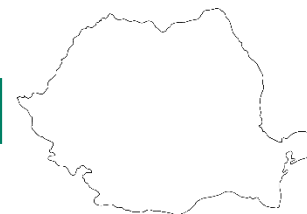
4

## Section Four: Socio-Cultural Narrative

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Historical accounts of the development of corporate social responsibility (CSR) in Portugal usually begin by referencing the importance of social intervention institutions. The Misericórdias (Holy Houses of Mercy) are the most widely acknowledge example of said institutions, and possess a long standing linkage to the Catholic Church that has endured for over five centuries. The first of these institutions was founded in Lisbon in 1498, during the relatively prosperous reign of Dom Manuel I (1495- 1521). According to the 2012 work of Salamon et al, the Misericórdias still provide a substantial proportion of social assistance in Portugal. Approximately 400 of these organizations still exist, and they continue to operate 19 hospitals which in turn deliver around 90% of nonprofit health care services in Portugal.

In spite of its status as a high-income country, Portugal is one of the less developed European countries and thus social issues are still considered exceedingly important. Furthermore, the continent’s repeated and severe economic crisis have exacerbated the need for social services. According to Steurer, Martinuzzi and Margula’s 2012 work, the Portuguese welfare state—like its counterparts in Spain, Italy and Greece—provides only “fragmented and ‘clientelistic’ support focusing on income maintenance (pensions)” and is “still under development, making older systems of social support (family, church) indispensable”. Given these realities, it comes as no surprise to find that CSR in Portugal still largely focuses on corporate involvement in local communities, as well as alleviating poverty and fighting exclusion. It is thus unsurprising that philanthropic activity is viewed positively in Portugal.



## Section One: CSO Formation, Operation, & Dissolution

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

Individuals are free to form organizations and the law does not prohibit the formation of “unregistered groups”. There is little government interference on the types and purposes of such organizations during the formation process, though the activities and funding of political parties and the activities of religious cults are regulated by different laws. So long as their activities are not covered under the Political Parties Law, CSOs may pursue political activities as they see fit. The registration process is somewhat demanding, requiring moderate time and resources. The registration bodies (local courts) are generally consistent and apolitical.

Reviewer  
Score

4.0

The minimal capital for foundations is relatively steep, and is set at 100 times the minimum legal salary for a full time employee, around 25,000 USD. Fortunately, capital requirements for associations are set at the much more reasonable level of one times the minimum salary, or around 250 USD. On top of the initial capital requirements, taxes with notary, judiciary fees and other set-up of legal operations are around 200 USD. The list of documents required for registration is not very large, but there are some slight differences in the interpretation of application requirements by the local courts. Registration itself takes a moderate amount of time and resources and requires some expertise. On average it takes between three and six weeks to go through the various stages of the registration process.

According to Law 60/1991, citizens are also free to express their social or political views through public gatherings and demonstrations, but must provide advance notice to local councils for those gatherings which take place in public squares, on public roads, or in other open air places.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

Organizations are minimally inhibited in their internal governance with little or no impediments on the purposes of their activities. The law provides guidance on the structure of associations, foundations, and federations. Associations and federations must have three distinct bodies; a general assembly, a board of directors, and an auditor (or audit committee for associations over 100 members). Foundations, however, only have two such bodies; a board of directors and an auditor (audit committee).

Reviewer  
Score

5.0

Organizations are free to communicate through various media channels and to cooperate with domestic and international entities. CSOs are also able to engage in some economic activities provided that the activities are related to the organization’s objectives. Similarly, commercial companies can also be established by CSOs provided the profit of these companies is reinvested

in the company or, if distributed as dividends, used to support the organization’s objectives. The reporting requirements are clear, consistent, accessible, and require reasonable resources for completion.

### Question Three: To what extent is there government discretion in shutting down CSOs?

Romanian associations are able to voluntarily terminate their activities through a decision of the general assembly. Involuntary termination is subject to court decision at the request of any interested party when: the purpose or means of the organization are contrary to the law or public order; when it pursues a purpose other than the one that it has been constituted for; when it is unable to constitute its leadership bodies according to its constitution for more than one year; or, when it is insolvent. Clear and fair legal regulations exist to guide the involuntary dissolution of an organization. The involuntary dissolution process is handled by the local court, which nominates the liquidators (physical or juridical persons tasked with concluding the existing operations and responsibilities of the dissolved association or foundation). Conversely, in the case of voluntary termination, the general assembly nominates the liquidators. Liquidators have to produce a report on the liquidation process and submit it to the local court. The report can be contested by any interested person. All contestations are resolved by the court in one session and are subject to one appeal.

**Reviewer Score**  
**4**

Upon liquidation, the remaining assets cannot be transferred to a Romanian physical person. Instead, they must be transferred to other Romanian juridical private or public entities with a similar purpose through a procedure set in the statute of the association or foundation. If the liquidators cannot transfer the goods or there is no clear procedure in the statutes of the CSO, then the local court picks the juridical entity which will receive the assets. If the association or foundation is dissolved for pursuing illegal purposes or for pursuing purposes that are different from those for which it was originally constituted, the assets will be transferred to the state (through the Ministry of Finance or the local government). In the case of federations, unless the law or the statute has different provisions, the assets of a dissolved Federation will be split among its members.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Under the Sponsorship Law and the Romanian Fiscal Code, corporations—both foreign and domestic—making contributions are eligible for tax credits (subject to a combined ceiling of 0.3% of annual turnover and 20% of the profit tax), while individual donors can choose to allocate a portion of their income tax (2%) to CSOs or to churches under Article 84 of the Romanian Fiscal Code. Also, individuals who carry out independent economic activities can deduct sponsorships up to 5% of their taxable income.

**Reviewer Score**  
**3**

Compared to the rest of the world, the ceilings on such incentives are moderately high for corporations, but somehow restrictive for individuals and for small and medium sized enterprises, limiting the size of the donations in the later cases. The process of receiving tax benefits is clear, consistent, and requires a reasonable amount of time and resources. Entities making donations are mostly free from government regulation.

To receive tax benefits, companies are asked to report contributions when they submit their annual tax statement, while individuals can designate their two percent as a part of their annual tax return (for taxpayers with multiple sources of income) or through a special designation form submitted annually (for taxpayers with income from salaries).

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Romanian organizations are eligible to receive significant tax exemptions. As per Article 15(2) of the Fiscal Code, they are exempt from paying profit tax on a large variety of income sources, including membership fees, donations and sponsorships, and revenues from fundraising events. They are also allowed to engage in commercial activities provided that they maintain a separate record of the commercial sections of their accounting. These activities can also benefit from a profit tax exemption, up to 10% of the nonprofit annual income or 15,000 EUR (19,000 USD) per year.

**Reviewer  
Score**  
**4**

In accordance with Government Decision 26/2000, to be eligible to receive tax exemptions, an organization must be registered in Romania as an association, foundation or federation. The process to receive tax exempt status is clear and consistent, requiring a reasonable amount of resources and time. Organizations are able to raise some funds from private sources, and can receive contributions from both domestic and international donors.

## Section Three: Cross-Border Philanthropic Flows

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

Cross-border charitable donations can be received without additional cost and in kind donations are tax exempt if they are used for charitable purposes. According to recent regulations promulgated by the Council of Europe, organizations that import goods to distribute, fundraise, pursue philanthropic objectives, or to satisfy their operational needs are to be exempted from the payment of import tax. Furthermore, tax incentives can be obtained for international charitable donations that are similar to those for domestic donations. The process to receive charitable donations from abroad is clear and consistent, requiring a reasonable amount of resources and time. A wide range of activities can be supported through received cross-border contributions, and Romanian organizations do not need to seek government permission prior to accepting foreign contributions.

**Reviewer  
Score**  
**5**

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

Cross-border charitable donations can be sent without additional cost. Under the Sponsorship Law, cross-border donations are not, however, eligible to receive the same tax incentives as domestic donations if they are going to be used for charitable activities outside Romanian territory. The process to send charitable donations abroad is clear and consistent, requiring a moderate amount of resources and time. There is no prior approval process or reporting requirements for sending charitable contributions. A wide range of activities can be supported through donated cross-border contributions.

<b>Reviewer Score</b>
<b>4</b>

**Section Four: Socio-Cultural Narrative**

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Civil society, in the modern sense of the word, was born in the early twentieth century when cultural and sport associations began to flourish and the Romanian Red Cross started to develop. The Catholic Church continued its tradition of involvement in social issues, both through different monastic orders and church associations. People from the upper classes got involved in building schools, setting up scholarship systems and maintaining hospitals or other public institutions. The middle classes were targeted as part of fundraising events, such as concerts and raffles, or through major campaigns supported by the media. The Romanian Athenaeum, one of the landmarks of Bucharest, is one such example, and was established through a fundraising campaign for individual donations.

After World War II, Romania’s communists seized not only political and economic power, but also the country’s nascent civil society structures. Some were simply destroyed while others were converted to serve new needs, and by the 1950s and 1960s, most of them were fully subordinated to political goals. A “benign” civil society was born in the 1970s and 1980s, one which was stripped of the militant character that was starting to develop in other Eastern European countries. Tourism, caving, nature protection and cultural associations existed, some of which made significant achievements in the late 1980s, either by promoting Romanian art and culture or by contributing to significant environmental studies and nature conservation activities. Although some of these groups had a significant number of voluntary members (often larger than today’s CSOs) they lacked critical agency, as their role was mainly to promote the cultural, scientific or leisure goals of their members. Most of their funds came from the state or through communist organizations, but some resources were also raised through membership fees.

After the fall of communism, the needs of society and the support rendered by increasingly active international supporters and partners led to the creation of a new wave of civil society organizations. These new CSOs were particularly active in addressing the needs of institutionalized children and promoting cultural, health, environmental and community development concerns. Catholic Relief Services and other international organizations active in the area of children and community support have opened offices in Romania, while regional coordination bodies of the Romanian Orthodox Church created NGOs to support the delivery of social services. In the last ten years, Romania has seen a gradual increase in the support that its

NGOs receive from domestic individuals and corporations, largely due to the incentives contained in the Romanian Fiscal Code and the strengthening of ties between CSOs and their local constituencies.

A large majority of the population donates at least once during the year, with two thirds of donors giving to religious causes. Other fields commonly supported by Romanians include social services (one fifth of donors) and health (one tenth). Donors usually give because they are a member of the recipient organization or because their friends and colleagues have made them aware of the organization. Philanthropic attitudes in Romania are further reinforced by the large majority of the country's population which thinks that companies should support social causes. However, only a minority of donors (approximately one in three) think that it is preferable to donate to/through a CSO, while the rest would prefer to make the donation directly to the final beneficiary. Instead, most Romanian citizens believe that the primary role of CSOs should be to address emergency situations and to help with immediate needs, rather than engage strategically to help prevent and solve community or social problems.



## Section One: CSO Formation, Operation, & Dissolution

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

While individuals are partially restricted in their ability to form organizations, Russian law permits individuals to act collectively through unregistered groups or organizations. Despite this, the government continues to heavily monitor and limit the types and purposes of organizations. According to the Article 15 of the Law on NGO, adopted in 1996, founders cannot be foreign citizens or a member of a previously suspended organization. This heavy-handed treatment is generally extrajudicial, and is not prescribed by law. Instead, groups are selectively targeted based upon their activities, and the prosecution of groups is primarily dependent upon their political affiliations.

Reviewer  
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The registration process is extremely burdensome and is inefficiently managed. In addition to requiring heavy resources—though the nominal registration fee is 4,000 RUB (60 USD), the application is impossible to complete with a lawyer, whose services usually cost an additional 41,000 RUB (600 USD)—applicants are sometimes required to repeatedly resubmit their application—and the entire set of required documentation—to the Ministry of Justice. In some cases, organizations have reported that they have had to file up to eight times before the registration authorities would respond. On average, it takes between three and six months to successfully register a CSO in Russia. Registration also has excessive documentation requirements. Applicants must submit: their personal information; copies of the bylaws and constituent documents; copies of the government’s approval of the constituent documents; information on the founders; proof of payment for registration fees; the address of the organization; and if the founder is a foreigner, an extract from the register of foreign legal entities proving the legal status of the founder. The governing body is inconsistent and politically motivated, and the probability of successfully registering almost entirely depends on the personality of the applicants, their political views, and their previous activities.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

Organizations are prevented from exercising true autonomy by the country’s numerous detailed rules and regulations, and face severe impediments—both legal and extralegal—which restrict the purposes of their activities. In September of 2014, several amendments to Russia’s Civil Code came into effect which established new regulations for NGO governance. Despite government assurances to the contrary, the vast majority of these regulations are so poorly written that compliance—by both registration authorities and by organizations—is extremely difficult. Furthermore, Russian reporting requirements are inconsistent, inaccessible, and extremely onerous. In addition to filing

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documents describing their activities, Russian CSOs are also required to report the identities of the personnel comprising their governing bodies, how they spend their money, and what money they receive from foreign sources. These requirements are even more severe for non-profit entities exercising the functions of a foreign agent which, in addition to the aforementioned requirements, must provide an annual audit statement. Finally, the Ministry of Justice further complicates the process by determining both how organizations demonstrate that they have met these requirements and the time by which they must do so.

The structure of an organization's governance varies depending on its form. Russia's Civil Code classifies all legal entities—including Non-Commercial Organizations—as either corporate or unitary. It is worth noting that this distinction between the two is a new phenomenon in Russian law, one that only came into effect in September of 2014. According to Russian law FZ#99, corporate entities are those “legal entities the founders (participants) of which have the right of participation (membership) in them and form their governing body.” In addition to commercial legal entities—which include economic partnerships and companies, peasants' farms, economic partnerships and production cooperatives—corporate legal entities include noncommercial organizations of the following legal forms: consumer cooperatives; public organizations; associations of workers (unions) and associations of real estate owners; Cossack societies registered in the State Register of Cossack Communities in the Russian Federation; and communities of indigenous small-numbered peoples of the Russian Federation. Article 65.1 of the Civil Code also establishes the legal status of unitary entities as “legal entities whose founders do not become members and do not acquire membership rights...These include state and municipal unitary enterprises, foundations, institutions, autonomous noncommercial organizations, religious organizations, and public law companies.” Noncommercial unitary organizations are also further defined, and include funds, institutions (state, municipal and private), autonomous noncommercial organizations, and religious organizations.

Organizations do not have many opportunities to use certain social media channels and are not encouraged to cooperate with international entities. All NCOs receiving or intending to receive funding from any foreign sources which in turn conduct or intend to conduct political activities are required by law to be labelled as “NCOs performing the functions of a foreign agent” or, more simply, “NCOs-foreign agents”. At present, 35 NGOs have been defined as such. However, many of these groups are in fact human rights groups. Furthermore, many Russian organizations have refused to accept or shed existing foreign financing, for fear of being classified as a foreign agent.

### Question Three: To what extent is there government discretion in shutting down CSOs?

While the governing body of a Russian organization is able to voluntarily terminate its activities, the process requires onerous reporting. Furthermore, the activities of a foundation can only be terminated and the foundation itself liquidated by a court decision.

Technically, involuntary termination by a government entity can only occur after a violation. However, there is no legal guarantee that

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organizations will be presented with the opportunity to ameliorate the problem. In reality, involuntary termination almost always depends on the organization's political position. And while legal regulations do exist to guide the involuntary dissolution of an organization, they are inconsistently implemented. Aside from the politicization of Russia's registration authorities, much of the inconsistency in the dissolution process also stems from the fact that there are two ways to pursue dissolution: liquidation and exclusion from the state register of legal entities. The government can exclude from the state register of legal entities any organization that has failed to successfully submit a tax report and which has not had a financial transaction with any bank account during the year. This requirement can be problematic as Russian authorities enjoy excessive legal discretion in determining what constitutes a successful submission. Fortunately, liquidation is a difficult process, which could be confirmed by court decision.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Only individuals are eligible for income tax deductions, which may be claimed up to 25 % of their annual income. These deductions can be claimed on individual donations to non-profit organizations which are: charitable; religious; pursue activities envisaged by the legislation of the Russian Federation; or which pursue activities related to science, culture, amateur sports and physical education, education, public health, human rights, social and legal support, disaster relief, or environmental protection. While this may appear to be a broad group, legal definitions of what does or does not constitute a non-profit greatly limits the range of organizations that can receive tax-deductible donations. The process of receiving tax benefits is clear, consistent, and requires a reasonable amount of time and resources. Corporations making donations are mostly free from government regulation, but are not eligible to receive tax deductions.

Reviewer  
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### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Civil Society Organizations are eligible to receive moderate tax exemptions, but it is important to note that for many organizations only some types of income are tax exempt. And while CSOs are generally exempt from taxes on income derived from donations, grants, and charitable funds, all income derived from economic activities which are comparable with those engaged in by commercial entities are taxable for all NCOs. Fortunately, transfers of properties to CSOs which are made to support the implementation of their primary, non-economic statutory activities are exempt from VAT, as are donations of goods and services.

Reviewer  
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There are limits on the types of organizations that can receive tax exempt income and other tax benefits, as only educational and medical NGOs are tax exempt. Organizations are able to raise funds from private sources without any limitation.

## Section Three: Cross-Border Philanthropic Flows

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

Cross-border charitable donations can be received without incurring additional costs. Such donations are eligible for the same tax incentives as domestic donations if the donation contract is in full compliance with Russian legislation and especially with Article 582 of the Civil Code. The process to receive charitable donations from abroad is clear and consistent, requiring a moderate amount of resources and time. However, since July of 2012 receiving foreign money can be a difficult—and at times even dangerous—venture, due to the fact that the law now defines as “foreign agents” those non-commercial organizations that receive funds and other property from foreign states, their government bodies, international and foreign organizations, foreign citizens, persons without citizenship or persons authorized by them, and/or Russian legal entities receiving funding and other property from said sources. Furthermore, the Law does not provide any definition or minimal threshold under which receipts would not be considered as support from foreign sources.

Reviewer  
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Certain organizations, however, are exempted from the law, specifically state corporations and companies, CSOs established by state companies, state and municipal institutions, political parties, religious organizations, associations of employers and chambers of commerce. It is important to note that while the law’s scope is broad, individuals and business entities which are involved in political activities and which receive support from foreign sources are not subject to the law’s regulations.

Under Russian law, a CSO is considered to engage in political activity, if, regardless of its statutory goals and purposes, it participates—including through financing—in organizing and implementing political actions aimed at influencing the decision-making by state bodies intended for the change of state policy pursued by them, or in the shaping of public opinion for the aforementioned purposes. Such activities are considered political, regardless of whether an organization is conducting them in the interest of foreign funding sources. While the law does not impose direct restrictions on receiving cross-border contributions, the stigma and additional regulatory barriers associated with the foreign agent law place some limitations on the type of activities supported through cross-border contributions.

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

Cross-border charitable donations can be sent without additional cost; however, they are not eligible for the same tax incentives as domestic donations. The process to send charitable donations abroad is clear and consistent, requiring a moderate amount of resources and time. Despite the lack of barriers, there are no significant examples of cross border contributions from either the Russian Government or from Russian donors.

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## Section Four: Socio-Cultural Narrative

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Since 2012, the largest change in Russia's philanthropic environment can be found in the growth of propaganda associating NGOs with foreign agents. This propaganda, which is disseminated both through state television and through other media outlets, has been readily accepted by many ordinary people, regardless of the NGO's actual purpose. Fortunately, Russia has seen progress in other areas, and in spite of deepening skepticism, middle class citizens have become increasingly involved in crowd funding for charitable purposes.

Since the early 20th century, Russian philanthropy has primarily been the domain of the Russian aristocracy, whose support generally went to the arts and the poor. After the fall of the Soviet Union, Russian oligarchs grew increasingly wealthy and philanthropy reappeared when foundations started to form in the late 1990s. Most of these foundations were formed by high net worth individuals that ran successful corporations. And while trust in the philanthropic sector would dip in the early 1990s due to several corruption cases, a few key leaders surfaced, including Vladimir Potanin, who founded the Potanin Foundation. While the philanthropic sector has grown significantly since the 1990s, comparatively speaking, Russian philanthropy is a relatively new phenomenon. Today, there are approximately 226,000 non-commercial organizations in Russia, about half of which are public associations.

Currently, the regulatory regime governing Russian civil society is changing. On July 20, 2012, Russian President Vladimir Putin signed the Federal Law on Introducing Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents (hereinafter referred to as "the Law"). The Law's provisions, which came into effect in November of 2012, have significantly affected both domestic and foreign organizations carrying out activities in Russia. CSOs actively working in the areas of advocacy and human rights have been particularly hard-hit. The Law includes a number of ambiguous provisions that require elaboration in regulations yet to be promulgated. As a result, Russian authorities enjoy tremendous leeway in interpreting it, to the detriment of CSOs.

Under the law, all organizations receiving or intending to receive funding from any foreign sources that also conduct or intend to conduct political activities are defined as "NCOs performing the functions of a "foreign agent" (hereinafter referred to as "NCOs-foreign agents"). The Russian translation of the term "foreign agent" carries a negative connotation and is usually interpreted as a synonym for "foreign spy."

The law also introduced a number of new requirements for public associations (PAs), NCOs, and foreign nongovernmental non-commercial organizations (FNNOs). These new requirements imposed new burdensome obligations on many FNNOs and NCOs receiving foreign funding, expanded the supervisory powers of the state over organizations, and introduced harsh penalties for violation of the Law's provisions. The law's key provisions include a number of regulations that affect and restrict the activities of Russian organizations. For example, the law provides an ambiguous—and thus easy to manipulate—definition of which NCOs fall under the scope of its regulation by: 1) including those NCOs who intend to receive foreign funding and carry political activities; 2) defining "political activities" in such a vague and broad manner that the definition encompasses traditional NCO advocacy activities;

and 3) covering foreign funding from any source, regardless of the amount. Furthermore, the law requires all NCOs to register with the Ministry of Justice prior to receiving funding from foreign sources if they intend to conduct political activities. All materials published and/or distributed by foreign agents must identify the publishing NCO as a “foreign agent,” regardless of whether the particular material was sponsored by foreign funding.

Changes to the criminal law have also been enacted. Under the law, NCOs interacting with foreign organizations will be especially vulnerable to criminal penalties, particularly state treason. There is concern that the new text of the criminal law will allow the national security services to closely scrutinize interactions between Russian citizens and foreign and international organizations and will provide them with a broader base for accusing Russian citizens of passing state secrets, knowingly or not, through the provision of technical assistance or consultations. Furthermore, the law requires that any transfer of money from a foreign source must be immediately reported to a governing body, as the sums could be used in money laundering or in the financing of terrorist activity. If a bank fails to report such transactions, the bank will be penalized 200,000-400,000 rubles (approximately 3,100 – 6,200 USD) and the manager of the bank will also be personally penalized.



## Section One: CSO Formation, Operation, & Dissolution

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

The Constitution of Senegal recognizes the Freedom of Association, subject to a number of provisos. First, Article 4 states that individuals exercising this right must still “respect the Constitution, as well as principles of national sovereignty and democracy.” Similarly, Article 5 outlaws any act of “racial, technical, or religious discrimination that can harm the internal security of the State or the territorial integrity of the Republic, public order, or the republican nature of the State”. The Senegalese Constitution also forbids any association from identifying itself with a race, ethnic group, sex, sect, language, or region. In addition, Law 79-02 of 1979, provides for the dissolution of any association—both registered and unregistered—whose activities “harm public order”.

Reviewer  
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To be officially recognized as an NGO, an association or organization must submit an application and demonstrate that it has undertaken activities within Senegal’s national territory and that it has been in existence for at least two years. The organization then sends an application letter to the Ministry of Interior’s Directorate of General Affairs, requesting its recognition as an NGO and attaches five items: (1) a copy of the statutes of the association and the address of its headquarters; (2) a copy of the receipt proving that the association has declared itself to the government in the past, or , for foreign organizations, a copy of the registration certificate from the country of origin; (3) a list of the main members of the organization’s governing body—usually its trustees or its board of directors—with information on their ages, nationalities, professions, and addresses; (4) a memorandum or write-up that presents the private association or organization making the application for recognition as an NGO; and(5) a program of activities and budget stating the possible sources of financial support.

Senegalese organizations usually adopt one of six forms, depending on their activities, geographical scope, the desired degree of legal formality, and size. The first of these forms, associations, are regulated by the provisions of the Civil and Commercial Obligations Code (CCOC) of 1968. And while associations are usually created without any legal formality, the law requires that they eventually register with the Directorate of General Affairs (DAGAT) of the Ministry of Interior by lodging the appropriate application with the local government authority within their proposed area of operation. The local government authorities (i.e. the regional governors) then transmit the application for registration to the DAGAT. Following registration with the Ministry of Interior, the law requires that they also register with the Directorate of Statistics to obtain a national identification number.

Professional Trade Union’s constitute the second primary form, and are governed by Article 6 of the Labour code. Professional Trade Union’s allow individuals within the same trade, industry or aligned professions to pool resources, bargain collectively, and engage in advocacy. The structures of these organizations can, however, be complex as Professional Trade Unions

can be further divided into three categories: unions of salaried workers, unions of informal sector workers and federations of employers' organizations.

The third grouping is composed of community based organizations, which are also referred to as basic community organizations. These organizations have no formal legal status and they work largely at the community level. Community-based organizations constitute the majority of associations operating in Senegal, and are especially prominent in rural and peri-urban areas. Because of their informal structure, community based organizations do not have a defined legal framework. Their work usually focuses on issues of health, child protection, and local economic development.

Though they are less popular than they were just a few decades ago, Sporting and Cultural Associations (SCAs) make up a fourth category of Senegalese organizations. SCAs are associations established with the main goal of advancing popular education, sporting or cultural education. They are regulated by the terms of Article 821 of Law No.68-08 and Decree No.76-040, which stipulates that the profits resulting from any commercial or profit generating activities cannot be shared amongst the members of the association. SCAs can, however, receive subsidies from the State under Article 821(3) of the Civil and Commercial Obligations Code (CCOC) of 1968.

Fifth, Foundations have come to play an increasingly prominent role in the funding of Senegalese efforts. Consisting of legal entities made up of at least one person and possessing assets intended for the accomplishment of public or general interests, Foundations are regulated by the terms of Law No.95-11 of April 7, 1995. This law defines and establishes the legal bases for Public Utility foundations in Senegal. While recognition as a Public Utility may sound anachronistic, in Senegal, the term is used to confer legal status, as all foundations legally recognized as a 'Public Utility' are under the overall administrative oversight of the Ministry of Finance whilst day-to-day technical supervision is done by the line Ministry within the theme or area of such Foundation's operation. In other words, each Foundation is deemed to technically fall under the regulatory apparatus of a specific government Ministry and the State appoints representatives who can sit on the board of the Foundation.

Finally, many organizations choose to register as Non-Governmental Organizations (NGOs). A relatively flexible form, NGOs are regulated by the terms of the CCOC and in particular Decree No.96-103 which defines NGOs as: "non-profit private associations or organizations whose goal is to offer support to development in Senegal and that are recognized in this capacity by the government".

## Question Two: To what extent are CSOs free to operate without excessive government interference?

Senegalese law does not prohibit the registration of foreign NGOs provided that they do not engage in activities that violate the international conventions to which Senegal is a party to. CSOs in Senegal are free to define their goals, their internal governance structures, and their activities provided that they fall within the mandate defined in their own statutes and are not contrary to the aforementioned constitutional provisions. Article

Reviewer  
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4.3

12(2) of the Senegalese Constitution provides that groups whose objectives or actions are contrary to the country's penal laws or are a threat to "public order" are prohibited.

The Constitution and other relevant laws place no restrictions on the ability of NGOs to criticize the Government. Analysts have, however, identified a growing sensitivity amongst certain Government quarters to criticism relating to governance and human rights issues. In response, many members of the political elite have increasingly suggested that international NGOs are being manipulated and/or controlled by hostile foreign forces. These sensitivities notwithstanding, there are no legal restrictions preventing associations or NGOs from collaborating or cooperating with any other duly registered or recognized group in the country or abroad. Senegal also does not place any limitations on access to the Internet so long as users do not engage in any activity that is in violation of either the constitution or the penal code. Similarly, associations and NGOs are free to solicit and receive - without any restriction - both domestic and foreign funding.

### Question Three: To what extent is there government discretion in shutting down CSOs?

Senegal has a highly flexible registration system for CSOs and as such significant discretion is given to their governing boards on matters pertaining to the dissolution of both incorporated and un-incorporated civil society formations. The law contains standard provisions requiring due notification of intended dissolution for incorporated organizations and the distribution of assets in accordance with the terms of an organization's articles of association, statutes or constitution.

Reviewer  
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However, the Government does have the authority to enforce constitutional provisions that organizations not undermine the security of Senegal, respect the constitution, and not participate in discriminatory activities. As such, the administrative authority has the discretion to shut down an NGO or Association that is deemed to be in violation of the provisions of the national Constitution. A reading of all the applicable laws suggests that rules of natural justice and due notice will be applied to the offending party requiring compliance with the legal provisions or risk the consequences. Nonetheless, Senegal has not involuntarily dissolved an NGO since 2000, and the likelihood that it will do so in the future is relatively minimal.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

To a large extent, the tax system is favorable to making charitable donations. Following recommendations by major donors, Senegal has attempted to lower barriers to outside financial flows by lowering VAT and simplifying approval procedures. However, outside financial flows are still impeded by poorly designed and implemented regulatory controls, high compliance costs, and ineffective tax professionals.

Reviewer  
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### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

There are no formal legal barriers that either stop or inhibit Senegalese CSOs from receiving charitable donations. However, and as discussed in greater detail in Indicator Questions Six and Seven, the diffuse nature of Senegalese legislation unwittingly limits the ability of CSOs to optimize the amount of resources available to them by impeding their ability to efficiently utilize impact investment vehicles and processes.

Reviewer  
Score

3.3

First, Senegal suffers from a lack of investment vehicles. Although impact investment funds have been used effectively in other countries to pool and direct private capital towards investment opportunities in impact enterprises, the limited availability of investment funds in Senegal limits the availability of funding. Second, CSOs in Senegal must also deal with incomplete or asymmetric financial information. Most CSOs have access to only a limited database of impact enterprises and investment opportunities. As a result, most of the matching of borrowers and lenders is done by informal networks and nascent Impact Investing platforms. Similarly, groups also suffer from a dearth of exit options. Indeed, one landmark 2012 study by Dahlberg found that “the equity capital markets in Senegal are still incipient, with limited liquidity. This serves as a disincentive to investment funds that need to profitably exit from their investments.”

Senegalese groups also suffer from a number of challenges when they attempt to direct capital to impact investing. First, CSOs and impact investors must choose from a number of competing incentives that while beneficial, may undermine the broader goals that the organization is attempting to achieve. For example, while groups may take advantage of the suspension of customs duty and surcharges on selected imported products such as rice and powdered milk, doing so discourages local agricultural production. Second, the tax framework is opaque, and certain exemptions have led to confusion for both entrepreneurs and investors. For example, while the law states that enterprises can benefit from the suspension of VAT for three years, it is unclear whether or not they are obliged to repay all the accumulated VAT at the end.

In conclusion, the tax system is favorable to making charitable donations, but requires greater clarification, coordination and synergy. The current framework addresses donations made by non-commercial entities more comprehensively than donations or social impact investments by for-profit organizations.

## Section Three: Cross-Border Philanthropic Flows

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

The regulatory legal environment in Senegal is favorable to receiving cross-border donations and investments. However, and because public resources alone have not been able to achieve the government’s objectives of economic growth, the Government has engaged in a

concerted effort to harness private investment to generate social benefits. Since 2012, Senegal’s National Investment Promotion Agency (APIX) has advocated for the use of policy tools to catalyze impact investment aimed at directing private capital towards projects capable of providing solutions to major social problems. The Government of Senegal has identified entrepreneurship and enterprises, particularly small and medium enterprises (SMEs), as the engines of wealth creation and economic growth. However, beyond supporting general SME activity, the Government actively encourages enterprises that consciously seek to create a direct scalable social impact through their business models.

Reviewer  
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**3.6**

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

Senegalese laws do not provide any restrictions on the repatriation or transfer of private capital. Senegal's 2004 Investment Code is the statutory body which regulates foreign investments. The Code set the tone on the repatriation of profit and capital observing the principle of equality in treatment of all parties involved. Furthermore, the Code also specifies tax and customs exemptions according to specificities like the size of the investment, classification of the investor (such as small or medium-sized enterprise versus a larger corporation), and location (investments outside of Dakar receive longer periods of exoneration from taxes). The Government of Senegal does limit the amount of foreign exchange individuals may take out of the country on trips. Departing travelers may take a maximum of 6 million CFA in Euros or other foreign currency/traveler’s checks (approximately USD 13,000) upon presentation of a valid airline ticket.

Reviewer  
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**3.5**

It is important to note that the aforementioned Code which regulates charitable donations across the Senegalese borders was not created to harm CSOs. Rather the laws were designed in an era where cross-border donations from Senegalese nationals and organizations were not envisioned. As such, they deal indirectly with the issue of donations and do not specifically address the unique aspects of cross-border philanthropy, such as special exemptions, deductibility and related matters. Crucially, there is no restriction on the transfer or repatriation of capital and income earned in Senegal, or on investments financed with convertible currency. In the absence of a prohibition, this means that cross-border charitable donations can be sent without additional cost and such donations are not eligible for the same tax incentives as domestic donations. The process to send charitable donations abroad is clear and consistent, requiring a moderate amount of resources and time.

## Section Four: Socio-Cultural Narrative

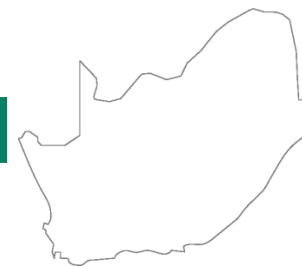
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Senegal has a strong civil society and a deeply established civic culture that dates back to the dawn of the 20th century. Senegal’s civic space has been shaped by internal social struggles as well as geo-economic and geo-political events. As a result, associations have come to permeate every aspect of Senegalese life. There are different categories of non-State organizations, including professional, political, religious, quasi-commercial and family-based

associations. While early Senegalese non-profit organizations focused largely on matters of culture and sports, these newer forms have come to dominate the civic landscape.

A key turning point for civil society occurred in the 1970s, when, after a severe drought, organizations devoted to development began to emerge. These organizations would prove essential to Senegal's attempts to deal with the fallout of the economic structural adjustment era of the 1980s and 1990s, which saw a deepening of poverty and income inequality in Senegal. The difficulties of the period did, however, lead to a proliferation of civil society organizations focused on economic empowerment and social protection programs aimed at the poorest of the poor. Senegal would also see increased political liberalization in 1990 after the fall of the Berlin Wall and the collapse of dictatorships across much of Africa. This period of economic and political liberalization coincided with the global mobilization for the first Beijing Conference on the Status of Women. As such, Senegal saw an increase in the number of human rights organizations and groups working on issues of women's rights. More recently towards the end of President Abdoulaye Wade's tenure, a group of CSOs in the June 21st Movement were able to openly and freely oppose his attempt to seek a third term. Nonetheless, the government has grown increasingly sensitive to criticism of its human rights and governance record by groups such as Human Rights Watch and Amnesty International.

Reviewer: Ricardo Wyngaard  
Institutional Affiliation: Independent Expert



### Section One: CSO Formation, Operation, & Dissolution

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

South Africa has adopted and abides by the major treaties that protect the freedom of association, in particular, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. This right is also enshrined in Clause 18 of the country's Constitution. Practically, there are three forms of legal entities for non-profit organizations operating in South Africa: voluntary associations, non-profit trusts, and non-profit companies. Of these entities, voluntary associations are the most popular because their establishment is fairly quick, inexpensive and easy. A voluntary association is established in terms of common law and basically entails the finalization of the organization's constitution by its members. The time to register a non-profit trust depends on the local office where registration takes place and range from 2 weeks to 2 months. Incorporation of a non-profit company can take between 3 to 4 months. Any of these three entities can register in terms of the Nonprofit Organizations Act, which process takes about two months.

Reviewer  
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Seeking to cultivate a welcoming environment for nonprofit organizations, in 1997 South Africa adopted the Nonprofit Organizations Act of 1997 which established the basic requirements for CSO registration in the country. These requirements are not especially onerous, and South African law does not prohibit the formation and operation of unregistered groups. Groups are also generally not subjected to frustrating legal impediments when setting up non-profit organizations. The law neither restricts who can be a founder nor demands a certain amount of minimum capital or assets. The law generally makes provision for applicants to appeal the decisions of the departments responsible for registrations. Setting up and registering a non-profit organization may be subject to delays, but in 2013 the Directorate for Nonprofit Organizations introduced an online registration facility which has significantly improved the registration process. The Directorate for NPOs has, however, resisted foreign involvement by refusing to register non-profit organizations if the majority of its board members are not South African citizens. After some exchange of correspondence, the NPO Directorate did, however, register an organization in October 2014 which consisted of mostly non-South Africans and only required one South African board member.

#### Question Two: To what extent are CSOs free to operate without excessive government interference?

Recently, organizations are generally allowed to decide on their internal governance structures and government actors only rarely interfere with the internal governance structures of non-profit organizations. The requirements that are legally imposed upon CSOs are usually aimed at ensuring that the organization is an authentic non-profit organization which is not

abused for private gain and that the activities of the organization are lawful. The NPO Act, for example, lays down a number of requirements that must be adhered to in order for a non-profit organization to be registered and be in compliance with the terms of the NPO Act. The founding document of a CSO must provide, inter alia: that the organization's incomes and assets are not distributable to its members or officers, that these individuals have no claims to these incomes or properties, the organization's structure and governance protocols, procedures for dissolution, and procedures for distributing assets in cases of dissolution.

Reviewer  
Score

4.0

Similar requirements are applicable to tax exempt organizations and are provided for in South Africa's Income Tax Act. CSOs are not prohibited from participating in networks, using the Internet or from employing other forms of social media. Reporting requirements for CSOs are freely available and equally applicable to all organizations. One provincial department of social development has issued a draft policy declaring the department's desire to be involved with the appointment of board members of the organizations funded by the department. Some organizations have, however, criticized this draft policy as it would impede upon the independence of non-profit organizations.

### Question Three: To what extent is there government discretion in shutting down CSOs?

As per the common law, the Trust Property Control Act, and the Companies Act, the governing body of an organization is allowed to voluntarily dissolve itself. South African law does not generally allow governments much discretion in shutting down the activities of an organization. In the event that a government department intends to close down an organization, it would be required to first approach a court of law to obtain an order for that purpose. Involuntary termination is usually only provided for in circumstances where an organization may be insolvent and would then become subject to the statutes contained in the Insolvency Act. This law, originally passed in 1936, is applied relatively equally to all organizations.

Reviewer  
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4

Organizations may in certain instances also be deregistered when there has been noncompliance with relevant legislation. For example, the NPO Act empowers to the Director of NPOs to cancel the registration of an organization that has not complied with a material provision of its constitution; a condition or term of any benefit or allowance conferred on it in terms of the NPO Act; or its reporting requirements as contained in the NPO Act. Before cancelling the registration status of an organization, the Director must first issue a compliance notice to the organization in which it is given the opportunity to comply with the relevant provisions. An organization that has had its registration cancelled can also lodge an appeal against the decision of the Director to an arbitration panel appointed by the Minister of Social Development.

The Minister of Social Development has, however, unfortunately failed since 2011 to appoint an arbitration panel as required in terms of law. Large-scale de-registrations occurred 2013 which resulted in approximately one third of the registered NPOs being deregistered. This sparked a massive public outcry which saw the reinstatement of the deregistered NPOs.

Fortunately, and as of August 2014, the appointment process of the arbitration panel was on track and heading towards resolution.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Non-profit organizations can access a number of tax benefits provided for in the terms of the Income Tax Act. This Act—along with various other rulings and statutes—confers upon South African NPOs a number of advantages. First, they ensure that South African NPOs are fully exempted from paying income tax if they engage in no or limited trading activities. This also means that CSOs are partially exempted from paying income tax in situations where its trading income exceeds the limitations contained in Section 10 (1) (cN) of the Income Tax Act. Second, CSOs are able to receive donor deductible contributions. Only approved public benefit organizations (PBOs) whose status complies with the terms of section 18A of the Income Tax Act can issue receipts to their donors for donations received—either in cash or in-kind—which will allow the donors to make deductions from their taxable income—up to 10% for both individuals and corporations. Third, South African CSOs are able to access other tax benefits that are reliant on the organization’s PBO status. These include exemptions from transfer duties, estate duties, capital gains taxes, donations taxes, skills development levies and dividend taxes. Finally, South African law allows organizations to apply for rebates on property rate taxes which are usually accessed at the local government level.

Reviewer  
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To access these main tax benefits, most organizations must become approved PBOs. Applications to be approved as a PBO are submitted to the Tax Exemption Unit of the South African Revenue Service. Application is made by completing a prescribed form and providing supporting information on the activities of the organization. The process should take about two months, in theory, but applicants have waited much longer in practice, sometimes up to six months. PBOs must carry on one or more public benefit activities as defined in the Income Tax Act and must submit annual income tax returns to qualify. Only in a few instances are PBOs required to submit audited financial statements.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

As indicated in previous responses, South African NPOs are able to receive contributions that are donor deductible. Only approved public benefit organizations (PBOs) whose status complies with the terms of section 18A of the Income Tax Act, however, can issue receipts to their donors for donations received—either in cash or in-kind—which will allow the donors to make deductions from their taxable income—up to 10% for both individuals and corporations. Section 18A of the Income Tax Act allows taxpayers to make a deduction from their taxable income when they make donations to certain organizations.

Reviewer  
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The process to receive these deductible donations is clearly articulated in Section 18A of the Income Tax Act, which stipulates that a donation will only qualify for a deduction if: the donation is made to an approved PBO, the PBO receiving the donation uses the funds to carry out public benefit activities, the donation is not made in payment for services rendered to the taxpayer, the donation is not made in the form of a service, and the donation does not exceed ten percent of the taxpayer's taxable income.

Not all PBOs, however, can receive tax deductible donations. Some organizations, for example, focus on activities such as the advancement, promotion or preservation of the arts, culture, or customs. The provisions of youth leadership or development programs do not qualify for donor deductible status.

## Section Three: Cross-Border Philanthropic Flows

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

South Africa's Customs and Excise Act of 1964 does make provision for the general rebate of customs duties on imported goods for NPOs. This rebate is, however, made in accordance with the terms and definitions provided in Schedule No. 4 of the Act and provides a refund—partial or full—of customs duties on certain specified imported goods, subject to various conditions. This includes situations where goods are used for cultural, educational, charitable, welfare or youth organizations.

Reviewer  
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3

For example, goods for disabled or indigent persons are eligible for a full rebate provided that the recipient can produce a certificate from a specified organization such as the South African National Council for the Blind, the South African National Council for the Deaf or the South African National Council for Mental Health. These certificates must in turn be endorsed by the International Trade Administration Commission and applicants must demonstrate that the imported goods are for the exclusive use of persons with disabilities. The requirement for an endorsement of the Commission is not, however, solely limited to goods for disabled persons, and all goods seeking a rebate must demonstrate that they are for the exclusive use of their recipients and must be distributed free of charge. Goods that either fail, or are ineligible, to receive a rebate are subject to normal customs duties, which are ordinarily calculated as a percentage on the value of the goods and can range from 5 to 20 percent.

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

South Africa's tax laws are not restrictive for PBOs operating outside its borders. The Income Tax Act used to require PBOs to conduct at least 85% of their public benefit activities—whether calculated by time or money—within the borders of South Africa. This requirement was, however, abandoned in 2006 and PBOs are now generally free to conduct their activities outside the country's borders. Nonetheless, a PBO can only obtain donor deductible status if it conducts its public benefit activities in South Africa.

Reviewer  
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3

Even though the tax laws have seemingly been relaxed, South Africa still enforces prohibitory exchange controls, and all residents are subject to exchange control requirements. And although the controls have generally been relaxed in recent years, they nonetheless still stipulate that applications by official or recognized charitable, religious or educational bodies seeking to transfer funds to groups in countries outside the Common Monetary Area—Namibia, Lesotho, South Africa and Swaziland—must be submitted to the Financial Surveillance Department with full particulars of the underlying request for approval. Organizations are not, however, required to obtain government consent in order to receive off-shore donations or to channel such donations via a government department.

## Section Four: Socio-Cultural Narrative

National research in South Africa has described it as a “nation of givers” and has concluded that the overwhelming majority of those that participated in the study—over 90%—gave time, money and in-kind donations. Although South Africa does not rank highly in the most recent edition of the World Giving Index, philanthropic activity is growing.

South Africa has long benefited from a rich charitable culture, one that has given rise to a vibrant civil society and non-profit sector. South Africans have generally aspired to the spirit of Ubuntu. This principle embraces the duty to care for others and can be roughly translated as “I am what I am because of who we all are”. The spirit of Ubuntu has been present in South African communities and has laid the platform for philanthropic activity on both individual and organizational levels. CSOs are perceived as an integral part of South African society, and given the high levels of poverty in South Africa, CSOs have played a significant role in rendering much needed services to marginalized communities. In addition to rendering services, CSOs are also playing an important role in advocating for policy changes to support South African Society. During its repressive past, the non-profit sector—which has historically mostly consisted of small community-based organizations—played a significant role in bringing about democracy and ending apartheid in South Africa.

South Africa’s legislation pertaining to non-profit organizations provides a supportive environment for such organizations. However, the resources to support the effective implementation of such laws have been lacking. Legislation and policies should be supported with well-resourced departments and institutions that can give expression to the essence of those laws.





## Section One: CSO Formation, Operation, & Dissolution

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

Individuals and corporations are mostly free to form organizations. Nevertheless, for foundations and public benefit associations, the supervising authorities are somewhat inconsistent, but largely apolitical. In many cases, registration as a public benefit organization is linked to tax incentives, so registries are somewhat conservative in their rulings. Foundations are required to be registered, and to obtain a declaration from the supervising authorities establishing its public benefit purposes in addition to a minimum amount of capital (35,560 USD). Crucially, CSOs are not prohibited from pursuing any legal purposes.

Reviewer  
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### Question Two: To what extent are CSOs free to operate without excessive government interference?

Recently, various soft law tools—which are not legally binding—have been approved for use by the government, allowing it to influence the functioning of boards and their members. However, although these tools—which primarily originate from FATF’s recommendations—have grown increasingly influential, the law still allows for sufficient discretion in setting the structure and governance of CSOs. In Spain, CSOs are permitted to contact and cooperate with colleagues in civil society and their peers in both the business and government sectors within and without the country. In return, these organizations must comply with legal and tax requirements and maintain records of their transactions with their partners and beneficiaries. Spanish organizations are not, however, required to provide the names of their donors or beneficiaries to the supervising authorities. Transaction records are used only in cases where an organization is suspected of involvement in activities related to money laundering or terrorism. Public benefit associations and foundations also have to follow rules regarding reporting requirements, which are relatively clear and predictable. While the process is bureaucratic, it is scalable, and organizations have different requirements depending on their size, resources, and structure.

Reviewer  
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### Question Three: To what extent is there government discretion in shutting down CSOs?

In Spain, associations and foundations, among other entities, can be extinguished voluntarily. Should an organization’s board wish to do so, they must proceed according to an administrative process established in its bylaws. While voluntary dissolution does not require government

Reviewer  
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4.5

authorization, the decision of the board to dissolve must be ratified by the supervising authorities. The government also has to ratify the destination of the remaining assets of an extinguished foundation after liquidation. For associations, this process is lightly supervised and managed. If the government wants to dissolve them, a court decision is required, even after the most flagrant of violations. Involuntary dissolution is rarely pursued, as the rights of associations and foundations are formally recognized in the Constitution of 1978 as civil rights.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Both individual and corporate donors are eligible to receive tax incentives for cash or in-kind contributions made to qualified registered CSOs. Nevertheless, only some CSOs manage to qualify: mainly foundations and public benefit associations as well as sport federations or some special entities. As such, donations made to associations without public benefit recognition are ineligible to receive the tax benefits extended to other organizations.

Reviewer  
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Before December 2014, income tax incentives took the form of tax credits: 25% of the amount or of the value donated for individuals, and 35% of the amount or of the value donated for corporations. In either case, credits were limited to 10% of the donor's taxable income. As such, while individuals were free to donate as much as they wanted, they could not deduct more than 10% of their personal income in a given year. Consequently, donations which exceeded the 10% ceiling were ineligible to receive incentives. Donations by corporations were similarly regulated, although they could deduct amounts which exceeded the ceiling over the next ten years. Other types of in-kind contributions were not clearly recognized as eligible to receive tax incentives, most notably services which were rendered pro bono.

It is worth noting, however, that Spain's tax system is in the process of changing. A new tax law has made its way through Parliament, one which has raised tax incentives for eligible contributions. For individual donors, they are now able to claim a credit of up to 75% for the first 150 € (180 USD) donated, and 30% for the remainder. In some special cases, individual donors may even be able to claim up to 35% provided they meet the government's specific requirements. For their part, corporate donors are still able to claim deductions at a rate of 35%, but may now also claim 40% in some special cases.

The process of receiving tax benefits when making donations is clear and predictable. For entities—namely foundations and public benefit associations, as well as some other special entities—tax incentives are automatically applied if they fulfill the requirements of the tax regulations for not for profit entities. This means that eligible organization must provide various pieces of information to Spain's Tax Authorities and complete the corresponding tax form (as other contributors). Just like individuals or other entities, they are subject to the discretion of the Tax Authorities, and disputes have arisen concerning varying interpretations of the requirements for being considered a not for profit entity. Both individual and corporate donors have to declare in their tax forms the donations made to the not for profit(s) that they wish to

claim a deduction on. CSOs have to issue a certification to the donors containing: the name and fiscal information of the CSO, the name and identification of the donors, the amount of the donation and the date. CSOs have to provide this information annually to the country's Tax Authorities through the completion of a tax form. The information contained in these forms is not, however, made public.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Eligible CSOs are able to receive a wide variety of tax exemptions in the form of property tax exemptions, income tax exemptions, and others. However, only some CSOs are eligible, namely foundations and public benefit associations, sport federations, and some special entities. However, associations without public benefit recognition are not eligible. As a result, though associations without public benefit recognition are taxed at a lower rate than companies, they are taxed more than eligible entities and some of their incomes are not exempt.

Reviewer  
Score

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Although restrictions on receiving donations do exist, they now come not from the tax code, but rather from regulation designed to prevent money laundering and financial support for terrorism. According to these regulations, donors contributing more than 100 € (120 USD) must be identified by the receiving CSO.

## Section Three: Cross-Border Philanthropic Flows

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

For income tax purposes, cross-border donations received by CSOs are treated no different than foreign revenues received by corporations. As such, while there are no taxes on receiving cross-border philanthropic cash donations, taxes are levied on receiving in-kind donations, namely VAT and duties. VAT is also levied on domestic acquisitions and purchases. Other costs also come from the transaction costs imposed by banks and other financial institutions. Cross border transactions are relatively easy to conduct, and there is no approval procedure for receiving cross-border donations.

Reviewer  
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4.7

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

While there are no taxes on sending cross border cash donations, such contributions are not tax deductible, whether they are made by individuals or by corporations. Furthermore, some taxes are levied on exported in-kind donations, namely VAT and in some cases duties. Other costs are imposed by banks and other financial institutions. Like most European states, Spain does not require CSOs to attain permission before

Reviewer  
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receiving cross-border donations.

## Section Four: Socio-Cultural Narrative

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In the last few years, philanthropic activity has become better perceived by the people of Spain, and the number of individual donors has increased. Nevertheless, CSOs lack diverse funding sources, and most of the donations to foundations, for example, come from corporations (70%), while only a fraction come from individuals (25%). On the whole though, Spain's people are relatively generous, and the country's citizens annually contribute on average between 150 € (180 USD) and 200 € (240 USD) per person.

In Spain—as in many other European countries—public bodies have played an important role in many fields including education, social services, and cultural appreciation. However, since the beginning of the current economic crisis, this role is changing in many fields, albeit very slowly. As a result, public budgets increasingly need to be complemented by services from foundations and charities. Despite the newfound importance of the sector, the government nonetheless maintains its tendency to intervene in its affairs. The importance of the role that the third sector plays in society is becoming increasingly well understood, and is being promoted through research studying the role of these institutions and through self-regulatory mechanisms designed to promote the knowledge and transparency of the sector.



## Section One: CSO Formation, Operation, & Dissolution

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

The current principal Act governing CSOs is the Non-Governmental Organizations Act 24 of 2002. Non-Governmental Organizations may, however, register under the Companies Act or the Trusteeship Act, which some—namely Pereira in 2011—have argued provide superior legal status. The option to register an organization under of these acts is attributed to the apparent lack of a consolidated and definitive regulatory structure for philanthropic activities. The legal status of an organization is particularly important in Tanzania, where all philanthropic organizations are technically exempted from all forms of tax provided that that they meet the governments registration requirements.

Reviewer  
Score

4.0

The Tanzanian Non-Governmental Organization Act 24 of 2002 defines a National Non-Governmental Organization (NGO) as one “established in accordance with the provisions of this Act and whose scope of operation extends to more than two regions”. Within the scope of the Act, NGO’s are further defined as: “a voluntary grouping of individuals or an organization which is autonomous, non-partisan, and non-profit making and [is] organized locally at the grassroots, national or international levels”. The law also defines the activities that NGOs may engage in, and states that NGO’s must exist “for the purpose of enhancing or promoting economic, environmental, social or cultural development, or protecting the environment”, or for advocating for certain interests. Crucially, the law does not include social clubs, political parties, religious organizations, or trade unions under its NGO definition.

The NGO Act also provides a self-regulation framework for NGOs with clear governance and accountability structures. At the pinnacle of this self-regulation structure is an NGO governing board that consists of 30 members from various NGOs. This structure allows the CSO sector to set its own terms of reference, governance protocols and obligatory procedures within the provisions of the law.

Registration requires an application fee of between 80,000 TZS(50 USD) and 150,000 TZS, depending on the level of registration i.e. local, national or international. This is considered an affordable amount, as no other assets are required for this process. Section 11(1) of the NGO Act 24 of 2002 requires every NGO operating in Tanzania to register with the Registrar of NGOs. Sections 11(2) to (5) make provision for the exemption of those NGOs whose status requires registration to be made under any other written law, or to apply for registration under other such laws. Those NGOs that are registered or established under any other written law are required to apply to the Registrar for a certificate of compliance. The certificate of compliance is in turn issued upon satisfaction of the terms and conditions for registration under the NGO Act and affords organizations legal treatment comparable to those organizations that

received a certificate of registration issued under the NGO Act. No fee is required to process an application for a certificate of compliance.

The attainment of the certificate is not, however, the end of the process. Section 12(1) of the Act requires those wishing to register a Non-Governmental Organization to submit an application in the prescribed form to the Registrar. This application for registration may be submitted by one or more founders, and must be accompanied by: (1) a copy of the constitution of the Non-Governmental Organization; (2) minutes containing the full names and signatures of founding members; (3) the personal particulars of office bearers; (4) the address and physical location of the head office of the NGO; (5) an application fee; and (6) any other particulars or information as may be required by the Registrar. Section 13(1) of the NGO Act requires the Registrar of NGOs to refer the application together with their recommendations to the NGOs Board for consideration no more than one month after receiving the application. Thereafter, the NGO Board has two months to consider and make a determination on the application for registration. The Board is then presented with two choices. First, it can choose to approve the application and direct the Registrar to register the Non-Governmental Organization. Second, it can also decide to deny the application, in which case it will direct the Registrar to inform the applicant or applicants accordingly. According to Section 14 (1), the NGO Board may only refuse an application for registration if: (1) it is satisfied that the activities of a Non-Governmental Organizations are not for public interest or are contrary to any written law; (2) the application has given false or misleading information in any material particular; or if it possesses a recommendation from the National Council of NGO's to not register the applicant.

Should the Board refuse to register an NGO, it must notify the applicant of the reasons for the refusal no more than 21 days after reaching the decision. Section 15 of the NGO Act grants 'any applicant who is not satisfied with the decision of the Board' the right to appeal to the Minister responsible for NGOs. Similarly, Section 16(1) of the Act gives dissatisfied applicants the right to apply to the Board for a review of its earlier decision. The applicant is able to choose which route to take based on the circumstances. On receipt of the appeal, the Minister has two months to consider and make a decision on the appeal. In determining the appeal the Minister may: uphold, quash or vary the decision of the Board; require the Board to revise or review its decision; or require the Board to inquire into specific information from the appellant and make further consideration of the application.

Upon registration, NGOs are issued a certificate of registration. That, amongst others, contains information on: (1) the name and address of the NGO; (2) its area of operation, and (3) the terms and conditions that the certificate is subject to. A certificate of registration is considered to be conclusive evidence that an entity possesses the authority to operate as specified. The registration process is however, slightly more complicated for organizations with foreign members. According to Section 19 of the NGO Act, applicants that have foreign employees require an additional approval from the Director of Immigration Services.

In conclusion, Tanzanian CSOs operate in a relatively favorable environment. According to Pereira's seminal 2011 analysis, CSOs have the ability to "challenge official positions and develop their own policy proposals". Nonetheless, CSOs may occasionally face regulatory and operational challenges that constrain their activities.

## Question Two: To what extent are CSOs free to operate without excessive government interference?

The Non-Governmental Organizations Act gives NGOs leeway to determine their own governance structures, whatever structure the organization decides on, it must be submitted to the government upon registering, and it is the responsibility of the NGO to inform the Registrar of any changes that it may make. The rules governing what can and cannot be included in an organization's bylaws are largely determined by the National Council of NGOs. It is important to note that this council is governed by members selected by NGOs to represent their interests, and that it therefore represents perspectives of entities outside the government. The unique structure of the National Council of NGOs is largely a reflection of section 31 of the NGO Act's recommendation to international non-governmental organizations to "foster and promote the capacities and abilities of other NGOs, especially indigenous organizations".

Reviewer  
Score

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At present, no law specifically outlines or dictates the activities of NGOs. The Act is relatively permissive, and while it requires that NGOs respect the law, culture and traditions of the communities in which they function, neither it nor any other law outlines or dictates the activities of NGOs.

Similarly, there are no legal binding documents that impede NGOs from participating in networks or from using social media. However, while media freedom exists in practice, there are a number of regulations which impede access to information such as the National Security Act of 1970 and Civil Service Act, the latter of which prevents a commissioner or civil servant from revealing any information concerning the Government without the consent of the permanent secretary or relevant minister.

Reporting obligations are also fairly benign, and the NGO Act provides a detailed generic outline of all reporting obligations for those organizations that have gone through the registration process. These include an annual report of activities undertaken by the organization, as well as an audited report. These are both required to be submitted to the NGO Council and the NGO Board, and to be made available to the Public, and other stake holders.

## Question Three: To what extent is there government discretion in shutting down CSOs?

While the NGO Act 24 of 2002 does not speak to voluntary termination specifically, Sections 20 and 21 do address the involuntary cancellation of a registration certificate. Section 20(1) states that subject to Section 21, the Board may suspend or cancel a certificate of registration if it is satisfied that:(1) the terms or conditions prescribed in the certificate have been violated;(2) the Non-Governmental Organization has ceased to exist; (3) the Non-Governmental Organization has operated in variance to its constitution; or (4) the National Council of NGOs has submitted, to the satisfaction of the Board, a recommendation for its suspension or cancellation. Furthermore, Section 9 of the Amendment Act 11 states that an organization can also be terminated if it has failed for two or more consecutive years to submit a report to the Board.

Reviewer  
Score

4.2

Should the Board decide to suspend or cancel an organization's certificate of registration, it then directs the Registrar to: (1) notify the relevant Non-Governmental Organization; (2) order such Non-Governmental Organization to stop its operations; or (3) remove the name of such Non-Governmental Organization from the register.

Section 21(1) provides that should the holder of a certificate be found to be in violation of the certificate's terms and conditions or section 20, the Registrar may serve the holder a written default notice specifying the nature of the default. Upon receipt of the default notice, the holder is entitled to make representation in writing to the Registrar regarding remedy or rectification of the default. If the holder has failed to remedy or rectify the default within the time specified in the notice or if it has not done so to the satisfaction of the Registrar, the Registrar will submit to the Board a recommendation for the suspension or cancellation of the violator's certificate. Organizations are, however, permitted to apply to the Board for a review of the decision. Should that fail, an organization may also appeal to the Minister responsible for NGO's.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Government Notice No 176 of 1973 gives the Minister of Finance and planning the authority to exempt NGOs from various taxes if an NGO's activities are deemed to be for public interest, or if the NGO is classified as a religious or charitable entity. More specifically, the Income Tax Act of 2004 provides exemptions from income taxes to eligible individuals, institutions, or irrevocable trust of public interest, which are established for the advancement of religion or education, relief of poverty or public service provision.

**Reviewer  
Score**

**4**

Tanzanian organizations also benefit from the fact that Value Added Tax is exempted on items that are deemed relevant to the activities of that organization. This Exemption of Value Added Tax is applicable to both the importation foreign goods as well as the purchase of local goods and services by, or on behalf of, an NGO or religious entity. These purchases must, however, be used for the sole use of the organization, or for the advancement of: religion; relieving persons from the effects of natural calamities, hazards or disaster; or the development, maintenance or renovation of projects relating to health, education, training, water supply infrastructure. Furthermore, the importation or local purchase of goods by charitable community-based or other non-profit driven organizations of household consumables are also exempt, provided that the goods are used to support orphanages, day care centers or schools. Household consumables—such as food, clothing and toiletries— are also exempt. Vat exemption is not, however, applicable to the procurement of cars, or office supplies.

All tax exemptions are granted through a generic process outlined on the Tanzanian Revenue Authority's website.



**Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?**

Tanzanian groups can receive exemptions on taxes levied on monetary gifts and on duties levied on imported goods received by an organization. The organization is in turn expected or required to use these goods for its programmes. Exemptions for imports are processed through a straight forward three step process. First, an organization submits an application of exemption to the Commissioner for Customs and Excise. Second, the applicant then submits a series of documents, the most important of which is a letter from the district commissioner confirming the existence of the organization or the project. Finally, and after the exemption is approved, the organization then presents proof of approval to a customs agent who will then clear the goods for entry.

**Reviewer Score**  
**4**

**Section Three: Cross-Border Philanthropic Flows**

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

The Tanzanian Revenue Authority states that goods and funds donated by members of Tanzania’s diaspora to NGO, charities, or, religious organizations that provide or support social services, are exempted from import duties, excise duties and VAT on imported goods. Exempt organizations must, however, demonstrate that the goods are for the sole use of the beneficiary and that they will not be diverted from the intended use.

**Reviewer Score**  
**3.4**

Under the Income Tax Act of 2004, any income that is accrued in, derived from, or received in Tanzania, is exempted from tax if the recipient of that income is an institution, body of persons or irrevocable trust of public character established for the sole purpose of the relief of poverty or the advancement of religion or education.

Social enterprises or impact investors may also be eligible to receive an additional set of reliefs under the Tanzania Investments Act of 1997. Among other things, the Act established a “One-Stop Investment Centre” to coordinate, encourage, promote and facilitate investment in Tanzania. The incentives for those investments registered with the Tanzania Investment Centre include: guaranteed assistance in processing registration and licenses; a guarantee against State expropriation; and the right to repatriate profits and capital relating to investment.

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

Outbound cross-border donations are not specifically regulated under existing legislation. As such, the only relevant legislation relates to the right to repatriate profits. Because Tanzanian law does not distinguish between repatriated profits and outbound donations, charitable contributions leaving the country would therefore, be taxable at a rate of

**Reviewer Score**  
**3.4**

10 percent.

Furthermore, all transactions in foreign currency are regulated by the Foreign Exchange Act which permits any person, resident or not, to: (1) hold any amount in foreign currency; (2) sell any amount of specified foreign currency to an authorized dealer ; and (3) to open and maintain a foreign currency account with a bank that is an authorized dealer. Under the Investment Act of 1997, investors are guaranteed unconditional transferability through any authorized dealer in freely convertible currency of net profits, foreign loan service, royalties, fees, and technology transfer charges. While the law does not specify, given this, it seems likely that outbound donations would benefit from the same guarantees. The relative poverty of Tanzania, however, ensures that most charitable sums stay within the country.

## Section Four: Socio-Cultural Narrative

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NGOs in Tanzania date back to the colonial era where their activities were focused on faith based or ethnic groupings. The expansion of NGOs in Tanzania began in the early 1990s and was propelled by the dwindling ability of the State to efficiently and effectively deliver services. During the 1990s, Tanzania faced challenges to its legitimacy and underwent an economic and political transition from dictatorship to democracy. Since then, the greatest challenges for NGOs have been ensuring accountability and maintaining appropriate relationships with the government. The enactment of the NGO Act 24 of 2002 and the option of registering an organization under the Companies Act has helped to engender a more accommodative and predictable environment for NGOs. As a result, NGOs have gradually shifted from service based activities to government monitoring and evaluatory activities such as the auditing of government expenditures.

Like those in many other African countries, CSOs in Tanzania are currently struggling a lack of reliable and sustainable income sources. At present, most charitable civil society groups primarily rely on mobilizing resources from local communities and members of their organization. CSOs tend to seek funding from corporate entities, government departments and high net worth individuals. A report by CIVICUS in 2011 revealed that 12.2% of donations to CSOs in Tanzania came from local companies, while only 9.8% relied entirely on foreign funding.

Culturally, charitable giving is perceived as an informal act. This could be due to the fact that most donations are done informally in rural or semi urban areas. Informal civil society groups tend to support social needs that are closely linked to daily cultural and ceremonial practice such as harvest, burial and marriage ceremonies. Conversely hand, formal CSOs tend to donate financial resources and material goods for natural disaster and epidemics.



Reviewer: Selen Lermioğlu Yılmaz, Sevda Kılıçalp Iaconantonio, Sezin Dereci  
Institutional Affiliation: Third Sector Foundation of Turkey (TUŞEV)

## Section One: CSO Formation, Operation, & Dissolution

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

Turkish law does not allow individuals to act collectively through unregistered groups or organizations. Furthermore, there are restrictions regarding the forms of CSOs, and individuals are required to register their CSO as either an association or a foundation. According to the Turkish Civil Code, an association is “a society formed by unity of at least seven real persons or legal entities for realization of a common object other than sharing of profit by collecting information and performing studies for such purpose”. For their part, Article 101 of the Code states that foundations are “charity groups in the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for public use”.

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Because the country’s legal framework only recognizes the formation of associations and foundations as legal entities, other forms of collective action—e.g. initiatives, non-profit companies, groups, and networks—are not recognized and not provided legal entity status. It is worth noting that while the law technically recognizes platforms—defined in the Civil Code as “interim societies formed by associations themselves or with the foundations, unions and similar other civil organizations...to realize a common objective”—as a third form, they are not accepted as legal entities. Consequently, no collective group other than registered associations and foundations are allowed to pursue any legal purpose, such as having a bank account, applying to funds, and taking legal action. And although they are recognized as legal entities, CSOs cannot participate in economic activities directly, and must instead establish separate economic entities to pursue such purposes.

Although the laws themselves do not place onerous requirements for registration, the use of administrative decrees and legal opinions—produced by public institutions—has made registration requirements more difficult. One notable example of such extra-legal regulations include requiring official documentation demonstrating that a building owner consents to allow a CSO to operate in their building. Furthermore, associations are obliged to provide their statutes along with other documents to registration authorities. The legal framework provides a long list of required information to be provided in a statute and includes the definition and procedures of the executive board, the inspection board, and the general assembly. The number of founding members required by the state is seven, a number that is significantly higher than most international and European standards, which usually range between two and three people.

Foreign organizations/representative offices are required to obtain the permission of both the Ministry for Internal Affairs and the Ministry for Foreign Affairs before they are permitted to operate in Turkey. Consequently, according to 2014 data, only 119 foreign

organizations (17 foundations and 102 associations) are allowed to operate in Turkey. Some of these organizations have reported that the application process is burdensome, frequently political, and time intensive. Additionally, the experiences of many CSOs have shown that the post-application process is not transparent and lacks accountability. According to the Constitution, every individual and legal person with legal capacity has the right to establish a CSO without having to obtain any prior approval. However, a number of laws place several restrictions prohibiting some groups/individuals for becoming founders in CSOs. In addition to near universal regulations barring individuals under the age of 15 from founding CSOs, Turkish law also prohibits foreigners without legal residency permits from founding or even being a member of associations—although they can create foundations. Additional restraints can also be imposed on members of Turkey’s armed forces, its police officers, and other civil servants.

The registration process for associations differs from the process used for foundations and the two are respectively regulated by Law on Associations and the Law on Foundations. For associations, seven citizens and/or residents from other nationalities must apply to the provincial office of the Department of Associations with the necessary documents. Critically, no registration fee is required, and the Department has up to 60 days to review the application. As soon as the association initiates the registration procedure, it is assumed that the association is already founded and therefore can start its activities. If the administration rules that there are missing documents or that the application of association violates existing rules and regulations, the association is given 30 days to rectify these errors.

While associations can be established with relatively little effort, the registration of foundations is much more complicated. First and foremost, foundations are required to have assets—defined as all types of immovable and movable property, including cash, securities and bonds, and rights that have an economic value—which are allocated for the specified purpose of the foundation. The Council of Foundations, which serves as the highest decision making body of the General Directorate of Foundations, determines the minimum asset value applicable on the establishment of a foundation on an annual basis, the value of which was set at approximately 21,136 USD in 2014. Foundations are also required to be founded by a charter which is verified by a notary and confirmed by a court. This charter contains information on the title, purpose, assets, organs, and applicable administrative procedures. Assuming the application is accepted, a foundation is granted legal personality upon the approval of the court and is then registered by the General Directorate of Foundations. The time required to found a foundation varies depending on the work load of the courts, although anecdotal evidence suggests that it usually takes between two and three months.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

The Associations Law and the Law on Foundations impose certain restraints which constrain the ability of CSOs to run their internal affairs. Turkey’s Constitution states that freedom of association may be restricted in the interest of national security, public order, prevention of crime, public health, public morality, and the protection of the freedom of others. However, due to unclear definitions of these terms in the applicable

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legislation, the administration is provided with vast discretionary powers. Recently, several LGBTI organizations were charged with wrongdoing due to claims that their aims and activities were against morality. Similarly, numerous websites of some rights-based CSOs—particularly those with a focus on minority and LGBTI rights—were banned based on this principle. The Anti-Terror law also imposes significant barriers on freedoms of association, expression and assembly. In recent years, several CSO members and human rights activists have been persecuted and imprisoned under the Anti-Terror Law.

The Law on Foundations and Associations allows authorities to inspect the activities of CSOs and to assess if they are in line with the organization's statute. Associations and foundations are not prohibited from directly engaging in political activities, but oppositional and/or rights-based CSOs are reportedly facing more government interference than others, and there are clear examples of state interference in the internal matters of associations and foundations. Inspections of rights-based CSOs have reportedly also been conducted unequally, and many critics allege that the frequency, duration, and scope of inspections are far more onerous for rights-based CSOs than for others. Furthermore, regional disparities and disproportionate administrative and judicial practices also significantly impact the operations of Turkish CSOs.

The country's legal framework explicitly defines the ways in which the decision-making and governance systems of a CSO should work. As a result, it is not possible for CSOs to choose the way they would like their decision-making systems to work. For example, recently an association wrote in their statute that all members of the association—and not the executive board—would have the right to participate in the decision-making of all matters. They received a notice from the authorities demanding that they revise their statute to be in line with the law, or else the association would be terminated. A court case considering the issue is still ongoing.

While recent legal changes have eased reporting requirements, standard annual reporting forms are still considered cumbersome and time consuming. From a legal point of view, reporting requirements do not vary among CSOs, but the government has had problems in implementing them.

CSOs are permitted to contact and cooperate with colleagues in civil society, business and government both within and outside the country. However, CSOs are required to notify the government when receiving grants from international organizations, or before using foreign funding. In addition, Turkish CSOs are required to provide information regarding the names of organizations and the nature of their cooperation annually—inside and outside the country—within the context of mandatory reporting forms provided to the relevant state authority.

CSOs are permitted to participate in networks and to use the Internet and all forms of social media as they see fit. However, websites of CSOs, such as was the case of the aforementioned LGBTI organization in 2011, can be banned on the grounds of morality and other relevant clauses of the Constitution.

Internet censorship by the government is common and has increased in the last couple of years. The Law on Regulation of the Publications Made on the Internet and Fight against the Crimes Committed via such Publications—more succinctly known as The Law on the Internet—has significantly impaired political freedom of expression. Preventing access to web-sites with opposing views has stifled means for debate, and has prevented Turkish citizens from reaching alternative views. According to data from Engelliweb.com, over 40,000 websites are blocked as

of February 2014. Worse still, the documents stating the reasoning behind court decisions to block websites and other relevant records are not easily accessible.

### Question Three: To what extent is there government discretion in shutting down CSOs?

The governing body is able to voluntarily terminate a CSO within the limits set by law. For their part, associations can decide to voluntarily dissolve themselves with a decision of their general assembly. Involuntary termination, however, is a more complex procedure, one that requires notice be given and a court trial. Although involuntary termination is subject to judicial supervision, the process is neither apolitical nor transparent, and legislation states that this power can be exercised at any given time. Associations may also be terminated by court order. According to Article 89 of the Civil Code “if the objects of the association are not compatible with the legislation and morality, the court may give judgment for the dissolution of the association upon request of the Public Prosecutor or any other concerned person. The court takes all the necessary measures during the proceedings of the case, including suspension of activity”. The phrase “not compatible with the legislation and morality” in the aforementioned article accord the judicial organs with broad discretionary power—a power that has been unfairly exercised on more than one occasion.

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Similarly, the dissolution of foundations may occur when the realization of the founding object becomes impossible and amendment of the object is out of question. Foundations may dissolve ipso facto or upon obtaining a court decision by deleting the foundation’s name from the official records. Foundations can only be dissolved if it can be demonstrated that they have violated their founding objectives or activities. However, another article of the Law on Foundations describes the grounds for restricting the formation of a foundation as “[being] contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, morality, national integrity and national interest, or [aiming to] support a distinctive race or community”. These prohibitions on the founding objectives of foundations are rather vague and therefore provide government actors with ample legal pretext to dissolve nearly any foundation.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Both legal persons and legal entities (including corporations) are eligible to receive a 5% tax deduction—or 10% if the donation is directed to a development priority region—if they donate to tax-exempt foundations and associations with public benefit status. Although some specific regulations can affect donations to certain causes, in general, there is no ceiling on the amount of the deduction that can be claimed. There is, however, no tax deduction available to individuals who are permanent employees and do not submit annual tax returns, as they would not be recognized as legal persons. Critically, tax

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benefits are not strong enough to encourage corporations to make generous donations to philanthropic activities, although the process is clear and consistent.

In order for foundations and associations to receive tax benefits, they must be recognized as either having tax exempt status or public benefit status respectively. These statuses are provided by the Council of Ministers upon recommendation of the relevant Ministry. For foundations, such recommendations must come from the Ministry for Finance, while those for associations must originate from Ministry for Interior. Although, the process is clearly and explicitly written in the relevant legal framework, the process is highly political, very bureaucratic and vague. Accordingly, the number of CSOs that are able to receive these statuses is very low.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

The tax exemptions available for CSOs are very limited. CSOs are only exempt from income tax and are subject to all other taxes such as VAT, stamp tax, real estate tax and profit tax if they engage in economic activities.

For foundations, tax exemption may be granted by the Council of Ministers—contingent on the approval of the Ministry for Finance—provided that the foundation is established with the purpose of performing public service. The tax exempt status grants donors the opportunity to deduct their donations to tax exempt foundations from their taxable income. In order to be tax exempt, the contribution’s purpose must fall within the areas of health, social aid, education, scientific research and development, culture, or environmental protection. Foundations serving a specific region or group cannot, however, receive tax exemptions. In other words, tax exemptions are only given to those foundations that cover the whole country and all citizens rather than specific regions or groups of people. Foundations, tax-exempt or not, are subject to income taxes levied on earnings from rent, interest and dividends.

For associations, tax exemption comes with the conferment of public benefit status. Much like foundations, associations can only receive this status after a decision of the Council of Ministers. Unfortunately, the process is highly political and vague, which is why the number of CSOs with these statuses is very limited: only 5% of foundations (254) have tax exempt status, and only 0.04% of associations have public benefit status. Furthermore, both statuses bring only limited financial benefits. Although CSOs in Turkey can raise funds from private donors, the range of CSOs that receive such support is narrow.

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## Section Three: Cross-Border Philanthropic Flows

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

There are no costs or taxes such as customs, duties, or VAT, attached to cross border philanthropic donations. CSOs can receive in-kind and cash gifts from both natural and legal

persons abroad. While there are no extra costs associated with making or receiving a cross-border donation, cash donations and grants must be sent and received through bank transfers. CSOs do not need to receive permission from the government to receive funds from abroad, although a notification is necessary. Furthermore, CSOs are required to notify the government when receiving, and prior to using, foreign funding. However, there is no restriction on the types of activities that could be supported with foreign funding or on the nationality of the contributor.

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

CSOs may make donations to those foundations and organizations based abroad that are established with similar purposes. There are no required government approval procedures and restrictions on sending cross-border charitable donations are practically non-existent. Donors do not, however, receive tax deductions on contributions made to foreign organizations.

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## Section Four: Socio-Cultural Narrative

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The number of associations active in Turkey as of September 2014 is 102,717, while the foundations active in the country reached a new high of 4,781. Although CSOs are active in all of Turkey's provinces, available data suggests an uneven geographical distribution. In terms of numbers, CSOs in Turkey are usually concentrated in urban areas, the largest concentrations of which exist in İstanbul, Ankara and İzmir. CSOs in Turkey predominantly concentrate on areas such as religious services, sports and social solidarity. There are also various imbalances evident in the civil society environment. First, the data suggests that gender inequality is particularly acute in civil society. Among 8,852,907 association members in Turkey, only 1,606,739 are women. Second, and as discussed earlier, associations in Turkey are also predominantly geared towards providing religious services, sports and solidarity, and in total, there are 47,329 organizations working in these areas. Conversely, there are only 1,714 environmental groups and 795 youth associations, and only 861 of them focus on rights based issues.

Foundations and associations are subject to different laws and are regulated by different public agencies. The legal framework is quite restrictive and focuses on penalties and limitations rather than incentives and freedoms. The EU Progress Report 2013 identified many of these deficiencies and cited examples of the restrictive interpretation of legislation vis-à-vis civil society in Turkey including excessive fining, limiting the right to publish press statements, requiring advance notification of demonstrations, and the disproportionate use of force by the police against demonstrators. Moreover, although there have been significant initiatives, government-civil society relations remain nascent, and dialogue and consultations are not systematically pursued. The strong state tradition inherited from the Ottoman era and the relative lack of opposition are structural political conditions which pose challenges to the development of government-civil society relations and also helps to explain reversals in the



country's democratization. Despite the fact that civil society is growing increasingly vibrant and diverse, civil society has had only a limited ability to influence policymaking in recent years.

Understanding the nature of philanthropy in Turkey requires contextualizing its perception. The understanding of philanthropy itself as the private giving of time or valuables for public purposes is an underdeveloped and underappreciated concept in the country. As a result, philanthropic activity is regarded mostly as the business of the wealthy. This perception has been largely confirmed by recent reports, and according to the 2013 World Giving Index, only 17% of Turkey's population is charitable, placing Turkey 128th in the Index's ranking.

As might be expected, more nuanced interpretations of philanthropy are also largely unknown in Turkey. Notably, the difference between strategic philanthropy and traditional charity is unclear to both the public and policymakers. As a result, people are mostly likely to give directly to individuals rather than donating to a nonprofit organization, a tendency that is reinforced by concerns over the effectiveness of the country's CSOs. And while the country has seen an increase in volunteering and membership rates, insufficient citizen participation remains one of the major challenges for civil society in Turkey, and membership numbers lag far behind the European average. According to recent statistics, only 12% of Turkish citizens are members of CSOs, with one CSO existing for every 800 individuals.

Of the country's approximately 5,000 foundations, only 618 report that they recruit volunteers, and the total number of volunteers recruited by these organizations is only around one million. In terms of the extent of civic participation, volunteering attracts the smallest part of the population compared to individual activism, membership, or charitable giving. Despite the small role of citizen participation in Turkey, those participating in civil society activities do so rather deeply and intensely. This can be seen in the fact that a significant percentage of citizens who are members or volunteers of one CSO are members of or volunteers in at least one other. One cultural factor that might explain this disparity is that people tend to think that volunteering is not a priority in the hierarchy of needs and can only be engaged in if other needs are satisfied.

Despite these problems, Turkey has vast philanthropic potential. The Turkish Republic inherited a number of strong institutions—governmental and nongovernmental—conducive to charity, many of which trace back to medieval times. Mutual aid is an important characteristic of local communities, and although very few of them are formally organized, networks of reciprocity form an integral part of Turkish life. In reality, the main motivation for engaging in charitable giving stems from religious obligations as well as traditions and customs. For example, in the Islamic faith, giving is institutionalized not by government, but by *zakat*, which is one of the five pillars of Islam. As a result, people predominantly tend to directly donate to needy relatives, neighbors and the people around them.

It is also likely that the size of informal philanthropy is broader than is commonly believed, and studies have shown that 80% of citizens claim to have donated to either institutions and religious groups, or the needy. However, the amount of donations remains low and 87% of people prefer to donate directly to individuals rather than donating to institutions.

A substantial part of this skepticism of organized giving is due to the low level of trust that the public places in CSOs. In Turkey, trust is mostly built at an individual level through interpersonal contact. Even though most CSOs publicize their reports and make an effort to be

transparent, people want to know staff members, managers and board members personally before they can be confident in the organization and engage with its activities. Companies in particular will only cooperate with CSOs to the extent that a CSO is reputable while making funding decisions. As a result, CSOs working in the more tangible areas of education, health, children, art and culture have more possibilities for raising funds from the public than rights-based organizations.

In conclusion, the socio-cultural context is not conducive to civil society development in Turkey. According to numerous studies, widespread interpersonal distrust is embedded in Turkish society which is inherently detrimental to civil society. The findings of the 2013 World Giving Index confirm that the culture of giving has not been actively cultivated in Turkey, and people see nonprofit organizations as unprofessional, inefficient and un-institutionalized organisms capable of only limited impact. These stereotypes, however, do not fairly reflect the realities on the ground. For their part, practitioners feel that the public does not understand how nonprofits work and that they unfairly treat rights-based nonprofits as political organizations. As a result of heavy-handed government interventions, individuals are generally anxious about being affiliated with such CSOs for fear of being stigmatized.

While civil society sector is developing rapidly, the majority of CSOs are at an early stage in their organizational development. According to TUSEV, a leading research organization in Turkey, almost 79% of CSOs do not find their financial resources to be sufficient and regard insufficient human resources as one of the top organizational weaknesses of CSOs in Turkey. When coupled with the aforementioned problems with public perceptions, financial difficulties act as the main constraint impeding the institutionalization and professionalization of CSOs.



## Section One: CSO Formation, Operation, & Dissolution

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

While CSOs may pursue almost any legal purposes for either public benefit and/or the benefit of their members, there are, however, a few exceptions in the Constitution and laws. The articles of associations and religious organizations—which govern the structure of Ukrainian CSOs—are subject to the so-called “legal expertise” of registration agencies. This expertise, which serves to regulate CSO conduct, is applied somewhat inconsistently and often goes far beyond ensuring that CSO purposes and activities comply with the law. Additionally, associations face onerous restrictions concerning their names, including prohibitions against including specific terms such as “committee”, “inspection” or “agency”.

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Fortunately, the processes and requirements for CSO registration and creation are relatively definite. According to Ukrainian law, all individuals of legal age—including foreigners and stateless persons—and private legal entities can be the founders of CSOs. Additionally, Ukrainian law specifies that in addition to adults, minors between the ages of 14 and 18 can create associations. The structure of these organizations is similar to those in many other countries, with charities and institutions required to have at least one founder, while associations must have at least two.

CSOs operating in Ukraine, including foundations and other charities, have no minimum capital requirements, permitting relatively easy creation. However, and while the laws governing CSOs provide for a closed list of required papers, the treatment of associations by regulators is somewhat arbitrary and inconsistent. Registration fees for CSOs are reasonable, ranging from 5 USD for Ukrainian CSOs to 30 USD for foreign CSO representative offices. Some CSOs, including all associations, are exempt from registration fees. The Ministry of Justice is ultimately in charge of CSO registration, except for religious organizations, which fall under the jurisdiction of the Ministry of Culture. While these regulatory agencies are apolitical and operate independently, they are often understaffed and their practices are somewhat inconsistent and non-transparent.

The law sets forth a fixed period for making decisions on CSO registrations of between three and seven working days, after which the regulator must register a decision. The registration of religious organizations may, however, take up to three months. This has been a relatively effective practice with 85% of associations and nearly all charities registered within two weeks of filing in 2013, with the remaining 10-12% of CSOs registered after amending their names and/or articles.

Ukrainian law provides a list of grounds for denying a CSO’s registration, but is somewhat unclear for associations. These regulations mandate that a written explanation for any denial is required, and that this explanation must specify all the grounds on which the

denial was made. If the founders believe the denial to be ill-grounded, administrative courts must review their appeal no more than six months after the denial’s issuance.

## Question Two: To what extent are CSOs free to operate without excessive government interference?

The internal governance structures of CSOs are predominantly regulated by their articles of association. Government agencies are prohibited from directly interfering in CSO governance, except when their activities fall outside of those permitted by law. Associations are required by Article 97-100 of the Ukrainian Civil Code to have general meetings and one or more directors, while institutions are only required to have corporate boards. A CSO may, however, change its governance structure or directors without prior state approval provided that these actions do not change the organization’s CEO. Any changes in an institution’s statutory purposes are, however, supervised by the courts.

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The governing articles of CSOs are also required to specify the powers of officers, conflict resolution mechanisms, formation and decision making processes—including those for online voting—and procedures for reporting to the membership. The conduct of these organizations is further shaped by the Law on Charities, which while not specifically directed towards associations, nonetheless sets forth basic safeguards against conflicts of interests.

While CSOs are not prohibited from engaging in political activities, there are, however, special procedures governing their participation in public consultations and the sharing of their expertise on public policies that must be complied with. Ukraine’s Constitution also enumerates those purposes or activities which it deems to be illegal, such as those that work against the sovereignty or integrity of Ukraine, undermine national security, promote hate crimes, or restrict human rights.

Board members of Ukrainian CSOs are not permitted to derive any personal benefit from CSO assets and—as a check against corruption—the names of all CSO directors are made available online in public registers. While the law does require administrative expenses to be limited to 20% of annual income for charities—and only charities—there are no spending rate or salary caps for Ukrainian CSOs. The reporting requirements for CSOs are generally clear and consistent, and tax exempt CSOs must submit tax, financial, and statistical reports once a year. However, checks by the Fiscal Service and the Prosecutor’s Office are somewhat onerous, and have been used arbitrarily for political purposes in several cases. While internal audits by CSOs are not required by law, it is stipulated in Ukraine’s 1999 Law on Accounting and Financial Reporting that independent auditors must check all legal entities once every three years. This requirement, however, is not implemented consistently.

Contrary to popular belief, there are no general legal restrictions that impede cooperation between CSOs within Ukraine, nor are there any that impede cooperation between domestic and foreign CSOs. Ukrainian CSOs may create or join any national or cross-border networks, and there are no legal or practical restrictions on the use of social media or the internet by CSOs. The notorious “Dictatorship laws”, which were passed by ousted President Viktor Yanukovich and modeled on Russian provisions requiring the registration of “foreign agent CSOs”, were never implemented, even before their repeal in March of 2014. Special

notices or permits for the events organized by CSOs are not required, except for outdoor mass meetings or assemblies, and entertainment events as required by the Law on Tour Activity. These notices are not, however, required by Ukrainian law, but rather by the administrative rules of local governments.

### Question Three: To what extent is there government discretion in shutting down CSOs?

The governing bodies of CSOs are entitled to decide on voluntary termination without obtaining any government approvals or permits. The reorganization of associations is, however, currently restricted only to joining or merging with other associations. Voluntary termination usually takes six months or longer, and preliminary one-time checks from the State Fiscal Service of Ukraine are required. Dissolved CSOs are required to distribute their assets to other CSOs or, if prescribed by law or court decision, to the government. The list of the grounds for the involuntary termination of a CSO is closed and generally reasonable. Nonetheless, many court decisions deal with unclear and inconsistent legal provisions, which inject uncertainty into the process. This problem is felt particularly keenly when the courts are asked to rule on claims made by the State Fiscal Service against CSOs that failed to submit tax reports for two years or longer.

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Ukraine's various registration agencies may file for the involuntary termination of associations, but only if they can demonstrate that a CSO violates the Constitution's restrictions on their purposes and activities. All decisions on the involuntary termination of CSOs are made by administrative courts and are subject to appeals. This process has proved flexible, and the number of CSOs terminated involuntarily usually numbers between 50 and 60 per year. Additionally, while involuntary termination using bankruptcy procedures is technically possible for those CSOs engaging in economic activities since 2013, no cases have been reported.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

There are no tax credits for donations in Ukraine, and income tax incentives are provided at the national level only. Donors are mostly free from government regulation and may apply for tax deductions on those donations made to any tax exempt CSOs. However, and per paragraph 157.1 of the Tax Code, all government agencies and public institutions—such as schools and hospitals—also have tax exempt status, and the competition for deductible donations between CSOs and these agencies—sometimes classified as government organized non-governmental organizations, or GONGOs—is common in Ukraine.

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At present, there is no minimum threshold for donations to be considered deductible, and any donation amount may be deductible. Corporations are eligible for tax deductions on their donations in cash or in kind up to 4% of the previous year's profit. This practice is

somewhat restrictive, especially given the current financial conditions facing Ukrainian corporations. This ceiling is also one of the lowest in Europe and Eurasia.

Similarly, individuals may deduct up to 4% of their annual taxable income, with individual tax returns required to be submitted the following year. The maximum deduction, however, is capped according to the annual salary of the individual. Unfortunately, individual businesses are not currently permitted to receive tax benefits according to paragraph 177.4 of Ukraine’s tax code.

Finally, it is worth noting that donations of services are deductible only if they are contributed by companies, and individual volunteering is heavily regulated under the 2011 Law on Volunteering. The law’s regulations have ensured that while volunteerism thrives in Ukraine, volunteer activities are conducted unofficially and are seldom authorized by the government.

The process for receiving tax deductions is clear and takes minimal resources, but often it is accompanied by additional checks from the Fiscal Service—conducted under the auspices of tax avoidance prevention—that are often time-consuming and somewhat biased. As a result, only a minority of individual or corporate donors choose to apply for their tax benefits.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

The Ukrainian Tax Code makes a broad range of private CSOs eligible for tax exempt status, including universities, cooperatives, political parties, trade unions, and employers organizations. In addition to these private organizations, both public agencies and public institutions also have tax exempt status. Representative offices of foreign CSOs, however, are not eligible for tax exempt status as they are classified as tax non-residents and must pay income taxes on revenues derived from Ukrainian sources—although this is somewhat mitigated by the fact that these taxes are usually reduced by Ukraine’s more than 70 bilateral conventions against double taxation.

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In Ukraine, tax exempt status absolves CSOs from the payment of taxes levied on donations, membership fees, investment income, and budget subsidies. Contributions from private donors are also tax exempt provided that they are channeled to charities, religious organizations, associations of people having disabilities, public benefit associations, or universities.

Technically, incomes from related economic activities are also tax exempt, but fiscal regulations are heavily inconsistent and compliance is onerous. CSOs tend to avoid direct sales or merchandising to keep their tax exempt status, or they choose to set up business companies. Associations of people having disabilities and their subsidiaries may receive additional tax exemptions on a discretionary basis if they operate on the national level. Charities are also exempted from paying land taxes and VAT—the standard tax rate of which is 20%—for donations in-kind.

While these policies may be generous, the process for receiving tax exempt status is neither clear, nor predictable. The length of the procedure and the grounds for denial are not specified by law, and are open to interpretation. Fortunately, the list of required

documentation is not onerous, and CSOs may apply for tax exempt status just after their registration. Reportedly, this procedure is also relatively insulated from corruption.

While nearly all charities receive tax exempt status, only half of associations have been filed and recorded in the official register of tax exempt organizations—the data and files of which are not made publicly available. Further complicating matters is the fact that the termination of tax exempt status is largely at the discretion of the Fiscal Service, and the grounds for termination provided in the Tax Code are not closed, clear or consistent. This has the effect of making court appeals by CSOs particularly difficult, especially for those engaging in economic activities as it significantly impedes CSOs from reinvesting incomes derived from economic activities.

## Section Three: Cross-Border Philanthropic Flows

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

Tax exempt CSOs may receive donations in cash from abroad without incurring additional taxes or costs, other than standard bank services fees. However, income derived from favorable changes in the exchange rate of foreign currencies is taxable unless the CSO receives donations as humanitarian or technical assistance. As of 2014, Ukraine’s National Bank also retains the discretionary power to demand that a proportion—historically between 50 and 100 percent—of any CSO’s income from abroad be immediately converted into UAH at the official exchange rate. This requirement, however, makes CSO activity and grants implementation more difficult because of the volatile state of the national currency.

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Donations in kind are tax exempt in full if they are recognized by government agencies—who evaluate donations on a case-by-case basis—as contributing humanitarian or technical assistance. The procedure for this determination is usually onerous and requires substantial time to complete. While donations to charities are exempt from import VAT, these funds may not be used in economic activities. For their part, donations to other non-charity CSOs are required to pay this tax, unless the specific goods or services are VAT exempt. CSOs are also required to pay customs on in-kind donations. Fortunately, these customs are relatively low—although some, most notably on vehicles—are quite high and usually range between zero and five percent in Ukraine.

Cross-border donations are also subject to surveillance from the Financial Service if the amount is greater than 150,000 UAH (12,000 USD) per month or if the donation is sent to or from countries sanctioned by the government of Ukraine. Donations or grants from abroad do not require special approval from the National Bank or government agencies unless they are intended for humanitarian assistance. Other than funding political parties and nominees for political office, there are no specific legal restrictions on the types of activities that may be supported from abroad. The National Bank is, however, the only entity authorized to grant CSOs those permits needed to open bank accounts abroad.

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

The list of activities conducted abroad that can be supported with cross-border donations in cash without first acquiring special permits from the National Bank is severely limited, and consists only of health care, education and legal aid. Like many other states, donations to persons or entities affiliated with international terrorism or appearing on sanctions lists are prohibited. Donors are also constrained by the fact that humanitarian assistance to other countries and health care for some diseases requires routing through government channels.

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Ukraine imposes no export VAT or customs on cross-border in-kind donations, however, these donations are subject to income taxes, which are levied on both individual and corporate donors at a rate of 15%, unless otherwise provided in Ukraine's international tax treaties. While there are no tax deductions for individual or corporate donors sending donations abroad, donations to the headquarters of Ukrainian CSOs with activities abroad are deductible in full.

Currently, exchanging domestic Ukrainian currency for foreign currencies is extremely difficult, as only banks are permitted to buy foreign currency. As a result, CSOs can donate only the foreign currency already in their accounts and cannot exchange reserves of Ukrainian hryvnias for whatever foreign currency it desires. However, it is lawful for CSOS to buy foreign currency for healthcare, education, or legal aid provided that the CSO is operating under a service contract from a foreign provider.

## Section Four: Socio-Cultural Narrative

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Philanthropic activity is traditionally viewed as a positive force in Ukrainian society, and has historically been affiliated with church and communal assistance to specific target groups, even during the Soviet period. For instance, while Ukraine's constitution requires that health care be provided for free in public hospitals, many patients can only receive proper surgery or services abroad, and fundraising for them is a common occurrence in many Ukrainian cities. Donations to the 100,000 plus population of orphans maintained in public institutions are also common, although the long-term impacts of this philanthropy cannot compare to the support offered by family care.

Government agencies frequently attempt to use CSO resources or individual donations to help deliver those social services that are underfunded in the national budget, a dependency that has only grown given the deepening economic crisis in Ukraine and the ongoing hostilities in some of its regions. Until recently, tax benefits for donors or for activities promoting a CSO's economic activities were considered out of the reach of most CSOs, and groups seeking them were faced with various legal and administrative restrictions. And while online and mobile-phone based donations have gradually grown, unfavorable regulatory, monetary and taxation policies have seriously constrained these progressive techniques.

While the situation has improved, the long-term fortunes of the sector are still uncertain, and the government has displayed a worrying lack of regard for the impact that its regulatory and tax policies have had on CSOs and donors.



In Ukraine, donors rarely expect to accrue tax or other tangible benefits from their philanthropic activities: it is rather a matter of personal ethics. Both Ukraine's domestic media and its business leaders tend to avoid publicizing philanthropic activities, likely due to the Fiscal Service's biased and arbitrary conduct. As a result, it is difficult to estimate the true extent of individual giving in the country. While a few annual achievement awards are given that honor donors, they fail to attract much attention from the public or from other private donors. That said, the awards do help promote best-practices which are regularly replicated by other CSOs.

In 2013, the World Giving Index placed Ukraine near the bottom of its ranking at 102nd place. Although this represents an improvement compared to its 2012 ranking of 111th, there is obviously room for improvement. While Ukraine's score on volunteering in the World Giving Index was a bright spot, the regulatory regimes constraining contributions made in cash and cross border donations are in desperate need of additional fiscal and regulatory incentives.

Complicating this paucity of incentives is the fact that many fundraisers are distrusted, as the sector has been plagued by corruption, scandals, improper reporting issues, and instances of cash misuse by CSOs. This distrust is not helped by the fact that only a minority of CSOs choose to be transparent and regularly publicize their reports.

CSOs themselves are also relatively distrusted by society, with only 35 to 38 percent of surveyed citizens expressing faith in the organizations in 2013. As a societal unit, CSOs are less trusted than many of Ukraine's other institutions such as the Church, domestic media, and the army. However, they are more trusted than country's political parties and parliament. Additionally, CSOs are generally thought to have more supporters than opponents, and indeed, nearly 8% of Ukraine's population considers themselves as either civic activists or as donors.

Currently, many individuals are actively setting up new charities and CSOs to either make donations or to deliver social services. This growth is likely evidence of both increasing demand for social services as well as a relative distrust of existing CSOs. Despite this growth, grant making activities by domestic foundations and other donors are still uncommon in Ukraine.

In January 2013, a series of new laws on associations and charities came into effect, and significantly improved CSO registration and entry procedures. Largely as a result, Ukraine's State Statistics Committee reported that 15,300 charities (mostly foundations), 76,647 associations, 2,620 institutions, and 24,796 religious organizations have been registered in Ukraine as of October 01, 2014. Ukraine has also taken steps to increase transparency and accountability, and has begun publishing an open register of CSOs (at <http://rgo.informjust.ua>) and a corporate register (at <http://irc.gov.ua>). The Register of Tax exempt organizations, however, is not yet publicly available, and it is a well-known fact that many CSOs submit blank reports and declare no income.

The taxation and legal regulation of CSOs is still less than ideal, with Ukraine even taking the uncommon step of decreasing the tax deductible donations ceilings for companies and individuals from 5% to 4% in 2011. While the current government strongly opposes providing any essential tax benefits to donors, several bills on tax exempt donations related to Maidan victims, patients and some other target groups were nonetheless passed and entered into effect in September of 2014.

In 2013, Ukrainian associations reported an annual income of 3,754 million UAH (470 million USD), while charities reported a total of 3,443 million UAH (431 million USD). This

amount, however, almost certainly underestimates the true extent of Ukrainian philanthropy, as it does not include many individual donations in cash and in kind, and does not include contributions of technical assistance, volunteering and pro-bono service.

In general, Ukrainian law does not impede domestic CSOs as beneficiaries, but provides only limited tax incentives for donors, especially for individuals and for those seeking to donate abroad. Despite these problems, Ukraine has undergone—and continues to undergo—a philanthropic revival that is resurrecting its donor and volunteering culture, a renaissance sparked by the Maidan movement and other events this year. While it is too early to estimate the total amount of donations in question—largely because many donors pay via individual banking cards—it is clear that contributions have increased dramatically. One foundation, for example, gathered 5 million USD for Maidan victims and their relatives in less than a week. Altogether, from May to September of 2014, 23% Ukrainians reported that they had made a donation to charities caring for displaced and other disadvantaged people, while the number of registered charities has increased by 5.7% within last five months.



## Section One: CSO Formation, Operation, & Dissolution

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

Individuals may act collectively through unregistered groups or organizations and may pursue any legal purposes. Charities (a defined subset of CSOs) can only pursue charitable purposes which do not include political aims. They are generally free from legal impediments from the state. Charity law and regulation is now devolved (for purposes other than taxation) in Scotland and Northern Ireland, so that there are different (but similar) legal and administrative regimes. This section will use England and Wales in its examples. Registration requirements are not onerous, and Charities in England and Wales must register with the Charity Commission unless their annual income is below £5,000 (8,000 USD). Documentary requirements are clear and reasonable with model documents available for adoption. There is currently no registration fee, although it has been the subject of recent discussion. The process is reasonably efficient and is conducted with due process in a timely fashion with appropriate rights of review and appeal. It takes an average of 30 days for a charity registration application to be processed. Recently, a new Tribunal has been set up to hear appeals from certain defined decisions and actions of the Charity Commission. The Tribunal is still new in operation and its results so far have been mixed. While the number of cases before the Tribunal has been less than predicted, the development of charity law has progressed more than would have been the case if the Tribunal had not been established.

Reviewer  
Score

5.0

There are minimum age limits on becoming a trustee of a charity with individuals having to be at least 18 or 16 depending on the legal structure of the organization. Additionally, some people are disqualified by law from acting as trustees, such as undischarged bankrupts.

The Charity Commission's regulatory performance has attracted considerable public and parliamentary interest recently. This has occurred against a background of significant budget cuts. As a result of government spending reductions aimed at tackling the United Kingdom's budget deficit, between 2007-08 and 2013-14, the Commission's budget fell by 40% in real terms. However, over this period the number of registered charities remained fairly stable at around 160,000, as has the annual income of the sector at around £60 billion (95.8 billion USD) in real terms. In March 2013, the Public Accounts Committee investigated the Commission's regulatory response in relation to a charity that was found to have been set up as a tax avoidance scheme. The Committee's report, which expressed dismay at the Commission's handling of the case, was followed up by further critical reports from the National Audit Office in December 2013.

## Question Two: To what extent are CSOs free to operate without excessive government interference?

The structure and governance of CSOs are flexible and do not overly constrain the internal affairs of organizations. The four traditional primary forms of CSOs are: companies limited by guarantee; unincorporated associations; trusts; and industrial and provident societies. A CSO in any of these categories can qualify as a charity if it pursues exclusively charitable purposes. While none of these legal structures are specific to charities, recently, a new legal form has been created which is the first structure specifically designed for charities – the Charitable Incorporated Organization (CIO). Whilst the majority of registered charities are currently unincorporated bodies—either as trusts or associations—it is possible that many new charities will adopt the CIO form in the future since it gives incorporated status and limited liability, but is not subject to company law. There are model governing documents for each legal structure which charities may—but are not required to—adopt.

Reviewer  
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While CSOs may carry out any lawful activities, charities cannot have political purposes. CSOs may freely collaborate and communicate with other entities through networks, collaborations, and may use the internet and all forms of social media. New legislation enacted in 2014 that affects non-party campaigners—those that campaign at elections but are not standing as political parties or candidates—may impede charities’ ability to engage in campaigning in the run up to an election.

While reporting requirements are clear and predictable, there is some duplication of reporting for certain forms of CSOS that may be subject to more than one regulatory body. For example, charitable companies must file with both the Charity Commission and Companies House. Also, charities that operate across borders may have to register in more than one jurisdiction. Reporting requirements are graduated, depending on size of income.

## Question Three: To what extent is there government discretion in shutting down CSOs?

The governing bodies of charities are able to voluntarily terminate their charity. This is regulated by law and the procedure to be followed will depend upon the legal structure of the charity. The procedure, which is generally supervised by the Charity Commission, requires that any remaining funds must be applied toward charitable purposes. Charities with a permanent endowment may need to change their objects to cover new areas of work, change their constitution to allow the endowment to be spent, or merge with another charity.

Reviewer  
Score

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The Charity Commission is not allowed to become directly involved in the running or administration of a charity, although it can under certain circumstances give directions to charity trustees, appoint interim managers to displace the trustees, and make remedial schemes. The legal framework is designed to protect assets and envisages a charity continuing after the Commission has dealt with misconduct or mismanagement, albeit perhaps with different trustees in control of the charity. Ordinarily, the Charity Commission will only remove a charity from the Register of Charities if it ceases to operate or exist—which is relatively

common—or, more rarely, if it can be proven to be a sham and was never was a charity in the first place. There have been recent government consultations on extending the Charity Commission’s powers to tackle abuse in charities. The draft Bill which resulted from that consultation gives the Commission greater ability to effectively force a charity’s winding up in instances where there are concerns that the trustee body as a whole is not capable of remedying non-compliance or abuse.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Single donations of money to a charity can give rise to a tax repayment for the charity and income tax or corporation tax relief for the donor via Gift Aid. For basic-rate (20%) taxpayers, charities can claim back from HM Revenue & Customs (HMRC) the tax that the donor has paid. Charities get the (after tax) donation from the donor and then reclaim basic-rate tax (20%) on its gross equivalent (the amount before the tax was deducted). So, with a gift to charity of £100, the charity can claim back £25. This is because the gross amount of the gift is £125, or  $£100 \div 0.8$ . For a charity to receive £100, a basic-rate taxpayer need only make a donation of £80 (£100 less tax at the basic rate of 20%). The charity then claims back the basic-rate tax of £20 on the donation. Donors taxed at the higher rate (40%) can claim an additional 20% tax relief (the difference between the higher rate of 40% and the basic rate of 20%) on the grossed-up donation. There are no minimum or maximum amounts for a payment to qualify for Gift Aid and donors may now join the Gift Aid scheme by submitting a declaration either in writing, by phone or via the internet. Donors may also now complete a single declaration to cover a series of donations. However, and despite these improvements, the Gift Aid procedure is complex and many individual donors do not understand how it works. As a result, many higher-rate taxpayers do not claim via their self-assessment tax return the relief to which they are entitled. This may be through ignorance, complexity or because they consider that it is not worth doing.

Complicating this are the United Kingdom’s “tainted charity donations” rules aimed at denying tax relief where a main purpose of the donor is to receive directly or indirectly from the charity an advantage for the donor or a connected person.

An alternative form of tax relief, Payroll Giving, allows employees to make regular and one-off payments to charity directly from their pay before tax is deducted through a pay-as-you-earn scheme which ensures that employees are given tax relief on their donation immediately. Relief is also available for individuals making gifts of shares, securities and real property to charities, or disposing of such assets below market value to charities. Lastly, companies may benefit from corporation tax relief if they give land, property or qualifying shares to a charity, or sell them to a charity at less than their market value.

Reviewer  
Score

4.0

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

Charities are exempt from most forms of direct taxation. Their main exemptions from income or corporation tax are on income from: Gift Aid payments; payments of money from other charities; income from profits of a trade; investment income; profits from fund-raising events; lottery income; and, property income. Charities are also exempt from paying stamp duty, land tax, inheritance tax and capital gains tax. Generally, to be exempt, the relevant income and gains must be applied to charitable purposes only.

Reviewer  
Score

4.0

There are a number of VAT reliefs and exemptions available specifically for charities, subject to certain conditions and restrictions. Charities are entitled to an 80% reduction of business rates. Local authorities also maintain the power to, at their discretion; grant a further 20% relief to requesting entities. Whilst other CSOs do not generally enjoy tax benefits, sports clubs that register with HM Revenue & Customs (HMRC) as Community Amateur Sports Clubs (CASCs) can benefit from various tax advantages that are ordinarily reserved for charities.

Previously, tax legislation containing charity reliefs relied on the common law definition of “charity”, or latterly, the definition contained in the Charities Act 2011 and not in tax legislation. In 2010, however, a new definition of “charity” was introduced, one which applies to all United Kingdom charity tax reliefs and exemptions. As a result, charities must be recognized and registered as charities—where appropriate—and be located in the United Kingdom, a European Union member state, Iceland, Norway or Liechtenstein. In addition, all persons in the charity having control and management responsibilities must be “fit and proper persons”, a restriction designed to prevent charities from claiming unlawful tax exemptions and from abusing the “charity” tax status. Consequently, persons with a history of tax fraud would not pass the test and charities controlled or managed by such people would thus be ineligible to receive tax reliefs. This new stricter definition of charity for tax purposes could potentially lead to a body being recognized as a charity by the Charity Commission, but not by HMRC, leading to the denial of tax reliefs for both the charity itself and its donors.

## Section Three: Cross-Border Philanthropic Flows

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

The Charity Commission recommends that, after having applied a charity’s risk management processes, trustees need to carefully evaluate incoming donations and may need to take extra steps in identifying, verifying, and handling donations received from sources outside the United Kingdom. Whilst trustees can accept anonymous donations, trustees must be able to identify and be assured of the legality of substantial donations.

Reviewer  
Score

4.0

Good due diligence helps to assess and mitigate risks, legitimizes the process of accepting money and assures recipients that the donation is not from any illegal or inappropriate source.

Gift Aid relief for donors do not ordinarily apply to gifts from individuals or from companies headquartered overseas. For individuals, the donor must be charged income tax and/or capital gains tax for the year of donation at least equal to the tax treated as deducted from all their Gift Aid donations. For companies, Gift Aid donations are only deductible against United Kingdom Corporation Tax profits.

HMRC guidance states that, in addition to permitting charities' tax exemptions for all interest, Gift Aid donations, and other annual payments, these exemptions apply to any non-United Kingdom equivalents of such income—which would otherwise be assessed as foreign income. The guidance also notes that occasionally charities seeking to claim exemption from foreign tax from an overseas tax authority may request confirmation that they are subject to United Kingdom taxes. Certain Double Taxation Agreements provide that a resident of the United Kingdom will be entitled to exemption or relief from the foreign tax on certain types of income only if he or she is subject to tax on that income in the United Kingdom. HMRC advises that charities should be aware that a person is not regarded as subject to tax in the United Kingdom if the income in question is statutorily exempt from tax.

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

Whilst actual instances of terrorist abuse of charities are extremely small in number, the Charity Commission has nevertheless become increasingly concerned about charities that either operate abroad or that support other overseas charities. If trustees simply pass funds to another organization without controlling the way that funds are spent, such transactions are not regarded as charitable according to the law.

Reviewer  
Score

4.0

Additionally, from a tax point of view, expenditure made by charities overseas may be considered non-charitable and therefore liable for tax if organizations do not take the steps that HMRC considers sufficient to ensure that the funds are used for charitable purposes. Charities must provide evidence that reasonable steps have been taken to establish that donations to offshore recipients would be, or have been, spent charitably to the satisfaction of an officer of HMRC. If a charity cannot provide evidence that it took the necessary steps (and HMRC sets out in its detailed tax guidance notes for charities what these steps should be), then the expenditure may be deemed non-charitable and tax exemptions may be restricted accordingly.

Previously, donors wishing to give to European Union (EU) charities and to claim United Kingdom tax reliefs were obliged to make the gift to a charity registered in the United Kingdom. Consequently, larger EU charities sometimes established “sister” organizations in the United Kingdom to receive donations from United Kingdom taxpayers. As a corollary, donations to other smaller EU charities had to be channeled through donor-advised funds. However, there has been a recent extension of United Kingdom tax reliefs to bodies equivalent to charities in the EU and in the European Economic Area (EEA) countries of Iceland, Norway and Liechtenstein. This was necessitated by a decision of the European Court of Justice which held that to deny tax exemptions for cross-border gifts made to EU charities is contrary to the principle of free movement of capital.

Donations made directly—rather than being routed through a United Kingdom intermediary charity—to charities in countries outside the EU or EEA do not qualify for tax relief.

## Section Four: Socio-Cultural Narrative

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There is a strong tradition of highly respected and widely practiced philanthropic activity in the United Kingdom. Frank Prochaska, a historian and noted authority on the matter, claimed that “no country on earth can lay claim to a greater philanthropic tradition than Britain”. This statement seems to be somewhat substantiated by recent scholarship which found the United Kingdom to be the 6th most generous nation in the world according to the World Giving Index 2013. Similarly, the United Kingdom Giving 2012/13 update published by the Charities Aid Foundation suggests that the proportion of people donating to charitable causes in a typical month increased during 2012/13 to 57%, with an average donation of £29 (46 USD) per month. Overall donation levels have remained fairly static in the past decade, despite the combined efforts of charities, governments and others to increase them.

The National Council for Voluntary Organisations (NCVO) Almanac noted that there were over 161,000 active voluntary organisations in the United Kingdom in 2011/12, or 2.5 for every 1,000 people. This does not include a large number of “below the radar” informal groups that are not registered charities. Volunteers are also a vital part of the work of CSOs and 29% of the population formally volunteer at least once a month.

In the United Kingdom, the role of CSOs has recently become the focus of more direct policy engagement, largely focused on the involvement of the sector in welfare provision and how this relates to the role of the state. This has led to debate about what should be the relationship between the state and CSOs, how this relationship should be managed and supported by government, and how to maintain the independence of the sector. Under the previous Labour Government, the relationship between the state and the third sector saw marked improvement, and government support for the sector developed significantly. This in turn led to a political and economic profile for the sector which was unprecedented. Since 2010, under the coalition government, a new policy discourse began to centre on the desirability of promoting the “Big Society” to bring about changes in the relations between government and citizens. The idea was to create a climate that empowers local people and communities by building a “Big Society” that will take power away from politicians and give it back to people. Part of the Big Society agenda saw a commitment to reform the delivery of public services by extending the role of private entities and CSOs. This has the potential to significantly change the workings of some CSO providers, particularly those who rely heavily on volunteers. All this is happening against a backdrop of recession, austerity and unprecedented cuts in public funding for CSOs that have generally not embraced the Big Society initiative.

Despite recent prominent negative media coverage of the charity sector—including concerns over executive salaries, campaigning activity and adverse publicity about the use of charities for tax avoidance—research conducted on behalf of the Charity Commission in June 2014 revealed that overall public trust and confidence in charities remains high, with only the police and doctors being trusted more than charities. However, the research highlighted a shift



in public opinion, and found that people are attaching greater importance to good and transparent financial management by charities.



Reviewer: Professor Leslie Lenkowsky  
Institutional Affiliation: School of Public and Environmental Affairs, Indiana University

## Section One: CSO Formation, Operation, & Dissolution

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

Americans generally have a considerable degree of freedom in forming CSOs, including Constitutional protection of “freedom of association.” People wishing to act collectively do not need to obtain legal recognition in advance and hundreds of thousands of such “informal” groups are estimated to exist. However, if they wish to obtain legal recognition in order to, for example, own property or limit individual liability, CSOs need to follow a process of incorporation—usually at the state level, but for a few groups, at the Federal level—that entails meeting a minimal set of requirements, such as having bylaws, a set of directors, and a legal purpose. If they wish to obtain special tax treatment, such as exemption from income or property taxes, CSOs need to apply for approval from both Federal and state tax authorities. Although the process is well-established and approval is usually routine, it requires filing of documents, payment of fees, and legal assistance. Depending on the circumstances, the process can be costly and time-consuming. Moreover, the principal Federal agency involved, the Internal Revenue Service, has been under investigation for allegedly applying partisan political criteria in considering applications for tax-exemption.

Reviewer Score  
**4.0**

CSOs that have received legal recognition are required to file annual reports with both state and Federal agencies, which are made public. To promote increased transparency and public accountability, the amount of information sought on these forms has been increasing in recent years.

Depending on their legal status, CSOs may be prohibited from conducting activities that are permitted for other types of organizations. The largest group of tax-exempt organizations, “public charities” (501c3’s), are not allowed to take part in Federal election campaigns, for example. These rules are set by statute and administrative action, and are conveyed in writing, although appeals can be made through state and Federal courts.

### Question Two: To what extent are CSOs free to operate without excessive government interference?

CSO governing boards generally have broad authority over their organizations’ internal affairs, but are expected to comply with both statutory and common-law rules pertaining to directors of corporations, which require them to avoid conflicts of interest and act prudently in making decisions about their corporations. Federal and state laws also contain provisions that may limit the discretion of directors in certain areas,

Reviewer Score  
**5.0**

such as in setting executive compensation or making risky investments of organizational assets. Directors who violate these rules can face legal liability, fines, and removal from office.

In several states, proposals have been made to regulate the structure of CSO boards, most notably by requiring organizations to have more minority-group members as directors. Some aspects of corporate governance laws, adopted in the wake of for-profit business scandals, also apply to CSOs or are seen as practices worth adopting. These include conflict-of-interest regulations, record-retention, and whistleblower protection policies.

Within generally applicable laws—such as criminal laws—and specific statutory limitations, CSOs have relatively few constraints on working with other groups (or governments and businesses), or in using communications media, both within the United States and outside it. However, American grant-making organizations are required to establish a mechanism for financial oversight of grants made to foreign CSOs, and supporting organizations considered to be engaged in terrorism is prohibited. Various laws aimed at regulating political spending and lobbying—such as those preventing coordination between CSOs and candidates for political office—also impact the activities of CSOs.

Many of these governance rules are long-established, and thus, generally clear and understood. However, enforcement is often sporadic, leading to uncertainties about their applicability in particular situations. In addition, various non-governmental groups promulgate—with varying degrees of influence—“best practice” standards, that may differ from those required by law.

### Question Three: To what extent is there government discretion in shutting down CSOs?

In the United States, governing boards have the authority to dissolve CSOs according to procedures specified in by-laws or in state incorporation laws. At dissolution, the net assets owned by the organization—such as property or investments—must be made available for use by another CSO, rather than distributed to directors, stockholders, or members. Additionally, state laws may also set rules for dissolution, including procedures for the valuation of assets. Since CSOs are generally not required to report when they go out of business, accurate data on the extent of voluntary terminations are hard to come by.

State officials—typically the Attorney General—usually have the power to involuntarily dissolve CSOs in their states for failing to comply with the requirements of incorporation laws. They can also take remedial steps, such as replacing an organization’s governing board, although these actions generally require approval by a state court. At the Federal level, the Internal Revenue Service (IRS) has the authority to revoke an organization’s tax-exemption, which could lead to its termination. The IRS also can impose financial penalties for violations, generally known as “intermediate sanctions.” Although the IRS can take these actions administratively, CSOs have the right to appeal them to Federal courts, although court rulings in these matters are typically treated as private ones, conveyed only to the affected organization.

In relation to the large number of CSOs existing in the United States, involuntary termination or other kinds of remedial actions by state or Federal authorities occur

Reviewer  
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infrequently. Whether this is because misconduct is infrequent, or, as some have argued, because enforcement agencies have typically been under-staffed and under-funded, is unknown. However, efforts to ascertain the extent of problems among CSOs—such as IRS audits of salaries paid by large foundations—have usually found a low incidence of them, though journalistic accounts allege that wrong-doing is more extensive than commonly believed. Since CSOs are generally not required to report when they go out of business, accurate data on the extent of voluntary terminations are hard to come by.

## Section Two: Domestic Tax and Fiscal Issues

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### Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?

In the United States, tax incentives are available to certain donors, but considerable variations exist among states and localities on the type and value of these incentives. Donors—including both individuals and businesses—to CSOs whose purposes are recognized by tax authorities as charitable and have broad public support—i.e., those exempt under section 501c(3), or “public charities”, and which constitute a majority of tax-exempt groups—can deduct the amount of their cash or in-kind gifts from their income tax liability. However, donors to other types of organizations—such as labor unions or political action committees—cannot do so, even though the organization is exempt from paying Federal taxes. Moreover, only taxpayers who itemize their deductions—less than one-third of all households—are eligible to claim this deduction, the value of which is reduced for taxpayers with large totals of itemized deductions. Gifts to “public charities” provided for in wills—known as “bequests”—are deductible in full from estate taxes.

Reviewer  
Score

5.0

States and localities differ in how they treat charitable gifts, and while some follow Federal rules, others do not. In some states, donations to particular kinds of CSOs—e.g., colleges or universities in the state, or organizations helping the needy—are deductible, or may be eligible for a credit against income tax liability, up to an amount specified in state law. Likewise, while some states allow tax-exempt organizations to sell goods or services without collecting sales taxes from purchasers, others do not. Further complicating this is the decision by some—but not all—states to waive sales tax collections for certain types of transactions. All jurisdictions do, however, allow owners to deduct the value of property donated to “public charities,” often at current market-value, not purchase-price.

The maximum value of Federal tax deductions depends on the donor’s taxable income. The higher the tax bracket, the more valuable the deduction, which has led to repeated, but so far unsuccessful, efforts to “cap” the value of the deduction to raise revenue or promote equity. Individuals can reduce their taxable incomes by up to 50 percent annually for gifts to “public charities,” while businesses can deduct up to 10 percent of their pre-tax net income. Different limits do, however, apply to gifts of capital or gifts made to private foundations. Both individuals and firms can carry-over “excess” deductions into subsequent tax years.

The process for claiming deductions is well-established and generally not burdensome, but donors are increasingly expected to be able to verify the amounts they claim, especially for gifts of property.

### Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

In the United States, all CSOs can apply for exemption from Federal taxes on their net corporate income. The Internal Revenue Service usually approves most applications within a few months, and the process requires minimal legal assistance. However, in exchange for tax-exemption, American CSOs have to abide by a variety of rules, ranging from annual reporting requirements to limits on executive compensation and commercial income. Just like other corporations, CSOs also have to collect Federal payroll taxes if they have paid employees. Private foundations are also required to spend a certain amount of their assets each year and pay a tax on their net investment income.

**Reviewer  
Score**  
**5.0**

Organizations exempt at the Federal level can apply for—and generally receive—exemption from state and local corporate income taxes as well. In addition, CSOs can receive exemption from paying state or local taxes on property they own and sales taxes on purchases they make. However, the coverage and requirements for these exemptions, such as their applicability to types of property or purchases, vary across jurisdictions. Moreover, at the insistence of some state and local governments, CSOs are expected—and sometimes required—to provide certain kinds of services—e.g., charity care by hospitals—in exchange for these exemptions. Some organizations may also choose to make “payments in lieu of taxes” — more commonly known by their acronym PILOTs—the amount of which is usually related to the amount of tax the organization would pay if it were not otherwise exempt. Lastly, and depending on their location and structure, CSOs may be required to pay user fees for government services, such as police and fire protection.

Private donors are free to support any CSO they wish. However, if they wish to claim a tax deduction, their gifts must go to public charities. As a corollary, unless they have the permission of the Internal Revenue Service, private foundations can make grants only to such public charities.” Besides gifts, Private donors can also support CSOs in a variety of other ways, including membership dues, loans, purchase of goods or services, and capital investments, none of which are generally tax-deductible.

## Section Three: Cross-Border Philanthropic Flows

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

Although American CSOs can receive cross-border donations without prior government approval, they may have to incur additional administrative burdens. Whether or not such gifts are deductible from taxes depends on the rules of the donor’s country. Like gifts from Americans, gifts from foreign sources—such as bequests or donations from

**Reviewer  
Score**  
**5.0**

trusts—are not considered taxable income in the United States. However, gifts from foreign sources exceeding \$100,000—or \$15,000 (adjusted annually for inflation) if from a foreign corporation—must be reported to the Internal Revenue Service. In addition, regulations of the U.S. Treasury Department require individuals to report when they bring gifts exceeding \$10,000 are into the United States by plane, mail, or in person. If a foreign or nonresident alien donor earns income in the United States, gifts to American CSOs can be deducted from American income taxes to the extent allowed by law.

Little information about donations from foreign sources to American charities is available. The Internal Revenue Service has reported an increase in foreign trusts established by Americans, some of which may make payments to U.S. charities, as do American foundations domiciled offshore—e.g., Atlantic Philanthropies.

Tax-treaties—such as those with Mexico, Canada and Israel—may allow donors in other countries to deduct their gifts to American charities from tax liabilities in their own countries. International agreements—such as those dealing with donations of “cultural property”—may also restrict the ability of foreign donors to contribute certain kinds of gifts—such as cultural artifacts—to American organizations.

Campaign finance laws in the United States prohibit citizens of another country from providing support to candidates running in Federal elections. They do not, however, affect the ability of non-citizens to support groups engaged in election-related activity, such as public education. In addition, foreign-owned corporations with American subsidiaries can contribute to candidates through political action committees created by their subsidiaries.

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

Although Americans can give cross-border donations without prior government approval, they can obtain a charitable tax-deduction only for contributions to CSOs “created and operated”—as defined in IRS Code Section 170(c)(2)(A)—in the United States. However, they may be able to exclude such gifts from taxable income if they can show that the cross-border organization would qualify as a charity in the United States. Private foundations may also count cross-border donations toward the amounts they are required to give annually if they follow the—admittedly complicated—IRS procedures aimed at ensuring their gifts are used for activities that would be considered charitable in the United States. Americans can claim charitable tax-deductions for gifts to U.S.-based organizations, such as churches or humanitarian groups, which operate in foreign countries, but these groups must comply with Internal Revenue Service’s rules regarding how the gifts can be used. They can, however, make payments directly to needy individuals if the contribution is part of a “qualified” disaster relief effort. Lastly, a separate set of rules apply to cross-border giving by corporations and from trusts or bequests.

Many foreign organizations have established public charities in the United States to enable American donors to make tax-deductible contributions and some have also registered with the Internal Revenue Service. As a result, much of American giving abroad occurs through US-based organizations. Since 2001, Federal policies have tried to prevent charitable

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contributions from being used to finance terrorist activities. A 2010 decision by the U. S. Supreme Court in *Holder v. Humanitarian Aid* upheld the constitutionality of these policies, including the prohibition of gifts to organizations on a list of suspected terrorist groups, maintained by the U. S. Department of State. To avoid facing penalties, these rules have generally required donors to exercise greater diligence in making international gifts, leading some to argue that they have reduced giving, especially to Middle Eastern countries and Muslim groups.

## Section Four: Socio-Cultural Narrative

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In the United States, philanthropic activity has been highly respected and widely practiced, with upwards of two-thirds of American households thought to make donations annually. Contributions are estimated to amount to more than two percent of national income, the highest share in the world. American giving is not, however, simply limited to financial contributions, and one-quarter of all Americans report volunteering their time to charitable groups, a figure that does not include informal types of volunteering, such as helping neighbors or friends.

The roots of philanthropic activity in the United States can be traced to the attitudes of its early settlers in the 17th century. Since then, many observers have noted the widespread expectation that Americans will be actively involved in charitable and other kinds of community-serving activities. This expectation is seen as an important factor in the maintenance of American democracy and more generally, “American exceptionalism,” or what makes the United States different from other countries.

Key factors impacting philanthropic activity in the United States include widespread religious affiliation; a public philosophy favoring a limited role for government; and family and community networks that engaged new generations—and immigrants—in civic organizations. Although it has played a supportive rather than leading role, public policy, such as the deductibility of charitable contributions, has also had an effect.

Although still held in higher esteem than other parts of society—most notably government—the nonprofit sector is less well-regarded in the United States than it was one or two generations ago. This is largely because of well-publicized scandals involving charitable groups, declining religious affiliation, increased government and commercial activity in areas once the preserve of nonprofits, and diminished rates of volunteering, especially among young people. However, giving has now recovered the ground it lost during the 2007-09 recession, and the number of CSOs continues to grow, albeit at a slower rate. New forms of organizations—such as hybrids between for-profit and non-profits—are attracting increasing attention and have received legal authorization in several states. Though a small part of their total work, foundations and other organizations continue to act internationally.