Colombia

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation, Cooperative, Corporation, Mutual fund

Five main social issues addressed by these organizations: Housing and economic development, Basic Needs, Youth and family, Human rights, Environment

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

Average cost for registering a philanthropic organization:  
The costs involved are those of the process of registration and the fee will vary between organizations.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government, Other: Confecamaras/Confederation of Chambers of Commerce

Philanthropic Environment Scores:

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<td>2018</td>
<td>4.2</td>
<td>3.0</td>
<td>3.4</td>
<td>2.2</td>
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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

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

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

Score: 4.0

The Constitution guarantees Colombians' right to freedom of assembly and to freedom of association. The right to endow an organization with legal personality is an option to be exerted in accordance to the free will of the individual or group of individuals who may choose to establish their organization either as a separate, juristic person or as an informal and unregistered organization, one that is directly tied to the personalities of its members.

A civil juristic personality is created by the voluntary and explicit will of its founders in a charter or act/deed of juridical constitution with complementary by-laws or statutes that dictate the operation and governance of the organization. Once the charter and accompanying details are created, it is then deposited in a Public Registry, for acquiring *erga omnes* effects. Registrar functions are, chiefly, delegated to 57 guilds or chambers of commerce. Traditionally, a lawful object and cause are the only conditions for legal incorporation and operation; however, since 2017 and the introduction of Law 1819 issued December 29, 2016 by initiative of the current government, POs are fiscally less incentivized to incorporate unless their purposes align with official policy and agenda, which are deemed meritorious. Tax-exempt purposes are those presumed to complete “meritorious activities,” now listed in the Tax Code, comprising culture and education definitions in national policy, have been “enabled” by a political ministry, or are a United Nations objective, such as the Sustainable Development Goals. Official verification of "meritorious activity" is examined annually by the Tax and Treasury Administration in Bogota. If a PO's activity and purpose qualify as "meritorious," then it will be validated as a nonprofit entity with tax-exempt status through an administrative decision.

Organizations with a founder, board members, or legal representative who has been found guilty of a crime or offense against public administration are ineligible for tax exemption. The public registrar function of the Colombian civil society remains delegated to the Chambers of Commerce and, as with all merchant guilds, they are more invested in government than independent from it.

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

Score: 3.5

POs operations are now subject to intense interference from the national government, which, since Law 1819/16, judges the existence of or lack of merit not only in the overall purpose, but also in the operational activity, goals, and performance of a PO. According to the new law, an entity seeking to be eligible must have a purpose that “corresponds” to a “meritorious activity” as listed in the 13 topics in article 359 of the Tax Code. Hence, and by way of exclusion, there is legal restriction on unlisted purposes of unmeritorious activities, which are levied with a full tax burden. The potential for tax-
exempt status, as determined by the government and approved by congress, excludes the oversight and whistleblowing activities of the civil society, ideological and political opposition studies, labor unionizing activities, counterculture art, holistic education, and faith based organizations, among many others. Connection to a “meritorious activity” would not work as the merit is awarded only to “promotion/support” to human rights activities and not to litigation/realization of socio economic, civic, political and cultural human rights, for instance.

Law 1819 of 2016 creates different reporting requirements for POs based on annual income size. Small POs are those with incomes below 160,000 tax units (5,097,440,000 Colombian Pesos) or more than 1.7 million U.S. dollars. Large POs are those with incomes higher than this new threshold. Small POs must disclose their income if they want to be recognized as a nonprofit organization by the government, which is equivalent to tax-exempt status in the 14 sets of information requirements listed in the Code. Big POs must submit a detailed economic memory of their annual operation to facilitate government's verification of “meritorious activity.”

Colombia has no restrictions on communications, and POs are free to engage in national or international exchanges with colleagues using the Internet or other mediums.

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

As with any other juristic person, Colombian nonprofits may voluntarily terminate their legal personality and existence by following the clear procedure set forth by the Civil Code, as well as in the PO’s bylaws or statutes. Involuntary dissolution is rare and would only occur after administrative notice has been given and due process has concluded. The decision to dissolve may be appealed for judicial review.

The dissolution and termination of the legal personhood of a PO may also result from a judicial sanction placed on organizations involved in fraud, money laundering, or those that finance criminal activities and terrorism. Even in penal cases, organizations maintain the right to lodge an appeal with a Penal Court to overturn a termination. In rare cases, the legal personality of a nonprofit 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 of rural peasants that began in the mid-1990s. These POs were right-winged associations of armed rural peasants, and were officially understood as a “means of defense” from the growing power of the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) 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 Unidad Patriotica (UP), which lost its legal personhood in 2002 due to its inability to secure Congressional seats in the legislature. However, in 2013, the High Administrative Court reversed this decision, and restored the legal personality of UP. Aside from these exceptional cases, legal personality is voluntarily acquired and terminated.
II. Domestic Tax and Fiscal Issues

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

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

Score: 3.5

Donations made to “qualified” and established non-taxpayer POs are no longer deductible from the donor’s revenue (30%). Starting 2017, a tax credit discount of 25 percent has been authorized. If donations exceed the 25 percent limit, the excess will roll over to the next fiscal year. Only POs qualified as meritorious by the government may enjoy tax-exempt donations. Donations made to POs outside of the meritorious listing have no preferential fiscal treatment.

Tax exemption for cash donations is easy and clear to obtain; donations made by card, check, payroll deduction, or wire transfer qualify for tax exemption. Bonds and other financial products that are donated are deducted from their market value with prior inflation and depreciation calculus. Quite imprecisely, Law 1819 of 2016 now authorizes the donations of assets other than money, which will be discounted from the donor’s income tax based on the lowest commercial or fiscal value established for the asset. All donations, conditioned or unconditioned, must follow the “meritorious activity” of the fiscally authorized purpose. Donations made to non-officially aligned POs or those outside of the purposes established in the Tax Code, are taxed in full.

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

Score: 2.5

According to Law 1819/16, a PO willing to receive a private tax-exempt donation has to be under the inspection, control, and supervision of some State agency not identified in the law. Additionally, financial activity has to be carried out through a formal bank or establishment. Further, a PO must have declared its tax revenue in the year prior to receiving a donation and must also already be qualified as a real nonprofit entity (i.e. with officially qualified “meritorious activity”). POs can also receive donations of assets other than money.

The Special Tax regime for nonprofits does not exist any longer; it is now a request system granted on a case-by-case basis. POs now have a transaction cost when requesting admission to the Special tax treatment and must also annually pass an official test. Only those deemed meritorious might receive tax-exempt donations. Aside from the POs that are (a) entirely exonerated from fiscal transparency; (b) have to declare information yet are determined as non-taxpayers; or (c) automatically presumed as meritorious, all other legal persons have to prove eligibility and face scrutiny. If eligible, then they do not have to pay income tax, and all revenues are reinvested to support the organizational purpose within a 1-year period, which can be extended up to 5 years or more if authorized by the government. Non-reinvested revenues are levied by a special tariff of 20 percent, as opposed to the general tariff of 34 percent for the year 2017, and of 33 percent thereon. All POs are required to pay Value Added Tax (VAT) on purchases. The VAT was raised from 16
percent to 19 percent by Law 1819/16. In addition, a special VAT of 5 percent has been reserved only for POs incorporated to empower persons with disabilities in the labor market. POs are not exempt from financial transactions contributions (GMF), from payroll-based “parafiscales,” or from local industry and commercial taxes, when applicable.

III. Cross-Border Philanthropic Flows

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

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

Score: 3.2

Colombia is a middle-income country and, as such, it faces important challenges regarding peace, equity, justice, and poverty reduction. Therefore, cash and in-kind donations are generally domestic and aimed at Colombian causes and organizations. Only under exceptional circumstances will donations be sent abroad. Most international donations made by Colombians are conducted through the government and are typically in response to a humanitarian crisis. The Presidential Office of International Cooperation, along with the Ministry of Foreign Affairs, determines which causes and organizations deserve Colombian aid or contributions and which do not. Colombia frequently contributes with technical and cultural assistance more often than with financial aid. Colombian individuals and organizations willing to send cross-border donations usually channel their contributions through the Red Cross or UNICEF, by way of example.

Occasionally, cross-border donations made by Colombian juridical persons—either for-profit or nonprofit—will be subject to all merchandise exporting requirements or international wire transfers. Hence, in-kind donations must disclose the origin of product and the chain of custody, undergo an inspection in view of customs, and receive phytosanitary approval in order to ship any goods out of Colombia. Financial donations are treated as any other money transfer and require a bank or authorized intermediary, which, in turn, requires supporting documentation for legal compliance. It is worth noting that Law 1819/16 creates a special treatment within a separate chapter of the tax code for Colombian cross-border revenue transfers, payments, or donations linked to a Controlled Foreign Company or Entity, such as trusts and private foundations, without fiscal residency in Colombia.

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

Score: 3.5

POs receiving donations from abroad must provide evidence tracing the money transfer of foreign currency into Colombian pesos in order to comply with the anti-money laundering and anti-terrorism financing standards. Once a transaction has been processed, the bank will usually retain around 10 percent of the contribution, as a way of preempting the payment of the Colombian entity’s income tax. Cash donations are easier to make than in-kind donations, as the treatment of the later mainly
depends on the legal status of the foreign donor. If the donor is, for example, a government or multilateral organization the donation will be exempt from VAT and financial transaction contributions (GMF). Otherwise, received donations must pay customs duty and Import VAT. Educational, scientific, and technological research equipment and goods, as well as sports and health equipment, and goods imported as a donation may be exempt from Import VAT if the donation is approved by the Not-For-Profits Tax and Treasury Committee established in article 362 of the Tax Code.

By virtue of Law 1819, all POs, regardless of their choice to be qualified or not by the government as meritorious, must register in the President’s Agency of Cooperation (APC-Colombia). If they are willing to be verified and are qualified as eligible to a Special or Meritorious Tax Tariff, POs must be ready to disclose international donations and provide the donor’s name, amount donated, destination of the donation, and the timeframe of existence/execution of the donation. Foreign aid or nonrefundable international cooperation must also be annually disclosed as one of the 14 information conditions imposed on POs with annual revenues fewer than US $1.7 million. POs above this threshold must provide access to information by depositing their annual financial report to the Government Tax Administration-DIAN.

**IV. Political and Governance Environment**

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

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

Colombians have been polarized between rightist and leftist ideology for most than half a century; mindsets tend to be, therefore, defensive or adversarial, even among public servants. Generally speaking, participation in policy development is a policy development opportunity. Usually, participation is open to POs whose activities are aligned with the plans of the head of the local, regional, or national government and only metaphorically open to those unaligned with or in opposition to the government. Organizations not aligned with government interests are not recognized as legitimate social agents, and contracting opportunities.

Plural decisions and even consensus with POs and other civil society organizations tend to be overlooked when legally drafting tariffs and rules. Politicians usually seek the favor of transnational, multilateral, or international sources of recommendations rather than those of local individuals or the organized civil society. For example, the tax reform affecting Colombian CSOs (Law 1819/16) was decided outside public procedure and national sources. A temporary, external, pro bono commission of private practitioners, chiefly economists and commercial tax lawyers, were nominated by the Finance Minister to make recommendations. The gratuitous recommendations of these professionals, outside the scope of public view, with no accountability or transparency, where then funneled into Congress. The bill compiled its four debates within only 70 days and is now Law 1819/16. The biggest reform ever made on Colombian civil society organizations avoided civil society
participation. The Pro Bono Commission Report was made available only as a bibliography. The ministry justified this as required by OECD, even though Colombia is not yet a member of OCDE.

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

Since the mid-20th century, Colombian governments have lost interest in nonprofit entities. The *Theory of Alterity as Intention* (Ruiz-Restrepo, 2011) concluded that the conceptual void in defining the distinctive nature of NPO/NGO is the cause of lax or volatile regulations, and facilitates the capture, abuse, or instrumentalization of NPO/NGO legal forms by opportunistic or criminal actors, which has led to constant scandals in the sector. This void was solved through the emergence of a new system of legal thought and policy approach.

Presented to the Colombian State by Ruiz-Restrepo (2011) in order to open a national debate for safeguarding CSO juridical space from both restriction and corruption, a proposal of an Alterity System was applied, per government request and public *intuito* persona contracting, between September-October 2012, (Ruiz-Restrepo, and Reform Proposal). At the end of the year, the Santos government was willing to advance the reform and the articles containing the core of the new Alterity System. Congress introduced the reform in articles 49 and 99 of Law 1607/12 or Tax Code articles 468-3 #4 and 356-1, redefining nonprofit organizations as “For-Alterity Organizations” (“Entidades Con Animo de Alteridad”), and accordingly prohibiting their denaturalization as “Alter-intentioned Organizations.”

Later, in 2014, a pro bono Commission of Private Practitioners was created by appointment of the President in Decree 327/95. Their recommendations to reform were based on the 2012 proposal. The unauthorized adjustment of the Alterital System of Thought derailed transparency efforts of the “Principle of Alterity,” substituting it by the Governmental Opinion’s criterion of “Meritorious,” now Law 1819/16. By giving the power of verification in these lax terms to a Government Qualification Committee, the system becomes dangerous due to the risk of discrimination, arbitrariness, and even persecution to entities that are not aware of it (fiscal targeting), regardless of the current government (Ruiz-Restrepo, 2016).

Ensuing reforms to NPO procurement and Social and Solidarity Economy were adopted by decree or were fast-tracked by Bogota under the “Peace Agreement” pretext. Improvisation, policy incoherence, and unequal treatment are evident in the texts, as well as the intentions of political control of civil society and commercialization of society.

**V. Socio-Cultural Environment**

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

Philanthropy is not a frequent term, nor does it reflect Colombia’s traditional matrix of values and behaviors, which gravitate more towards solidarity with family, neighbors, colleagues, employees,
and families of employees rather than a philanthropic commitment to an objective cause. Giving without a personal involvement is less frequent in both the Eurolatinoamerican and Abya Yala culture and tradition. Overall, there is no ethnic or gender barrier in the formation and operation of POs. Voluntary initiatives are always perceived as valuable but not considered as fundamental. The Colombian State provides welfare, and structural development as a public service. "Filantropía" is mainly a foreign term recently introduced and tied to structured giving or institutionalized donations from prominent industrial families and their corporations, as well as by private offshore foundations and trusts. Only a short decade ago, these types of foundations decided to separate from other Colombian NGOs as a subsector. Philanthropy is the money powered organizations and grant makers; everything else, such as the people-powered organizations, grassroots associations, unions of workers, or human rights organizations are tagged as NGOs. Currently, the money-powered organizations are the preferred intermediary of the State when contracting social services, while the others are the direct representatives of the beneficiaries. Since 2012, with the definition of NPOs by their “alter-intentionality,” a system has been set in place to unveil fake organizations and operations generating unlawful or illicit profit distribution, personal self-employment, strategic proselytism, or criminal operations. The Principle of Alterity was taken out of explicit redefinition by Law 1819/16 and the denaturalization prohibition was weakened--the rest of the analytical system is kept but adjusted to political control and intervention instead of public transparency and fair treatment.

VI. Future of Philanthropy

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

Current state of the philanthropic sector

There is no institutionalized PO sector, and the State does not have an overarching public institution to interact with. The "sector" is mainly formed by streams of legal person’s types, which, naturally, represent their affiliate’s stakes. There seems to be no interest in joining forces and create one single sector, hence there is no unified voice to advocate the crosscutting needs and realities of the "sector". Decision-making regarding POs is made top-down from Bogota to the rest of urban and rural Colombia. Affiliation or access to key events of sub sectorial umbrella organizations is expensive for most grassroots and communitarian organizations. A trend of “corporatization” and “professionalization” of the civil society’s voice is creating distance between citizens and political authorities who prefer to exchange with umbrella organizations rather than reaching out to individuals and small organizations.

A vibrant, plural, and fairly-treated organized civil society is key to overcome exclusion and segregation, ground territorial peace, and allow for the local and autonomous development of communities. Traditional organized civic and solidary expressions are being increasingly disempowered because they are considered to be unprofessional, inefficient, or unsustainable. The increasing marketization of civil society is creating a clientelistic lens toward social development and human rights. Public registrar delegation and NPOs forum set within the 57 chambers of merchants or commerce is far from ideal, hence many continue to claim autonomy in the form of a CSO Chamber to deposit and openly manage the sector’s data.
Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

1. (2012-2014): Third Sector Problematization and path toward tax reform. The need for rationalizing the Special Treatment in Tax and Contracting with the intention of strengthening Civil Society was furthered by the government and Congress to convene a Pro bono Commission in charge of recommending a Tax Reform. After 10 months and 3 reports, the final report was presented to the public in January 2016 and became the main source for the Tax reform bill and Law 1819/16.

2. (2016): The Peace Agreement signed between the government (rejected by the Civil Society in the October Plebiscite) was authorized and admitted by Congress and a Constitutional Court’s decision, which was crucial because it placed pressure of the Tax Reform and therefore on the structural amendment to treatment to the Third Sector. Current implementation of “peace” now authorizes an even greater reduction of democratic deliberation time and windows for civic information and the involvement in public matters in a vast and disconnected country. Civil society participation and peace are symbiotic, and restricting one in favor of the other is illogical and should be remedied quickly.

3. (2016): Law 1819 established the assimilation of NPOs to commercial societies, which ended the traditional regime of special or preferential treatment for POs, and distorted the original sense of the reform started in 2012 by the government of President Santos. The legal reform has now extended to nonprofit procurement and amending the solidarity economy. The main driver to these reforms are ideological and are hybridizing all that is civil to be more commercial.

Future development trends in the philanthropic landscape

- Private welfare, aid, cooperation, and CSR will probably continue to increase and expand.

- Grassroots may continue to resort to creating juridical persons as a condition to access public or private funds.

- Corporate publicity will continue to include human virtues of decency, altruism and solidarity to improve brand reputation and increase profits. Similarly, the strategic crafting of “social” movements to oppose rival economic or political projects might continue. The spaces for the civil society are growing; even street marches are now convened and led by public servants, including public officials, such as mayors, senators, presidents, and ex-presidents.

- The allocation of international funds for peace agreement implementation, reconciliation, and transitional justice will expand the “market” for development, aid, and human rights. Foreign ideas and trends, such as social labels, social bonds, social innovation, and social enterprises entering a country with an already fragile architecture for organized civil society will create further confusion. It is becoming extremely difficult to distinguish what is public, compulsory, and legal and what is only a private and optional program/agenda.


The future seems to be one of accelerated hybridization, corporatization, professionalization and marketization of the civil society’s voice and agency in a country that desperately needs truthful communication to begin a real, true, and tranquil process of local dialogue, reconciliation, and transition under a solid, clear, and comprehensible rule of law.

**Three key recommendations to improve the environment for philanthropy**

1. Despite the distortion and derailment caused by the substitution of “juridical alterity” as the distinguishing criterion of the transparency system now entirely in place through Law 1819/16, it is still possible to prevent official interventionism and fiscal targeting of POs by clearly and explicitly realigning the subjective idea of merit to the original objective idea of “Alter-intentionality.” Equal dissemination and public access to bibliographical sources and legal reforms to support democratic information, debate, deliberation, and policy pedagogy.

2. The oversight of CSOs delegated to Governors should be tied to a municipal system of CSOs registry hosted in each municipal human rights office (*personerias*), and such information and deliberation should be centralized in five Regional Chambers of Civil Society Organizations who enjoy the enhanced protection of the Public Ministry/NHRI (National Human Right Institution). Superintendents should encourage PO complaints of disloyal and unfair competition toward their social and “solidarity economy” efforts, as their efforts to innovate usually spring up from local grassroots and vulnerable populations.

3. Philanthropists, philanthropic-capitalists, aid providers, development actors, corporate grant makers, social investors, and entrepreneurs should make sure that their valuable help/expertise is embedded in the national preexisting rule of law and societal culture; further, they should transparently advocate and propose legal reform in support of clearly identified local population groups. Social labels, agendas, innovations and startups should harmonize with the reality of Colombian cultures and juristic organization of society, especially if they truly wish to contribute to poverty reduction and peace in Colombian society. International Development Actors should seek to contribute without legally disempowering the organized or unorganized civil society or disconnecting projects from systemic institutional frameworks.