Venezuela

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QUICK FACTS

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

Five main social issues addressed by these organizations: Higher Education, Primary and High School Education, Arts and Culture, Basic Needs, Human Rights.

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

Average cost for registering a philanthropic organization: US $150

1) POs with political objectives (e.g. promotion of democracy) are practically impossible to register; 2) Registrars are highly discretionary and government controlled; 3) It may take more than the legal time to register a PO; 4) Sometimes, registration employees may ask for non-legal fees; and 5) There are restrictions to foreigners to serve on a PO’s board of directors, especially those with political purposes.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government

Philanthropic Environment Scores:

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<th>Ease of Operating</th>
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<tr>
<td>2018</td>
<td>1.7</td>
<td>3.8</td>
<td>2.4</td>
<td>1.0</td>
<td>4.0</td>
<td>2.56</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: 0.5

The Constitution recognizes the right of freedom of assembly, political participation, freedom of expression, and a number of other human rights protecting POs and their members. Likewise, the law establishes the means to acquire legal personality, and case law has defined the nature of civil associations and foundations. Nevertheless, there is a great contradiction between what regulations say and what happens in practice.

First, registration authorities are extremely corrupt. Even though, according to the law, the registration process should not be burdensome and does not require heavy fees or resources. In practice it is frequently onerous. Second, each registrar has a great deal of discretion in decision-making. As a result, the by-laws and other documents required for registration often have to be submitted several times in order to adapt them to the capricious requirements of registration officers, and to receive final approval by the registration officer. Third, the registration authorities frequently deviate from the formal procedures and oblige POs to undergo various unnecessary formalities, which waste time and resources. Finally, POs advocating for human rights or pursuing political objectives are very difficult to register, as there are unofficial governmental guidelines that prevent registration of POs in these areas. These types of organizations are included in the Law for the Defense of Political Sovereignty and National Self-determination (Article 3) published on December 23, 2010 (Gaceta Oficial N° 6.013 Extraordinario) as:

a) Organizations with political purposes that carry out public or private activities, aimed at promoting the participation of citizens in public spaces, and promote candidates who aspire to hold elected positions; and

b) Organizations that promote, divulge, inform, or defend the full exercise of the political rights of citizens.

Given these facts, it is clear that individuals are restricted in their ability to form organizations. The government heavily monitors and limits the types and purposes of organizations formed. Furthermore, the registration process is extremely burdensome, requiring excessive fees and resources, and the government entities apply regulations inconsistently and based on political motivations.

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

Score: 1.0

According to civil law, PO founders are given sufficient freedom in setting the structure and governance of their organizations. In practice, however, the law holds little sway, and registrars
can—and usually do—interfere with the structure and governance of POs. While POs are legally entitled to pursue any activity that is not unlawful or against public order, serious restrictions exist for POs with political purposes. According to the Law for the Defense of Political Sovereignty and National Self-determination, these organizations cannot receive any kind of foreign funding or economic aid, be it from foreign individuals or organizations. These organizations and their members can also face severe fines should they persist in their activities. PO members can also be forbidden from exercising their political rights, should it be determined that they have violated this law.

Communication and the use of social networks are limited, not only because of the existing technological limitations in regard to bandwidth in the country, but also because the government has threatened and detained activists who use social networks to advance the purposes of their organizations. The government has also hacked activists’ accounts and regularly spy on them.

As a result, the internal governance of organizations is moderately to highly inhibit due to the high discretionary power of registration authorities and restrictive government practices. Organizations with political purposes are severely restricted to accomplish their purposes and activities and their communications are effectively restricted and/or monitored which limits cooperation with domestic and international entities.

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

Score: 3.5

According to civil law, an organization’s governing body is able to voluntarily terminate its activities, in accordance with the rules established in its by-laws. Involuntary termination by the government may occur only during severe violation or failure to correct said violation. Nevertheless, in practice, there is high discretion of governmental officials and courts to determine what constitutes a violation. Even though there are no high-profile cases of involuntary terminations, there are constant threats to POs and their members, especially those organizations defending human rights and civil liberties.

Involuntary termination would be subject to judicial supervision. Currently, the judicial and executive branches of government do not act independently, and several studies have proved that in Venezuela, judicial courts always align with executive’s interests in cases where political interests are at stake.

**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: 4.0

A. As explained under Article 14.3 of the Income Tax Law, charitable and social assistance organizations (as defined in the Income Tax regulation) are eligible for exemption from income tax if they meet the requirements established in this article. In order to receive exemption from income
tax, organizations must register with the Tax Administration (SENIAT) and demonstrate that they have met all requirements (LISR Article 14).

B. Deductibility of Charitable Contributions under the Income Tax Law states that corporate and individual taxpayers can deduct donations to civil associations and foundations that pursue nonprofit purposes. In addition, donations to a branch of government (national, state, municipality, or official autonomous institute) are deductible (LISR Article 27 paragraph 12). The amount of the deduction is limited to:

- 10 percent when the net income of the donor does not exceed 10,000 tributary units;
- 8 percent for the portion of net income that exceeds 10,000 tributary units; and
- 1 percent if the contributor carries out economic activities relating to hydrocarbons or the exportation of minerals.

For all of the above-mentioned deductible donations, the deduction applies only to recipients domiciled in Venezuela, and does not benefit donors who suffered losses in the immediately preceding fiscal year (LISR Article 27). The executive branch is authorized to exempt POs from paying taxes on inheritance and donations if they dedicate themselves to the activities named in article 14-10, which are: religious, artistic, scientific, conservation, defense and improvement of the environment, technological, cultural, sports, and professional associations or trade unions, provided they do not pursue profit.

Donations may be made in cash. These contributions can be deducted from the company's income taxes. Deductibles depend on the type of contribution. If the contribution is made in cash to any of the above-mentioned beneficiaries, it will be deducted as a paid tax (LISLR Article 27); however, if the contribution is made as an investment in the company itself, it will be deducted as an expense.

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

In general, any POs can receive support from private donors. In practice, however, private donors tend to avoid making donations to POs with political or human rights purposes for fear of government retaliation against them. All POs are eligible for tax exemptions if they fall under the categories of charitable or social assistance organizations established in the Income Tax Law previously described. According to the Income Tax Law, POs wishing to receive incentives must be registered before the Tax Administration Office and must have obtained a Registration of Fiscal Information (RIF).

Most Venezuelan POs are able to receive tax exemptions of various forms. Article 14.3 of the Income tax law (*Ley de impuesto sobre la renta*, as amended in 2007) establishes that charitable and social assistance organizations (as defined in the Income Tax regulation) are eligible for exemption from income tax if they meet the following requirements:

1) Their income was obtained with the objective of furthering their charitable purposes;
2) They do not distribute earnings, profits of any kind, or any part of their assets to their founders, associates, or members; and
3) They do not make payments in the form of distribution of profits or assets.
Article 14.10 of the Income Tax Law also establishes that institutions dedicated exclusively to activities named in this article are exempt from payment of Income Tax if they meet the legal requirements.

According to the 1997 Law on Inheritance and Donations, Venezuela’s executive branch is further authorized to exempt individual POs from paying the tax on inheritance and donations if they dedicate to the above-mentioned activities. To take advantage of this exemption, organizations must report each inheritance or donation to the Tax Administration office within 30 days. If a donation is not exempt, the donor and recipient are jointly liable for tax payment.

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: 1.8

There is not a particular legislation to regulate foreign donations. The Law on Inheritance and Donations is applicable to all sorts of contributions. According to the law, the tax aliquot goes from 10-55 percent depending on the amount of the donation. Donations of large amounts of money, properties of great value, or immovable properties must be made through authenticated documents, adjusted to the current legal exchange rate in order to comply with the Illicit Currency Exchange Law.

Decree No. 2001 establishes exemption for:

(i) Private nonprofit organizations that engage primarily in activities of science, education, art, culture, sports, or similar;

(ii) Private nonprofit establishments engaged in charitable, healthcare, social protection activities; and

(iii) Private nonprofit establishments mainly engaged in welfare or religious activities.

Such exemption requires that 75 percent of income is destined to pursue the mentioned activities. Organizations shall request an “exemption certificate” from SENIAT (National Tax Administration), and they must inform SENIAT within 30 days after receiving the donation.

These same regulations apply to cross-border philanthropic donations; however, in this case, it is important to take into consideration bilateral treaties in order to avoid double taxation, which Venezuela has enacted with several countries. In most cases, exemptions and exonerations remain unchanged. There are no specific procedures or approval processes in order to send donations to foreign entities. If the amount donated exceeds US $10,000, the donor must notify the Venezuelan Exchange Control Authorities. The major restriction on sending cross-border charitable donations comes from the Exchange Control System; the process of obtaining exchange currency must follow all the regulations and mechanisms established by the Venezuelan Administration. In this sense, the
origin of donated funds must be acquired through the instruments imposed by the Venezuelan Government through the Illicit Currency Exchange Law.

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

Score: 3.0

From a practical and legal standpoint, Venezuela does not have specific procedures or approvals to receive cross-border donations. The main limitations for either receiving or sending foreign charitable donations exist in the Venezuela’s Exchange Control System. This system has centralized control on the purchase and sale of foreign currency within Venezuela through the Central Bank; however, with the recent modifications to the Illicit Currency Exchange Law, these limitations have been reduced to the obligation to declare sent/received donations when they exceed the amount of US $10,000.

The Law for Protection of Political Sovereignty and National Self-determination targets POs dedicated to the “defense of political rights” or other “political objectives.” These organizations are prohibited from receiving any kind of donation from foreign sources. Noncompliance could lead to a fine.

**IV. Political and Governance Environment**

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

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

Score: 1.0

The current political environment is characterized by extreme political tensions between an openly undemocratic government and a democratic civil society; these tensions are largely due to the negativity of the government when organizing elections (among other violations of basic democratic principles. The government not only investigates and threatens civil society activists, but also civil society benefactors. In this context, the government sees philanthropic freedom as a menace. Under these circumstances, philanthropic organizations may be at risk. Since the government is an openly totalitarian regime, the private sector is seen as an enemy and a threat.

In general, and for more than a decade, the relationship between the Venezuelan government and the private sector has occurred in a climate of great tension, even more so now that economic freedom is seriously restricted. The government perceives philanthropy as an adversary, rather than a sector with which they can develop relationships of cooperation. This is especially true in the case of POs that advocate for human rights or who serve political objectives. Donors may be threatened or coerced by government through various means.
The political-economic system recognizes independent groups as actors and agents of social change. Nevertheless, government policies and specially practices block most private initiatives. The government does not create opportunities to involve philanthropic organizations in policy development and implementation. On the contrary, it blocks and even censures POs’ initiatives in very sensitive sectors. For example, the government recently blocked donations of medicines and food for people with serious health problems (cancer, dialysis) or people who are starving because the donations were channeled through POs, like Caritas.

Currently in Venezuela, there is a great political instability, which is completely unfavorable to the development of philanthropy. The political instability, poor economic conditions, and a climate of extreme uncertainty generate threats to the autonomy and sustainability of the philanthropic sector. Nevertheless, if the democratic movements succeed and there is a peaceful transition to democracy, philanthropic organizations will be more likely to find the conditions required to flourish and contribute to social development.

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

| Score: 1.0 |

The government neither promotes nor supports a culture of philanthropic tradition. The government does not allow/promote POs’ equal access to resources and opportunities, either. Freedom to support any philanthropic cause or organization without government pressure is seriously restricted. The Law for the Defense of Political Sovereignty and National Self-determination limits political organizations from receiving financial support from foreign organizations (Article 7). Even philanthropic activities in non-political areas, such as health and food, have been under threat. The government does not support POs unless they politically control them. The government does not implement effective laws and programs to prevent corruption, especially if POs are under government control.

**V. Socio-Cultural Environment**

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

| Score: 4.0 |

Venezuela has a cultural tradition of philanthropy. Solidarity is a rooted social value, and altruism is highly regarded by entrepreneurs. The private sector is open to support philanthropy, even though the current economic situation has remarkably restricted philanthropic activity. Venezuela shares with many countries in Latin America a common colonial and religious background that has shaped what philanthropy is today in this country. The Catholic Church used to take care of many existing charities and had the primary responsibility of providing education, health, and social welfare (Landim & Thompson, 1997). Consequently, Catholic religious values of solidarity shaped the face of philanthropy in Venezuela both in colonial times and many decades later.

Most people are aware of the importance of philanthropy for society, and there is a general understanding of what philanthropic organizations do. Nevertheless, philanthropy is not perceived
as a sector, but rather philanthropy is perceived as independent entities working in isolation, all of which do good. It is necessary to raise awareness of philanthropy as an organized sector to contribute to its development and to leverage the efforts made by many private organizations and individuals inside the country, as well as overseas.

In terms of credibility, POs are, in general, perceived as transparent and accountable, and they are highly trusted by society. The structure of society and its cultural traditions do facilitate the free development of philanthropic activities. Upper class citizens are, generally speaking, very conscious of the importance of solidarity. Civil society generates spaces for the development of POs independent of social status. Similarly, there are not openly perceivable social barriers for women to participate in philanthropic activities. On the contrary, the participation of women in philanthropy is very high, and they sometimes hold important positions in the sector as directors of foundations or coordinators of networks of nonprofits, such as the President of Sinergia Civil Association.

Social inequality is a big problem in Venezuela, especially in the last few years when the collapse in international oil prices, along with inadequate macro and microeconomic policies, significantly affected the economic and social performance of the country (World Bank, 2017). However, even though it can be perceived as a barrier to the growth of philanthropy, it can also be seen as an opportunity to develop the sector and create awareness among citizens about the importance of philanthropy as a mechanism to advance social development.

VI. Future of Philanthropy

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

Current state of the philanthropic sector

The philanthropic sector is expansive in Venezuela. There are very relevant and well-recognized NGOs and donors that are highly regarded by civil society as a whole. Nevertheless, philanthropy is not an institutionalized sector and should be better organized. There is not a clear consciousness among POs as belonging to a sector. Even though there are prominent donors and organizations that individually cooperate, there are not prominent private groups or organizations supporting the autonomy, capacity, sustainability, and impact of the sector as a whole. The sector has become professionalized even though there is still work to do in relation to the professionalization of the sector. The development of the sector depends on the return to democracy in the country. Once a transition to democracy is implemented, opportunities for and development of the sector will be significant.

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

1. Political and economic crisis have dramatically reduced the amount of money that donors put into POs for several reasons: 1) the national private sector has been reduced to less than half of what it was prior to the Chavista regime, and the few companies that have managed to survive have reduced the money they dedicate to social responsibility; 2) international donors see Venezuela as a highly hazardous country in which to operate; and 3)
governmental corruption, unclear legislation, and the lack of transparency reduce foreign donations.

2. Legislation, such as the Law for the Defense of Political Sovereignty and National Self-determination, as well as the changes introduced in tax laws, have reduced the financing sources for human rights organizations or those POs with political aims. Likewise, unlawful threats made by the government to donors have affected not only funding for human rights organizations but also funding for social assistance, educational, health, and food POs.

3. Some leaders of the sector argue that “brain drain” (the emigration of highly trained people from the country), which has occurred during the last 3 years, has affected the development of the sector.

Future development trends in the philanthropic landscape

- Given the Venezuelan economic crisis, the trend is to reduce cash donations. However, there is a growing trend of giving through other means, such as providing support by donating time, knowledge, or specific material resources.

- The Venezuelan diaspora has grown significantly during the last ten years. People who have left the country have been sensitive to the political and economic crisis and have been supporting local philanthropic organizations and individuals by donating food, medicines, and cash. The Venezuelan diaspora is becoming a relevant new actor in the philanthropic landscape. Even though it is mostly an unstructured phenomenon, it is developing into a more systematic and organized activity. Hence, it can turn into a new important source of philanthropy in Venezuela.

- If Venezuela returns to democracy, one probable outcome is the development of a stronger and more active philanthropic sector to help re-build and strengthen democracy in the country.

Three key recommendations to improve the environment for philanthropy

1. It is crucial to support the transition to democracy in Venezuela. If the totalitarian regime subsists, philanthropy will be at risk of disappearing.

2. Develop a campaign in order to: 1) give POs a sense of cohesion as a sector; 2) raise awareness among beneficiaries about the importance of POs; and 3) raise the awareness of potential donors about the benefits of philanthropy.

3. Promote an adequate legal environment that endorses transparency, tax incentives, and freedom of association.