



# Argentina

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## QUICK FACTS

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

**Five main social issues addressed by these organizations:** Food, Human Rights, Basic Needs, Youth and Family, Housing and Economic Development

**Average time established by law to register a philanthropic organization:** Between 3 and 12 months

**Average cost for registering a philanthropic organization:** US \$150

The average cost mentioned above refers to official costs. However, there are also professional fees that should be added, approximately US \$200.

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

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.0	2.8	3.8	3.5	3.5	3.50

## 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
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The National Constitution (NC) not only explicitly recognizes the rights of association and of expression, as well as the right to petition to authorities (NC, Article 14), but it also formally incorporates into its constitutional hierarchy the international human rights of international treaties to which Argentina is a party (NC, Article 75, 22). Consequently, individuals may act collectively through unregistered groups or organizations. Individuals are also free to form organizations with legal personality, which in turn, are endowed with minimum capacities, such as opening a bank account and obtaining tax exemptions.

Argentine law enacts three types of organizations that can be legally formed: civil associations, foundations, and mutual entities. While both civil associations and foundations are defined as public benefit organizations, mutual entities are cooperatives whose ownership is held by its members, and whose purpose is to benefit its own members.

The Republic of Argentina is a federal state, and is governed at national (or federal), provincial, and local levels of jurisdiction. The new Civil and Commercial Code—enacted by National Law (# 26,994 in 2014), effective from Jan 1, 2016—provides the general civil legal framework for associations and foundations. Provinces, each with their own registration requirements, provide legal personality. However, while there are some differences in the requirements of the 24 jurisdictions, the amount of documents required by each province is reasonable. Registration fees are not high, about US \$150 (plus professional fees of approximately US \$200), and the process is not onerous.

Activities at the lowest and highest levels of Argentina's government are somewhat consistent and mostly apolitical, particularly since 2016 (with the new Government). It usually takes between 3 and 12 months to obtain legal personality. There is a right to appeal to the courts in the case of denial.

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

Score: 4.0
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The national legal framework of Argentina, as well as requirements at the provincial level, allows POs sufficient discretion in setting their structure and governance procedures. Organizations in Argentina are minimally obstructed in their internal governance and face few or no restrictions in accomplishing their purposes and activities.

POs are permitted to contact and cooperate with other civil society organizations, businesses, and government sectors, both within and outside the country. They can also participate in networks, use the Internet and all forms of social media, and are free to communicate through various media

channels. In general, POs are not restricted from communicating or cooperating with other domestic entities.

In the period 2008–2015, there were, however, some restrictions on receiving donations from international entities; all foreign currency in checks or wire transfers had to be channeled through the official banking system, and then be given to the payee in local currency at the official exchange rate. This was problematic because the gap between the official exchange rate and the non-official rate was almost 50 percent, and the exchange process could take between 20 to 30 days. This suggests that the former Argentine government was not interested in helping local CSOs obtain financial support from abroad.

Finally, the reporting requirements for POs are predictable, and applicable to all organizations, no matter the amount or source of their income. POs must also submit annual financial statements, which in turn must be signed by a public accountant.

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

<b>Score: 4.0</b>
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According to the national civil law framework, as well as to most provincial requirements, a PO's governing body is able to voluntarily terminate its activities. The dissolved association or foundation's assets must then be transferred to an Argentina-based public or private not-for-profit legal personality established for the common good—although an exemption exists if the dissolving organization is foreign. For example, in Buenos Aires the General Resolution 6/1980 stipulates that the revocation of a civil association's legal personality leads to the dissolution of the institution, and any remaining liquid assets must be given to a cooperative venture. According to Article 30, decisions such as these require approval by the administrative oversight authority.

Involuntary termination by a government authority occurs only following severe violations, and usually only after the government has provided an opportunity to correct said violation, though it is ultimately at the government's discretion. If involuntary termination is pursued, there are appropriate channels through the law, including notice and the opportunity to be heard prior to termination.

Occasionally, however, there is a degree of discretion and arbitrariness in the decisions of the government authority. For example, in Buenos Aires, while regulations do stipulate certain standard sanctions (such as a monetary fine), and a few standard administrative procedures have also been established (such as requesting the intervention of the Ministry of Justice to revoke legal personality, or dissolution and liquidation) there is lack of clear criteria concerning what would constitute a "serious case." This lack of a precise definition gives to the implementation processes a margin of discretion. Fortunately, these decisions can be appealed in judicial courts.

## **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: 2.5**

The process of receiving tax benefits is clear and consistent, but somewhat onerous, as it requires an excessive time period—usually about a year—and important resources. Individuals and corporations making donations are moderately regulated by the governing body. According to the Income Tax Law (a national law, # 25.239), individual and corporate donors are eligible for limited income tax deductions. The ceiling on such incentives is, however, low, which significantly restricts the size of the donations. When charitable contributions of money are made to a “qualified PO,” individuals and corporations may deduct only up to five percent of their adjusted gross income. Mutual entities, however, are not eligible to receive tax-deductible donations.

Whether or not an organization constitutes a “qualified PO” is dependent upon the group fulfilling the conditions stipulated in Article 81 of Argentina’s Income Tax Law. According to this section, such an organization must demonstrate that it fulfills at least one of four possible purposes. First, the PO may be structured as providing not-for-profit charitable medical assistance, including the care and protection of children, elderly populations, and individuals with disabilities. Second, it can also be engaged in scientific and technology research certified by the Secretary of Technology and Science of the Ministry of Education and Culture. Third, the organization can pursue scientific research on economic, political, and social matters related to the development of political parties’ goals. Finally, a qualified PO may be an educational institution offering either education leading to a degree certified by the Ministry of Education and Culture, or free courses offered to promote cultural values. In addition to fulfilling at least one of these substantive requirements, POs seeking qualified status must have a previously approved and current tax-exempt status.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?****Score: 3.0**

Organizations with legal personality may receive moderate tax exemptions and reductions. At the national level, they may receive an income tax exemption (the tax rate for legal persons is 35%) and a reduced rate for Bank Account Debit and Credit Taxes—which are levied on bank operations—from 1.2 percent to 0.6 percent. Although not technically an exemption, at provincial levels POs may also receive a Sales tax reduction, from 3 or 3.5 percent (according to each jurisdiction) to 0 percent. These benefits however, have left many Argentine civil society organizations unsatisfied, and several CSO coalitions—most notably Foro del Sector Social, Grupo de Fundaciones y Empresas and Confederación de la Sociedad Civil—are currently lobbying for additional tax benefits. This includes a reduction in, or exemption from, the Value Added Tax (VAT), which is currently 21 percent for their operations, a total exemption from the Bank Account Debits and Credits tax, and trade union status for their employees.

Obtaining income tax-exempt status is not easy and the process is somewhat demanding, requiring long periods of time and resources. Although the range of POs eligible for tax exemption is broad, there are still several restrictions on the eligible types of organizations to receive such tax benefits. One of the most salient restrictions is the Income Tax Law #25,239. The law states that civil

associations and foundations are disqualified from tax-exempt status if, during a given tax period, they provide any form of compensation (including lodging, food, and similar expenses) to any members of its surveillance or managing board that exceeds 50 percent of the annual average of the three highest salaries of the administrative staff. Furthermore, since the amendment of the Income Tax Law in 1999, foundations can also lose their income tax exemption if they carry out commercial activities; this is a barrier for creating social enterprises within POs, such as microcredit activities.

### 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?**

<b>Score: 4.0</b>
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In the period between 2011 and 2015, under the presidency of Cristina Kirchner, the increasing rate of inflation provoked a notable increase in the demand for foreign currency. Consequently, the government introduced tight capital controls on foreign currency to stem capital outflows and bolster central bank reserves—a decision that was a disaster for the Argentine philanthropic sector. There were three types of currency regulations: 1) those of the Central Bank, which attempt to protect reserves of foreign currency; 2) those of the Financial Action Task Force, which aimed to prevent money laundering and the financing of terrorism; and 3) those promulgated by the Federal Agency of Public Income, which prevented tax evasion. Due to those regulations, sending money abroad required prior government approval, which made it very difficult to send cross-border charitable donations. The process for sending charitable donations abroad became inconsistent and onerous, mainly because of the mandatory routing of foreign funding through government channels. It was almost impossible for individuals and organizations to send foreign currency abroad, for either charitable or trade and commerce purposes. .

Since January 2016 (with the new administration of president Macri), private entities are able to freely send charitable contributions abroad without extra cost. The process to send charitable contributions abroad is uniform, simple to complete, and there are no restrictions on the types of activities that can be supported abroad. However, charitable contributions sent abroad do not receive tax benefits.

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

<b>Score: 3.5</b>
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In general, Argentine organizations can receive cross-border charitable donations. No approval process is required to receive charitable contributions from abroad, and there are no restrictions on the purposes cross-border charitable donations can support.

Since the beginning of 2016, the process for receiving charitable donations from abroad is not onerous and does not take an excessive amount of time. However, due to new regulations for the Prevention of Money Laundering and Terrorist Financing, the National Financial Information Unit requires a more rigorous accounting of cross-border financial operations, which is applicable to all third party donations or contributions received by legal persons in amounts exceeding \$100,000 pesos (US \$6,450).

#### 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: 3.5**

Since December 2015, with the beginning of the administration of President Mauricio Macri, the political environment has improved dramatically. With the former presidency (Cristina Kirchner's), particularly from 2008 to 2015, there were political tensions between the government and the philanthropic sector, and the legal and fiscal framework became unfriendly. The new government recognizes the role of POs as agents for change and their function in supporting a democratic system, and allows for the participation of POs in implementing some public programs. It is important to point out that many public officials came from the Philanthropic Sector. Nevertheless, the political and economic conditions of the country are unstable and still present challenges to the success of philanthropy. Because of these conditions, and because the government has other priorities, few changes have been made so far in order to improve the legal framework for the Philanthropic Sector. Current economic conditions are a threat to the autonomy and the sustainability of POs.

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

**Score: 3.5**

As explained earlier, the former presidential administration (2008–2015) had no interest in promoting philanthropy. The current government (only 16 months in office), recognizes the role of POs as agents for change and for supporting democracy, but, due to its reduced capacity, has not made efforts toward promoting philanthropy or POs' equal access to resources and opportunities (such as services, training, networking opportunities, sources of funding, etc.). However, the government has given priority to fighting corruption, and has successfully implemented several laws and programs to prevent corruption.

In terms of freedom to support causes, donors are generally free to support any philanthropic cause without government pressure or intervention.

## V. Socio-Cultural Environment

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

**Score: 3.5**

Philanthropic activities have a long history in Argentine society; philanthropy has been important since the origin of the Republic (1810) and even during the colonial period. There is a cultural history of engaging in charitable activities, and the socio-cultural environment is favorable to the development of philanthropic organizations.

Most of the Argentinian population are descendants of immigrants, many of whom either founded or participated in community civil society organizations, for charitable and religious purposes, and contributed to build a strong philanthropic culture. Many of these organizations are now important actors in Argentine society; they operate hospitals, nursing homes, schools, and numerous other projects. A survey conducted in 1998 by the Foro del Sector Social and Gallup showed that POs enjoy a high level of approval (48%). During the Argentine economic crisis of 2002 and 2003 the number of POs increased dramatically, up to an estimated 100,000 POs. However, official registration figures show that only a small proportion have actual legal personality (roughly 20,000), and those that are also registered as income tax-exempt are even fewer (less than 10,000). This fact, and others mentioned in this report—most notably the lack of incentives for donations, which makes donations very small despite an openness about giving—shows that the growth of the philanthropic sector has not been accompanied by a favorable regulatory framework. The asymmetry between the favorable public opinion about POs and the unfriendly legal framework is due in part to an important group of political leaders (in particular those from the Peronist and Leftist parties) who promote greater government interference in social and private activities, and display a lack of trust toward philanthropic organizations, or civil society organizations in general.

In terms of equality, the philanthropic sector in Argentina shows remarkable participation of women in philanthropic activities; many POs are conducted and supported by women, in equal conditions. There are no other types of social barriers either.

## 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

As stated before, even though philanthropic activities have always been well perceived in Argentine society, and there is favorable public opinion toward Civil Society Organizations in general, only a small percentage of organizations in this sector are formally registered. Almost 80 percent of POs have no legal personality, defining the philanthropic sector as very informal and non-institutionalized. This situation was caused, mainly, by many years of unfriendly government policies, which generated an equally unfriendly legal framework. Many years of economic crisis were also an important obstacle that contributed to the lack of professionalization of the sector, due to the costs,

time, and efforts required to be formalized. The new government policies seem to be much more favorable to support POs; however, the promotion of philanthropic activities through, for example, new regulations to facilitate obtaining legal personality and legislation introducing more incentives for donations, are not at the top of the official agenda.

In the past years, many POs have formed intra-sectoral collaborations under the form of “umbrella” organizations, like federations such as Foro del Sector Social, Federación de Fundaciones, Red Banco de Alimentos, and Red Argentina de Cooperación Internacional. More recently, in 2015, a confederation that gathers almost all those federations, called the Confederation of Civil Society (CSC: Confederación de la Sociedad Civil) was formed. In 2016 this Confederation made important presentations before officials of the Executive power (the highest level) and before legislators in the National Congress. As a result, POs leaders and experts now hold periodical meetings with public officials (from different government agencies, such as fiscal, legal, etc.), and work together in order to collaborate on projects to promote formalization, donations, formal work, transparency in the management of funds, and other initiatives.

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

- August 1, 2015: a new Civil and Commercial Code is approved (Law # 26994), introducing more regulations regarding the constitution and life of civil society Organizations. This regulation does not contribute to the increase of the formalization of POs.
- August 7, 2015: an important POs regional meeting, organized by the recently formed Confederation of Civil Society Organizations, was held at the AMIA (Asociación Mutual Israelita Argentina: the largest Jewish philanthropic organization), focusing on how to promote more friendly legal frameworks for CSOs in Argentina, Brazil, Chile, and México.
- December 2015: a new Presidency takes place; the new government recognizes the role of POs as agents to promote change and support democracy, allowing the participation of POs in implementing public programs and appointing an important number of Civil Society leaders in different public positions.

### **Future development trends in the philanthropic landscape**

There is a strong movement toward promotion of intra-sectoral collaboration between philanthropic organizations, but also towards more inter-sectoral collaboration with the government (at all levels: national, state and local), as well as with the business sector. This opening of the philanthropic sector to collaborate with other organizations and other sectors is producing new forms of philanthropy.

There is also a more fluid relation of the philanthropic sector with the media, which gives more visibility to its causes.

Philanthropic organizations are becoming more aware of their own potential and strength when working together to influence government policies and to advocate for their causes. It is presumed that in the next few years new legal reforms toward a friendlier regulatory framework of POs will be approved.

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

- Give greater visibility to philanthropic activities, through all communication media.
- Strengthen bonds between civil society organizations to facilitate the ability to learn from each other about new forms of philanthropic activities, and to advocate for a better legal framework regarding legal personality, tax exemptions, incentive for donations, specific labor laws for civil society employees, and so on.
- Introduce civil society law into the curricula of universities; bring together academics from other countries to share information on course content, teaching methodologies, and course development.