

Brazil

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I. Summary

A. Types of Organizations

Brazil is a civil law country, and its Civil Code (Law 10.406 of January 10, 2002) provides for two traditional civil law forms of not-for-profit private legal entities: associations and foundations. [\[1\]](#)

An association is an organization created by a group of people seeking to achieve a particular goal.

A foundation is an organization created and formed by an endowment. A foundation can be private (created by a private will or a donation) or public (created by law). The public foundations were created by Law 7,596/87 (http://www.planalto.gov.br/ccivil_03/Leis/L7596.htm).

In addition, the Federal Government may confer upon a not-for-profit organization one of five special designations, namely:

1. Organization of the Civil Society for the Public Interest (known as OSCIP);
2. Social Organization (known as OS);
3. Public Utility Entity;
4. Social Assistance Beneficent Entity enrolled in the National Council of Social Assistance; and
5. Social Assistance Beneficent Entity holding the Social Assistance Beneficent Certification (CEBAS).

Public foundations and private foundations created by the Public Administration are unable to receive the OSCIP designation (Law 9.790/99, article 2, VI and VII) (<http://www.planalto.gov.br/ccivil/leis/L9790.htm>).

Special designations are not mandatory for private entities to be qualified as not-for-profit. Because the designations may bring organizations closer to being equivalent to an IRC §501(c)(3) organization, a grantmaker should inquire whether a not-for-profit entity has one of the designations.

B. Tax Laws

The Federal Constitution exempts educational and social assistance NGOs from taxes at all levels. To be eligible, an educational or social assistance NGO must observe requirements set forth in federal law. These requirements may bring the organization closer to being equivalent to an IRC §501(c)(3) organization.

Organizations that do not qualify for constitutional tax exemptions may be eligible to receive some tax benefits at the federal, state, and municipal level, according to specific laws.

The income and the corporate tax laws provide donors with select tax benefits. There is no double taxation treaty between Brazil and the United States.

II. Applicable Laws

- [Brazilian Federal Constitution, Articles 5 \(XVII to XXI\) and 150 \(VI\) \(c\) and § 4](#)
- Tax Code - Law 5.172 of October 25, 1966 – Articles 9, 14 and 111 ([Portuguese](#)) ([English Excerpt](#))
- Civil Code - Law 10.406 of January 10, 2002 - Title II, Chapter II and III ([Portuguese](#)) ([English Excerpt](#))
- Law on Social Assistance Organizations - Law 8.742 of December 8, 1993 ([Portuguese](#)) ([English Excerpt](#))
- Legal Framework on Social Assistance Issues modified by Law 9720 of November 30, 1998, Resolution 191 of November 10, 2005 from the National Council of Social Assistance, Resolution 31 of February 24, 1999, Article 3, IV, Legislative Decree no. 27 of November 18, 1966
- Legislation on Civil Society Organizations for the Public Interest - Law 9.790 of March 23, 1999 ([Portuguese](#)) and Decree 3.100 of June 30, 1999 ([Portuguese](#))
- Legislation on Public Foundations - Law 7596/87 ([Portuguese](#)), Decree 200/67 of February 25, 1967, modified by Decree 900 of September 29, 1969, Decree 2299 of November 21, 1986, Law 8958/94 of December 20, 1994 ([Portuguese](#)), and Law 10.637 of December 30, 2002 ([Portuguese](#))
- Law on Social Organizations - Law 9.637/98 ([Portuguese](#)) ([English Excerpt](#)) and Decree 5396 of March 21, 1995 ([Portuguese](#))
- Legislation on Public Utility - Law 91 of August 28, 1935 ([Portuguese](#)) ([English Excerpt](#)); and Decree 50.517 of May 2, 1961 ([Portuguese](#))
- Legislation on Certification of Social Assistance Beneficent Entity - Law 8.212 of July 24, 1991 ([Portuguese](#)); Decree 2.536 of April 6, 1998 modified by Decree 3.504 of June 13, 2000; Decree 4327 of August 8, 2002; Decree 4.381 of September 17, 2002 and Decree 4.499 of December 4, 2002; Law 12.101 of November 27, 2009 ([Portuguese](#))
- Law on Public Registries - Law 6.015 of December 31, 1973 added on October 30, 1975 - Title III, Chapter II, Articles 114 to 126 ([Portuguese](#)) ([English Excerpt](#))
- Law on Volunteerism – Law 9.608 of February 18, 1998 ([Portuguese](#)) ([English Excerpt](#))
- Law on Crimes Resulting from Racial Prejudice - Law 9.459, May 13, 1997 ([Portuguese](#)) ([English Excerpt](#)) which modifies Law 7.716, January 5, 1989
- Law on Social Security Financial Contributions - Law 10.833 of December 29, 2003 ([Portuguese](#))
- Law on Supporting People with Disabilities and their Social Integration - Law 7.853, October 24, 1989 ([Portuguese](#)) ([English Excerpt](#))
- Law on Credit, Exchange, and Insurance Operations Tax - Law 5143, October 20, 1966 ([Portuguese](#))
- Law on the National Cultural Program (Rouanet Law) - Law 8313, December 23, 1991 ([Portuguese](#)) ([English Excerpt](#)) - Decree 5761, April 27, 2006 ([Portuguese](#))
- Law on Contribution to Sportive Projects - Law 11.438, December 29, 2006 ([Portuguese](#)) ([English Excerpt](#)); Decree 6180, August 3, 2007 ([Portuguese](#))

- Law on the National Fund for the Ederly - Law 12.213, January 20, 2010 ([Portuguese](#)) ([English Excerpt](#))
- Law modifying Tax Legislation - Law 9532, December 10, 1997 ([Portuguese](#)) ([English Excerpt](#))
- Law on Tax Revenue - Law 9249, December 26, 2005; Law 5172, October 25, 1966 ([Portuguese](#)) ([English Excerpt](#))
- Decree on Industrialized Products Tax - Decree 4.544 of December 26, 2002
- Decree on Rural Real Estate Tax - Decree 4.382, September 19, 2002
- Provisional Measure ("*Medida Provisória*") no. 2.113 of April 26, 2001, Article 59 and Law 9249 of December 26, 1995, Article 13, § 2, III ([Portuguese](#))
- Normative Instruction on the execution of collaborative agreements - no.1 of January 15, 1997 from the National Treasury Office
- Ministerial Ordinance nº 127, of May 29, 2008 ([Portuguese](#))

To view English translations of select excerpts from these laws, please click [here](#).

III. Relevant Legal Forms

A. General Legal Forms

1) *Association*: An association is a self-governed and voluntary organization, formed by at least two persons, for one or more purposes set forth in its founding documents and charter. Associations organize their activities in order to achieve their aims and acquire legal personality by registering a charter with the proper public register office. [Civil Code article 45; Law 6,015/73 §120]

Freedom of association is considered a fundamental right according to the Brazilian Constitution. The only restrictions applicable to this general rule concern an association aimed at unlawful purposes or to form a military group. [Brazilian Federal Constitution §5 (XVII)] Therefore, under normal circumstances, an association must merely register its charter with the public register office to obtain legal personality. It does not have to seek any other kind of public authority permit to register as a not-for-profit private legal entity.

2) *Private Foundation*: Often referred to simply as a foundation, a private foundation is a not-for-profit private legal entity with an endowment. According to Brazilian legal doctrine, a foundation is defined as a collection of assets to which legal personality is granted by an operative law and that is devoted to public interest purposes (though, as discussed below, only certain public interest purposes qualify). The foundation's goals are recorded in a written declaration, which must be registered with a public notary.

The 1916 Civil Code allowed foundations to pursue any lawful purpose. Currently, foundations are limited to religious, moral, cultural, or assistance purposes. [Civil Code, article 62, sole paragraph] There is a debate over the exclusion of other public interest purposes, such as education, environmental preservation, and research and development.

The Civil Code requires that a foundation have and disclose sufficient assets to achieve its purposes. [Civil Code, article 63] A foundation is controlled and managed in the manner set forth in its charter by the person or persons appointed by the founder in the letter of establishment.

A foundation is established in Brazil by submitting its letter of establishment, constitutive acts, and charters to the Attorney General's Office (*Ministério Público*). Upon receiving the Attorney General's approval, the founders have to register their founding documents in the proper public register office. [Civil Code, articles 62 to 69; Law 6,015/73 §120] Once registered, the Attorney General's Office has oversight authority over the foundation's administration. [Civil Code, article 66]

3) *Public Foundation*: A public foundation is a not-for-profit private legal entity created by legislative authorization to undertake public activities not necessarily assigned to the government. Public foundations have independent administrators and boards as well as their own assets, which may come from the federal government or from other sources. [Law 7,596/87 §5 (IV)] Public foundations, like their private counterparts, become legal entities through the registration of their constitutive acts in the public register office. Unlike private foundations, public foundations are not subject to oversight by the Attorney General's Office. [Law 7,596/87, §5 (IV)(3)]

B. Special Designations

a) **Civil Society Organizations for the Public Interest (“*Organização da Sociedade Civil de Interesse Público*” - OSCIP)**: The permissible activities to be performed by an OSCIP are found in article 3 of Law 9,790/99 and include:

- social assistance;
- promotion of culture;
- historical preservation and cultural heritage;
- charitable free education;
- charitable free health care;
- nutrition and food security;
- environmental protection;
- promotion of voluntary work;
- promotion of economic and social development;
- experimentation with alternative employment and credit systems;
- protection of rights;
- promotion of citizenship and democracy; and

- development of alternative technologies.

An OSCIP may not distribute any surplus revenues (either general or liquid), dividends, bonuses or assets derived from the performance of its activities to any of its members or participants, advisors, directors, employees or donors. Therefore, an OSCIP must use all of its assets and income in pursuit of a relevant public purpose.

Until 2003, OSCIPs could not receive tax benefits if they remunerated their Directors. [Law 9,532/97, article 15, §3] Under Law 10,637/02, article 34, however, the governing staff's remuneration is no longer an obstacle for the fruition of tax benefits. The salaries cannot exceed the limit established for the remuneration of the Federal Executive Power (the President and Ministers of Brazil). Of the five types of special designations that an organization may acquire, only the OSCIP designation allows Directors to be paid a salary without any risk to the eligibility for tax benefits.

The law also established a special form of contract called "*Termo de Parceria*," that allows partnerships between OSCIPs and the government. Through this legal instrument, an OSCIP may receive public funds or other governmental support to execute public interest projects. Such contracts aim at improving cooperation between government and these organizations, which must always undertake public interest activities according to the terms set forth in the law.

b) Social Organizations ("*Organizações Sociais*" – OS): The title OS can be granted to any not-for-profit private legal entity created to privatize the administration of a public asset (e.g., laboratories, monuments, museums, transportation, public companies, public universities).

The goal is to facilitate the privatization of public services to not-for-profit institutions. Accordingly, the tasks of these organizations are quite strict and always depend on a specific concession from the government. The concession of the right to manage a public company or asset is formalized through a legal instrument called Management Agreement or "*Contrato de Gestão*", according to article 5, of Law 9,637/98.

The control of an OS by its founding members is limited by the Management Agreement, as well as by the structure of the Board of Directors, which is called the Administration Council and includes, in addition to the founding members, representatives from the government and the community.

An OS that does not comply with the requirements of the Management Agreement may be disqualified or terminated after the respective administrative procedures are followed. [Law 9,637/98, article 16] The Law that creates the special designation of "Social Organizations" has been the subject of litigation before the Supreme Court since 1998, and it is expected that it will undergo some changes in the future.

c) Public Utility Entity ("*Declaração de Utilidade Pública*" – DUP): The criteria

for being qualified as a public utility organization are stringent. To be eligible, the organization must have the objectives of promoting education, scientific research, culture or philanthropy; in addition, it must:

1. be properly registered as a legal entity;
2. be formed in Brazilian territory;
3. have carried on a public interest activity for more than three years;
4. not remunerate its directors under any circumstances nor distribute among any of its members or participants, advisors, directors, employees or donors any eventual surplus or revenues (either general or liquid), dividends, bonus, and/or assets; and
5. publish a balance sheet and income statements every year.

[Decree 50,517/61, article 2]

Further, a not-for-profit legal entity with public utility status must annually report on its activities to the Ministry of Justice. The public utility status of a not-for-profit entity may be revoked by the Ministry of Justice if the entity ceases to promote its purposes, remunerates directors, distributes income or assets or fails to report on its activities for three consecutive years. [Decree 50,517/61, §6]

d) Social Assistance Beneficent Entity enrolled in the National Council of Social Assistance (“*Entidade Beneficente de Assistência Social inscrita no Conselho Nacional de Assistência Social – CNAS*”). This designation is granted to not-for-profit private legal entities that carry out or promote "social assistance," which includes:

- Providing social assistance to needy families, mothers, children, youth, and people with disabilities;
- Promoting and developing rights;
- Promoting citizenship;
- Combating social inequalities;
- Enhancing social and popular movements; and
- Promoting leadership capacity.

[Law 8,742/93, articles 2 and 3, regulated by Resolution 191 of November 10, 2005, of the National Council of Social Assistance]

An entity with this designation may apply for government subsidies and some types of tax exemptions on imports. [Legislative Decree n°. 37 of November 18, 1966]

In addition, according to article 10 of Law 8,742/93, it may enter into special collaborative agreements ("*Convênios*") with the government to obtain public funding [Inter-ministerial Ordinance n°. 127 of May 29, 2008, governs the execution of such collaborative agreements at the federal level]. Such organizations cannot remunerate their Directors.

e) Social Assistance Beneficent Entity holding the Social Assistance Beneficent Certification (CEBAS) ('*Entidade Benficiente de Assistência Social detentora do Certificado de Entidade Benficiente de Assistência Social*' - CEBAS) - This designation allows entities to qualify for special tax benefits, such as exemption from required payments of certain fringe benefits and social security taxes.

In order to obtain the Social Assistance Beneficent Entity Certification, a not-for-profit legal entity must be considered a charitable, social assistance, educational or health organization that carries on free activities and/or contributes to programs for:

- Families, mothers, children, youth, and aid to the elderly;
- Education and rehabilitation of handicapped people;
- Assistance to children and youth from troubled homes; and
- Promotion of education and health assistance without charge.

Under Law [12,101 of November 27, 2009, organizations qualified as OSCIPs by the Ministry of Justice may also receive this certification if they develop activities in the fields of education, health or social assistance.](#) To be entitled to the certification and to further request the social contribution exemption, a not-for-profit must fulfill the following requirements:

1. Be properly registered as a legal entity in Brazilian territory for at least 12 months and provide evidence of developing public interest activities during the last fiscal year by the time of application;
2. Be registered with the National Council of Social Assistance, in the case of Social Assistance entities;
3. Be registered with the State or local Council of Social Assistance (according to the location of the entity's head office), in the case of entities performing Social Assistance services;
4. Provide evidence that its resources, income, profits and operational results are invested only in the national territory and for advancing its social goals;
5. Not remunerate its directors, counselors, partners, directly or indirectly or distribute among any of its members or participants, advisors, directors, employees or donors any surplus or revenues (either general or liquid), dividends, bonus, and/or assets, for the functions or activities assigned to them by their charter;
6. Not retain/receive assets of any individual or any organization that is not considered of social assistance;
7. Establish in its charter that in case of dissolution, remaining assets must be transferred to another not-for-profit organization holding the Social Assistance Beneficent Entity Certification or to a public interest entity with similar aims; and
8. Perform its activities without discriminating against anyone under any circumstances;

Health entities must demonstrate that they offer at least 60% (sixty percent) of their services to the Public Health System (SUS). Organizations developing educational activities must demonstrate that at least 20% of their annual income is destined to render free educational services for the population in general.

According to the new regulation it is no longer necessary for any entity to hold the Public Utility Declaration in order to acquire the CEBAS.

Under article 21 of Law 12,101/09, Certificate (CEBAS) concessions and renewals are no longer the exclusive responsibility of the National Council of Social Services. The Ministries of Health, Education and Social Development also analyze and make decisions on requests presented by not-for-profits, according to their most prominent performance area.

The certificate's request and renewal procedures are regulated by Decree 7,237 of July 20, 2010, updated by Decree 7,300, of September 14, 2010. According to this regulation, the first request presented by a not-for-profit shall be assessed within six months, except when complementary information is required by the Ministry responsible for granting the certificate. The certificates will remain valid for three years and renewals will be granted for the same period of time.

For organizations developing activities in more than one of the areas specified above, the concessions and renewals of certificates will depend on the approval of the respective Ministries, which means that in addition to complying with the general rules set forth by the Law and the Decrees, an organization will also have to obey particular requirements specified by each of the relevant Ministries.

The Ministries of Health, Education and Social Development will supervise the organizations to ensure compliance with the conditions that gave rise to the certification. At any time they may ask the organizations to submit documents and may perform audits and due diligences. If non-compliance is verified, the authority that granted the certificate may cancel it, and the organization may appeal the decision.

C. The National Registry of Entities Qualified by the Ministry of Justice (CNEs/MJ)

In January 2007, the National System of Entities Qualified by the Ministry of Justice (CNEs/MJ) was created by a Governmental Decree. Under this Decree, all organizations qualified as OSCIP or holding a Public Utility Status, and all other foreign organizations authorized to conduct activities in Brazil must register with the Ministry of Justice and annually render accounts.

The CNEs/MJ is designed to publicize financial accounts and reports on activities carried out during the year by registered entities. These reports can be presented and

disseminated electronically.

Under the new system, OSCIPs that render accounts once a year may obtain a “Certificate of Regularity,” which is necessary for the execution of “*Termos de Parceria*” with the government and to benefit from fiscal incentives.

IV. Specific Questions Regarding Local Law

A. Inurement

Organizations with tax-exempt status conferred by the Brazilian Constitution (discussed below) shall not distribute any assets or profits among their members. [National Tax Code, article 14] Although the remuneration of board members and administrators is not prohibited by the Federal Constitution nor by the Brazilian Tax Code (which regulates the tax-exempt status conferred by the Brazilian Constitution), articles 12 and 15 of Law 9,532/97 include the non-remuneration of the board as a requirement that must be met by not-for-profits in order to benefit from their tax-exempt status.

Because Law 9,532/97 holds an inferior normative status compared to the Federal Constitution and the Tax Code, in theory it should not be able to create new requirements for not-for-profits to benefit from their constitutional tax-exempt status. As a result, this legal provision has generated controversy and several not-for-profits still must appeal to the Judiciary to guarantee their right to benefit from the constitutional tax-exemption status, even when all the legal requirements set forth by article 14 of the Brazilian Tax Code have already been met.

Organizations qualified by the Ministry of Justice as OSCIPs may not be included in this controversy, since there is a specific provision in §4, “VI” of Law 9,790/99 allowing them to remunerate directors who effectively work in the executive management of the entity or that provide specific services. In both cases, directors must be paid the market average rates in the region corresponding to the organizations’ area of operation. Under Law 10,637/02, article 34, however, the governing staff’s remuneration is no longer an obstacle for the fruition of tax benefits if: (i) they are hired as employees; and (ii) their salaries do not exceed the limit established for the remuneration of members of the Federal Executive Power.

Tax-exempt organizations must devote all of their funds to the pursuit of their own social purposes. [Law n°. 9,532/97, article 12]

In addition, laws granting special designations – such as the Law on Civil Society

Organizations and the Law on Social Organizations – prohibit inurement of personal benefit to private individuals or for-profit entities. In general, the organization’s bylaws must state that it shall not, under any circumstances, distribute among any of its members or participants, directors, advisors, employees or donors any surplus or revenues (both general and liquid), dividends, bonuses, and/or assets or equity. [Law 9,790/99 article §1(1)] Fringe benefits are also prohibited.

According to an opinion from the Legal Department of the Ministry of Social Welfare, however, a director of an organization with any type of special designation may receive reasonable remuneration for any additional services, beyond those of a director. [Legal Department decision 639/96 - D.O.U. October 10, 1996]

Managers and employees of organizations holding any special designation may be paid reasonable salaries, determined according to the market average. A not-for-profit entity without tax-exempt status and without any special designation is not subject to limitations regarding inurement.

Law 12,101, November 30, 2009, prohibits the remuneration of directors of entities holding the Social Assistance Beneficent Entity Certification (CEBAS) for the *functions or activities assigned to them by their charter*. Directors could, however, be remunerated for other jobs performed within their organizations, for example, in the case of a not for profit health organization whose director also works as a doctor for the same entity.

B. Proprietary Interest

1) *Associations*: Founders, members and donors lose all property rights over assets granted to an association once they are registered under the association’s name, except for the possibility to recover the donated assets in case of the association’s dissolution.

2) *Foundations*: No founder, member or donor can retain a proprietary interest on assets granted to foundations.

3) *Special Designations*: Founders and members of entities holding special designations and also donors cannot retain a proprietary interest in assets they contribute to such organizations.

C. Dissolution

1) *Associations*:

An association may be dissolved (i) by decision of its members, (ii) according to provisions set forth in its constitutive acts, or (iii) involuntarily, by judicial order, according to a due process of law. [Brazilian Federal Constitution, article 5 (XIX)]

The association's bylaws may establish that in case of dissolution, all members can be reimbursed the funds given to the organization. According to article 61 of the Civil Code, any additional assets remaining upon dissolution must be transferred to a not-for-profit organization named in its bylaws or, in case of omission, by resolution to a municipal, state, or federal institution with similar objectives.

2) *Foundations*:

A foundation may be terminated if its purposes become illicit or impossible to achieve or if it reaches the end of its term, if stipulated in its constitutive acts. Any assets remaining upon dissolution must be transferred to a not-for-profit organization with similar objectives or to a government entity. [Civil Code, article 69]

3) *Special Designations*:

If any organization with a special designation is dissolved or has its designation revoked, all assets acquired from the government must be transferred to another organization with the same designation and similar aims. These provisions must be included in the organization's bylaws. [For example see Law 9,790/99 § 4 (IV), Law 9,637/98 §2 (I) (j) and Resolution n°. 31/99, article 3, IV, of the National Council of Social Assistance]

In addition, the assets managed by Social Organizations under the Management Agreement are public property and must revert to public administration at the time of the organization's dissolution.

D. Activities in General

Associations. Associations are generally permitted to engage in any lawful activities according to Brazil's constitutional freedoms of assembly and of association (Brazilian Constitution, article 5, XVII), except when the association aims at paramilitary purposes.

Foundations. By definition, foundations must serve public benefit or public interest purposes. Their activities are restricted to those set forth in their constitutive documents. According to the Civil Code, they may have religious, moral, cultural and assistance purposes.

Special Designations. Organizations granted special designations are limited to the development of a host of prescribed activities:

a) Civil Society Organizations for the Public Interest (OSCIP):

- Promote social assistance programs;
- Promote cultural activities and the protection and maintenance of historic and

artistic assets;

- Promote free education;
- Promote free health care;
- Carry on food aid programs and nutritional education programs;
- Promote sustainable development and environmental protection programs;
- Promote volunteerism programs;
- Promote social and economic development and fight poverty;
- Carry on not-for-profit experiments regarding new patterns for social production activities and alternatives for production, commerce, employment, and credit systems;
- Promote the creation and consolidation of legal rights;
- Promote legal services;
- Promote ethics, peace, citizenship, democracy, human rights and other universal values; and
- Study, research, and develop new technologies and disseminate scientific and technical knowledge regarding the activities mentioned herein.

b) Social Organizations:

- Promote education;
- Promote scientific research;
- Promote technological development;
- Promote environmental protection and preservation; and
- Promote cultural activities and health care.

c) Public Utility Entities:

- Promote education and scientific research programs; and
- Carry on scientific research, cultural activities, and non-discriminatory philanthropic activities.

d) Social Assistance Beneficent Entities:

- Provide social assistance to needy families, mothers, children, youth, and persons with disabilities;
- Promote and develop rights;
- Promote citizenship;
- Address social inequalities;
- Enhance social and popular movements; and
- Promote leadership capacity.

e) Certification of Social Assistance Beneficent Entity:

Same as the activities listed under Social Assistance Beneficent Entity, plus the ones that can be exercised by organizations qualified as OSCIP.

E. Economic Activities

In general, not-for-profit organizations in Brazil may pursue economic activities. They can invest in the stock market, participate in mergers and acquisitions and acquire control of companies. However, there are relevant restrictions. First, economic activities cannot constitute the primary purpose of the organization. Second, no profits or income of any kind may be distributed to employees, directors, managers, collaborators or members under any circumstances. Instead, any surplus must be used to carry out the social purposes of the organization. Further, the revenues resulting from such activities must be fully applied in Brazil to fulfill the organization's purposes. [Article 14, II of the Brazilian Tax Code] The organization's bylaws may impose additional restrictions on its economic activities.

The Civil Code defines associations as entities organized for non-economic purposes instead of not-for-profit, which means that these organizations may pursue *economic activities*, but not have *economic goals*.

F. Political Activities

Brazilian law generally imposes no restrictions on the ability of foundations and associations to engage in legislative or political activities. These entities may freely support candidates for public office as well as any kind of legislation. Any restriction on political activities would be contained in the organization's governing documents.

The only explicit limit concerns Organizations of the Civil Society for the Public Interest, which may not take part in political campaigns under any circumstances or support political parties or politicians in any way. [Law 9,790/99, article 16] These restrictions cover political party activities and the nomination of candidates for parliamentary and local governmental elections at the county level.

The law does not expressly prohibit political or legislative activities by public foundations or social organizations. However, the nature of their structures, their purposes and the activities they develop may implicitly keep them from engaging in political issues.

G. Discrimination

Brazilian law imposes criminal penalties against anyone who denies or restricts a student's admission to a public or a private educational institution on the basis of race or disability. [Article 6 of Federal Law 7,716/89 altered by Law 9,459/97 and Law 7,853/89 Article 8] In addition, an organization holding the Certification of Social Assistance Beneficent Entity may not discriminate against any person under any circumstances.

In July 2008 Brazil ratified the UN Convention on the Rights of Persons with Disabilities, with a qualified quorum, being thus afforded constitutional status, according to Constitutional Amendment n°. 45/04. As a result, all laws in Brazil must be revised to respect, fulfill and implement the rights, principles and guidelines established by the Convention.

H. Control of Organization

In general, no restriction exists on the control of not-for-profit organizations by other organizations or persons. The Federal Constitution guarantees the freedom of self-organization of associations. [Federal Constitution §5 (XVIII)] It is possible that a Brazilian not-for-profit may be controlled by a foreign entity or by an American grantor charity (which requires the charity to specifically provide so in the Affidavit). In such cases, at least one of the persons responsible for the organization's activities must be Brazilian or a Brazilian proxy must be nominated.

V. Tax Laws

In order to understand the tax benefits available to not-for-profit organizations, it is necessary to have an overview of the Brazilian tax system. The power to create and collect taxes ("*tributos*") is shared among the Federal Government, States, the Federal District, and Municipalities, and is defined and regulated by the Federal Constitution, the Brazilian Tax Code, and several other statutes. The expression "*tributos*" includes duties ("*impostos*"), public service fees ("*taxas*"), social contributions ("*contribuição social*"), improvement charges ("*contribuições de melhoria*") and economic domain intervention contributions ("*contribuição de intervenção no domínio econômico*").

A. Tax Benefits for Not-for-Profit Private Legal Entities

1. Constitutional Tax Exemption

In Brazil, tax benefits depend on the nature of the not-for-profit organization's activities, rather than the nature of the organization itself. This means that the legal form of a not-for-profit is irrelevant in determining its tax benefits.

Article 150 (VI)(c) of the Brazilian Constitution stipulates that the federal government, States, Federal District and cities are not allowed to tax *educational and social assistance* not-for-profit private legal entities. This tax exemption applies only to those assets, income, and services related to the essential activities of the entity. In addition, the article provides that statutes may specify criteria that educational and

social assistance organizations must satisfy in order to obtain the tax benefit.

Article 14 of the National Tax Code stipulates that to obtain tax exemption, an educational or social assistance entity:

- i. shall not distribute its assets or profits among its members;
- ii. shall keep accounting books in order to promote transparency of its activities and accounts; and
- iii. shall limit the use of its resources to the Brazilian territory and to maintaining and developing its aims.

Other laws impose additional conditions. For an educational or social assistance organization to be eligible for tax exemption, it must also:

- i. not remunerate in any way its board members or governors (managers and staff can be remunerated) for the functions or activities assigned to them by its bylaws;
- ii. invest all its funds in the maintenance and development of its objectives;
- iii. keep full records of income and expenses using proper accounting procedures;
- iv. keep records for at least five years to demonstrate the origin of revenues, the nature of expenses, and any other acts and transactions that may change its net worth;
- v. submit income tax statements to the Federal Revenue Office annually;
- vi. make sure that in case of merger, acquisition, liquidation, or dissolution, its assets are transferred to another similar organization that is also eligible for exemption; and
- vii. comply with additional requirements set out in statutes related to the operation of tax-exempt organizations. [Law No. 9532/97, article 12]

These criteria are not considered restrictions on any constitutional protections, but means of promoting the public interest and transparency duties of an organization granted tax benefits.

Provided that the foregoing requirements are met, the educational or social assistance entity needs merely to declare that it is eligible for the exemption before Revenue Service Authorities ("*Receita Federal*").

2. Federal Tax Exemptions

To be granted other tax benefits not stipulated in the Federal Constitution, a not-for-profit entity must fulfill several requirements.

The following Federal Laws concerning taxes and duties ("*impostos*") are applicable to not-for-profit organizations. Unless otherwise specified, the requirements apply to

all types of not-for-profit entities:

1) **Revenue Tax ("Imposto de Renda" – IRPJ)** - Full exemption from payment of the revenue tax. Entities awarded this benefit must fully complete the income tax form every year and must comply with the requirements of article 12, items (i) to (v), of Law 9532/97 referred to above. [Article 15 of Law 9532/97; Federal Constitution §150(VI)(c); Tax Code Law 3470/58 §113; Law 5172/66, §§9 (IV)(c) and 14 (I-III); 1999 Income Tax Law (RIR/99) §808 (3)]

2) **Social Contribution on Profit ("Contribuição Social Sobre o Lucro")** – Full exemption from payment of this contribution. To benefit from it, entities must fully complete the income tax form every year and comply with the requirements of article 12, items (i) to (v), of Law 9532/97 cited above. [Article 15 of Law 9532/97]

3) **Social Integration Program Contribution ("Programa de Integração Social" - PIS)** - Since 2003, education and social assistance entities must collect and pay 1% of all employees' salaries. Other not-for-profit entities must pay 0.65% of their receipts. [Federal Constitution §195(I)(7); Law 10.637/02]

4) **Social Security Financial Contribution ("Contribuição para o Financiamento da Seguridade Social" - COFINS)** – Full payment exemption for educational and social assistance entities. Since 2004, other not-for-profit entities must collect and pay 7.6% of their receipts. [Federal Constitution §195(I)(7); Law 10.833/03]

5) **Social Welfare Contribution ("Contribuição Previdenciária" - INSS)** - Full exemption to social assistance organizations that are granted both federal Public Utility Status and the Certification of Social Assistance Beneficent Entity. [Federal Constitution §195(I)(7); Law 8.212/91 §55]

6) **Work Accident Fund Contribution ("Contribuição para Acidente do Trabalho")** - Full exemption to social assistance organizations that are granted both federal Public Utility Status and the Certification of Social Assistance Beneficent Entity. [Federal Constitution §195(I)(7); Law 8.212/91 §55]

7) **Importation Tax ("Imposto de Importação" - II)** - According to §2(I)(a) of Law 8032/90, social assistance and educational private legal entities are given special treatment on payment of the Import Tax on products imported for their activities.

8) **Industrialized Products Tax ("Imposto de Produtos Industrializados" - IPI)** – Social assistance and educational entities' products are fully exempted from IPI, since they are for their own use or are freely distributed to their students. (Decree 4544/2002)

9) **Credit, Exchange and Insurance Operations Tax ("Imposto sobre operações de crédito, câmbio e seguro" - IOC e "Imposto sobre Operações Financeiras" - IOF)** - There are no exemptions from payment of Credit, Exchange and Insurance Operations

Tax or the Financial Operations (capital gains) Tax. [Law 5143/66]

10) **Rural Real Estate Tax ("Imposto Territorial Rural" - ITR)** – Full exemption from payment of the Rural Real Estate Tax if the amount exempted is used to pursue the entity's goals. [Federal Constitution §150(VI)(c); Decree 4.382/02, article 3]

B. State and Municipal Tax Exemptions

As long as Federal Constitutional principles are observed, state and municipal governments have the right to grant not-for-profit private legal entities exemptions from state and municipal taxes.

C. Incentives for Philanthropy

1. Contributions to not-for-profit private legal entities granted Public Utility Status or OSCIP special designations.

Corporate contributions to organizations granted federal Public Utility Status or Civil Society Organization for the Public Interest designations may be deducted up to 2% of the corporation's tax base operating profit ("*lucro operacional*") before the corporation calculates its revenue tax liability. [Law 9.249/95 article 13(2)] Only corporations may claim tax benefits for such contributions. Since 1996, individuals have not been eligible for tax benefits for contributions to not-for-profit organizations.

2. Contributions to Cultural Projects.

Law no. 8.313/91 ("*Lei Rouanet*") created the National Cultural Programme (Pronac), which allows projects approved by the Ministry of Culture to receive sponsorships and donations from companies and individuals, which may deduct - totally or partially - the amount invested from their income tax.

Under this law, the treatment of sponsorships differs from that of donations. [\[2\]](#) A company may deduct 40% of the value of its donation and 30% of the sponsorship from its income tax. The total amount of the deduction may not exceed 4% of the total tax liability. [Law 8,313/91, article 26 and Law 9,532/97]

An individual may deduct 80% of the value of her/his donation and 60% of her/his sponsorship from her/his tax income. The total amount of the deduction may not exceed 6% of the person's total tax liability. [Law 8,313/91, article 26 and Law 9,532/97]

In addition, individuals and companies may deduct 100% of the value of the donation or sponsorship if they have supported certain activities such as:

- Theater;
- Books on arts, literature and humanities;
- Instrumental and erudite music;
- Arts exhibitions; and
- Libraries and museums.

Decree 5,761/06 establishes mechanisms to promote the “democratization” of certain programs, projects, and activities in order to provide:

- prices more affordable for the population;
- accessible conditions for aged and disabled persons;
- the distribution of goods free of charge for beneficiaries previously identified by the Ministry of Culture; and
- the development of diffusion strategies in order to broaden the access to incentivized programs, projects, and activities. (Article 27, I a IV)

Many states have laws concerning contributions for cultural projects and tax exemptions of ICMS for donors and sponsors.^[3] Some examples include Bahia - Law 7,015/96, modified by Law 9,846, of December 28, 2005 and Law 11,899 of March 30, 2010 (http://www.cultura.ba.gov.br/wp-content/uploads/2010/apoioaprojetos/1-Lei_7015_de_09-12-1996_-_Criacao_FAZCULTURA_-_Com_Alts_de_2005_e_2010.pdf); Ceará - Law 13,811, of August 16, 2006 (<http://www.secult.ce.gov.br/legislacao/sistema-estadual-de-cultura/LEI-SIEC.pdf>); Rio de Janeiro - Decree 22,486/86; Pernambuco, Law 12,310, of December 19, 2002 (<http://www.sefaz.pe.gov.br/flexpub/versao1/filesdirectory/systems787.pdf>) and São Paulo - Law 12,268/2006 (http://www.cultura.sp.gov.br/StaticFiles/SEC/Incentivo%20a%20Cultura/Lei_12268-06_Incentivo_Cultura.pdf).

Many municipal governments also have laws that provide deductions for cultural activities. Examples include Rio de Janeiro - Municipal Law n° 1,940 of December 31, 1992 and Decree 33,384, of February 8, 2011 (<http://200.141.78.79/dlstatic/10112/150625/DLFE-220052.pdf/CCPCLeideIncentivo.pdf>) São Paulo - Municipal Law 10,923/90 (<http://ww2.prefeitura.sp.gov.br/arquivos/secretarias/financas/legislacao/Lei-10923-1990.pdf>)

3. Contributions to not-for-profit private legal entities certified by the Council of Public Policies for Children and Youth.

The Council of Public Policies for Children and Youth has a Fund composed of revenue of the government as well as corporate and individual donations. The fund is used on Public Policies for Children and Youth and it can be distributed to certified organizations. Donations to the Fund are deductible as follows:

- Corporate donations - Full deduction of the donation up to a limit of 1% of the income tax due; and
- Individual donations - Full deduction of the donation up to a limit of 6% of the income tax due.

4. Contributions to Sports Projects.

Under Law 11,438/06 ruled by Decree n° 6,180/07 (“*Lei do Incentivo ao Esporte*”), projects approved by the Ministry of Sports can receive sponsorships and donations from companies and individuals. All projects must be approved by a Technical Commission from the Ministry before receiving donations or sponsorships.

Individuals may - totally or partially - deduct the amount invested from their income tax up to a limit of 6%, and companies may deduct up to a limit of 1%. Donations and sponsorships that directly or indirectly benefit companies or individuals that maintain relations with the donor or the respective sponsor may not be deductible.

Projects combining education and sports shall involve at least 50% of students from public schools of the surrounding area where they will be held.

Donations include:

- a. free transfer of money, goods and services for projects (though not for publicity) concerning sporting and “para-sporting” activities; and
- b. free distribution of tickets to sporting and “para-sporting” events by companies, to their employees or to needy communities.

The maximum deductible value will be annually fixed by the Executive Power, based on applicable corporate and individual tax rates.

5. Contributions to the National Fund for the Elderly.

Law 12,213/10 established the National Fund for the Elderly which shall subsidize programs and activities that protect the social rights of the elderly and create conditions to promote their autonomy, integration and effective participation in society.

The procedures to be adopted by taxpayers to obtain the deduction were recently defined by the Normative Instruction of the Federal Revenue Service n°. 1,131, of February 21, 2011.

According to this Normative Instruction, the sum of deductions deriving from donations made to the Elderly’s Fund and to the Fund for the Rights of Children and Youth (or to private not-for-profit legal entities certified by the National State or Municipal Councils of the Rights of Children and Youth cannot exceed 1% (one percent) of the income tax due. The donations made to this fund cannot be deducted

as operating expenses.

Finally, it establishes an overall limit for the deductions, which corresponds to six percent of the total revenue tax liability, which includes the sum of all the deductions made to the fund for children and youth, to the elderly's fund, to cultural, sportive and "para-sportive" projects and also to audiovisual activities, specific projects and works.

D. Double Tax Treaty

There is no double tax treaty between Brazil and the United States.

VI. Knowledgeable Contacts

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Footnotes

[1] In 2003, Law 10.825/2003 revised the Civil Code to include religious organizations as a new type of organization. According to this Law, every religious organization is free to establish, organize, and define its internal structure. Moreover, the State cannot deny its registration and existence. This law also states that the Chapter concerning for-profit organizations also applies in part to associations.

[2] Decree 5.761/06 defines a "donation" as the definitive and irreversible transfer of money or goods to the proponent - either a juridical or natural person - whose cultural program, project, or action has been approved by the Ministry of Culture. "Cultural Sponsorship" is defined as either the definitive and irreversible transfer of money or services - with a promotional purpose- or the payment of expenses and the use of

realty or goods of the sponsor, without the transfer of property, for the accomplishment of a cultural program, project or action which has been approved by the Ministry of Culture. (Article. 4, IV e V)

[3] The Tax on the Circulation of Goods and Transportation and Communication Services ("*Imposto sobre Circulação de Mercadorias e Prestação de Serviços*" - ICMS) is a state tax which is covered by the Federal Constitution and by a specific national law, but many of its provisions are determined by Interstate Tax Conventions. The Federal Constitution exempts educational and social assistance not-for-profit organizations from the ICMS. Other not-for-profit organizations can be exempted from the referred tax as long as their state laws grant this benefit. (Federal Constitution article 155(II); (§2) (XII) (g); Complementary Law 87/96, and specific state laws.)