

Charitable organisations in Brazil: overview

- **Resource type: Country Q&A**
- **Status: Law stated as at 01-Sep-2016**
- **Jurisdiction: Brazil**

A Q&A guide to charity law and practice in Brazil.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning charity law in this jurisdiction, including the legal framework and legal definition of a charity; principal sources of law; forms of organisation used for charitable purposes, and the qualification requirements/formalities to set these up; main regulatory authorities; management; accounting/financial reporting requirements; tax; overseas charities; and reform.

To compare answers across multiple jurisdictions visit the *Charity law Country Q&A Tool*.

This Q&A is part of the Charity Law Global Guide. For a full list of jurisdictional Q&As visit www.practicallaw.com/charity-guide.

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Overview and main trends

1. What is the historical background to charity law and charitable organisations in your jurisdiction?

The non-profit sector in Brazil is governed by a large and complex system of laws.

Brazilian non-profit organisations originate from the acts of philanthropy and religious charity. The Holy Houses of Mercy (*Santas Casas de Misericórdia*) started their social activities in the mid-16th century and some are still active. Throughout the colonial period until the end of the 19th century, new organisations emerged with a common religious origin and welfare practice in underprivileged communities.

In 1916, such organisations were legally recognised as associations, foundations and civil societies without economic purposes by the Civil Code (*Law No. 3, 071/1916*).

In 1935, the Ministry of Justice granted these entities public utility status (*Law No. 91/1935*), which provided that they "selflessly served the community". However, this did not grant any real advantages or benefits.

In 1959, recognition of these organisations was expanded by creation of the Entity Certificate of Philanthropic Purposes Entity (*Law No. 3, 577/1959*). This allowed exemption from social security employer's contribution for entities with philanthropic purposes, recognised as federal public service, and whose board members did not receive remuneration.

With the 1988 Federal Constitution, which recognised the importance of involving civil society in ensuring basic social rights, the legal evolution of non-profit organisations began to show more significant developments.

The Social Organisation and Public Interest Civil Society Organisation was created in the 1990s (see *Question 3*). The Voluntary Law was also enacted, recognising the relationship between non-profit organisations and their volunteers.

Reform of the Civil Code in 2002 (*Law No. 10, 406/2002*) defined associations and foundations as legal forms in the charity sector, and excluded civil societies without economic purposes from the list of private law legal entities.

In 2009, Law No. 12,101 made many changes to rules for non-profit organisations granted with a Certificate of Beneficent Social Assistance Entity (CEBAS). Known as the new philanthropy law, this special designation qualifies entities for an exemption from the social security employer's contribution.

Recently, the relationship between non-profit organisations and the government has changed. Law No.13.019/2014 promotes more transparency in the use of public resources, better control and evaluation systems, to verify projects carried out in partnership. This law, referred to as the New Regulatory Framework for Civil Society Organisations, has created new legal instruments for partnerships between government and non-profit entities.

2. Are independent charitable organisations common and significant in your jurisdiction? What is the current size and scope of the sector and the main trends?

According to the latest data from the Brazilian Institute of Geography and Statistics (IBGE), in 2010 Brazil had 290,700 private foundations and non-profit associations. The methodology follows the guidelines of the Handbook of Non-profit Institutions in the System of National Accounts, prepared by the Statistics Division of the United Nations. It refers to organisations that meet five criteria:

- Organisations.
- Not-for-profit and non-profit distributing.
- Institutionally separate from government.
- Self-governing.
- Non-compulsory (can be set up freely by any group of people).

In Brazil, these criteria correspond to two legal entities in the new Civil Code: associations and foundations.

Using the criteria adopted by IBGE, non-profit entities carrying out activities relating to the development and defence of citizens' rights and interests account for 30% of all organisations in Brazil. These are followed by non-profit organisations relating to:

- Religion (28%).
- Culture and recreation (12.7%).
- Social assistance (10.5%).
- Education and research (6.1%).

According to incorporation date, 40% of non-profit organisations were created between 2001 and 2010 (half of them in 2006). Most organisations were founded between 1981 and 2000 (46.5%), with the highest concentration from 1991 to 2000 (31%).

Regarding the labour market, in 2010 the Brazilian non-profit sector employed 2.1 million formal salaried workers (4.9% of all Brazilian formal workers).

Legal framework

3. Is there a legal definition of a "charity"? What are the principal sources of law and regulations relating to charitable organisations and activities?

Definition of charity

There is no single definition of charity in Brazil as such. There is a parallel between UK charities and Brazilian tax exempt non-profit entities, that is, social assistance, health and education organisations. Under the Civil Code, charitable foundations must be incorporated exclusively for the development of certain public activities (see *Question 5*).

An entity is often recognised as charitable due to a designation granted by public authorities. Currently, the main designations are:

- Public interest civil society organisation (OSCIP).
- Certificate of Beneficent Social Assistance Entity (CEBAS).
- Social organisation (OS).

The OSCIP designation is granted by the Ministry of Justice to non-profit legal entities that pursue public interest purposes, which cannot be exclusively for the benefit of or directed to a specific group of people.

To be designated as an OSCIP, the non-profit entity cannot have public employees in its management bodies, must have an audit committee, and must abide by certain restrictive rules regarding transparency, accountability and conflict of interest (*Law No. 9,790/1999*). Further, the entity must develop activities in at least one of the following areas:

- Promotion of social welfare.
- Promotion of culture, protection and preservation of historical and artistic heritage.
- Free promotion of education.
- Free promotion of health.
- Promotion of food security and nutrition.
- Protection, preservation and conservation of the environment and promotion of sustainable development.
- Promotion of volunteering.
- Promotion of economic and social development and poverty reduction.
- Experimentation, in a non-profit manner, of new social productive sectors and alternative systems of production, sale, employment and credit.
- Promotion of established rights and construction of new rights and access to free legal services.
- Promotion of ethics, peace, human rights, democracy and other universal values.
- Promotion or performance of studies and research, as well as the development of alternative technologies, production and dissemination of information and technical and scientific knowledge relating to these activities.
- Studies and research for the development, delivery and implementation of technologies related to the mobility of persons, by any means of transport.

OSCIP designation can only be granted to non-profit legal entities incorporated at least three years before the application (*Federal Law No.13,019/2014, amending Law No. 9,790/1999*).

CEBAS designation is granted exclusively to non-profit entities that develop activities related to social assistance, health and education. It is granted respectively by the Ministry of Social and Agrarian Development, the Ministry of Health or the Ministry of Education, depending on the main activities of the entity.

The main requirements to obtain CEBAS designation are, broadly:

- To be incorporated as a non-profit legal entity in Brazil for at least 12 months, and provide evidence of activities developed relating to social assistance, health and/or education during the fiscal year before the application.
- Provide evidence that its resources, income, profits and operational results are invested exclusively in Brazil, for development of activities related to social assistance, health and/or education.
- To maintain its accounting records in accordance with the legal requirements.
- Not to pay dividends or distribute any part of its assets.
- To be registered with the state or local social assistance council and perform its activities at no cost for its beneficiaries, if the entity has social assistance activities.
- To provide a certain amount of scholarships, if the entity has education activities.
- To provide a certain amount of hospital beds or develop strategic health projects, if the entity has health activities.

OS designation can be granted by public authorities, at their discretion, to non-profit entities able to operate public facilities related to health, culture, technology research, education and others. A designated non-profit entity establishes a contract called a management agreement (*contrato de gestão*) with the public authority.

Principal sources of law

These are:

- Federal Constitution: regulates the right of association and tax regimes.
- Civil Code: regulates the incorporation, legal requirements and functioning of associations and foundations.
- Tax Code: regulates the requirements for income tax immunity.
- Law No. 9,532/1997: regulates the requirements for income tax exemption.
- Law No. 9,790/1999: regulates the requirements and procedures for the designation as a Public Interest Civil Society Organisation (OSCIP).
- Law No. 12,101/2009: regulates the requirements and procedures for the Certificate of Beneficent Social Assistance Entity (CEBAS).
- Law No. 9,637/1998: regulates the requirements and procedures for designation as social organisation (OS).
- Law No. 13,019/2014: regulates partnerships between non-profit entities and public authorities.

Legal bodies

4. What are the forms of organisations that are used for charitable purposes? What are their advantages/disadvantages?

Under the Civil Code, non-profit organisations can be incorporated in Brazil as an association or a foundation. Associations and foundations are corporate entities with procedures and requirements set out in the Civil Code.

Unlike other corporate entities (such as limited companies or corporations), associations and foundations:

- Cannot pay dividends to their members.
- Can obtain federal, state and local government designations allowing, for example, access to further tax benefits, contracts with public authorities to manage public assets, or to grant benefits to their donors.

Both corporate types have advantages and disadvantages, depending on the intent of the founding members. A foundation is generally used to create a legacy, subject to more control to ensure perpetuity. An association is usually a more dynamic entity, with no regulation by public authorities.

Association

An association is a non-profit legal entity formed by a group of people with a common purpose. An association must have at least two members to be incorporated.

Associations are not subject to the oversight of public authorities, nor to prior approval of strategic decisions.

The incorporation of an association is less time consuming and sometimes more cost effective than the incorporation of a foundation.

The purpose of an association can be freely amended at any time, whereas the social purposes of a foundation cannot be radically amended.

Foundation

A foundation is a collection of assets with legal personality that must achieve an aim serving a public interest.

Even though trusts are not recognised under Brazilian law, foundations are similar to UK charitable trusts, to the extent they must have a charitable purpose and develop activities for public benefit. Foundations are managed by a special body called the curators' counsel. It is subject to the oversight and prior approval of its strategic decisions by the state public prosecutor, in the jurisdiction in which it operates.

In contrast to an association, a foundation requires the existence and allocation of assets for its incorporation. Further, the assets conveyed for incorporation of a foundation cannot be reclaimed by the grantor.

The social purposes of a foundation cannot be radically amended. This can restrict its activities, but can also ensure more stability regarding the grantor's legacy.

Since foundations are subject to the oversight of the state public prosecutor, their management is more bureaucratic.

5. What are the qualification requirements/formalities to set up these organisations?

The social purposes of a non-profit entity dictate the applicable tax regime and access to tax exemptions. For example, entities that develop activities related to education, health or social assistance can benefit from tax immunity (*see Question 9*). These entities can apply for the Certificate of Beneficent Social Assistance Entity (CEBAS) (*see Question 3*).

Associations

The social purposes of associations, as a rule, are not subject to legal restrictions.

To incorporate an association, the first step is to draw up its bye-laws. The bye-laws are the internal rules of the association, with contractual clauses establishing the purpose, rights and duties of the association and its members.

The Civil Code establishes that association bye-laws must set out:

- The name and institutional purpose of the association.
- Requirements to admit, dismiss, and exclude members.
- Members' rights and duties.
- Sources of income of the association.
- Constitution and functioning of the management body.
- Conditions for amendment of the bye-laws and winding up of the association.

To incorporate an association, its bye-laws must be filed with the Civil Registry and it must be registered with the Corporate Taxpayers' Registry of the Ministry of Finance. The association is then a legal entity with legal capacity.

Foundations

The Civil Code establishes that foundations must be incorporated exclusively for the development of activities related to:

- Social assistance.
- Culture, defence and preservation of historical and artistic heritage.
- Education.
- Health.
- Food and nutrition security.
- Defence, preservation and conservation of the environment and promoting sustainable development.
- Scientific research, development of alternative technologies, modernisation of management systems, production and dissemination of information and technical and scientific knowledge.
- Promotion of ethics, citizenship, democracy and human rights.
- Religious activities.

Foundations are created through either:

- A testamentary instrument, which is a unilateral disposition of last wishes.
- A public writ, which is a public declaration of will.

A public writ or testament that intends to incorporate a foundation must include:

- Information about the grantor(s).
- The grantor's intentions to create the foundation.
- The aim of the foundation.
- The grantor's disposition of his/her unencumbered personal property or real estate.

A foundation only acquires legal status after its bye-laws are filed with the Civil Registry.

Representatives designated by the grantor in his/her testament or public writ must prepare the foundation's bye-laws. In certain cases, the bye-laws are set out in the testament or public writ.

To file the bye-laws, it is first necessary to obtain the approval of the public prosecutor's office, which ensures that the legal rules relating to the organisation of the foundation are respected.

Ongoing regulatory requirements

6. What are the main regulatory authorities for charitable organisations? What are their powers of investigation/audit/sanctions?

Regulatory authorities

The main regulatory authorities are:

- Ministry of Justice: responsible for granting the title Organisation of Civil Society of Public Interest (OSCIP) and Foreign Organisation (*Organização Estrangeira, OE*).
- Ministry of Health Issues: responsible for granting the Certificate of Beneficent Social Assistance Entity (CEBAS) to organisations developing health activities.
- Ministry of Education: responsible for granting the Certificate of Beneficent Social Assistance Entity (CEBAS) to organisations developing education activities.
- Ministry of Social Development: responsible for granting the Certificate of Beneficent Social Assistance Entity (CEBAS) to organisations developing social assistance activities.
- Courts of accounts (Federal and State): audits the accounts of administrators and persons responsible for public funds, assets, and other monies. The courts are also responsible for the accounts of any person or organisation that causes loss, misapplication or other irregularities resulting in damage to public funds. There are also municipal courts of accounts in the states of São Paulo and Rio de Janeiro.
- Office of the Attorney General (State Prosecutor): responsible for monitoring and supervising foundations to meet the purposes intended by the grantor, and to achieve their full potential.
- Secretariat of the Federal Revenue of Brazil: responsible for the administration of federal taxes. It controls and audits entities to verify compliance with tax immunity and exemptions.
- Federal Supreme Court: this is the highest body of the judiciary. It is responsible for upholding the Federal Constitution, and establishes precedents for the constitutionality of non-profit legislation.

Powers

See above, *Regulatory authorities*.

7. Which bodies or persons manage charitable organisations and what general requirements must they meet?

Associations

Under the Civil Code, an association is a non-profit legal entity formed by at least two individuals or legal entities, either Brazilian or foreign, pursuing a common purpose. Foreign members are represented by powers of attorneys, with specific authority to act for the association.

The minimum governance and management required by law for associations are:

- The general meeting (the deliberation body, composed of its members).
- At least one executive officer (or a board of officers), who is the legal representative of the association with executive administrative functions. The executive officer must be a Brazilian citizen or a foreign person with a permanent visa for Brazil.

The mandatory and non-transferable powers of the general meeting are (*section 59, Civil Code*):

- Dismissal of the administrators (for example, members of the board of officers).
- Amendments to the bye-laws.

The bye-laws can expand the powers of the general meeting.

Associations can also create a non-mandatory board, such as a board of directors and audit committees.

Foundations

In contrast to associations, foundations are formed by assets, so there is no requirement for a minimum number of individuals to form a foundation. Foundations are created by testamentary instrument or public writ (*see Question 5*).

The governance body of a foundation is the curators' council, composed of individuals not subject to a judgment in criminal or civil proceedings. The curators' council must follow the directions set out in the foundation's charter documents, as stated by the grantor.

The minimum governance requirements for a foundation are:

- The curators' council.
- At least one executive officer (or a board of officers), who is the legal representative of the foundation with executive administrative functions. The executive officer must be a Brazilian citizen or a foreign person with a permanent Brazilian visa.

Foundations can also create a non-mandatory board, such as a board of directors and audit committees.

8. What are the accounting/financial reporting requirements?

Non-profit organisations (associations and foundations) must prepare annual accounts and comply with filing deadlines to avoid cancellation of their designations.

They must follow Brazilian Accounting Standards (ITG 2002), which impose criteria and procedures for:

- Evaluation.
- Recognition of transactions and changes in equity.
- Structuring of financial statements.
- Minimum information to be disclosed in the accounts.

In particular, the following is required:

- Activities report.
- Financial statements.
- Legal entities income tax report (ECF).
- Social security annual report relating to employees (E-Social).
- Audit committee report (depending on the administrative structure of the non-profit entity).
- Opinion and independent audit report (might be required by the government or donors).

Tax

9. How are charities taxed, and what (if any) are the principal exemptions and/or reliefs from taxation that they enjoy?

Non-profit organisations, incorporated as associations or foundations under Brazilian law, that pursue public interest purposes, can be entitled to tax and other legal benefits according to their social purposes, on meeting certain conditions.

Tax immunity

The Federal Constitution sets out limitations on the government's powers to tax, also known as tax immunity. Under section 150(VI)(c) of the Federal Constitution the union, states, federal district and municipalities cannot tax educational, health, and social assistance non-profit private organisations. Tax immunity covers the organisation's assets, income and services relating to essential activities (social purposes) of the legal entity.

To receive tax immunity, the entity must meet the following requirements (*section 14, Tax Code*):

- No distribution of its assets and profits among its members.
- Maintenance of accounting books and registers, to ensure transparency of its activities and accounts.
- Use of its resources is limited to Brazil and the maintenance and development of its social purposes.

If tax immunity is not possible, the legal entity can be granted specific exemptions.

Tax exemptions

In contrast to tax immunity, which is set out in the Federal Constitution, tax exemptions are set out in federal, state or municipal law.

Exemptions are available under specific laws for each tax. For example, under section 12 and 15 of Law No. 9.532/1997, philanthropic, recreational, cultural or scientific non-profit organisations and/or civil associations are exempted from income tax and social contribution on net profits, if they comply with the following:

- If its officers receive compensation for their services, the amount must be limited to up to 70% of the highest compensation paid to an executive officer (except for non-profit entities performing at least one activity listed in Article 3 of Law No. 9,790/1999, that are not involved in political party or electoral interest campaigns, in which case the executive officer can receive market practice compensation).
- Apply all of their resources to the maintenance and development of their social purposes.
- Maintain full accounting registers, in compliance with formal/legal requirements.
- Maintain over five years' of documents that support the accounting registers.
- File annual income tax returns, in compliance with tax authority requirements.

To verify if a non-profit entity can obtain a tax exemption, it is necessary to analyse the relevant law and verify whether the organisation meets all its requirements. Depending on the tax, a formal recognition from public authorities may also be required.

Tax on income

See above, *Tax immunity and tax exemptions*.

Tax on capital gains

See above, *Tax immunity and tax exemptions*. As a general rule, capital gains earned by non-Brazilian residents in transactions involving the disposal of Brazilian assets are subject to tax in Brazil at a rate of 15% or 25%, if the beneficiary is domiciled in a low tax jurisdiction.

Tax on capital gains is not payable by tax immune entities (under an injunction granted in a direct action of unconstitutionality, No. 1802-3).

Tax on property used by the organisation

Generally, tax on urban property (IPTU) is payable on the ownership, control, or possession of urban land or buildings, based on the assessed value of the real estate. The rate varies according to the city and type of real estate involved. Non-profit social assistance, health and education entity properties are immune to this tax, even if the core activity does not take place at the property or it is rented or used for commercial purposes. However, all money received from the leased property must be used for the development of the entity's social assistance, health and educational activities.

Value added tax (VAT)

The equivalent to VAT in Brazil is the state value added tax (ICMS), imposed on:

- Sales of goods.
- Inter-municipal and interstate transport services.
- Communications services.

It is generally calculated on the amount of the transaction, or on the price of goods and services. ICMS rates vary depending on the goods or services, and specific regulations in each state (the average rate is 18%).

ICMS is currently paid by non-profit entities, but the Supreme Court has decided that ICMS levied on products sold by non-profit social assistance entities is not payable, if the economic result obtained is used for the development of the entity's social purposes (*RE No. 540,725*).

National Institute of Social Security Tax (INSS)

The National Institute of Social Security Tax (INSS) is a social security tax paid by both employers and workers, levied on payroll and on remuneration. For employees, directors, and independent workers, it is calculated on gross remuneration, including certain benefits. The tax base is limited to an amount determined by the government. For the employer, INSS tax is levied on total remuneration paid to employees, directors, and independent workers, including indirect benefits.

This tax is not paid by tax immune entities with the CEBAS designation.

Contribution for the Social Integration Program (PIS)

PIS is levied at a different rate for associations and foundations (tax immune or exempted) (1% of the payroll).

This tax is not paid by tax immune entities with the CEBAS designation.

Social security financing (COFINS)

COFINS is not due on inherent revenues of tax immune and exempted entities. The tax authorities hold that inherent revenues are from contributions, donations, fees or annuities, fixed by law, statute or the general meeting, received from members or supporters, that are not a payment of consideration.

This tax is not paid by immune entities with the CEBAS designation.

Tax on donations (ITCMD)

Inheritance and donations are subject to a state tax on donations, at a rate varying from 4% to 8% of the total amount donated. Some states have full or partial tax exemptions for non-profit entities.

10. What, if any, are the taxation benefits for donors to charities?

Under Federal Law No. 9,249/95, donations to non-profit organisations by companies meeting certain requirements are deductible from the corporate entity's operational income, up to 2% of the income.

Only donors that calculate income tax through the "real profit system" can make these deductions. Operational income is the basis for calculating their income tax and social contribution obligations. This deductibility generally provides the donor with a 34% return on the amount donated, meaning that for each BRL100 donated, the donor has a reduction of about R\$34 from its income tax and social contribution obligations.

Law No.13,204/2015 has extended this benefit to all non-profit entities, regardless of their designation, provided that they both:

- Perform at least one of the activities listed in Article 3 of Law No. 9,790/1999.

- Are not involved in political party or electoral interest campaigns, under any means or form.

Companies donating to educational or research institutions can also tax deduct up to 1.5% of their operational income, calculated before any deduction.

At federal level, there are also tax benefits for cultural, sports, and health projects, and projects targeted at children, adolescents, and the elderly.

The most well-known tax incentive for businesses in Brazil relates to cultural projects. Under the Rouanet Statute (*Federal Law No. 8.313/91*), legal entities can deduct sums contributed through donations or sponsorship to cultural projects approved by the Ministry of Culture. A legal entity can deduct part of the amount it donates from its income tax payable (30% for sponsorship, and 40% for donations), up to 4% of the income tax payable.

In specific sectors such as the visual arts and preservation of cultural heritage, amounts donated to cultural projects can be tax deducted, up to 4% of income tax due from the taxpayer. However, donations in these sectors cannot be deducted from taxable income.

States and municipalities can also establish their own tax incentives, which typically benefit cultural and sports projects. For example, both the State and Municipality of São Paulo have incentives for companies that donate to cultural projects.

Disadvantages

11. What are the main disadvantages of charitable status?

An entity is often recognised as charitable through a designation by the public authorities (see *Question 3*). The main disadvantages of this are the bureaucracy involved in renewing the designations, and having to provide accounts to public authorities.

Overseas charities

12. Is it possible to operate an overseas charity in your jurisdiction? What are the registration formalities? How (if at all) are overseas charities treated differently in your jurisdiction from charities set up under domestic law?

The Law of Introduction to Brazilian Law Rules (Decree Law 4.657/42, as amended) allows foreign legal entities to carry out their activities in Brazil. The legal personality of these entities is recognised, provided they have been duly incorporated according to their own country's legislation.

Therefore, foreign associations, civil societies and foundations incorporated in accordance with the laws of their own countries can have legal status and capacity to operate in Brazil, on granting of authorisation by the Brazilian government.

An authorisation request must be sent to the Co-ordination of Social Entities of the Ministry of Justice, and addressed to the President of the Federative Republic of Brazil with the following documents:

- Complete copy of the bye-laws.
- Evidence that the non-profit entity was duly incorporated (certificate of incorporation).
- Copy of the minute of the general meeting that authorised the operation of the non-profit entity as a foreign organisation in Brazil.
- Power of attorney, granting powers for the grantee to accept the conditions under which the authorisation will be granted, as well as receiving judicial notices.
- Copy of the minutes of the general meeting, by which the current members of the board of directors and governing councils were appointed.
- List of the members of the board of directors and governing councils, specifying their job titles and contact information.
- Statement of whether there are foreign persons working in the organisation in Brazil. If yes, documentation evidencing their Brazilian visas is required.
- Detailed report specifying in which areas it will operate in Brazil. It must state if it intends to operate in the Amazon area (states of Acre, Amapá, Amazonas, Pará, Rondônia, Roraima, Mato Grosso, Tocantins, and Maranhão).
- A qualitative specification of the social purposes and activities.
- Balance sheet for the previous fiscal year.

Once the Ministry of Justice has approved the application, it is forwarded for the approval of the President, with a later decree granting authorisation to operate.

After this decree is enacted in the Official Gazette of the Federal Executive, it must be registered with the Civil Registry of Legal Entities. On registration, the entity can request its corporate taxpayers' registration with the Ministry of Finance (CNPJ/MF), as a foreign non-profit association authorised to operate in Brazil.

To operate, a foreign organisation must evidence that it is duly incorporated and that the individual (officer or representative) acting on its behalf has powers to do so in its bye-laws. Even when translated into Portuguese, the bye-laws are usually in a format unfamiliar to the Brazilian authorities and third parties. Since foreign organisations are not as common as local associations, they can face challenges in evidencing their legal existence and functioning, such as when opening and closing bank accounts, executing agreements, and leasing real estate.

13. Is it possible to register a domestic charity abroad, and has your jurisdiction entered into any international agreements or treaties in this area?

There is no Brazilian legal prohibition on Brazilian non-profit entities registering a branch or operating abroad. In addition, there are no applicable international agreements or treaties which Brazil has entered into.

A tax immune entity (see *Question 9*) is legally obliged to apply its resources, income, profits and operational results exclusively in Brazil, for its social purposes.

Reform

14. Are there any proposals for reform in the area of charity law?

The economic sustainability of civil society organisations is a challenge that requires legal reform. Donations must be encouraged and tax barriers reduced and simplified.

The main tax related to donations is the state tax on donations (ITCMD) (see *Question 9*). Even though some states provide exemptions for non-profit entities, the procedures are very bureaucratic.

There is an ongoing debate about non-profit organisations being financed with their own resources, through the creation of an endowment fund.

In 2015 a bill that includes non-profit organisations to simplify taxes and reduce tax rates was discussed at the national congress. This should be implemented, once it has the potential to contribute to their sustainability and decrease bureaucracy regarding the payment of taxes.

The abolition of the public utility designation, by Federal Law No. 13,204/2015, may lead to possible reform. This designation previously allowed non-profit organisations to grant benefits to donors, and was a requirement for establishing partnerships with some government authorities.

Online resources

Legislation portal, Brazilian Federal Government

W www4.planalto.gov.br/legislacao

Description. Official website that contains acts of all Brazilian federal legislation, since 1889. Available in Portuguese only.

Civil Society Organisations Map

W <https://mapaosc.ipea.gov.br>

Description. Official website of the Brazilian Institute of Applied Economic Research. It offers a geo-referenced data platform for organisations operating in Brazil, with a large volume of continuously updated information. Available in Portuguese only.

Contributor profiles

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Professional associations/memberships

- Brazilian Bar Association (OAB).
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Languages. Portuguese, English

Publications. Including:

- *CUBAS, Renata Correia; OLIVEIRA, Flavia Regina de Souza. ICMS nas operações realizadas pelas entidades sem fins lucrativos. In: MATTOS FILHO, VEIGA FILHO, MARREY JR. E QUIROGA ADVOGADOS. Sinopse tributária: 2011-2012. São Paulo: Imprensa Régia, 2011. pages 87 to 97.*
- *SOUZA, Flavia Regina Ribeiro da; MONTEIRO, Juliana Gomes Ramalho. Levando o pro bono a sério. Revista Jurídica Consulex, São Paulo, 15 ago. 2013, v. 398, pages 28 to 29.*
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Resource information

Resource ID: 2-633-0890

Law stated date: 01-Sep-2016

Products: Charity Law Global Guide, PLC Cross-border, PLC UK Corporate, PLC UK Law Department, PLC UK Private Client, PLC UK Tax, PLC US Law Department

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