

# NONPROFIT LAW IN VENEZUELA



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This report describes the legal framework governing nonprofit organizations (also known as non-governmental organizations or NGOs) in Venezuela, and includes translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 92-94.

These reports have been prepared by the [International Center for Not-for-Profit Law](#) (ICNL). Please direct corrections and comments to [Lily Liu](#).

We include hyperlinks to the following information, to the extent available:

- Longer country reports analyzing various aspects of local legislation; and
- Texts of local laws that affect the decision whether or not to qualify a grantee (generally in translation, although ICNL and the Council cannot warrant the accuracy of any translation; in addition, legislative excerpts were selected by in-country contacts, and ICNL and the Council cannot warrant that all relevant provisions have been translated).

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## I. SUMMARY

### A. TYPES OF ORGANIZATIONS

Venezuela is a civil law country with two traditional forms of non-governmental, not-for-profit organizations (NPOs):

- Civil Associations and
- Foundations.

Other non-profit legal forms, such as religious congregations and political parties, are outside the scope of this Note due to their limited interaction with foreign grantmakers. The Note also excludes cooperatives and community councils. [\[1\]](#)

### B. TAX LAWS

NPOs receive significant incentives and fiscal benefits in Venezuela. Foundations and associations may qualify for exemption from paying income tax under Article 14(3) of the Income Tax Law (LISR). The LISR and its regulations set forth the requirements for qualifying and registering for the exemption, which is granted by the Tax Administration. Certain foundations and associations are also eligible for exemption from paying taxes on inheritance and donations. Although associations and foundations are not exempt from the Value Added Tax (VAT) *per se*, some services and transfers of certain goods are exempt.

Corporations and individuals may deduct certain contributions to foundations and associations pursuing publicly beneficial purposes.

## II. APPLICABLE LAWS

- [Constitution \(1999\)](#)
- *Código Civil* (CC) (Civil Code) (1982)
- *El Código Orgánico Tributario* ([Tax Code](#)) (2014)
- *Ley de Impuesto Sobre la Renta* (LISR) (Income Tax Law), as amended
- *Ley de Impuesto Sobre Sucesiones Donaciones y Demás Ramos Conexos* ([Law on Taxation of Inheritance and Donations](#)) (1999)
- *Ley de Impuesto al Valor Agregado* (LIVA) (Value Added Tax), as amended in 2018 by [the Decreto constituyente que mediante el cual se Reforma la Ley que establece el Impuesto al Valor Agregado](#) ([Constitutional Decree Partial Reform of the Statute that creates VAT](#))
- *Ley Orgánica de Aduanas* (Organic Customs Law) (2014)
- *Reglamento de la Ley del Impuesto Sobre la Renta* (RLISR) ([Regulation to the Income Tax Law](#)) (2003)
- *Reglamento de la Ley que Establece el Impuesto al Valor Agregado* (Regulation to the VAT Law) (1999)
- *Ley Orgánica de la Educación* (Organic Education Law) as amended
- *Decreto con Fuerza de ley Especial de Asociaciones Cooperativas* (Decree with Force of Special Law of Cooperative Associations) (2006)
- *Providencia SNAT/2007/0685, por la cual dicta la Reforma Parcial de la Providencia No. 0828 del 21/09/2005, sobre Sujetos Pasivos Especiales publicada en Gaceta Oficial No. 38.622* (Ordinance amending Ordinance No. 0828 of Sept. 21 2005, on Special Designated Agents) (2007)
- *Ley de Defensa de la Soberanía Política y la Autodeterminación Nacional* (Law of Defense of Political Sovereignty and National Self-Determination) (2010)
- *Ley Orgánica contra la Delincuencia Organizada y Financiamiento al Terrorismo* (Organic Law against Organized Crime and Financing of Terrorism) (2012)
- *Constitucional de Inversión Extranjera Productiva* (*Constitutional Act for Productive Foreign Investment*) (2017)
- *Convenio Cambiario No. 1* (*Exchange Agreement N° 1*) (2018) (published in the Official Gazette No. 6.405 Extraordinary on September 7th, 2018)

### III. RELEVANT LEGAL FORMS

#### A. GENERAL LEGAL FORMS

Venezuelan law recognizes two primary forms of NPOs: civil associations and foundations.

## **CIVIL ASSOCIATIONS**

The Civil Code recognizes civil associations without defining them (Civil Code Article 19). In Venezuelan jurisprudence, however, “civil association” has been defined as an assembly of persons organized in a corporate form to realize a common purpose that is non-profit in character. [\[2\]](#) Civil associations may dedicate themselves to any purpose not contrary to law or public order.

## **FOUNDATIONS**

The Civil Code also does not explicitly define “foundations,” though it recognizes the form and provides that they may only be formed with a generally beneficial purpose of an artistic, scientific, literary, charitable, or social nature (Civil Code Article 20). In Venezuelan jurisprudence, “foundation” has been defined as a collection of assets dedicated exclusively and permanently to the attainment of a specific objective. [\[3\]](#)

## **B. PUBLIC BENEFIT STATUS**

No administrative process formally designates a non-profit organization as a “public benefit organization.” However, by definition, a foundation must pursue generally beneficial purposes in one of five areas: art, science, literature, charity, or social activities (Civil Code Article 20).

In addition, the Tax Administration implicitly recognizes that particular organizations engage in public benefit activities by granting them tax exemptions under the Income Tax Law and its accompanying regulation (LISR Article 14(3)). Under the regulation, two types of organizations qualify for income tax exemption: charitable institutions and social assistance institutions. These are not distinct types of legal entities, but rather special designations conferred on eligible associations and foundations. To be eligible for a tax exemption, an organization must also comply with certain requirements regarding their financial operations and other matters (see Section V.A.).

# **IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW**

## **A. INUREMENT**

The Civil Code is silent with respect to unjust enrichment and use of association or foundation assets for personal ends. However, according to local experts, common doctrine and jurisprudence dictate that in order to be “non-profit,” an organization cannot distribute profits, benefits, or any part of its assets to founders, associates, or members of any kind in

the form of dividends, fees, or shares; nor can it use the resources of the organization for any purpose other than those provided for in its statute.

Organizations registered as exempt from income tax are precluded from making distributions or providing benefits, directly or through third parties, to founders, associates, or members ([LISR Article 14\(3\)](#)).

## B. PROPRIETARY INTEREST

As a general matter, a donor to an association or foundation can retain a proprietary interest in the donation while allowing it to be used by the organization through the Civil Code doctrine of “usufruct.” [\[4\]](#)

## C. DISSOLUTION

Upon the dissolution of an association, its assets are distributed according to its governing documents. An association's documents will often require the distribution of any remaining assets to another NPO—either an organization to be determined by the General Assembly or one indicated in the statutes themselves.

With respect to an association registered for income tax exemption, the Venezuelan tax authority (SENIAT) has sometimes required organizations to provide in their governing documents that, upon dissolution, the organization's remaining assets will pass to another institution with similar purposes. [\[5\]](#) However, this is a general rule and not a formal requirement.

Upon dissolution, the assets of a foundation are typically distributed according to the organization's governing documents. In the absence of any provision in the governing documents, the court overseeing the dissolution will generally distribute the assets to another NPO with a similar purpose, so long as that purpose has not become unlawful or impossible to fulfill. However, this too is a general rule and not a formal requirement ([Civil Code Article 23](#)).

## D. ACTIVITIES

### 1. GENERAL ACTIVITIES

Associations, once registered, are legal persons. As such, they are permitted to engage in a broad range of activities, both for mutual and public benefit, so long as the activities are enumerated in the organization's governing documents. Foundations, by contrast, may only engage in activities that contribute to public benefit objectives in the artistic, scientific, literary, charitable, and social areas.

In order to gain tax-exempt status, however, an organization must engage in particular activities. These comprise:

- Charitable activities (providing medical or educational services; providing food, clothing, or shelter to the destitute; or providing funds for those purposes); or
- Social assistance activities (preventing or reducing sickness, misery, vice, or other social ills, or providing funds for these purposes); or
- Activities in one of the following areas: religious, artistic, scientific, conservation, environmental, technological, cultural, sports, professional, or unions (guilds).

## 2. ECONOMIC ACTIVITIES

As with any natural or legal person, an NPO may carry out any type of lawful economic activity. It can buy, sell, and mortgage property, real and personal; make domestic or foreign investments; and buy shares in companies and receive dividends.

Although the Civil Code is silent on the matter, local experts state that Venezuelan jurisprudence requires NPOs to pursue economic activities only as a means of advancing their non-profit goals, self-sustainability, and financial autonomy. This requirement must be met for an organization to register as tax-exempt under the Income Tax Law ([LISR Article 14\(3\)](#)).

## E. POLITICAL ACTIVITIES

As a legal matter, Venezuelan NPOs are permitted to promote legislation and support candidates, except during voting periods, when all political campaigning is prohibited. They may also undertake advocacy activities on behalf of or to support their target populations and to protect their respective organization or collective interests.

In December 2010, Venezuela enacted the *Ley de Defensa de la Soberanía Política y la Autodeterminación Nacional* (Law of Defense of Political Sovereignty and National Self-Determination). The law prohibits any organization with political aims or any organization that protects political rights from receiving any kind of foreign funding or economic aid, be it from a natural foreign citizen or a foreign organization. Organizations that do not comply with this law will face a fine up to double the funding amount received, and, where there are repeat violations, organizations can be prohibited from participating in the electoral process for a period of five to eight years. The chairman of an organization—in his or her individual capacity—found to be in violation of the law also can face a fine as well as individual exclusion from participation in the political process. In addition, the law punishes those organizations that invite foreign organizations or citizens who, under the organization's sponsorship, criticize governmental institutions or civil servants or in any way try to affect the exercise of national sovereignty.

## F. DISCRIMINATION

[Article 21 of the Venezuelan Constitution](#) prohibits discrimination based on—among other things—race, sex, creed, or social condition. In addition, Article 6 of the Organic Law of Education provides that all persons have the right to an education without discrimination on the basis of race, sex, creed, economic and social position, or otherwise. This provision applies to all levels of education in Venezuela, from preschool through university.

## G. CONTROL OF ORGANIZATION

Venezuelan charities may be established by natural or legal persons, domestic or foreign. Therefore, it is possible that a Venezuelan NPO may be controlled by a for-profit entity or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

## H. CURRENCY AND MONETARY ISSUES

Venezuela has an exchange control regime. Any donation must be in Venezuela's local currency, *Bolívares Fuertes* (VEF). Dollars must be exchanged and declared to the central Bank of Venezuela or any other entity delegated by the law.

As of November 2016, Venezuela has two official exchange rates. For food and medicine, the official exchange rate is VEF 10.00 for every U.S. dollar (Exchange Agreement No. 35). For any other transaction, the rate is the average result of the previous day's transactions under the controlled money exchange table, which roughly calculates to VEF 727.17 for every U.S. dollar (Exchange Agreement No. 35). [\[6\]](#)

The 2017 *Ley Constitucional de Inversión Extranjera Productiva* (Constitutional Act for Productive Foreign Investment) prohibits foreign investors from donating to NPOs or providing other forms of support without procuring a permit from the Foreign Investment Agency. As of December 2018, the Foreign Investment Agency had not yet been created.

## I. NPOS AND THE LAW AGAINST ORGANIZED CRIME

The *Ley Orgánica Contra el Crimen Organizado* (Organic Law against Organized Crime) provides that NPOs are "obligated subjects" of the Law, along with other entities including banks and other financial institutions, insurance companies, hotels, jewelry and antiques sellers, and casinos. As such, NPOs are treated as institutions susceptible to becoming instruments for money laundering and other organized crime activities. NPOs are therefore subject to scrutiny and surveillance by the executive entity in charge of the fight against organized crime, and their activities could be criminalized.

## V. TAX LAWS

The following section discusses relevant tax legislation, recognizing that taxes may affect the amount of the grant actually flowing to the grantee.

### A. TAX EXEMPTIONS

Under Article 14(3) of the Income Tax Law (LISR), charitable and social assistance organizations (as defined in the Income Tax regulation) are eligible for exemption from payment of income tax if they meet the following requirements:

- Their income is obtained with the aim of furthering their charitable purpose;
- They do not distribute earnings, profits of any kind, or any part of their assets to their founders, associates, or members; and
- They do not make payments in the form of distribution of profits or assets (LISR Article 14(3)).

Charitable and social assistance organizations are not distinct types of legal entities, but rather special designations conferred on eligible associations and foundations.

A "charitable institution" is understood to be one that:

- Renders medical and educational services to the destitute;
- Provides food, clothing, and shelter to the destitute; or
- Provides funds for those purposes.

A "social assistance" institution is understood to be one that:

- Engages in activities directed at preventing or reducing sickness, misery, vice, or other social ills; or
- Provides funds for those purposes.

In order to receive an exemption from income tax, organizations must register with the Tax Administration (SENIAT) and demonstrate that they have met all applicable requirements (LISR Article 14).

### B. DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS

Under the LISR, corporate and individual taxpayers can deduct donations to civil associations and foundations that pursue non-profit purposes and that dedicate the donations to one or more of the following purposes:

- Charitable
- Religious



- Cultural
- Educational
- Artistic
- Scientific
- Conservation
- Defense and betterment of the environment
- Technological
- Sport
- Betterment of urban or rural workers

In addition, donations to a branch of government (national, state, municipality, or official autonomous institute) are deductible (LISR Article 27 paragraph 12).

The amount of the deduction is limited to:

- 10 percent, when the net income of the donor does not exceed 10,000 tributary units (in 2017, one tributary unit was equivalent to VEF 300, or about USD 0.41);
- 8 percent, for the portion of net income that exceeds 10,000 tributary units; and
- 1 percent, if the contributor carries out economic activities relating to hydrocarbons or the exportation of minerals (LISR Article 27 paragraph 13). [\[7\]](#)

Under the Law for the Protection of Children and Adolescents (LOPNA), donors who contribute to programs or entities for the protection of children or adolescents can deduct the amount of those donations up to double the percentages listed above; when the donation is made to the Foundation for the Protection of Children and Adolescents, the percentages are tripled (LOPNA Article 344).

For all of the foregoing deductible donations, the deduction can be taken only if the donee is domiciled in Venezuela, and cannot be taken if the donor suffered losses in the immediately preceding fiscal year (LISR Article 27).

The Executive Branch is authorized to exempt NPOs from paying the tax on inheritance and donations if they dedicate themselves principally to charitable activities, social assistance, social protection, or the funding of such activities; religious centers accessible to the public; or scientific, educational, artistic, cultural, sports, or recreational activities, or activities of a similar nature (Law on Inheritance and Donations; Decree of 2001). To take advantage of the exemption, organizations must report each inheritance or donation to the Tax Administration within 30 days (Decree of 2001). If a donation is not exempt, the donor and donee are jointly liable for payment of the tax.

Finally, the Organic Law of Science, Technology and Innovation (*Ley Orgánica de Ciencia, Tecnología e Innovación*), enacted in August 2005 and reformed in 2010, promotes the development of scientific, innovative, and technological activities in Venezuela. Under the

law, every "large corporation" has a duty to make an annual contribution of up to 2 percent of its gross income to an activity in the fields of science, technology, or innovation. A "large corporation" is defined as any legal person that has an annual gross income of more than 100,000 "tributary units." The definition of a "large corporation" also includes civil associations, foundations, and other legal and economic entities.

Contributions can be made via cash donations to beneficiaries such as the Science, Technology, and Innovation Ministry; state-funded or private universities and other academic institutions; research and development centers, laboratories, or scientific societies; or by investing in a company's own science, technology, or innovation activities.

In September 2007, the "*Sala Político-Administrativa*" of the Supreme Court of Venezuela determined that these contributions can be deducted from a company's income taxes. Deductibility will depend on the type of contribution made: if the contribution is made in cash to any of the above-mentioned beneficiaries, it will be deducted as a paid tax (LISLR Article 27); if the contribution is made via an investment in the company itself, it will be deducted as an expense.

The Organic Law on Drugs, enacted on September 15, 2010, stipulates that donations by natural or legal persons to drug prevention programs and projects can be deductible, with preference to those programs aimed at the protection of children and adolescents. This law also establishes the obligation of all private legal persons, consortia, or public entities with for-profit purposes that have 50 employees or more, to contribute 1 percent of their earnings to the National Anti-Drug Fund, which will, in turn, direct these contributions to programs for the prevention of drug consumption and trafficking. The Organic Law on Drugs repealed the *Ley Orgánica Contra el Tráfico Ilícito y el Consumo de Sustancias Estupefacientes y Psicotrópicas* (1996) (Organic Law against the Trafficking and Consumption of Illicit Substances).

## C. VALUE ADDED AND TURNOVER TAXES

There is no specific exemption from the VAT for non-profit organizations, but certain goods and services are exempt. For example, goods donated from abroad to NPOs and to universities for the accomplishment of their goals may be exempt upon approval of the Tax Administration. Also exempt from the VAT are transfers of certain goods, including: medicines, wheelchairs, catheters, valves, artificial organs and prostheses, books, pamphlets, and magazines (LIVA Article 18). Certain services, including particular educational, medical, and cultural activities, are also exempt from VAT (LIVA Article 19).

## D. CUSTOMS DUTIES

Customs duties are governed by the *Ley Orgánica de Aduanas* (Customs Law), which was amended in 2014 by the *Reforma Parcial a la Ley Orgánica de Aduanas* (Partial Reform of

the Organic Customs Law). Goods imported by NPOs are exempt if they are specifically dedicated to the purposes of the organization and its “beneficiaries.” Other exempt goods include religious goods and those for public welfare and social assistance.

Under the 2007 *Ley para Personas con Incapacidad* (Law for Persons with Disability), certain imports by organizations serving the disabled are exempt from custom duties if they meet particular requirements. Products eligible for exemption are: medicines, technical assistance, equipment, specialized materials, and any other technological resources or other useful and necessary resources for the personal, family-related, or social integration of the disabled (Law for Persons with Disability, Article 45).

## E. DOUBLE TAX TREATIES

A double taxation treaty between Venezuela and the United States went into effect in 2000.

## F. SPECIAL DESIGNATED AGENTS

Under the Ordinance SNAT/2007/0685, the National Service of Customs and Tax Administration (SENIAT) may determine that a foundation or civil association is a “Special Designated Agent” if the gross income of that organization equals or exceeds VEF 1,500,000 (approximately USD 150,188). Special Designated Agents are subject to additional obligations, such as abiding by a special taxpayer calendar and keeping track of withholdings made to third parties and clients. They may also face more severe sanctions, such as four to six years of imprisonment for failure to pay a withholding tax. Organizations with special designated agent status should consult with a local attorney to ensure compliance with these rules.

## VI. KNOWLEDGEABLE CONTACTS

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## FOOTNOTES

[1] The Law of Community Councils of April 2006, as amended in 2009 by the Law of Partial Reform of the Law of Community Councils, creates councils that seek to enable the public to collectively exercise management over public policy and projects that respond to the needs and aspirations of communities supporting equity and social justice.

[2] See Miguel Angel Itriago Machado and Antonio L. Itriago Machado, *Las Asociaciones Civiles en el Derecho Venezolano* 58 (1998).

[3] See Miguel Angel Itriago Machado and Antonio L. Itriago Machado, *Asociacion Civil y Fundacion* 13 (1994), citing Jose Luis Aguilar Gorrondona, *Derecho Civil-Personas* 52 (1979).

[4] Usufruct can involve real or personal property and it can be outright, for a fixed period of time, or subject to conditions. In this way, a donor can retain ownership of property while allowing the organization to use it ([Civil Code Article 582 et seq.](#)). (A donor can also transfer ownership of property to the organization and retain, for him or herself or for specified others, the right to use the property.)

[5] See Antonio L. Itriago and Miguel Angel Itriago, *Leyes y Regulaciones de Organizaciones Sin Fines de Lucro en Venezuela* 8.

[6] The Complementary System of Administration of Foreign Exchange (*Sistema Complementario de Administración de Divisas*, or SICAD) publishes an official exchange rate for certain headings.

[7] Net income is calculated before deducting the amount of the donation(s).