

Key Issues for Foreign Nonprofits Considering Establishing a U.S. “Friends Of” Affiliated Organization

1. Legal relationship with the foreign institution

There are a variety of ways in which you can structure the legal relationship between a foreign institution and the U.S. “friends of” organization. Often times, non-U.S. charitable or educational institutions seek to establish charities in other countries to assist with overseas fundraising efforts for the institution, and in such circumstances, the foreign institution will seek to structure the U.S. entity in a way that gives the foreign institution a certain amount of control over the foreign charity (e.g., by having the institution itself serve as the sole member of the foreign charity, or through partly overlapping boards). They can also be structured to be legally independent of one another, even though there would be an informal understanding that the purpose is to help raise funds to support the foreign nonprofit institution.

2. “Foreign conduit” prohibition

In order to ensure that donations from U.S. donors are tax-deductible, the U.S. entity cannot be organized and operated solely to solicit earmarked funds on behalf of a pre-existing foreign entity. The U.S. entity must maintain discretion and control over the funds solicited within the United States, which may involve having the U.S. board take steps to review any prospective project to be funded in advance of making a grant, and monitoring the project to ensure that the U.S. entity’s charitable goals are met. It may also require asking the foreign recipient to furnish a periodic accounting of how the grant funds were used. It may be the case that the U.S. organization’s goal is solely to support the foreign institution, and that all grants are, in fact, dispersed to the foreign institution, but this decision is made on a per-grant or per-project basis, and is not explicitly promised or committed to the foreign institution as part of the organization’s legal structure.

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