

Beyond Borders

*Observations for US organizations considering
nonprofit incorporation in Mexico*



US-MEXICO
BORDER PHILANTHROPY PARTNERSHIP
ALIANZA FRONTERIZA DE FILANTROPIA
MÉXICO • EEUU

*Cultivating leadership, philanthropy,
and collaboration along the border.*



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The US-Mexico Border Philanthropy Partnership (BPP) is a binational membership organization of leaders and practitioners representing grantmaking institutions, nonprofits, advocacy organizations, academic institutions, government agencies and individual philanthropists. Our members represent a leadership network strengthening US-Mexico border communities.

BPP membership offers:

- Access to information, data, research and general knowledge on current and future trends relevant to the well being of border communities
- Capacity building, in the areas of marketing and communications, resource mobilization and endowment building, and leadership development at the individual and institutional level
- Access to organizations from along the border and across the US and Mexico, representing a spectrum of sectors, that have a proven commitment to investing in an improved quality of life for the border
- Inclusion in a unique bi-national network that promotes stewardship and regional leadership on issues that are important to border residents

For more information about the BPP contact:
 US-Mexico Border Philanthropy Partnership
 2508 Historic Decatur Rd. Suite 130
 San Diego, CA 92106

T. 1 (619) 814-1387 | F. 1 (619) 814-1389
info@borderpartnership.org
www.borderpartnership.org



Authors

Thelma Manzano
Independent Consultant

Maria Laura Muñoz
Independent Consultant

For their thoughtful contributions to this report, the BPP wishes to extend a special thanks to:

Deborah Acevedo, Independent Consultant

Luis Daniel Anaya Vargas, Junta de Asistencia Privada del Estado de Chihuahua

Vivian Blair, Vivian Blair & Asociados

Ma. Antonieta Béguerisse, Fundación Internacional de la Comunidad, A.C.

Consuelo Castro Salinas, Centro Mexicano para la Filantropía (CEMEFI)

Jorge Contreras Fornelli & Karen Yarza Sieber, Fundación Comunitaria Frontera Norte, A.C.

Ana María De La Garza, Fundación Comunitaria de Matamoros, A.C.

Josefina Durán de Pataki, Fundación Esperanza México, A.C.

Mariano Esparza Vázquez and Mario Medina De La Torre, Fundación para los Niños de las Californias

Gracia Goya, Hispanics in Philanthropy

Judy Gresser and Cristina Gonzales, Yuma Community Foundation

Richard Kiy, International Community Foundation

María Eugenia Olivo de Barúa, No. 16 Public Notary, Juárez, Chihuahua

Monica Patten, Community Foundations of Canada

Elisa Sabatini, VIA International (formerly Los Niños International)

Héctor Silva, Deloitte – Galaz, Yamazaki, Ruiz Urquiza, S.C.

Lee Tablewski, Institute of the Americas

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MESSAGE FROM THE BPP

In the fall of 2008, after six years of incubation with a New York based nonprofit, the US-Mexico Border Philanthropy Partnership (BPP) was formally recognized in the US as an independent 501(c)(3) organization. This was an important milestone for the BPP but, it marked only the beginning of the Partnership's transition to a binational organization fully serving both sides of the US-Mexico border.

BPP members believe that cross-border collaboration is essential to addressing the complex issues faced by border communities. This type of collaboration is best served by an organization with an equal presence in both countries. While the BPP is governed by one, binational board, it was imperative to incorporate in Mexico to enable the full delivery of BPP's offerings to Mexican members, and, more importantly, to ensure full and equitable representation.

In early 2009, the BPP commissioned a study on nonprofit incorporation in Mexico as an *Asociación Civil* and *Donataria Autorizada*. The study produced an extensive report to the BPP titled, "*Findings and recommendations for legal incorporation, governance and structure of the new BPP entity*". BPP's subsequent process to incorporate in Mexico integrated many of the study's findings.

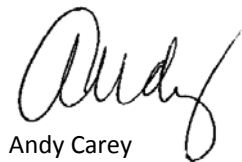
Through the process of the study, BPP leadership became aware of the general lack of understanding and information available to US organizations operating in the border region – or elsewhere in the US – similarly wishing to consider expansion into Mexico. This document – an abbreviated version of the full report - is BPP's contribution to this field.

The report before you is intended to share BPP's own experience and observations around the process and best practices of incorporating and operating as a binational organization. We believe that the leaders of US nonprofit organizations considering expanding their operations into Mexico, and the funding agencies that support these nonprofit organizations, will especially benefit from its contents.

This report includes a broad overview of the Mexican nonprofit incorporation process. It raises important questions and alerts the reader to possible pitfalls to avoid when considering binational incorporation. It should be used as a guide in a wider effort that also engages the advice of legal counsel and other experts, along with the thoughtful reflection of an organization's leadership and constituency as to what the best route for expansion may look like.

We trust that you will find its contents useful to your mission and work on either side of the border.

Sincerely,



Andy Carey
Executive Director



INTRODUCTION

Throughout the US, and especially along the border with Mexico, there are a myriad of nonprofit and civil society organizations pursuing important missions on both sides of the US-Mexico border. Some organizations currently operating binationally – serving constituents in both countries - began their work in a binational structure. But for most, the process of growing operations to serve communities on both sides has been an organic evolution based on the realization that a binational strategy is critical to the pursuit of their missions and impact.

This small, yet experienced group of organizations is on the forefront of the nonprofit sector, shaping as they go the model structure for a binational organization. While some organizations decide to legally incorporate an independent nonprofit entity in Mexico, others just expand their service delivery beyond the border without creating a legal entity that would bring new legal and tax obligations. Some have different boards for each national entity; others have just one board to oversee both organizations.

With any model, organizations must be aware of the challenges of binational work, including cultural differences, communications and physical distance. This work poses new questions and responsibilities, which simultaneously can offer new opportunities and benefits.

This guide provides an overview of best practices in governance, operations, communications, and legal and tax issues for organizations that are considering incorporation as an independent nonprofit organization in Mexico.

The findings here are based on research and extensive interviews with the leadership of a variety of organizations that have worked or presently work binationally. This guide is not intended as a substitute for expert advice. The authors and the BPP recommend that any organization that wishes to pursue the process of incorporation as a nonprofit organization in Mexico seek the advice of local nonprofit and legal specialists.

Key questions that US nonprofit leaders should ask when considering the possibility of binational work:

- ✓ Due to the extensive territories of both countries, can programmatic activities be managed from the US alone?
- ✓ Does our organization have reliable partners or allies in Mexico, able and willing to help us consolidate operations in an effective way?
- ✓ Do the wide cultural differences make it necessary to include Mexican nationals for our projects to be successful?
- ✓ Are current decision-makers strongly familiar with the Mexican context? If not, how can we ensure that the local context and perspective is integrated in our planning and work?
- ✓ Is our convening capacity strong enough to recruit and secure leaders that will work to advance the development of the organization?
- ✓ Do we need a long-term presence in Mexico ie; hire full time staff, set up an office?
- ✓ Are there any offerings or possibilities to harness significant amounts of resources in Mexico that would go untapped for lack of a legally incorporated entity?
- ✓ Is not having a physical presence in Mexico raising suspicions or creating mistrust from other local actors?



US organizations may favor incorporation of *Asociación Civil* in Mexico when:¹

- A nonprofit organization needs to hire staff in Mexico or formalize an employee structure. Although a US-based organization can hire personnel to work in Mexico through other structures, these do not offer job security or benefits to employees.
- There is a need to establish a physical presence to be trustworthy to donors and other partners. A general climate of mistrust towards people and organizations prevails in Mexican culture; therefore it may be necessary for people to “see” that the organization is for real. Having an office and being legally incorporated in Mexico can make a big difference.
- It is strategic for the organization to have a physical presence in Mexico for operational purposes; to be closer to donors and partners, program growth, etc.
- There are potential sources of funds and support in Mexico and this opportunity is not being explored due to a lack of structure.

If after careful thought, leadership decides that creating a new nonprofit organization is the best choice, this publication offers them a comprehensive, yet concise step-by-step guide to incorporation together with additional considerations based on the experience of other practitioners who successfully work beyond our border.

LEGAL INCORPORATION

The legal incorporation of a nonprofit organization in Mexico is a process that can take several months. The duration of the process can increase if the organization is seeking tax deductibility or “*donataria*” status (equivalent to the 501(c) 3 in the US). This is one of the reasons why leaders of nonprofit organizations should thoroughly analyze if programs and projects in Mexico can be adequately executed and managed without legally incorporating a new entity. Incorporation includes new and additional legal and tax responsibilities. To learn more about these responsibilities, restrictions and rights, please see page 19, where you will find useful links to internet sites of Mexican authorities. Obtaining expert legal advice to support the incorporation process is strongly recommended.

The most common type of nonprofit organization in Mexico is the *Asociación Civil*, or, more commonly referred to as an A.C. An A.C. is formally defined as “a legal entity that is incorporated through a contract between two or more people who agree to enter such agreement in a non-transitory way – permanently – to carry out a common goal which is not prohibited by law (licit) and is not intended to make a profit.”²

¹ *Asociación Civil*, the Mexican counterpart of a 501(c)(3) translates as civic association or civic corporation and is usually referred to in its abbreviated form “A.C.”

² Article 2568 from the Chihuahua State Civil Code [Article amended by the decree number 618-03 VII P.E., published in the Official Periodical No. 35, May 30, 2003].



There are several complete guides that describe in detail the required steps to legally incorporate a nonprofit organization in Mexico. A comprehensive guide can be downloaded in Spanish from the *Alternativas y Capacidades* website at www.alternativasociales.org.

The following section details, in chronological order, the required procedures with the various Mexican governmental agencies necessary for legal incorporation.



Borrowing from the Spanish phrase, *¡Ojo!*, the eye symbol signals other important considerations that US based organizations in particular should weigh or be on the lookout for through the incorporation process.³

Key questions when considering legal incorporation in Mexico:

- ✓ Can programs and projects be adequately managed without legally incorporating a new organization?
- ✓ Who will serve on the board of directors of the new organization, Mexican nationals or a combination of representatives from both countries?
- ✓ Will we have the infrastructure and support of local specialists to meet our new and additional tax and legal responsibilities?

Steps to incorporation

Step 1. Deciding the city and state in Mexico for legal incorporation of the new nonprofit

Since mostly Mexican federal laws regulate the tax and legal aspects of nonprofit organizations, steps required by state laws may vary from one state to the next. However, these differences (in costs or paperwork required) are minimal. Thus, the decision should therefore be based on what potential benefits and drawbacks a given location represents for the organization's operations.

Step 2: Obtaining a permit to legally incorporate a new nonprofit organization and registering the name of the new entity

This is accomplished by submitting a request to the Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*). This authorization also registers the name of the new nonprofit so that it is unique in Mexico. This permit lasts for 90 days, which should be enough time to complete the legal incorporation process. Once the name is obtained, a notice ("*aviso*") should follow within six months, to certify that a new nonprofit organization was created and that the name that was requested was indeed approved. This notice should specify if foreign citizens were included in the bylaws. For more information and to find out the location of local offices of the ministry throughout Mexico, visit: www.sre.gob.mx

Timeframe: 24 hours or less if the permit is requested before 11:00 am

Cost: Approximately \$700 MXN or \$55 USD

Notice: \$260.00 MXN or \$20 USD

Where: Local offices of the Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*) of the Mexican state where legal incorporation will take place.

³ *¡Ojo!* literally meaning 'eye', is an expression used in Mexico to alert to possible pitfalls.



- 👁️ Think of three possible names in the order you want them approved. The names should be unique and not be previously assigned to another nonprofit organization.
- 👁️ Mexican law does not allow organizations to have a majority of non-Mexican voting members named in its bylaws. If foreigners are included, the requirement is that 50% of members, plus one, should be Mexican nationals. The notary should be aware of this decision before drafting the incorporation documents, since Mexican legislation requires that nonprofit bylaws contain a clause that excludes them in regulating foreign investment.⁴
- 👁️ If foreign citizens are included as members (or “*asociados*”, in Mexican legal language) or legal agents (“*representante legal*”, the person authorized by the board of directors to act on their behalf) in a Mexican nonprofit organization, their inclusion increases the amount of steps and time for authorities to respond to the incorporation request, and raises the total cost of legal incorporation.

Foreigners acting as members should request and obtain a special immigration permit, which limits them to *only* carry out the specific activities for which the visa was granted.⁵

In addition, including foreigners as members may limit participation in political issues, and immigration permits may be denied for its legal agent(s). Although there are standard requirements established by the National Institute of Migration (*Instituto Mexicano de Migración*), the final decision to grant these permits is often up to the immigration agent. Check information in English at their website: <http://www.inami.gob.mx>

Step 3. Drafting the legal incorporation documents and formalizing the bylaws before a notary public

The notary public will need the permit to legally incorporate a new nonprofit organization and the name designation to proceed with the formalization (“*protocolización*”) of the new entity.

Timeframe: 30 to 45 working days

Cost: From \$5,000 to \$10,000 MXN or \$400 to \$800 approximately

Where: Offices of any public notary in the Mexican state where local incorporation will take place.


- 👁️ Since Mexican legislation is very particular when it comes to the wording of bylaws, we recommend you hire a notary or legal adviser that has previous experience with nonprofits to draft the legal documents. Pay special attention to the main purpose (“*objeto social*”) of the new entity, since the wording must exactly follow mandatory language if tax deductibility and other prerogatives are requested. (See steps 7 to 8). Public notaries have formats that include suggested wording for the bylaws. Check with local associations of notaries in the Mexican state or city where the new nonprofit will be legally incorporated.
- 👁️ If there is a possibility that the new entity will channel funds to projects in the US, the wording of the charter documents should be discussed with Mexican tax authorities, since this option is not considered by Mexican


⁴ Articles 15 and 16, Mexican Foreign Investment Law. Calvo clause on Article 27, Fraction I, Mexican Constitution.

⁵ Section VIII, article 42, General Population Law of Mexico and Immigration Procedures Manual, National Migration Institute.



laws. To the contrary, laws are designed for Mexican organizations to *receive* donations – and may result in denial of the request for tax deductibility.⁶

 An important decision is the definition of who will serve as the “*representante legal*”, the person authorized by the board of directors to act on their behalf. Although Mexican law does not specifically allow or prohibit foreigners to act as legal agent, it is recommended that this person be a Mexican national because of fund management concerns and public image issues around foreigners handling donations. Some international organizations designate their highest ranking employee as the legal agent, since he or she will be in charge of recruiting personnel, signing up for public services, and signing contracts, among other operational tasks.

 Notaries will provide a draft for your review before formalizing the new nonprofit. Some of the information that the notary will request in order to draft the legal documents include:

- Information about all founding members, including first name, last name and mother’s maiden name, age, date and place of birth, occupation, marital status, separate or shared property, name of spouse, and home address. Mexican nationals are required to provide registration numbers such as the CURP and RFC.
- A power of attorney signed by the board chair or the first and third officers (“*vocales*”), if the incorporation process will be completed by a third party. For exact wording, please see Appendix 1.
- The month when the annual meeting of all members (“*asamblea general de asociados*”) will take place.
- Member(s) that may call the annual meeting in the absence of the chair and the member that may substitute the chair in his/her absence and perform all of the duties of the chair.
- Number of board members, including the possibility of reelection if desired, and membership terms.
- Number or percentage of absences to board meetings that merit membership termination.
- Any additional membership status (such as honorary, or support (often called “*patronato*”, a group of people who help raise funds).
- The name of the person who will chair the oversight committee (“*propietario*”) and the name of the alternate (“*suplente*”).

Step 4. Registering the charter documents before the Public Property Registry (*Registro Público de la Propiedad*)

In order for the general public to have access to the charter documents of the new organization, the notary will register them before the state government authority. Requirements include the application form and payment receipt. Check with state authorities, as requirements vary from state to state.

Timeframe: 5 to 7 working days

⁶ Telephone interview with Consuelo Castro Salinas, Legal Coordinator, Centro Mexicano para la Filantropía (CEMEFI).



Cost: Although costs vary from state to state, they are approximately \$2,000 MXN or \$160 USD

Where: Local offices of the Public Property Registry (*Registro Público de la Propiedad*) of the state where legal incorporation took place. Check the website of the state government where the new nonprofit will be legally incorporated.


Step 5. Request the taxpayers' registration number (“*Registro Federal de Contribuyentes or RFC*”) for the organization


After no more than 30 days after the legal documents are finished, the organization should register as a “*Persona Moral con Fines no Lucrativos*” (a not-for-profit entity). The document that is obtained is called a “*cédula fiscal*”, a legal document valid for tax purposes. Requirements include the original formalized legal documents, a valid I.D. for the “*representante legal*” and proof of address of the new entity.

Timeframe: If requesting an appointment online in advance, registration is obtained the same day

Cost: Authorization is free of charge

Where: Any of the 66 Local Tax Administration offices (*Administración Local de Servicios al Contribuyente del SAT*) located in the city or state where the new nonprofit was legally incorporated. For contact information, visit: www.sat.gob.mx

 Some notaries have a special permit (“*Sistema de inscripción al Registro Federal de Contribuyentes a través de federatario público por medios remotos*”) to carry out step 5, but they may charge an additional fee of around \$2,500 MXN (\$200 USD approximately). We recommend discussing any possible additional costs with the notary before starting the legal incorporation process.

 Consult with an accountant with previous experience in the tax responsibilities of nonprofit organizations; Mexican tax law (“*Ley del Impuesto sobre la Renta*”) contemplates a series of special obligations for nonprofits.

Step 6. Authorization to receive tax deductible gifts (cash or in-kind) from donors in México (optional step)

Nonprofit organizations can request this authorization to be able to issue a written acknowledgment of the value of a gift or donation (“*recibo deducible*”), so that donors can deduct from their taxes according to Mexican Income Tax Law. This requires that the legal agent (“*representante legal*”) submit a special request to the Secretariat of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*). Needed documentation includes a letter of support from a government authority (“*carta de avalamiento de las actividades*”), the application, certified copies of the charter documents, and copy of the “*RFC*” or “*Cédula de Identificación Fiscal*”, among others.⁷


Timeframe: If requesting an appointment online, the documents are received by the tax authority and the response (whether positive or negative) is sent in a minimum of three months, though it can take much longer if the request should be denied.


Cost: The authorization is free of charge.


⁷ Articles 18 and 18-A, sections I, III, V and VII, Federation Fiscal Code, and rule I.3.9.1, sixth paragraph, in relation with 10/ISR form from annex 1-A of the official gazette of amendments enacted to tax legislation (*Resolución Miscelánea Fiscal*) for 2008.





Where: Any of the 66 Local Tax Administration offices (*Administración Local de Servicios al Contribuyente del SAT*) located in the city or state where the new nonprofit was legally incorporated. For contact information and required documentation, visit: www.sat.gob.mx

 **VERY IMPORTANT:** Authorizations are very often denied because of incorrect wording in the general purpose statement (“*objeto social*”) or any other part of the bylaws which may denote that the intentions of the new organization are not entirely philanthropic. The wording of the general purpose statement and bylaws must appear **exactly** as defined by Articles 95 and 96 of the Mexican Income Tax Law (“*Ley del Impuesto sobre la Renta*”). (see the conclusion of this report to get to know BPP’s own experience in this regard)

 Although Mexican law does not have a differentiated legal framework for foundations, if the new nonprofit organization will provide funds to other nonprofit organizations, this must be acknowledged in the bylaws, and a copy of the agreement between them replaces the support letter from authorities. Keep in mind that the grantees should also be organizations with tax deductibility status (or “*donatarias*”)⁸

 The required letter of support should be written by the federal or state government authority that oversees the area of interest of the new nonprofit (e.g. the Mexican Education Secretariat may provide the letter of support to a nonprofit that will provide education services for migrant workers). Check the Handbook: “*Donatarias Autorizadas: Requisitos, ventajas, obligaciones fiscales, SAT*” here: ftp://ftp2.sat.gob.mx/asistencia_servicio ftp/publicaciones/folletos08/donatarias2008.pdf

 Once this authorization is granted (the waiting period is at least three months after it is requested) the new nonprofit must print the receipts (“*recibos deducibles*”) it will give its donors in exchange for cash and/or in-kind gifts. These receipts must be obtained through print shops authorized by the federal government. See Appendix 2 for the exact contents of the “*recibo deducible*”.

 Authorization is not formal until the name and contact information for the new nonprofit organization is published in the “*Diario Oficial de la Federación*”, the official gazette of the federal government. www.dof.gob.mx. A list of the new authorizations is printed 3 to 4 times a year.

Step 7. Authorization to receive tax deductible gifts from donors in the US (optional step)

A Mexican organization can obtain this subsequent authorization as long as it is authorized to receive tax deductible donations in Mexico - see previous step - so its donors can deduct donations in the US. This special authorization is only available to organizations whose purpose is the “provision of social services, education, scientific or technological research, culture, ecology, restoration of endangered or near extinct animal populations, public museums and libraries”.⁹ This authorization allows donations from individuals and businesses to be tax

⁸ Rule 1.3.9.7. Federal Income Tax Law (*Resolución Miscelánea Fiscal for 2010*).

⁹ Articles 97 (valid from January 1, 2002; prior to this date, article 70-B), 116 and 119, Federal Income Tax Rules and Chapter 1.3.10 of the 2008 official gazette of amendments enacted to tax legislation (*Resolución Miscelánea Fiscal*), and 17 from the Related Protocol of the Convention for Avoidance of Double Taxation and Prevention of Fiscal Evasion signed between Mexico and the U.S., published in the Official Journal of the Federation (*Diario Oficial de la Federación*) on February 3, 1994.



deductible in the US, as long as these gifts are made from income-generating activities carried out in Mexico.¹⁰ Organizations that have this capability face more restrictions and additional tax responsibilities. If the organization intends to receive tax deductible gifts from donors in the US, we recommend speaking with Mexican tax authorities.

Timeframe: If requesting an appointment online, the documents are received by the tax authority and the response (whether positive or negative) is sent in a minimum of three months, though it can take much longer if the request is denied.

Cost: The authorization is free of charge.

Where: Any of the 66 Local Tax Administration offices (*Administración Local de Servicios al Contribuyente del SAT*) located in the city or state where the new nonprofit was legally incorporated. For contact information and required documentation, visit: www.sat.gob.mx

Step 8. Requesting and obtaining the CLUNI. (optional step)



If the new entity wishes to request funding from Mexican federal government programs that provide grants to nonprofit organizations, it is necessary to apply for the CLUNI (*Clave Única*) by registering the organization before the national nonprofit registry. Since this privilege demands additional compliance measurements, even if the organization with CLUNI does not request nor receive funds from the federal government in any given year, it is important to weigh the benefits of obtaining the CLUNI. Obtaining a CLUNI also has implications for the articles of incorporation and thus should be considered well before the incorporation process begins.¹¹ These clauses are specified in the Federal Law to Promote the Activities of Civil Society Organizations (*Ley Federal de Fomento a las Actividades Realizadas por las OSC*).

Timeframe: No more than 30 working days to notify the organization if the request is approved.

Cost: Registration is free of charge.

Where: Federal Registry of Civil Society Organizations unit located in the city or state where the nonprofit was legally incorporated. Visit the website for locations: www.corresponsabilidad.gob.mx

Final recommendations:

-  Check with staff or websites representing appropriate government agencies for updates on requirements and paperwork before starting the legal incorporation or tax authorization process. You can also request an appointment with government authorities to review the documentation for compliance with current requirements and any new legislation.
-  Hiring a local attorney or accountant to carry out these steps on your behalf can increase the total cost of the process, but is recommended in order to save time. The total cost of legally incorporating the BPP in Mexico as a nonprofit organization, including the “*donataria*” status, was approximately US \$5,000.

¹⁰ Castro Salinas, Consuelo, 2005. *Disposiciones Legales y Fiscales para las Organizaciones de la Sociedad Civil en México*. MC Editores, México, D.F. pp 38 – 43.

¹¹ *Federal Law for the Promotion of the Activities Conducted by Civil Society Organizations*



Once the legal incorporation process is finished, the new nonprofit entity may begin cross-border work. However, the following considerations regarding day-to-day operations, as well as initiating, guiding and building internal and external relationships, must be given careful thought:

LEADERSHIP & GOVERNANCE

Not unlike all other endeavors, leadership is a fundamental factor in the success of a binational organization. The founders and leaders of organizations that operate binationally must consider the desired characteristics, level of performance and the conditions that should be met in order for board members, executive leadership and volunteers to successfully move the organization forward.

In relation to the question of having a single or shared leadership, it is worth considering that having operating under a single board of directors conveys a well-integrated relationship among members who share a common vision. It also adds value to the process through unified criteria and direction.¹²

The creation of two separate boards (one in México and one in the US) can widen the gap between the two organizations in different countries. However, there are examples of successful sister organizations – organizations that have two separate boards, one for each country - such as the *Hospital Infantil de las Californias* and *Fundación Esperanza*.

By employing an array of strategies, these institutions make sure that both boards are closely aligned and functioning in concert; strategies such as the participation of board members in each other's sessions and the continuous flow of financial and operational information.

Board policies that regulate the organization's operations in relation to different cultures and countries should also be considered. Mechanisms to ensure effective meetings and equitable participation (such as defining the language in which business will be conducted and under what conditions translation can/will be made available) can save the organization future problems.

Key questions to help you define the most appropriate leadership model for the new entity:

- What are the pros and cons of having one vs. two boards?
- Where will board meetings take place? How often? What should be the process and protocol of board meetings?
- What ethical issues and/or policies should be established to ensure a balanced and adequate participation of all members?
- What procedures must be followed to incorporate new board members?
- What is the desired profile of individual board members and the board as a whole?
- What are responsibilities of board members? What rules or policies should be put into place to ensure equitable participation?
- Should there be one chair or two co-chairs? On what basis should the chair be elected, leadership or nationality? Why? What should be the profile for the new chair?

¹² Some trans-boundary organizations that are successful using the single leadership approach are: *Los Niños International, Inc.* and *Hispanics in Philanthropy*.



Selection of the board chair and board members

The nature of binational work demands that the leadership of the organization not only possess the typical characteristics of good leadership, but that the board chair and board members have extensive and reputable binational relations with different sectors, a vision and commitment for binational work, and a proven capacity to nurture diverse relationships.

More importantly leadership should also be bi-cultural, or culturally competent and necessarily bilingual. In this case, being bicultural or culturally competent is understood as the ability to operate comfortably and effectively in situations of cultural diversity. These attributes are essential in initiating and guiding the building of relationships and collaborating both internally and externally in a diverse, binational context.

Social processes that try to build equal relations, and not simply co-existence or unconscious contact, create a culture that is rich and full of potential. Bicultural actors convene to meet and get to know and understand each other in order to jointly carry out a long term project.¹³

ORGANIZATION

Effective and streamlined administration and operations are as important to a binational organization as they are to any other organization; especially given that binational organizations so frequently operate in vast geographies. Specifically, the binational organization is challenged to create systems that help to mitigate barriers created by language and culture, align the vision and objectives of a widely diverse stakeholder group, and maintain a close and accurate flow of communications, all while managing limited time and resources effectively.

Considerations for staffing a binational organization

It is important that staff and board members on both sides of the border understand and respect the context and the local work culture. Some attributes to look for in binational staff include:

- Possessing bilingual and bicultural capabilities
- Having experience in the nonprofit sector, as well as a strong understanding on how civil sector organizations work
- Being a high-level professional and having quality contacts, as well as knowledge of sector trends and local opportunities
- Having a clear understanding of cultural differences
- Understanding the unique challenges that the organization faces, as well as his or her role in its growth

Some key operational considerations

- Where should offices be located? In Mexico, in the US, or in both countries? Why?
- What should be the profiles and responsibilities of staff members?
- What guidelines or policies are needed to manage binational work and staff from two different cultures on both sides of the border in an effective way?
- What is the most appropriate salary structure?

¹³ Source: Zúñiga, Madeleine and Ansi3n, Juan. *Interculturalidad y Educaci3n en el Per3u*. Foro Educativo. 1997



Recruiting Mexican staff

Staffing in Mexico is governed by Mexican labor laws. Sites like www.mexicanlaws.com contain translations of the Mexican Labor Law into English. Organizations can also seek assistance from experts in labor law. Retaining expert human resources advice in Mexico is an important budgetary consideration. See sidebar for other costs that should be considered when planning the operation of a nonprofit organization in Mexico.

Many leaders of binational organizations may consider that disparity between US and Mexican salaries can be a problem (equal jobs and responsibilities receive a higher payment in the US than in Mexico). However, according to successful binational organizations that were part of this study, as long as salaries are competitive in the local market differences with the US counterparts do present significant challenges.

Additional costs unique or common to building a binational organization:

- ✓ Legal expenses
- ✓ Travel expenses for candidates when hiring staff
- ✓ Training in intercultural communications
- ✓ Simultaneous interpretation and translation of documents
- ✓ Travel expenses for face-to-face meetings
- ✓ Running costs (salaries, rent, utilities, etc.) maintenance, insurance, etc.)

COMMUNICATIONS

In a binational and, more importantly, bilingual setting, special attention must be paid to communications, ensuring that information flows smoothly, consistently, frequently and based on previously agreed-upon terms.

Cultural differences can present challenges to communications. Personal contact is very important, and face-to-face meetings are vital to keeping healthy interpersonal relations, especially in the Latino culture. Virtual or telephone communication should not be the only way conversations take place. Many organizations that work binationally hold face-to-face meetings several times a year.

Both English and Spanish should have the same weight. It is very important to have fully bilingual personnel, capable of communicating professionally in either language. Likewise, it is necessary to provide simultaneous interpretation in face-to-face meetings to facilitate understanding amongst stakeholders that are not strong in the opposite language.

Technology

Through the use of technology, distances can be shortened and some obstacles of binational relations can be overcome. Successful binational organizations invest in technology and use advanced tools currently available, such as Skype, videoconferencing, virtual meetings and social networks like Twitter or LinkedIn. Some also have additional tools to facilitate trans-boundary work, such as servers/networks that allow them to share documents, or special software. Organizations such as the Yuma Community Foundation recommend the use of technology to



bridge the gap between the two cultures, reaching out to universities that can provide videoconferencing services, having the documents on hand for virtual meetings and creating the ability to see the other party on the screen.

In order to keep communication flowing, it is crucial that all people involved in the organization have the necessary skills to use email and other technological tools in an efficient manner, and are comfortable with virtual communications. Also, the organizations must provide the necessary equipment (such as laptop computers, cell phones, etc.) to carry out their work effectively.

EQUITABLE PARTICIPATION

Cultural differences can present challenges in binational relations. The main challenge is to facilitate and achieve equitable participation of all stakeholders when communication styles and expectations are culturally varied.

The experience of binational organizations has shown that it is helpful when the relationship between two different entities from two different countries is formalized through a collaboration agreement, or, memorandum of understanding. Such agreements establish the expectations, attributes and responsibilities of each of the parties and lay the foundation for effective coordination of operations and administration between the two entities. This is especially true when dealing with resource allocation and accountability.¹⁴

Best practices to guarantee democracy and inclusion of all members

Since cultures and ways of life in Mexico and the US are very different when it comes to interpersonal and work relations, it is necessary to implement strategies to lay the foundation for a more equitable collaboration. Also, a critical factor for the successful management of binational organizations is trust among its members. Create and nurture deeper trust among your stakeholders from across both countries by:

- Making sure that all people understand and espouse the shared vision, objectives and goals
- Ensuring that cultural concerns, language and power dynamics are discussed by the board and other members of the organization
- Offering systematic training opportunities in cross-cultural communications to members
- Clearly defining roles and responsibilities for all members
- Creating and updating policies, processes and formats to standardize and improve the relations and communications between members from different countries

Cultural characteristics commonly associated with Latin America can impact communications

- ✓ Very formal interpersonal workplace relations and communication styles
- ✓ Less familiarity or priority placed on virtual communications,
- ✓ Emerging participation in philanthropic organizations and limited knowledge about the nonprofit sector and its concepts.

¹⁴ At the time this report was being developed, “Los Niños International, Inc”. was in the process of developing a written agreement to regulate its relationship with its Mexican counterpart “Los Niños de Baja California, A.C



- Keeping clear reports about budget expenditures
- Making decisions based on the strategic plan to guide the organization towards efficiency and social impact
- Fostering interpersonal relations among members outside the boardroom, as they will provide valuable opportunities to build relationships and trust
- Developing transparency and accountability mechanisms regarding topics such as personnel recruitment or resource allocation (i.e. creating a binational financial oversight committee).
- Developing mechanisms for board and staff from both countries to work with each other, such as meeting face-to-face, choosing alternate locations (US – Mexico) for meetings or conferences, and equal representation of participants from each country on committees
- Standardizing the language. Developing a common language for all people involved can be aided by creating a glossary of terms related to the programmatic areas of the organization

CONCLUSION

The decision to engage in binational work is an important commitment that entails the delivery of programs and services to constituents in another country where differences in language, culture, currency, politics, laws and government will affect every decision and operation of your organization. Your success in operating binationally will depend upon your capacity to understand these differences, and your ability to implement systems and processes to efficiently meet the needs of your new found constituency.

The BPP is binational and strives to meet the needs of its members and member organizations on both sides of the border. For us this means that our programs and services must be relevant and culturally appropriate and be available in both English and Spanish. It also means that you don't simply translate your program from one language into another. Rather, you must invest the time and resources to determine what products, programs and services are needed and make them available to your constituents.

We have shared our experience to help you navigate yours. Your determination to operate binationally must be guided by careful planning and astute decision-making. Seek expert advice from legal and financial counsel. Talk with organizations that have engaged the process. It was our experience that the process takes several months, and may cost up to \$5,000.

The devil is in the details. All of the experts shared that the Mexican government was a stickler for detail. Everyone told us to make sure the "I s" were dotted and the "T s" crossed. Truthfully, we didn't believe them. They were right. Our process was actually delayed by about one month due to a paperwork snafu in the name approval process. Our name was approved as Alianza Fronteriza de Filantropía A.C., A.C. The second A.C. in the name was mistakenly added by a government representative. To get the matter corrected, we were forced to schedule additional appointments, secure additional powers of attorney, and wait until the error could be properly corrected. Take the time to properly prepare your documents and secure strong and capable experts to assist you. It will save you significant time and financial resources.

We hope that our findings are relevant to you and assist you in successfully securing your incorporation as a registered nonprofit organization. The steps outlined in this report should guide you in your planning, alert you to specific decisions you will make, introduce you to the entities whom you must contact and the knowledge to understand the time and financial commitments the total process entails.



APPENDIX I: POWER OF ATTORNEY TO INCORPORATE VIA THIRD PARTY

[Name of the person that will incorporate nonprofit organization in Mexico]

Me permito otorgarle un **PODER ESPECIAL**, pero tan amplio, cumplido y bastante como en derecho se requiera, para que en mi nombre y representación ocurra ante notario público de su elección, a fin de formalizar la constitución de la persona moral que se denominará [Name of new nonprofit organization], a efecto de que participe como asociado en la misma, convenga y otorgue todos los demás términos y condiciones de la escritura constitutiva y estatutos de la sociedad, y para que designe al órgano de administración, consejo de vigilancia, funcionarios y apoderados que fuere necesario o conveniente para el funcionamiento de la asociación y para que fije las atribuciones y obligaciones de las personas antes mencionadas conforme a instrucciones del mandante.

[Name and signature of board chair]

TESTIGO:

[Name and signature of first officer or primer vocal]

TESTIGO:

[Name and signature of third officer or tercer vocal]





APPENDIX II: SAMPLE TAX DEDUCTIBLE RECEIPT

Information that should be printed in the tax deductible receipt (“*recibo deducible*”)

- Number (“*folio*”) and a copy of the “Cédula de Identificación Fiscal”
- The paragraph: “*La reproducción no autorizada de este comprobante constituye un delito en los términos de las disposiciones fiscales*”. This says that the unauthorized reproduction of this receipt is a punishable infraction by law
- The “RFC” number, name of the printer and the date that the authorization was granted, as it appears on the SAT website.
- Approval number from the “*Sistema Integral de Comprobantes*”
- Number and date of the official approval letter informing the organization about its authorization as a tax deductible charity
- Authorization expiration date



FUNDACION COMUNITARIA DE LA FRONTERA NORTE, A.C.
CAMPOS ELISEOS # 9050 4TO. PISO FRACC. CAMPOS ELISEOS C.P. 32472
CD. JUAREZ, CHIHUAHUA, MEXICO R.F.C. FCF-020912-CD1
TELEFONOS 625-25-64 Y 625-25-40 www.fcfronteranorte.org

RECIBO • DONATIVO

Nº 0665

CIUDAD JUAREZ, CHIH., A DE DEL 20

NOMBRE O RAZON SOCIAL

DOMICILIO

CIUDAD R.F.C. C.U.R.P. TEL.

CANTIDAD	DESCRIPCION	MONTO DEL DONATIVO
CANCELADO		
		TOTAL NETO \$
IMPORTE CON LETRA		



EFECTOS FISCALES AL PAGO "PAGO EN UNA SOLA EXHIBICION"
LA REPRODUCCION NO AUTORIZADA DE ESTE COMPROBANTE
CONSTITUYE UN DELITO EN LOS TERMINOS DE LAS DISPOSICIONES FISCALES.
NUMERO DE APROBACION DEL SISTEMA DE CONTROL DE IMPRESORES AUTORIZADOS N° 15702105

**EN CASO DE QUE LOS BIENES DONADOS HAYAN SIDO DEDUCIDOS PREVIAMENTE PARA
LOS EFECTOS DEL IMPUESTO SOBRE LA RENTA ESTE DONATIVO NO ES DEDUCIBLE.**

AUTORIZACION DE LA S.H.C.P. SEGUN
DIARIO OFICIAL DE LA FEDERACION
DEL DIA ___ DEL MES ___ DEL 20 ___

OFICIO: DG/145/08

FECHA DE IMPRESION: 15 DE DICIEMBRE DE 2008. VIGENCIA: 15 DE DICIEMBRE DE 2010. EMISION: 100 (051 - 750)



ADDITIONAL REFERENCES

- ✓ Legal basis for the correct wording of the main purpose of nonprofit organizations, Articles 95 and 96.
- ✓ Mexican Income Tax Law <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/82.pdf>
- ✓ Building your organization in 16 steps (Construyendo tu organización en 16 pasos) *Alternativas y Capacidades, A.C., Handbook for the legal incorporation of nonprofit organizations in Mexico.* www.alternativasociales.org
- ✓ Permit to legally incorporate a nonprofit organization (nonprofit name registration) *Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores)* www.sre.gob.mx
- ✓ Inscripción al RFC, requisitos y obligaciones. *Tax Administration Service (Sistema de Administración Tributaria)* www.sat.gob.mx
- ✓ Information about the temporary entry of foreigners into Mexico, *National Institute of Migration (Instituto Mexicano de Migración)* http://www.inm.gob.mx/index.php?page/Trmites_Migratorios_Visitar_Mexico
- ✓ Authorization as a donee in Mexico (*donataria*) *Handbook: "Donatarias Autorizadas: Requisitos, ventajas, obligaciones fiscales, SAT" (latest version was published on August 2008):*
ftp://ftp2.sat.gob.mx/asistencia_servicio_ftp/publicaciones/folletos08/donatarias2008.pdf
- ✓ List of public notaries that also can register the organization before the SAT to obtain RFC number:
http://www.sat.gob.mx/sitio_internet/sitio_aplicaciones/padron_fedatarios_notarios/notarios.html
- ✓ Legislation, requirements and locations to register a nonprofit organization before the Federal Registry of Civil Society Organizations and obtain the CLUNI code. *Website: Activities of the Federal Public Administration to Promote Civil Society Organizations:* www.corresponsabilidad.gob.mx
- ✓ The International Center for Not-for-Profit Law - Site that offers information and publications in English about Mexican legislation as well as English translations of the different laws that regulate the nonprofit sector in Mexico: www.icnl.org

