

# LAW AND THE AMERICAN PHILANTHROPIST

What foreign nonprofits  
need to know about attracting  
funding from U.S. donors

*\*Please note that nothing in this presentation is  
intended to constitute legal advice.  
Organizations should retain legal counsel for  
advice specific to their circumstances.*

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Presented by Anne Andrews Juntunen, JD  
Hosted by LGT Venture Philanthropy

### LGT Venture Philanthropy

- Impact investor
- Supports organizations with outstanding impact
- Team in five continents



### Anne Andrews Juntunen

- U.S. attorney
- Four years practicing business law in U.S.
- 2011 LGT Venture Philanthropy Fellow
- Currently consulting in Toronto



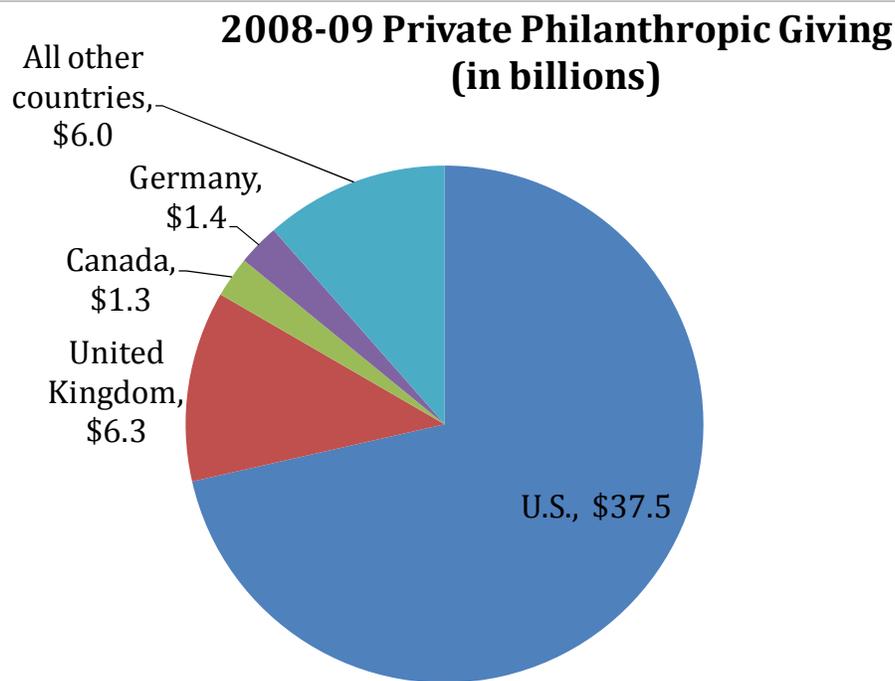
Operation ASHA



## Summary

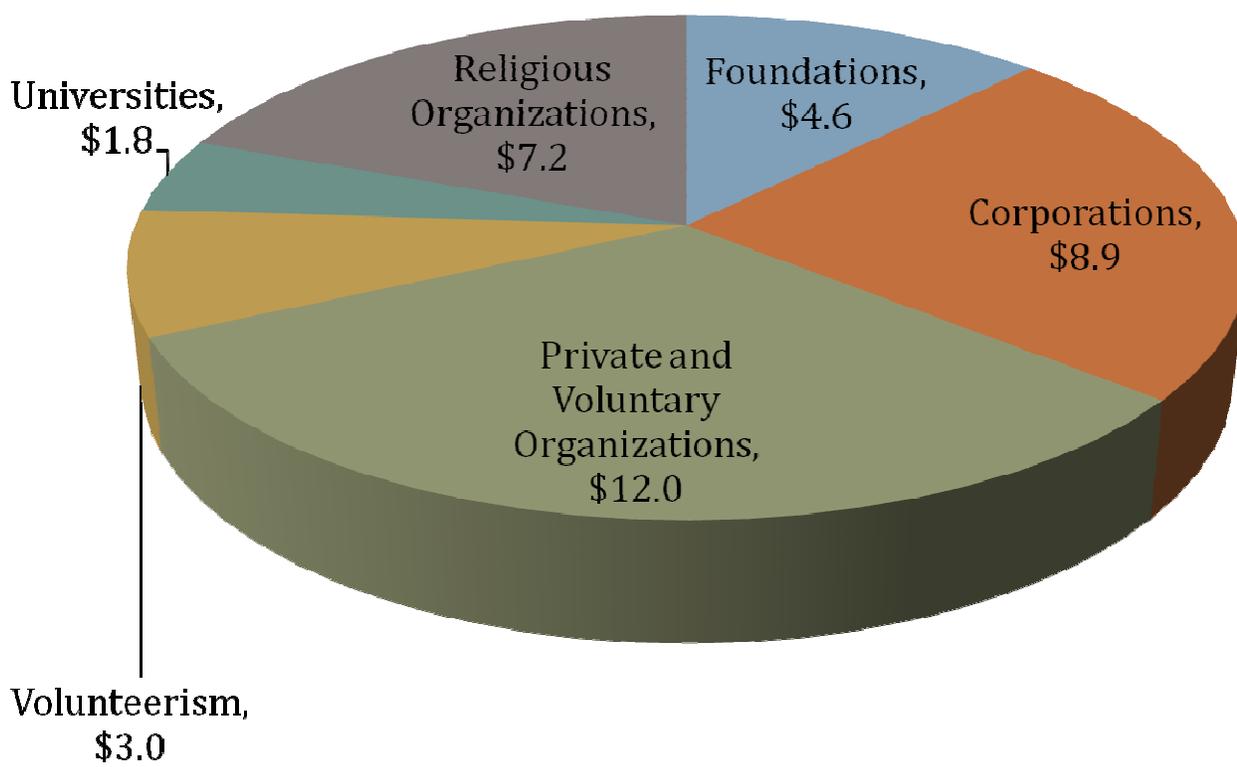
- Why U.S. philanthropy still matters
- What the legal implications of foreign donations are for U.S. organizations
- How to assuage the fears of prospective U.S. donors through transparency and good governance
- What legal issues may be lurking for recipients of foreign funds

## Why the U.S.?



Despite the recession, U.S. donors are still the largest source of private philanthropic support in the world

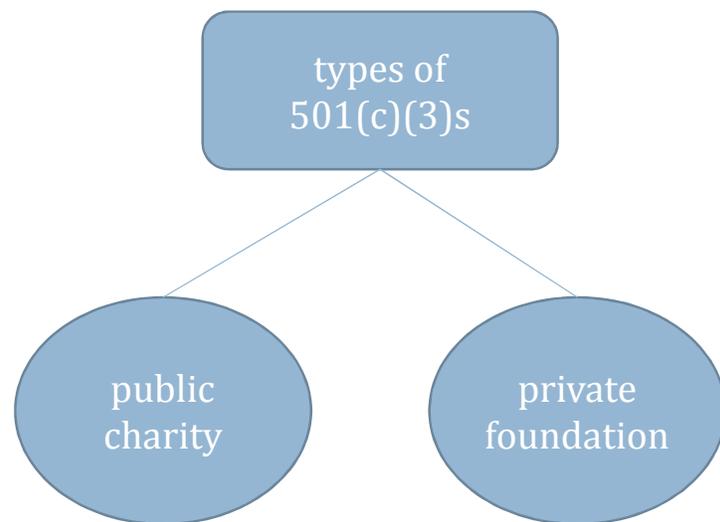
### U.S. Private Philanthropy to Developing Countries (in billions)



# Terminology

501(c)(3) of  
the U.S. Tax  
Code:

requirement  
that an  
organization  
be “organized  
and operated  
exclusively”  
for charitable  
purposes



# Legal Implications of Foreign Donations

For Individual Donors

- Donations to U.S. public charities and charitable foundations are tax deductible for individuals
  - Individual giving is cyclical according to the tax year
- Donations to foreign charities generally confer no tax benefit to Americans
  - And donations to a domestic charity, earmarked for use by a specific foreign charity, are not tax deductible (called “conduit transactions”)
- But, there are ways to offer tax deductibility to U.S. donors
  - “Friends of” organizations
  - Fiscal sponsorships
  - Crowdfunding platforms
  - Donor advised funds

# Legal Implications of Foreign Donations

## For Private Foundations

- Private foundations are types of charitable organizations that are generally funded by a small number of sources
- For foundations, grants must:
  - Be for a charitable purpose, and
  - Constitute a “qualifying distribution” so that they meet the annual distribution requirement
- Foundations are accustomed to making grants to tax-exempt public charities in the U.S. because they automatically meet these two requirements
- If a grant goes to a foreign organization that is not a U.S. public charity, the foundation must:
  - Make an equivalency determination, or
  - Perform expenditure responsibility
- Tax deductions do not matter because foundations are already tax exempt

# Legal Implications of Foreign Donations

## For Public Charities

- public charities can fund foreign organizations if the funding is in furtherance of the charity's mission
- public charities cannot, however, have funding a single foreign organization be their sole purpose
  - "Friends of" organizations are a sort of carve-out; the key is that the U.S. board of directors must retain ultimate control over grants and financial decisions involving the foreign entity
- public charities cannot pay for or participate in partisan political activity

## Restrictive Federal Legislation

- Foreign Corrupt Practices Act
  - Prohibits payment of bribes to foreign officials for purpose of keeping or obtaining business
- Executive Order 13224
  - Bans charitable donations to any restricted organizations alleged to be associated with terrorism
- the Patriot Act
  - Makes financial contributions to questionable organizations a punishable crime

## Transparency and Good Governance

- you must have a functional board yourself- if you have your own adequate governance a donor will be more comfortable giving to you
- the nature of nonprofits and ownership (and why this is tough for founders)
- keeping the board involved and engaged
- policies you should have

## Home-Grown Barriers to Foreign Philanthropy

- there may also be government-imposed restrictions from your home country on receiving foreign funds
  - India: FCRA requires permission before NGOs can receive foreign contributions
  - Colombia: can receive funding from foreign countries but banks require origin of support document
- restrictions may depend on nature of money (grant, loan)
- types of things to consider:
  - taxing authority
  - registration needed?
  - currency conversion/foreign currency restrictions
  - documentation needed for financial audit
  - agreement in place re: deliverables

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