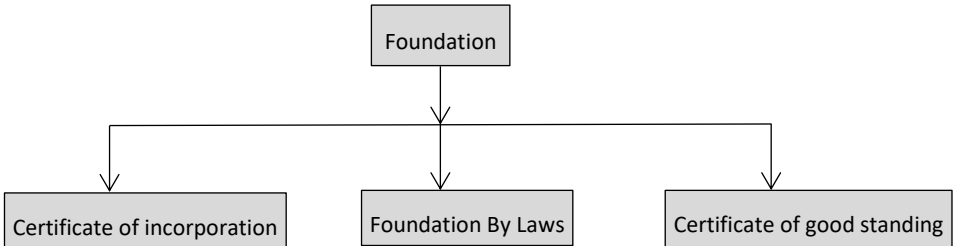


Legal Framework

OBJECTIVES

This Chapter talks about legal framework of a not-for-profit organization.

A not-for-profit organization would broadly have the following legal framework:



These are explained in the paragraphs that follow.

CERTIFICATE OF INCORPORATION

The Certificate of Incorporation is issued by local state authority and would include the following:

- Name
- Registered Office and Agent
- Purposes and Powers
- Members
- No stock
- Internal Revenue Code

The salient features of the Certificate of Incorporation are enumerated as under:

NAME

This needs to be the name of the Corporation

REGISTERED OFFICE AND NAME OF AGENT

This is the official address of the Foundation and the name and address of the agent.

PURPOSES AND POWERS

This section provides for the nature of engagement of the organization. It clearly highlights whether it is engaged in charitable purpose under 501(c)(3) of the Code and exempt from tax or whether it is a private foundation.

Accordingly, the Corporation would have the following powers:

- To solicit, raise, accept, hold and administer funds exclusively for its objects and purposes
- To take and receive, by purchase, grant, gift, bequest or devise, or as beneficiary of any trust, any property, real or personal, tangible or intangible, whosoever situated,
- To make donations in furtherance of such purposes,
- To invest and reinvest the funds and property of the organization including the power to invest and reinvestment funds in furtherance of such purposes,
- To collect and receive income from investments or reinvestment of such funds or properties and
- Apply such income and the properties which the corporation possesses from time to time for such purposes attributable to the corporation.

RESTRICTIONS

The Corporation shall not carry on any activities not permitted to be carried out by a corporation exempt under 501(c) (3) of the code.

The Corporation shall not be conducted or operated for profit and no part of the earnings of the Corporation shall inure to the benefit of any director, officer, employee or a member of any committee within the Corporation. However, this limitation shall not prevent such person to be paid reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes or an amount representing the fair market value of the property purchased by the Corporation.

In the event of liquidation or dissolution of the Corporation, the properties or assets of the Corporation will not be conveyed or distributed to any director, officer or employee, or member of any committee of the corporation, any other person or organization created or operated for profit , after deducting all expenses related to dissolution or winding up and the remaining property and assets need to be transferred to any other organization that will qualify for 501(c)(3) exemption as determined by the directors of the Corporation.

The Corporation shall not carry out any propaganda and or otherwise attempt to influence legislation and the Corporation shall not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.

During any period when the Corporation is determined to be a “private foundation” as defined under 509 of the code, the Corporation shall:

- distribute such amounts for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under section 4942 of the Code,
- not engage in any act which is subject to tax as self – dealing under section 4941 of the Code
- not retain any holdings which are subject to tax as excess business holdings under section 4943 of the Code,
- not make any investment in such manner as to subject the Corporation to tax under section 4944 of the Code and
- not make any taxable expenditure which is subject to tax under section 4945 of the Code.

To the fullest extent as permitted by local laws, no Director of the Corporation shall be personally liable to the Corporation for monetary damages for any breach of fiduciary duties as director, provided however, such relief from liability shall not apply in any instance where such relief is inconsistent with provisions under 501(c)(3) of the Code.

MEMBERS

The names of members are mentioned in Certificate of Incorporation. These members will have right to vote. All conditions of membership will be mentioned in the Bye Laws of the Corporation.

STOCK

The Certificate of incorporation usually mentions that the organization has no authority to issue capital stock option.

The certificate of incorporation needs to apostilled and stamped by the Secretary of the relevant state.

FOUNDATION BY LAWS

Foundation By Laws are segregated in respective Articles and each Article contains sections.

A summary of specimen By Laws has been highlighted as under:

Article I

Section 1: Location	The principal office of the Foundation would be as designated by the Board of Directors from time to time.
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Article II

Section 1: Membership	The Foundation may have one or more members. Each member will have right to vote. New members may be inducted upon unanimous vote of the members
Section 2: Term	Each member shall serve until his or her death, disability and resignation. Upon death, disability and resignation of all the members, the foundation shall cease to be a membership organization and all powers will be vested in the Board of Directors.
Section 3: Annual Meetings	An annual meeting will be held at the prescribed place of business as decided by the Board of Directors and notified in the notice of the meeting. At the annual meeting the members will elect Directors as provided in the By Laws and transact business as would arise before the meeting.
Section 4: Special Meetings	Special meetings of the members may be convened by the President or any member. Special meetings shall be held in such place as designated in the notice or waiver of notice of such meeting.
Section 5: Notice of Meetings	Notice of meetings shall be in writing and delivered to each member and shall state, place, date and timing of the meeting and purpose of meeting unless it is an annual meeting. Such notice has to be given personally, or email transmission not less than ten days nor more than fifty days before the meeting.
Section 6: Waiver of notice	Wherever notice is required to be given under relevant laws, certificate of incorporation or bye laws, waiver of notice signed by the member entitled to such notice, before or after the time stated therein, shall be equivalent to giving such notice.
Section 7: Quorum and action	The presence in person or by proxy of a majority of members will constitute a quorum.
Section 8: Proxies	Every member entitled to vote at any meeting or express dissent or consent without meeting may vote by proxy. Such proxy will be given in writing and delivered to the Secretary of the Foundation. No proxy shall be valid after eleven months. All proxies are revocable at the pleasure of the member executing it except or otherwise provided by law
Section 9: Action without a meeting	Any action required or permitted to be taken by members without being present at a meeting and without notice will be considered if all the members entitled to vote agree in writing to such action.

<p>Section 10: Actions requiring consent of the members</p>	<p>Following actions will require consent of all the members then serving: a) removal of the Chair, b) amendment of Certificate of Incorporation or Bye Laws, c) approval of annual budget of the foundation.</p>
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Article III: Board of Directors

<p>Section 1: Power of Board and Qualification of Directors</p>	<p>The affairs of the Foundation will be managed by and under the direction of Board of Directors.</p>
<p>Section 2: Number of Directors</p>	<p>The number of directors constituting the Board shall not be less than three. The number of directors may be increased from time to time by vote of majority of the Board.</p>
<p>Section 3: Election and term of Directors</p>	<p>Directors shall be elected by voting members and shall serve for a term of two years and until their successors are elected or until their earlier, death, removal or resignation. The members of the Foundation will serve as ex-officio and voting members of the Board of Directors.</p>
<p>Section 4: Newly created directorships and vacancies</p>	<p>Newly created directorships and vacancies in the Board of Directors shall be filled by action of the members. A director appointed to fill up a vacancy shall hold office for the unexpired term of his or her predecessor.</p>
<p>Section 5: Resignation</p>	<p>Any director may resign from the Board by submitting resignation in writing to the Secretary of the Foundation. Such resignation shall take effect from the period specified therein and unless otherwise specified, acceptance of such resignation shall not be necessary to make it effective.</p>
<p>Section 6: Removal of Directors</p>	<p>Any director may be removed from office at any time by members with or without giving any cause.</p>
<p>Section 7, 8 and 9: Meeting of the Board</p>	<p>An annual meeting of the Board of Directors shall be held at such time and place as agreed by the Board, for election of officers and other for transacting other business. Regular meetings of the Board shall be convened at such time and place as fixed by the Board. Special meetings may be convened at any time by the Chair, President or two directors of the Board. Meetings of the Board of Directors may be held at such places as fixed by the Board.</p>

Section 10: Notice	Annual and special meetings of the Board, will be held upon two days prior notice by first class mail or twenty four hours' notice on phone or email communication.
Section 11: Quorum and Voting	Majority of board of directors will form a quorum unless otherwise prescribed by law, certificate of incorporation or bylaws. Similarly vote by majority of board of directors present at the meeting at the time of voting, if quorum is present at such time, unless otherwise prescribed by law, certificate of incorporation or bylaws.
Section 12: Written consent of Directors: Meetings by Conference telephone	Any action taken without a meeting of the Board of directors is obtained from all the members of the Board in writing or by electronic submission to the adoption of a resolution authorizing such action. Each resolution so adopted will be added in the minutes of meeting of the Board.
Section 13: Compensation of Directors	Directors in general will not receive any remuneration except for reimbursement of expenses for attending annual , regular or special meetings of the Foundation as approved by the Board of Directors.

Article IV: Committees

Section 1: Committees of the Board	The Board of Directors by resolution may appoint an executive committee and other standing committees involving two or more directors and each of them will have and may exercise authority of the board. The Chair of the foundation will be the ex officio voting member in each of the committees
Section 2: Committee Rules	Each committee designated by the Board may make, alter and repeal rules for the conduct of its business. A majority of the entire authorized number of members of each committee shall constitute a quorum for the transaction of a business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and each committee shall otherwise conduct its business in the same manner as the Board of Directors conducts its business under Article III of these Bylaws.
Section 3: Service of Committees	Each committee of the Board of Directors shall serve at the pleasure of the Board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty under law to the Foundation.

Section 4: Records	Minutes shall be kept of each meeting of each committee. Copies of the minutes of each such meeting shall be filed with the corporate records and supplied to each member of the Board of Directors
Section 5: Advisory Boards	The Board of Directors may create such advisory boards and appoint to them such persons as it deems appropriate. Persons serving in such advisory capacity shall not exercise any of the powers granted to the Board of Directors in these Bylaws.

Article V: Officers, Agents and Employees

Section 1: General Provisions	The officers of the Foundation shall be a Chair, a President, a Secretary, a Treasurer and such other officers as may be designated by the Board of Directors from time to time.
Section 2: Terms of office, vacancies and removal	The officers shall be elected by the Board of Directors at the annual meeting of the Board. The Board may appoint other officers, who shall have such authority and perform such duties as may be prescribed by the Board. Each officer shall hold office for a term of one year, until the next annual meeting of the Board. Any officer may be removed by the Board with or without cause, except as otherwise provided herein. Such removal without cause shall be without prejudice to such person’s contract rights, if any, but the appointment of any person as an officer of the Foundation shall not of itself create contract rights.
Section 3: Powers and duties of officers	
Chair	The Chair shall preside at all meetings of the Board of Directors and shall also have such other powers and perform such other duties as the Board of Directors may from time to time prescribe. The Chair shall be an <i>ex officio</i> voting member of all committees. Only a member may serve as Chair
President	The President shall have the responsibilities customary to the office of president and shall have such other powers and perform such other duties as the Board of Directors may from time to time prescribe.
Secretary	The Secretary shall be responsible for the keeping of an accurate record of the proceedings of all meetings of the Board of Directors, shall give or cause to be given all notices in accordance with these Bylaws or as required by law, and, in general, shall

	<p>perform all duties customary to the office of Secretary.</p> <p>The Secretary shall have custody of the corporate seal of the Foundation, if any; and shall have authority to affix the same to any instrument requiring it; and, when so affixed, it may be attested by his or her signature. The Board may give general authority to any officer to affix the seal of the Foundation, if any, and to attest the affixing by his or her signature</p>
Treasurer	<p>The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Foundation; shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Foundation; and shall deposit all monies and other valuable property of the Foundation in the name and to the credit of the Foundation in such banks or depositories as the Board of Directors may designate.</p> <p>Whenever required by the Board, the Treasurer shall render a statement of accounts. The Treasurer shall at all reasonable times exhibit the books and accounts to any officer or director of the Foundation, and shall perform all duties incident to the office of Treasurer, subject to the supervision of the Board, and such other duties as shall from time to time be assigned by the Board.</p>
Section 4: Agents & Employees	<p>The Board of Directors may appoint agents and employees, including one or more country Managing Directors, who shall have such authority and perform such duties as may be prescribed by the Board. The Board may remove any agent or employee at any time with or without cause. Removal without cause shall be without prejudice to such person’s contract rights, if any, and the appointment of such person shall not itself create contract rights.</p>
Section 5: Compensation of Officers, Agents and Employees	<p>Salaries or other compensation of officers, agents and employees may be fixed from time to time by the Board of Directors, or this power may be delegated to the President or one or more country Managing Directors; provided, however that such salaries and compensation shall not be excessive in amount and shall be for services which are reasonable and necessary for performance of the Foundation’s purposes.</p>

Article VI: Miscellaneous

Section 1: Fiscal Year	<p>The fiscal year of the Foundation shall end on December 31 of each year.</p>
Section 2: Corporate Seal	<p>The seal of the Foundation shall be circular in form and contain the name of the Foundation, the words “Corporate Seal”, the state and the year the Foundation was formed in the center. The</p>

	Foundation may use the seal by causing it or a facsimile to be affixed or impressed or reproduced in any manner.
Section 3: Checks, Notes and contracts	The Board of Directors shall determine who shall be authorized from time to time on the Foundation’s behalf to sign checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money; to enter into contracts; or to execute and deliver other documents and instruments.
Section 4: Books and Records	The Foundation shall keep at its principal office (1) correct and complete books and records of accounts, (2) minutes of the proceedings of its member(s), the Board, and any committee of the Foundation, and (3) a current list or record containing the names and addresses of all directors and officers of the Foundation. Any of the books, records and minutes of the Foundation may be in written form or in any other form capable of being converted into written form within a reasonable time.
Section 5: Gifts	The Board may accept on behalf of the Foundation any contribution, gift, bequest, or devise for the non-profit purposes of the Foundation. The Board shall have discretion to reject any grant, gift or bequest the conditions of which might conflict with or jeopardize the Foundation’s charitable and educational purposes. The Board will have final authority over the making of all grants and other charitable expenditures, and nothing in this Article will constitute any restriction or limitation of any powers of the Board conferred by applicable law or these Bylaws.
Section 6: Amendments to By Laws	These Bylaws may be amended or repealed, and new Bylaws may be adopted by action of the member(s).
Section 7: Indemnification and insurance	The Foundation may, as permitted by law, indemnify any present or former director, officer, employee or agent or any person who may have served at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, whether for profit or not for profit, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her in connection with any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative, or investigative (other than an action by or in the right of corporation), to which he or she may be or is made a party by reason of being or having been such director, officer, employee or agent if he or she acted in good faith and in a manner he or she reasonably believed to be in or

	<p>not opposed to the best interests of the Foundation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.</p> <p>The Foundation shall have the power to purchase and maintain insurance to indemnify the Foundation and its directors and officers to the full extent such indemnification is permitted by law.</p> <p>The Foundation may pay expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such officer or director to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Foundation under this Section. Such expenses (including attorneys' fees) incurred by other employees and agents may be paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.</p> <p>In no case, however, shall the Foundation indemnify, reimburse, or insure any person for any taxes imposed on such individual under chapter 42 of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended ("the Code"). Further, if at any time the Foundation is deemed to be a private foundation within the meaning of 509 of the Code then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or a taxable expenditure, as defined in 4941(d) or 4945(d), respectively, of the Code.</p> <p>If any part of this Section shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.</p>
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OFFICERS' CERTIFICATE

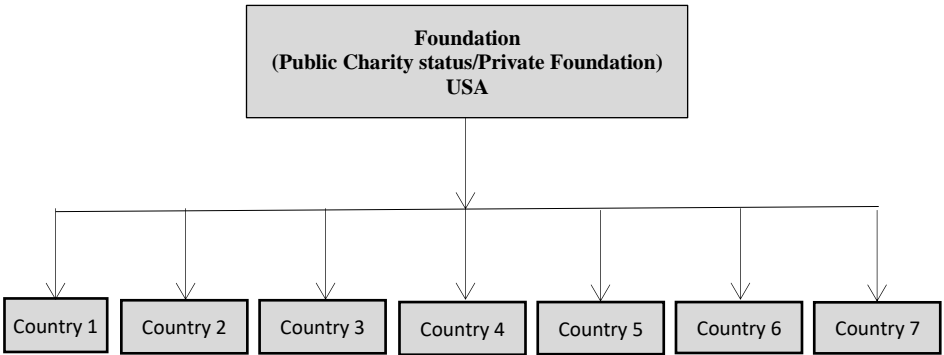
The President or the Chair or the Secretary, needs to certify that the facts mentioned in the Bylaws are true and correct and have been adopted by, the Board of Directors on(date).

CERTIFICATE OF GOOD STANDING

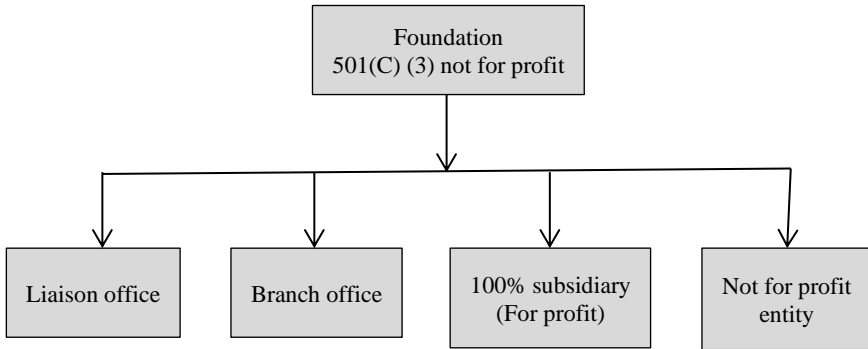
The foundation needs to get a certificate of good standing from the state where it is incorporated and the certificate needs to mention that the foundation is in good standing, has a legal corporate existence and that the franchise taxes has been paid to date

LEGAL STRUCTURE

A multi-national foundation operating in multiple countries would have a specimen legal structure as under:



In specific countries the foundation could have both profit and not for profit entities reporting into the parent country out of United States. The legal structure of such entities would look as under:



In the aforesaid set up the foundation is provided with various options. In general these may be as under:

If the Foundation wants to be represented in the country by a branch or a liaison office, which are not permanent

Establishments, this may be possible, albeit with lot of restrictions.

However, if the Foundation wants to have permanent establishment in some countries, it can incorporate wholly owned subsidiaries to carry on its business in those countries.

In some countries, local laws provide for incorporation of non for profit entities as well. These entities are provided with exemptions from payment of tax and at the same they can have exemptions whereby the funders or donors in these entities can also get tax exemptions against the specific donations made by them. These entities

can also take care of not for profit activities related to “Corporate Social Responsibility” linked to various corporate bodies.

In conclusion, a not-for-profit foundation could spread its wings across various continents and create representative offices as well as for profit subsidiaries to do business and get into not-for-profit development opportunities. In such cases the foundation could consolidate financial results of all the cross-border entities and come up with consolidated financial statements for the foundation as a group.