



Unit 2

Understanding legal matters

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Cover photo: MOH officials inspect Lisungwi Hospital, constructed in partnership with PIH in Malawi



Unit 2

Overview

Introduction	1
1. Forming a nonprofit in your home country	2
2. Registering a nonprofit in your host country	4
3. Legal representation	8
4. Ongoing legal needs	9
5. Memoranda of Understanding and contracts	10
6. Power of attorney and other authorities	13
7. Understanding local laws	14
8. Visitors and guests at the site	17
Conclusion	17
Resources	18



Understanding legal matters

“Lawyers working for NGOs and nonprofits are an essential part of the team serving your patients. Some legal issues may actually be more complicated than they appear, so involving lawyers before you start operations can be of enormous benefit.”

– Danny Greenberg, Schulte Roth & Zabel LLP, pro bono attorney for Partners In Health

INTRODUCTION

To operate effectively both in your home country and host country, your nonprofit organization must be in compliance with local and national laws and be registered with the appropriate government bodies. As a program manager, you will need to familiarize yourself with the basic concepts and the language associated with the legal aspects of running a nonprofit organization. In PIH's experience, formalizing our governance structure and establishing official relationships with governments has furthered our aim of supporting the public sector in all of our work.

This unit provides a broad overview of how to create a nonprofit organization and obtain tax-exempt status in your home country, and explores other legal issues that may arise as you begin or expand international operations. While it is generally good practice to involve a lawyer during the planning stages to avoid legal missteps, consulting a lawyer will be crucial if you have questions about a given law, applicability of any of the sections in this unit, or the legal requirements in your home country or host country. This information is based largely on PIH's experiences over the course of its existence and is by no means exhaustive. Program managers should use the information provided here in conjunction with other resources, some of which are listed at the end of this unit.

1. FORMING A NONPROFIT IN YOUR HOME COUNTRY

In order to engage in nonprofit activity, you will have to create a nonprofit entity under the laws of your home country. In the United States, where PIH's home office is located, the formation of a nonprofit entity is governed by state law. Two common types of nonprofit entities are charitable trusts and nonprofit corporations. While the formation of a nonprofit entity is governed by state law, the term “tax-exempt organization” is derived from federal income tax laws. It is possible—and commonplace—for an organization to be a nonprofit corporation or trust with respect to state law and qualify as a tax-exempt organization for federal income tax purposes. A lawyer can advise you on which of the options would be best regarding the formation of your organization (including whether a particular state would be more or less appropriate for your organization) and can help you with some or all of the formation process and paperwork.

In addition, note that if your nonprofit organization solicits charitable contributions in the United States, you will have to comply with the registration and reporting requirements of various governmental agencies in each state in which your organization solicits funds. Various websites specializing in nonprofit management may be useful sources of information. (See *Resources* following this unit.) If your organization operates in the United States, you will also have to submit detailed paperwork to your state of formation and potentially other states in which you have a presence, as well as to the federal government, including filings with the Internal Revenue Service (IRS).

1.1 Governance

Once your nonprofit organization has been properly formed in your home country, you will have to decide how to manage and operate it. Adopting organizational bylaws and electing a board of directors are important matters to settle as early as possible. In the United States, a nonprofit organization must have both bylaws and a board of directors.

Bylaws are the rules and procedures used to run the organization. Bylaws are critical to your organization because they instruct the board on how to conduct your organization's business. It is in the interest of the board and your organization to ensure that your bylaws provide sufficient structure for the legal governance of your organization and guidance to your board regarding its operations without being overly detailed, to allow flexibility in the day-to-day workings of the organization. Everything else—such as policy recommendations—should be documented separately. The initial directors of the organization or the persons responsible for forming your organization generally adopt initial bylaws at the first board meeting. Subsequently, bylaws may be changed by your organization's members at its annual meeting and, unless otherwise provided in your organization's formation documents or initial bylaws, by the board of directors.

A board of directors is a group of individuals who determine the general policies of an organization and oversee its major activities. They are usually (though not always) donors to the organization, and they should be knowledgeable and passionate about the organization's work. Board members can be helpful in introducing you to potential donors and can provide expertise in areas your organization's leadership may lack. (For more on board relationships with donors, see *Unit 9: Creating a development strategy*.) A board's responsibilities will vary by organization and will probably change over time.

Some basic objectives of a board of directors are to:

- Advance the mission of the organization
- Safeguard the assets (human, material, and financial) of the organization
- Act as ambassadors on behalf of the organization
- Ensure adequate resources for carrying out the organization's mission



Figure 1: Three of the founders of Partners In Health, who also serve on the Board



TIP: *In choosing members of your board of directors, consider whether there are particular areas of expertise that you would like to see represented on your board or certain geographic regions, industries, functions, or synergies between your organization and a potential director's organization.*

1.2 Securing federal and state tax-exempt status in the United States

Once you have formed your nonprofit organization in your chosen state, you will be ready to apply for tax-exempt status for United States federal income tax purposes and with your organization's state of formation. The primary benefit of United States federal tax-exempt status is exemption from federal income tax (other than federal income tax on income from an unrelated trade or business). An organization that has obtained an exemption for United States federal income tax may qualify for an exemption from certain state and local taxes. In addition, contributions to certain United States federal tax-exempt organizations are deductible (subject to certain limitations) for federal tax purposes by the contributors.

Generally, for a nonprofit organization to be exempt in the United States from federal taxes, it must meet the criteria for an organization organized and operated exclusively for charitable purposes. These criteria are set forth in Section 501(c) of the Internal Revenue Code (IRC) of 1986, as amended, and certain other provisions in the IRC. Keep in mind that a nonprofit organization is not necessarily tax-exempt. As discussed above, the creation of a nonprofit organization is a state law matter, while tax-exempt status is generally a matter of federal law. While the focus of this section is exemption from United States federal income tax, note that state requirements regarding exemption from state taxes vary, and you should ensure that you understand state tax exemption requirements and file necessary paperwork in your state of formation and other states, as required.

In order to apply for federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, an organization must obtain an Employer Identification Number (EIN) and submit a Form 1023 (discussed below) to the IRS. Section 501(c)(3) provides an exemption for certain types of organizations (subject to specified requirements) that are operated for religious, charitable, scientific, public safety, literary, or educational purposes; that foster national or international sports competitions (subject to certain exceptions); or operate for the prevention of cruelty to children or animals.

The EIN is a nine-digit number assigned by the IRS to all businesses, including taxable and tax-exempt organizations, for identification purposes. You and your employees will also need this number to file your income taxes. The EIN identifies your organization on the Form 1023. There are many ways to obtain an EIN. The quickest and easiest method is to apply online through the IRS website. However, an EIN can also be obtained by phone or by mailing or faxing the SS-4 form. (See *Resources* for this and other forms and for references to other information that can be obtained through the IRS website.)

Once your organization has obtained an EIN, the next step toward securing tax-exempt status is to submit a Form 1023 to the IRS. Although Form 1023 is quite long and requires detailed information, it is a relatively straightforward document. The IRS publishes a detailed instruction form that explains the meaning and intent of each question on Form 1023. Have the following information ready when you fill out the form:

- The address of your U.S. headquarters
- Your organizational structure and documents
- A narrative description of your activities
- The compensation and financial arrangements of your officers, directors, and other organizational leaders
- Financial data

The time it takes to form a nonprofit organization and secure tax-exempt status at both the federal and state level varies from organization to organization; some organizations can accomplish these tasks in a matter of months, while others can take closer to a year.

Once your organization has secured federal tax-exempt status, determine whether similar filings are necessary in the state where your organization has assets or operations. Many states will grant a tax exemption from state and local income taxes based on the organization's having secured federal 501(c)(3) tax-exempt status. Your lawyer should advise on whether your organization's operations require you to make any additional specific state filings.



TIP: Several fees payable to both state and federal levels are associated with forming a nonprofit organization. Be sure to include these fees in your administrative costs as you develop your budget.

2. REGISTERING A NONPROFIT IN YOUR HOST COUNTRY

Once you have secured nonprofit and tax-exempt status in your home country, you can obtain the required registrations and exemptions in your host country. These requirements vary from country to country, so it is advisable to contact a local lawyer or local government official to find out the required steps for registering your nonprofit in-country. PIH has typically taken the following steps in the countries where we work: registration as a nongovernmental organization (NGO)¹ and obtaining licensing for staff and tax-exempt status.

¹ Widespread use of this term “nongovernmental organization” and its acronym began with its definition in the United Nations Charter, and in keeping with that history, it is the term most frequently used to describe not-for-profit organizations that are not controlled or fully funded by the government. Unlike the term “nonprofit,” it does not have a legal definition.

2.1 Host country offices: divisions or separate entities?

One of the first things you will have to decide before beginning operations in your host country is whether to establish your operations in a host country as a division of your home country organization or as a separate legal entity. There are advantages and disadvantages to each option, and your decision will depend primarily on the following:

- The country in which you are working and its policies for NGOs
- Your funding streams (actual and anticipated) and their requirements
- The size and scope of your organization at the time of registration
- The nature of your operations in the host country and related potential liability concerns

Despite the technical differences between a formal division and a separate legal entity, the daily operations and level of accountability are very similar for both types of organizations. However, audits are conducted somewhat differently. If you have questions about which type of registration will provide an appropriate level of oversight and protection while allowing your organization the most flexibility, as well as the ability to serve the most people, seek the advice of a lawyer.

2.2 Registration as an NGO

Registering your organization as an NGO in your host country and obtaining tax-exempt status in your host country are often two separate processes. In many countries, registering as an NGO is the first step. Registration usually involves entering into a Memorandum of Understanding (MOU) with the government. This document will describe the intended scope and duration of your organization's work, and the catchment area. Once the MOU is established, you can complete the required steps to become an official NGO in your host country. (See *Section 5, Memoranda of Understanding and contracts* in this unit for more information.)

In many countries a ministry of local government (or its equivalent) is responsible for registration and oversight of NGOs. You may have to register with the government directly or through an external association or regulatory body. For example, when PIH registered in Malawi in 2007, both the Council for Nongovernmental Organizations (CONGOMA) in Malawi, and the NGO Board of Registrars had to approve our application.

It may be helpful to explore your host country's ministry of local government website, if one exists, to learn about the process of registering as an NGO, related reporting requirements, and required documents. Afterward, speak with someone at the ministry directly in order to understand the details of the registration process. Seeking advice from an already-established NGO is also useful; other organizations that have successfully navigated the process may be able to offer insight into the process and help you avoid delays and common mistakes.

The registration process may be bureaucratic and lengthy, so you will need to be proactive in helping to move it forward. Some ways that you can facilitate the process are:

1. Obtaining as much information, as early in the process as possible, about documents required for registration. Doing so often takes several steps, and

you may have to retrieve documents from your home country or have them certified at many different offices.

2. Making sure that you have a clear understanding of application procedures and requirements, such as deadlines, materials, number of copies of documents, where the application should be submitted, whether the application should be mailed or submitted in person, any notarizations or other required certifications, and the appeal procedure if the application is denied.
3. Finding out what to expect after your application is submitted, including the anticipated time frame for review, the contact person for updates, and what recourse is available to you in case of significant delays.
4. Finding out the terms of approval, including duration of registration and any requirements (both administrative and financial) for renewal.



PIH NOTE

When Abwenzi Pa Za Umoyo, or APZU (the PIH-supported site in Malawi), was registered with the Malawian government in 2007, we benefited from the experience of a local lawyer. He had been recommended to us by another NGO that had already been operating in Malawi for some time. He knew how to navigate the legal system and guided us through the registration process. Once the Malawi-based and Boston-based teams finalized all the necessary documents, including a description of our organizational purpose and an in-country work plan, the lawyer submitted the application on our behalf. He helped us obtain all the necessary documents, including a letter of support from a national figure—in our case, Malawi’s Secretary for Women and Child Development. We waited several weeks, following up as needed, and eventually we received news that our application had been approved.

2.3 Tax-exempt status in-country

NGO status typically allows you to apply for tax-exempt status through your host country’s ministry of finance (or other appropriate government body, depending on the country). In many cases, obtaining tax-exempt status in your host country requires that you submit organizational and financial statements as well as reports, budgets, and specific work plans.

In many resource-poor countries, a registered tax-exempt organization still has to pay taxes, but it can later apply for the tax to be refunded at the end of the government’s fiscal year. For example, to be eligible for the return of sales tax, one PIH site must register each of its programs with the government, detailing the program’s activities and the amount of money to be spent. That is, we must report each income-generation program, the after-school program, and the clinical support program as separate programs, and submit detailed budgets for all of the activities of each of them. We are also required to collect and submit very detailed expense reports and original receipts. Our accounting system must capture all of the relevant information needed to prepare these expense reports. We have customized software programs to compile the reports necessary for the return of the tax dollars spent.

Return of paid taxes often takes several months and may not occur in the anticipated time frame, or at all, which creates a budgeting challenge. To receive payment on as many claims as possible, we document all purchases carefully and submit complete, detailed reports in the format prescribed by the applicable regulator. Governments that refund sales taxes to an NGO will occasionally restrict or require prior government approval for the future uses of those funds. In one country where PIH works, refunded sales tax must be used by the organization for specific charitable purposes that require prior approval of the government.

Similarly, some countries require that NGOs have a signed MOU with the government and that the NGO submit original receipts to the local tax authority. These policies vary by country and by project. For example, a typical MOU might provide an exemption for sales taxes on labor and materials for construction, but it will not exempt the organization from paying and withholding income and benefit taxes on the wages of employees. In some countries, an MOU or tax exemption might also grant exemption from import duties on all drugs or equipment imported into the country in fulfillment of the charitable objectives of the organization. It is crucial to have a thorough understanding of the policies, procedures, and requirements involved. PIH has benefited from consulting other NGOs in the area and local legal counsel in this matter.



TIP: Investigate local tax policies so that you can take advantage of all possible exemptions and ensure that the taxes you are being asked to pay are appropriate.

2.4 Registration and licensing for staff

Bear in mind that, depending on the nature of your activities, you may also be required to register and license your staff with your host country. You may also be required to obtain district and local government approvals in addition to those of the national government. These arrangements are discussed in *Section 7, Understanding local laws*.



Figure 2: Staff care for a patient in a PIH-supported health facility in Rwanda

3. LEGAL REPRESENTATION

Legal counsel can make it easier to get your organization started quickly, and it can also help with ongoing legal needs. A lawyer can be viewed as having two primary roles: helping to draft and review legal documents (including establishing the NGO, obtaining power of attorney, drawing up contracts/MOUs) and serving in an advisory capacity as needed.

There are several options for legal representation, both in your home country and in your host country. The most common types of legal counsel are:

- In-house counsel providing services on a pro bono (free) or paid basis
- Firm representation on a pro bono or paid basis
- Representation on retainer—you pay an annual or monthly fee and use the lawyer's or firm's services as needed.

When considering these options, take into account your legal needs on a monthly and annual basis, as well as your available resources. If you have many ongoing needs, in-house counsel or firm representation may be best for your organization. However, those options can be expensive. If you are not able to pay for those services, try to find someone (perhaps through a board member or other supporter) who is willing to donate them. As with any aspect of your organization, it is likely that your needs and resources will change over time, so it is important to reassess both periodically to ensure the optimal structure for your organization.

3.1 *Legal counsel in your home country*

As stated earlier in this unit, there are several steps involved with forming and maintaining a nonprofit organization in your home country. While legal counsel is not required for completing these steps, it can be helpful with many of these issues, including formation, registration, obtaining tax-exempt status, adopting bylaws, and registering abroad. In addition, a lawyer can be a good resource for assistance with long-term governance issues and with organizational expansion and changing needs. The kind of legal assistance you choose will depend on several factors specific to your organization, including:

- The size, scope, and resources of your organization
- The types of services you provide
- Your level of experience and comfort in dealing with legal matters
- Your budget for legal services

If you decide not to retain legal services at first, you can change your mind later, and vice versa. You can also seek legal advice on an ad hoc basis.

3.2 *Legal counsel in your host country*

Having legal counsel in your host country will help you work more effectively at the site. Employing someone with local knowledge is often well worth the investment. Although

there can be fewer qualified professionals in resource-poor settings than in more developed countries, it is often possible to find references through other partners and local NGOs where you will be working.

Sometimes a lawyer in your home country can help identify a lawyer in your host country through contacts in various international legal networks. As you interview local candidates, inquire about areas of expertise and previous experience. Local lawyers can be invaluable in guiding you through the local processes and introducing you to contacts that may provide host-country expertise in other, non-legal, areas.



TIP: Consider hiring a local lawyer to assist with process of registering as an NGO. It will make registration more manageable and it is also an opportunity to support the community.

A local lawyer can be helpful by:

- Assisting with registration as an NGO
- Assisting with expansion or changes to organizational structure when necessary
- Assisting with contracts/MOUs and disputes
- Assisting with understanding local government regulations and government relations
- Advising about issues with funders
- Assisting with large purchases/capital investments
- Providing counsel on labor relations or other employee issues
- Assisting with visa applications and registration of long-term foreign volunteers and employees
- Managing the response to in-country accidents
- Coordinating necessary licensure and insurance arrangements

4. ONGOING LEGAL NEEDS

Many of your legal needs—barring lawsuits or other conflicts—will pertain to procedures related to starting operations both in your home country and in your host country. However, your organization will also have ongoing needs, including fulfilling requirements for maintaining tax-exempt status in your home country and host country, as well as other required reporting as your programs grow. If you keep your lawyers informed of your activities and plans, they can also advise and help you identify problems that you may not have considered or fully addressed. Lawyers also can, subject to attorney-client privilege and similar ethical considerations, share the knowledge and experience they have gained serving similar clients, in much the same way as another NGO might provide the benefit of its experience.

4.1 Maintaining nonprofit and tax-exempt status in your home country and host country

In order to maintain nonprofit and tax-exempt status in the United States and in your host country, you will have to comply with local and national regulations in both places and complete various government forms annually. In the United States, most tax-exempt organizations file annual information returns with the IRS on Form 990 (or a similar form), which requires detailed information about the organization and its receipts and expenditures. A staff member (typically in an accounting, human resources, or administrative role) is usually responsible for completing this form and filing it on time. Information about and assistance with Form 990 is available online free of charge. (See *Resources* for more information.) If your organization does not operate in the United States, you will need to research and understand the relevant requirements for annual reporting in your home country.

4.2 Other legal matters

The extent of any additional legal needs you have will depend on the nature of your work and your organization's characteristics. For example, if you have a website, you may want to post a legal disclaimer on your site and keep it updated. You may want to think about intellectual property issues, including obtaining a registered trademark for your organization's name and logo. If you are planning to sell merchandise—either crafts produced at your sites or promotional items such as t-shirts or coffee mugs—you will need to determine your tax liability with respect to such sales. If you share or publish information, you will need to consider how to best protect your intellectual property rights regarding such information, minimize any potential liability resulting from reliance by others on your information, and ensure compliance with applicable privacy laws, particularly with respect to medical or other personal data that can be linked to individuals.

5. MEMORANDA OF UNDERSTANDING AND CONTRACTS

MOUs and contracts are legal documents that outline each party's responsibilities when you enter into an agreement to develop or implement a project or set of activities. MOUs and contracts also apply to human resources, construction, and other matters. They help define each party's role in the collaboration.

MOUs and contracts often include agreements about the following components of a project:

- Employment—agreements for salaried employees and for those engaged to work on short-term basis
- Intellectual property—agreements about who owns any work generated from a project, such as a print publication, photographs, or a multimedia product



Figure 3: PIH began construction of a national teaching hospital in Mirebalais, Haiti, at the request of the national government

- Construction—agreements regarding timelines, materials, and staffing levels for creation or renovation of facilities

Legal review of significant MOUs and contracts can help clarify the terms of a MOU or contract and identify gaps in coverage or any potential risks to the organization.

5.1 MOUs

An MOU is a document describing an agreement between two or more parties. It expresses an agreed-upon plan of action between parties and often is used in cases that do not require a legal commitment. When the parties involved cannot (or prefer not to) create a legally binding agreement, an MOU is generally used in place of a contract. An MOU can help establish the guiding principles of the relationship, identify roles and responsibilities, and establish priorities for the work that you will be executing with your partners.



Figure 4: Signing a Memorandum of Understanding in Rwinkwavu, Rwanda

However, in some cases, depending on the exact wording, an MOU can have the binding power of a contract. An MOU could be preferable to a contract for various reasons. Sometimes the parties have made a decision to use an MOU because it is less formal than a contract. Sometimes the people signing an MOU do not have legal authority to sign a contract on behalf of their organization but can represent their organization's interests in the form of an MOU. Often, an MOU is preferred to a contract because there are no formal deliverables and the agreement simply formalizes the intention to work together toward a common goal. Typically, an MOU will not contain significant detail or attempt to provide for all circumstances and happenings the way a contract often does, and similarly will not provide remedies or procedures in the event that a party does not comply with the terms of the MOU. In many cases, the use of an MOU can be more of a cultural decision—governments and other NGOs may be more familiar and comfortable with the MOU concept and view a more formal contract as inappropriate or even offensive. If you are exploring the possibility of entering into an agreement with another organization or individual, seek advice from someone knowledgeable about MOUs and contracts and the relative benefits of each.

The specific content of an MOU will vary by agreement and project, but it should carefully lay out each organization's responsibilities, including those regarding funding and the provision of services. The MOU should also state the duration of the agreement and whether it will be renewed automatically at the end of that period if not terminated by either party.

**PIH NOTE**

MOUs can be wide-ranging and can be made with a variety of organizations or institutions. Some examples from PIH's experience include MOUs with:

- *The governments of Rwanda, Malawi, and Lesotho for the provision of comprehensive medical and social services and participation in strengthening their health systems*
- *The World Food Programme, for the provision of nutritional support to families affected by HIV/AIDS or tuberculosis in the Central Plateau of Haiti*
- *Brigham and Women's Hospital in Boston, for support of medical residents performing clinical rotations at PIH-supported sites*

5.2 Contracts

It is also important to understand contracts with funders, employees, and service providers such as construction workers or engineers. A contract is an exchange of promises between two or more parties to do or to refrain from doing something. This kind of agreement is enforceable in a court of law. Contracts function similarly to MOUs, but they often carry more legal weight. Note that many grant agreements are considered contracts.

Contracts are also required for any organization that receives federal funding from the U.S. government. Read all government contracts carefully, because they state the parameters and limitations on spending, as well as reporting requirements. For example, every time an organization begins a project with the National Institutes of Health (NIH) or the Centers for Disease Control and Prevention (CDC), a contract must be signed. Because federal grants come with very specific rules about how the money can be spent, you must fully understand those rules before embarking on a project using federal funds. Extensive information about allowable expenditures can be found in documents available from government agencies. It is worth the time and expense to review all information and requirements relating to a grant both internally at your organization and potentially with a government contracts lawyer to avoid any missteps or pitfalls. There is an entire area of legal practice devoted to government contracts, with countless subspecialties—a testament to the complexity of government contracts.



TIP: *While contracts and MOUs can seem intimidating or onerous, they can improve relationships with partners by helping to clarify the roles and responsibilities of collaborating organizations.*

5.3 Document translation

When an MOU or contract is written in a language other than English, you should have it professionally translated, preferably by someone with a background in legal translation. Similarly, translate contracts and proposals into the language of the people at the site

whenever possible, so that all parties are able to understand fully their commitment to a given collaboration. You may not be able to obtain the translation service as a donation, but the additional expenditure is a wise investment; the cost of misunderstood responsibilities could be far greater. If your local lawyer does not have experience in this area, ask other NGOs for recommendations. Government officials may also have useful suggestions for translation resources.

6. POWER OF ATTORNEY AND OTHER AUTHORITIES

At least one staff member—usually the clinical director, program manager, or someone in an equivalent position—should have power of attorney (POA) for operations in your host country. In addition, sometimes staff in your home country will have a POA so that they can assist with reporting or filing obligations, such as tax filing. Typically, a POA grants limited authority for signing contracts and MOUs and for making financial commitments. The extent of authority granted in a POA depends on practical need, but it is generally designed to provide for the efficient execution of routine commitments that require a signature for approval. You should always ensure that the POAs cover the appropriate areas without delegating too much or too little authority. While it is virtually impossible to conduct operations in multiple countries without them, POAs are powerful instruments, potentially permitting people to bind your organization to obligations and liabilities in a wide range of circumstances. At PIH, all important decisions are discussed extensively between host country management and PIH leadership in the United States, regardless of the fact that the POA holder can technically make commitments on behalf of the organization. A lawyer can review your form of POA as well as the specific delegation if it is unique or particularly broad. A local lawyer can also verify whether the POA meets local requirements.

6.1 *Registration and documentation of power of attorney agreements*

To authorize an individual to represent an organization before the IRS, the organization must file Form 2848 with the IRS. Other institutions, such as the banks in host countries where you establish accounts, often require copies of POA documents for their files. To avoid delays or confusion, have multiple copies accessible, and make sure that you notify all interested parties immediately whenever there is a change in any POA.

6.2 *Check-signing authority*

Check-signing authority is typically granted as part of a POA. Authority is generally granted to a single individual for limited amounts on checks that require a single signature. As your programs grow, other responsible staff are often granted limited check-signing authority as well. As with POAs, it is advisable to monitor check-signing authority and its use; to maintain a system of accountability over checks and bank accounts, organizations will often implement policies regarding who is authorized for various categories of expenditures and dollar amounts, or will require two signatures or home country signature for large dollar amounts. You will also need to understand any local or host-country regulations or policies regarding these issues.

7. UNDERSTANDING LOCAL LAWS

Your employees should be expected to know and obey local laws. Be thorough in acquainting all staff with local laws and customs and pay particular attention to labor, immigration, and privacy laws. For example, if you build hospitals, clinics, staff housing, or other buildings, you should have knowledge of zoning, construction, and waste management regulations. Also investigate other laws related to the provision of medical and psychological services, as well as regulations regarding the distribution of drugs. Vital to any organization is thorough staff understanding of patient rights, the protections afforded to patients, and the recourse available to patients in the event of medical error. A local lawyer can be helpful in clarifying some of these issues, as can other experienced NGOs and your partners in the host country.

7.1 Labor laws

Regulations about wages and limits on hours vary considerably among countries, so it is particularly important to learn about local labor laws, compensation practices, and benefits. (See *Unit 5: Strengthening human resources* for more on local labor laws.) Employment laws pertain to expatriate staff as well as to people hired locally, and you will have to ensure that expatriates comply with all requirements of labor and immigration laws. In particular, clinicians need to be appropriately licensed to deliver health care. Because requirements for permits and licenses change with some frequency, it is important to stay abreast of any shifts in policy at the local or national level.

7.2 Automobile licenses and insurance

It is likewise important to ensure that all employees are appropriately licensed to operate automobiles and other equipment. PIH requires that all local organizations purchase automobile insurance in the host country, if available. We also purchase a United States policy that provides excess liability coverage for automobile accidents.



Figure 5: A PIH-owned pickup truck navigates the roads in rural Haiti

7.3 Other licenses and permits

Before entering into any construction or infrastructure contracts or allowing an expatriate to perform any function, be sure to familiarize yourself with the laws pertaining to those areas. If additional licensing or training is required in-country, it will be useful to know ahead of time and prepare. With this knowledge, you will be able to plan ahead for this orientation period, resulting in minimal disruption to clinical services when new doctors come to the site. Also be

aware of any host country licensing requirements for job functions that are not regulated in your home country. The relevant licenses, accreditations, permits, and regulations that you will need to become familiar with are many and varied. They may include:

- Medical license
- Pharmacist license
- Nursing license
- License to administer certain drugs
- License to provide psychological services
- Driver's licenses for both local and expatriate staff
- Construction permits
- Waste management permits
- Zoning regulations

7.4 Privacy laws

Respect for privacy—particularly that of people living with HIV/AIDS and in countries that have a history of political and ethnic violence—is of utmost importance. Investigate local laws regarding patient confidentiality and make sure that all staff members understand them. In addition, remember that any research activities should be in compliance with all ethical standards involving human participants. (See *Unit 13: Conducting research* for more information.)

Respecting privacy is particularly important when work is documented in communications with donors or portrayed through photography and other media. Do not assume that patients will approve of having their pictures taken or their names used; try to obtain written consent from a patient or, if applicable, his or her guardian before sharing any identifying details or personal information. When patients are unable to read consent forms or sign their names, you can still seek oral permission, which can be documented by a witness.



Figure 6: A community outreach nurse consults with patients at a PIH-supported health facility in Malawi

7.5 Medical malpractice insurance

Despite the best intentions of clinical providers and program administrators, an unforeseen event can still occur in the course of providing routine or emergency medical care to patients. For this reason, PIH's expatriate clinicians are covered by some form of malpractice insurance in the countries where they are based. PIH's local clinicians are covered by local insurance in countries where it is available. If your clinical staff members are affiliated with a hospital in the United States or elsewhere, you may want to investigate the circumstances under which they can be covered under that institution's medical malpractice insurance. Also look into the option of purchasing local insurance.

7.6 Import/export and customs

Importing and exporting goods such as supplies and drugs can be complicated from both a logistical and a legal perspective. Each country establishes its own laws regarding what can and cannot be imported, as well as procedures regarding importation and exportation. If, because of organizational growth or lack of local knowledge about the process, you find that you are spending disproportionate resources on procurement of drugs and supplies, consider hiring an in-country staff person to be responsible for customs and other logistical issues. Doing so will not only help your organization, but will also help support the local economy. (For more on import/export and other procurement-related issues, see *Unit 4: Managing a procurement system*.)



Figure 7: Unloading supplies for Zanmi Lasante at a warehouse in Port-au-Prince, Haiti

7.7 Land and facility ownership

If you plan to buy land or buildings in your host country or are able to accept them as donations, investigate all local laws regarding ownership. You will have to understand how land and facility ownership will affect your tax and insurance liability. You will also have to be aware of the effect ownership has on your fixed assets as you develop your financial system.



PIH NOTE

PIH generally does not own property. Some of our land and buildings are leased from the local government or from entities such as the Catholic Church. In other cases, we do purchase land, which we then give to the country's Ministry of Health (or its equivalent) with the agreement that we can operate our facilities there. We have occasionally purchased buildings that house administrative offices; in those instances we have kept the buildings in our name.

7.8 Unwritten rules

Many countries, or regions within a country, have specific norms or customs that, while not “on the books,” are no less important than formal laws. They need to be observed with the same vigilance as other laws in order for your organization to gain acceptance in the community. Many of these unwritten rules concern free speech and public demonstrations. To avoid problems that may stem from misunderstandings about these unwritten rules, make an effort to ensure that expatriate staff understand that they are guests in the countries where they work, and that both their personal behavior and their professional conduct during work hours as well as off hours are important to the success of their work and that of your organization.

8. VISITORS AND GUESTS AT THE SITE

Partners, donors, students, volunteers, and other interested parties may be eager to visit your site, especially as the organization grows and its impact becomes evident. These visits can be very important for staff, patients, and guests, and they are often key to advancing your development strategy. (See *Unit 9: Creating a development strategy* for more information.) PIH has found that visits from guests work best when there is minimal impact on daily program activities. (See *Unit 10: Working with partners* for more on bringing volunteers and guests to the site.) Also be aware of the need to inform your guests about possible safety concerns and related legal issues. We have found that communicating clearly about these matters helps people prepare for their trip and understand what to expect.

Develop a clear policy on safety and emergencies for visitors at the site.

For example, you may want to institute a policy that visitors are responsible for their own safety while there. Some organizations maintain limited emergency insurance for volunteers, including coverage for evacuation, but do not provide medical coverage for visitors. Establish a policy that is appropriate for your organization—one that is clear about your guests' responsibilities but that does not alienate people who are eager to support you in your work.



Figure 8: A volunteer with PIH's sister organization in Peru speaks with a patient during a home visit
Photo: *Socios En Salud*

CONCLUSION

Legal considerations touch every aspect of your organization. Proper attention to legal matters from the very start of your organization's existence will help your work go more smoothly and will lay the foundation for legitimate and transparent operations going forward. These efforts will help you secure important legal protections for your patients, your staff, and the organization as a whole. An understanding of the laws where you work will also lend clarity to your relationships with government entities, other NGOs, businesses, and individuals, and will go a long way toward averting misunderstandings with those you encounter over the course of your work.



Resources

SELECTED RESOURCES

Finding Legal Advice in the United States

The Foundation Center. **Frequently Asked Questions.**

<http://foundationcenter.org/getstarted/faqs/>

This site provides information on finding pro bono advice for nonprofits.

Livestrong. **Legal Resources Available for Nonprofits.**

<http://www.livestrong.org/What-We-Do/Our-Actions/Professional-Tools-Training/Community-Toolkit/Legal-Resources-Available-for-Nonprofits>

This site provides a basic toolkit to help nonprofits find Legal Resources.

NonProfitExpert.com

<http://www.nonprofitexpert.com/>

See the “Nonprofit Law” section for answers to legal questions about nonprofits.

United States-based Resources

Northwestern University

<http://www.library.northwestern.edu/>

See the “Government Documents” department, which has been a federal depository library for more than a century and features such materials as Congressional reports and hearing transcripts, census information, statistics and studies generated by federal agencies, and Presidential papers.

United States Department of Health & Human Services. **International Organizations and Foreign Government Agencies.**

<http://www.fda.gov/InternationalPrograms/Agreements/ucm131179.htm>

This site provides links to international health organizations and in-country ministries of health.

United States State Department. **Foreign Embassy Information and Publications.**

<http://www.state.gov/s/cpr/rls/>

The Office of the Chief of Protocol publishes the Diplomatic List, which contains a complete list of the accredited diplomatic officers of foreign embassies within the United States. It also publishes a complete listing of the foreign consular offices in the United States.

Internal Revenue Service (IRS) Forms and Instructions

Internal Revenue Service. (2006). **Form 1023: Application for recognition of exemption.**

<http://www.irs.gov/pub/irs-pdf/f1023.pdf>

Internal Revenue Service. (2006). **Instructions for Form 1023.**

<http://www.irs.gov/pub/irs-pdf/i1023.pdf>

Internal Revenue Service. (2008). **Publication 557: Tax Exempt Status for Your Organization.**

<http://www.irs.gov/pub/irs-pdf/p557.pdf>

This is a comprehensive IRS publication with detailed instructions on establishing tax exempt status for your organization.

Internal Revenue Service. (2009). **Form 990: Maintaining Tax Exempt Status with the IRS.**

<http://www.irs.gov/charities/article/0,,id=218927,00.html>

Internal Revenue Service. (2009). **Form SS-4: Application for employer identification number.**

<http://www.irs.gov/pub/irs-pdf/fss4.pdf>

Internal Revenue Service. (2010). **Instructions for Form SS-4.**

<http://www.irs.gov/charities/article/0,,id=136198,00.html>

This link provides directions on obtaining an EIN either online, by phone, fax, or mail.

Internal Revenue Service. (2008). **Form 2848: Power of Attorney.**

<http://www.irs.gov/pub/irs-pdf/f2848.pdf>

Internal Revenue Service. (2008). **Instructions for Form 2848.**

<http://www.irs.gov/instructions/i2848/index.html>

Memoranda of Understanding

United States Department of Agriculture. **Example of a Memorandum of Understanding.**

http://nal.usda.gov/fsn/Guidance/mou_example_final.pdf

Nonprofit Management

BoardSource

<http://www.boardsource.org/Consulting.asp>

BoardSource is a consulting service that partners with organizations to prepare individuals for nonprofit board service.

The Foundation Center. **Establishing a Nonprofit Organization.**

<http://foundationcenter.org/getstarted/tutorials/establish/>

This site provides a 12-step tutorial to establish a nonprofit.

The Free Management Library

<http://www.managementhelp.org/>

This online library provides a variety of resources including legal information for nonprofits.

Idealist

<http://www.idealists.org/if/i/en/faqcat/27-94>

This site provides a comprehensive list of resources for nonprofits, including links to legal, budget, accounting, and technology.

The McKnight Foundation. **Nonprofit Management Toolkit.**

<http://www.mcknight.org/resources/toolkit.aspx>

This site offers a variety of selected online resources in nonprofit management, linked by topic area.

World Bank. (2008). **Performance-based contracting for health services in developing countries.** Washington D.C.: World Bank.

<http://www.who.int/management/resources/finances/CoverSection1.pdf>

This toolkit offers practical advice about performance-based contracting of health services with nonstate providers in the context of developing countries.

World Health Organization. **The Health Manager's Website.**

<http://www.who.int/management/en/>

This site includes links to internal and external resources designed for the program manager.

World Health Organization. **Legal Issues and Monitoring.**

http://www.who.int/ihr/legal_issues/en/

This site includes links to information about legal issues and procedures and monitoring and evaluation.

Registering as an Nongovernmental Organization in the United States

Internal Revenue Service. **FAQs about annual reporting requirements for exempt organizations.**

<http://www.irs.gov/charities/article/0,,id=96581,00.html>

This site offers information about maintaining federal nonprofit status.

Internal Revenue Service. **State Links.**

<http://www.irs.gov/businesses/small/article/0,,id=99021,00.html>

This site provides direct links to state government websites that are useful to those starting a business, including taxation, permits, and licensing.

Internal Revenue Service. **Tax Information for Charities and other Nonprofits.**

<http://www.irs.gov/charities/index.html>

United States Government. **Grants, Loans and Other Assistance.**

<http://www.usa.gov/Business/Nonprofit.shtml>

United States Government. **State Filings for Nonprofits.**

http://www.usa.gov/Business/Nonprofit_State.shtml