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Successfully Managing Travelers' Philanthropy Programs – Legal and Administrative Issues

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Introduction and Summary

BIO [*Third person*]: Joe Staiano brings two decades of experience in the responsible/ adventure, community-based travel field and has personal destination experience spanning 75 countries on 7 continents. Joe is skilled in tour development, trip operations, operator advocacy, emerging markets, tourism training and human resources. Recent accomplishments:

- Conducted multi-site assessment for Uganda Community Tourism Association.
- Recommended improvements in participatory community tourism products and business practices with Andaman Discoveries in Thailand.
- Conducted guide training and marketing consulting in Morocco and Colombia.

Joe is passionate about the power that meaningful travel has in affecting positive economic, environmental and social development. He has specific interests in:

- Linkages between meaningful tourism and development issues.
- Training programs for tourism providers.
- Bringing focus to SME, Small and Medium Enterprises

The Pacific Northwest is home to some of the most impactful philanthropic foundations and international development organizations. Besides being home to the largest philanthropic foundation in the world, Washington State has over 200 non-profits working on global development in over 144 countries. My goal for this conference was to bring a tourism perspective as well as report from a handful of leading tourism, non-profit, and development organizations covering areas such as: philanthropy, health, education, poverty, food/water, land rights and micro-enterprise.

While researching subject matter for 'Successfully Managing Travelers' Philanthropy Programs – Legal and Administrative Issues' I gained many interesting insights. My data collection included phone interviews with over a dozen persons representing tourism and the development world. I exchanged emails with legal professionals; and, I researched key Philanthropic periodicals and websites. I have also included assorted references of other organizations and associations that focus on legal and other issues in the philanthropy and non-profit fields. All throughout that process the focus was on gathering input on legal and administrative challenges, issues, best practices. However, just about every single subject I engaged with also had other pressing thoughts and opinions to share… and an absolute theme clearly emerged. That 'theme' focused on the scope, intent, and impact of Traveler's Philanthropy on the receiving locals and communities. I even learned a new word… "Philanthro-Washing". So, in addition to researching issues, practices and concerns in legal and administrative, I also summarize below:

- Some 'big-picture' scope and current news
- Trends
- How we (the travel industry) can better help our Philanthropy partners
- The above-mentioned theme of scope, intent and impact.

Outline:

- The big-picture – recent legal and administrative news in the Philanthropy world.
- Legal and Administrative Issues
- Trends
- How Can We (the travel industry) help philanthropy organizations
- Philanthro-Washing
- What’s Really on People’s Minds

<u>Recent Legal Issues in Philanthropy News…</u>

July 2011**, Bills to Try to Regulate Nonprofits Struck Down…**
Massachusetts, proposed to prohibit nonprofits from paying their boards of directors.
Oregon, tried a measure that would have required charities to spend at least 30 percent of their expenses on programs or else be unable to allow donors to get a charitable deduction.
Both of these efforts **<u>failed</u>** ! Failures indicate the challenges of introducing legislation that could affect just as many legitimate charity efforts as ones that are considered abusive.

July 2011, **Minn. Gov't Shutdown Causes Layoffs and Troubles at Scores of Nonprofits**
On the same day the state government of Minnesota shut down after a budget impasse.
- Minnesota Historical Society closed its 26 buildings, historic sites, and laid off 600 workers.
- Minnesota AIDS Project, laid off or reduced the hours of 41 of its 57 employees.
- A domestic-violence shelter is sending its clients across the state line to N. Dakota for help.

"*Minnesota's budget deadlock reflects a national deadlock over the role of government and how it should be funded*." Jon Pratt, Dir. Minnesota Council of Nonprofits.

"*some groups are so frail from past cutbacks that they might well go under because of the loss of state aid*." Janet Ogden-Brackett, Dir, Nonprofits Assistance Fund.

Mar 2011, *"Each high-profile disaster of the past few years— the Haiti earthquake, Hurricane Katrina, the Japan catastrophe—have made it clear that the way charities raise money in response to disasters does not work."* Saundra Schimmelpfennig, Chronicle of Philanthropy

Nonprofits immediately issue appeals after a disaster… But this is all done before anybody knows the extent of the disaster, the capacity of the local government and nonprofits to respond, and which other nonprofits are responding and what their capabilities are. In other words, they raise money in a vacuum, the system is far too opportunistic and does not ensure that money arrives where it is needed the most.

Resources:
Chronicle of Philanthropy, www.philanthropy.com

LEGAL

While not an expert in legal issues, there were several themes that emerged in my research…
Special Insurance
Significant Liability and Indemnification
Restrictions
Structure

Special Insurance is needed that applies to "Volunteer Workers".

Resources: Liability insurance tailored for 501(c)(3) nonprofit organizations
Alliance for Non-Profits of Insurance www.ani-rrg.org
The Maksin Group www.maksin.com

Significant Liability and Indemnification -
Both travel companies and philanthropy companies need to budget for liability insurance. Costs continue to spiral up each year. There was a question raised as to whether indemnification holds up for minors.

Restrictions on US funds going to charitable work outside the USA -
The rules regarding the tax deduction available for contributions to foreign charitable entities and programs are already complicated, and careful attention must also be paid to the tax rules affecting the foreign charitable activities of U.S. charities, particularly private foundations.

Resources: A Guide to International Charitable Giving
International Community Foundation www.icfdn.org

Structure of a ‘Trust’ versus ‘Foundation’ compared.

Research for my crest talk included talk with two absolute pioneers in the field of Responsible / Sustainable travel… Kurt Kutay of Wildland Adventures and Marilyn Downing Staff of Asia Transpacific Journeys. Wildland Adventures formed the Travelers Conservation Trust and Asia Transpacific Journeys formed the Asia Transpacific Foundation.

COMPARRISON OF STRUCTURES

TRUST	**FOUNDATION**
Travelers Conservation Trust	Asia Transpacific Foundation
Simple	Complex
Company values	Company Values
Instills confidence	Instills confidence
Not registered	Yearly compliance w Secretary of State
No bank account	Easier to apply for grants
No tax-deductability* Big donations >$5,000 are funneled through specific organizations and are added as a line item for deductibility.	Tax-deductibility

Resources:
Asia Transpacific Foundation –
http://www.asiatranspacific.com/ATJ/philanthropy/about-atf.aspx

Travelers Conservation Trust –
http://www.wildland.com/about/giving_back.aspx

LAW for CHANGE, www.lawforchange.org

LawForChange® is a unique legal resource for people and organizations dedicated to improving lives and bringing about positive social change. It’s specifically tailored to the needs of social sector organizations in the United States. Its intended audience includes social entrepreneurs and innovators, social enterprises, charities, community organizations, philanthropies, faith-based organizations and all manner of nonprofit organizations.

[NOTE: the following excerpt is reprinted-from]

Domestic Charity Funding of International Operations, Thompson & Thompson Law Firm, www.t-tlaw.com

The question is whether there are any restrictions on the ability of a U.S. organization to fund international activities.

Assumptions

Suppose that donors of the domestic charity are solicited for donations to be used overseas. Donors are also asked to fund its work in specific nations. Sometimes they are asked to support overseas employees, not all of whom are on the payroll of the domestic charity. Nearly all donations to the domestic charity are made with a designation as to intended use in one form or another. Nearly all donations, regardless of how they are designated, will in some part used to compensate international personnel.

Funds are transferred from the central office to the accounts of the various regional offices. Some of the regional directors are on the payroll of the domestic charity. Each time funds are accepted by the regional offices, someone must sign a statement agreeing to honor all fund designations made by U.S. donors. Some of the regional offices have one or more U.S. bank accounts to facilitate funds handling. The regional offices disburse funds to each national charity office which are under them.

Tax Requirements

The law primarily applicable to the use of funds by U.S. organizations overseas is the availability of a charitable deduction for donors of a domestic charity... The IRS has taken the position that a U.S. charity cannot be used as a mere conduit for diverting funds to foreign charities. The main concept promoted by the IRS in applicable rulings is that funds contributed to a U.S. charity cannot be earmarked for payment, or subject to an obligation to be paid, to a (foreign) national charity.

CAVEAT: The following discussion applies only to designated funds, that is, donations the donor specifically requests be applied to some international operations, or which the domestic charity is otherwise under an obligation to pass along to another organization. It does not apply to undesignated funds, that is, general donations, employee contributions, administrative charges and other revenues which the domestic charity may choose to apply to international operations. Donations which are not "earmarked" pose no deductibility issue.

Analysis

Under the fact assumptions above, U.S. money leaves the control of the domestic charity at the point where it is used to compensate the services of persons who are not on the payroll of the domestic charity. By definition, these people are not its employees and are not under its legal control. Typically, persons not on the domestic charity payroll are "nationals," although this is not necessarily always the case. Most frequently, once funds leave the control of the regional director's office, they leave control of the domestic charity. The key to this analysis is to realize that when money is used to pay someone not on the domestic payroll, it has been transferred from one organization to another organization. It pays to be very conscious of separate entities. Just because two charities work closely together, even if one was started by the other, it does not mean that they are the same organization. Legal distinctions are real and make a difference!

Donors to the domestic charity will be assured of a charitable contribution deduction for funds which are transferred to an incorporated or otherwise formally organized national charity office separate from the domestic charity only when the following situations exist:

The organized national charity office is controlled by the domestic charity. Tax regulations require the national charity office to be a "mere administrative arm" of the domestic charity. The most clear-cut form of control exists when the national charity is legally a corporate subsidiary of the domestic charity. Tax rulings do not acknowledge that a bare legal affiliate may be considered as a "mere administrative arm" of a domestic charity.

The national charity is not the exclusive means of charity conducted by the domestic charity in that nation. In other words, the domestic charity must have an independent presence in that nation, apart from the national charity.

The domestic charity must "maintain at all times full control of the donated funds and discretion as to their use." The domestic charity makes donations to the national charity only out of general or unrestricted funds.

Donations to the national charity serve a charitable purpose of the domestic charity.

Recommendations
The legal structure of the various national charities funded by the domestic charity should be carefully examined. Hopefully, the results of this examination will determine the degree of affiliation between the domestic charity and the various national charity office organizations.
[[end of excerpt from: Domestic Charity Funding of International Operations]]
ADMINISTRATION

Discussions about administration all slanted toward the issues and challenges. Future follow-up needed to share the successes and efficiencies behind smooth philanthropy travel administration. Some very common across-the-board issues:

Huge headaches in forming foundations

Staffing shortage or layoffs

Competition
"Everyone is now offering 'Educational Tours'. Many travel options are available and the internet has made it easy to shop around. It is very hard to distinguish ourselves in the marketplace as 'different'

Travel industry seen as 'helper' not 'partner'… (air, insurance, visas)

High marketing & business costs

Mission Drift
Many persons interviewed expressed concern over 'Mission Drift' -- losing focus on their core mission.

Shrinking commissions

Particular example from Lumana, Non-profit.
Lumana empowers rural communities through education and entrepreneurship.
Their issue: Insuring in-country Ghana staff.
Insurance quotes represent an insanely high amount of the budget.
$4,000 = price using US insurance Co. (most of that amount is tax)
$220 = finding insurance coverage in Ghana

TRENDS

Lots of competition

Travelers giving on impulse

Smaller donations (often to smaller organizations)*

Smaller travel companies and NGO's have the greatest opportunity to collect on the spot. This has a much different and more impactful "Tug-on-the-Heartstrings"

HOW CAN WE (the travel industry), HELP THE PHILANTHROPY INDUSTRY?

Respect the protectiveness of donor relationships that have been built over time

Travel must have value to the local people and communities… not just to needs of traveler. This value must be weighed against impact on community and burden to staff

Stay away from "Philanthro-washing"

Respect the protectiveness of the people and the communities they work with

Must want to establish a long-term relationship

CONCLUDING THOUGHTS

"*Philanthropy goes way beyond charity. Make sure you (travel industry) are not doing more harm than good*". Cole Hoover, Lumana

"*Its about the intent, quality, and unintended consequences. Are highlighted travel philanthropy solutions the most powerful levers for change, or distractions from more effective approaches? How is money raised being used? How does money raised change the power dynamics. H*.   Jim Coutre, The Philanthropic Initiative

"*Achieve impact! Go Beyond Fluff. There is an urgent need for sustainability, effectiveness and strategic thinking. Much have sustainable 'Vetting'. Do Due Diligence. Tend to your own business practices*."   Maria Fernandez, Philanthropy Indaba