

IABIN LEGAL STATUS ANALYSIS

I. Introduction

During the Fourth IABIN Council Meeting the Secretariat outlined a draft Fundraising Strategy. The idea of obtaining legal status for IABIN as one way to allow it to receive grants was raised. It was also pointed out that it would be a good idea to create an IABIN Foundation in order to qualify for certain kinds of financing.

The Secretariat, with the support of the IEC, was instructed to initiate the proper steps to analyze issues related to getting legal status for IABIN and to carefully consider what steps would be necessary to achieve it.

In following up on the task, some consultation has been carried out with Panamanian Officials, particularly at City of Knowledge, the Ministry of External Affairs, and the Ministry of Government and Justice, as well as with members of Non-Government Organizations. In addition, documentation from the United States Internal Revenue Service (IRS) of the Department of Treasury has been reviewed.

As a result, the present review paper has been produced. It does not consider options for IABIN funds administration that do not involve establishing an independent legal status for IABIN. Those options still need to be identified and analyzed before a decision or fully informed recommendation can be made. This paper includes some background information about the current IABIN situation regarding its legal status, some options that can be used to obtain a legal status, along with the benefits and downsides of following any of these paths, and finally recommendation as to which option listed in this paper is best!

II. Issue

Currently, IABIN (including its Council and Executive Committee) is a network of countries, data providers, and partners and does not have a legal status. Therefore, it is ineligible to enter into formal contracts and directly manage funds. This places some restrictions on IABIN's sustainability aim as it will always depend on other organizations for the management of its resources and to legally represent it.

III. Possible Options to Obtain Legal Status

Review of all available documentation suggests that IABIN could be an:

1. ***A non-profit organization, registered for example under US law, governed by a Board of Trustees with local or international***

members, but that for logistical purposes will benefit from having at least some officials being from the country where incorporation occurs. This could be achieved by becoming a US organization under 501(c)(3) provisions, with an exempt operating status. An organization with a 503(c) tax exempt status include corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific testing for public safety, literary or educational purposes, or amateur sports.

- i. Charitable organizations. Correspond to those organizations that are: a) churches, hospitals, qualified medical research organizations affiliated with hospitals, schools, colleges, and universities; b) have an active program of fundraising and receive contributions from many sources, including the general public, governmental agencies, corporations, private foundations or other public charities; c) receive income from the conduct of activities in furtherance of the organization's exempt purpose; or d) actively function in a supporting relationship to one or more existing public charities.
- ii. Private operating foundation. Typically have a single major source of funding (usually gifts from one family or corporation rather than funding from many sources) and most have as their primary activity the making of grants to other charitable organizations and to individuals, rather than the direct operation of charitable programs.
- iii. A non-government organization. Defined by the Agricultural Risk Protection Act of 2000, as an organization which is interested in preserving land, scenic and open space, and/or fish and wildlife habitat that has 503(c) tax exempt status and receives more than 1/3 of its annual support from gifts, grants, membership fees, or funds unrelated to trade or business.

Benefits:

- This allows IABIN to comply with potential donors requirements of non-profit / 503c status and/or non-profit tax ID for application to grant processes or for completion of grant award sign-up process
- Purchase tax free items for the organization
- Accept donations US\$250.00 or higher, which are tax deductible for the donor (person or company)

Disadvantages:

- A regular annual meeting has to take place and minutes need to be taken, distributed and filed if needed

- Treasurer needs to do paper work, record keeping (including slips of paper and receipts), annual reports etc.
- At the end of the year a tax return needs to be filed to essentially let the IRS know that no profits are being kept
- Conduct audits
- There may be some problem with keeping more than a certain percentage of income from one year to the next

Requirements:

- Applications forms
- Application fee for 501(c)(3) is ca. US\$150.00 filing fee for organizations with less than US\$10,000 income in a year (this may well vary according projected IABIN annual income)
- Ca. 15 day process for application to 501(c)(3) status. However the review process by IRS and final decision may take several months.
- Once the IRS approves the application a State ID number can be obtained
- Lawyers fees (do not have an estimate, but could be costly)
- The Constitutions or bylaws should include at least the following Sections:
 - a. The Inter-American Biodiversity Information Network, Inc., is organized exclusively for the charitable, scientific, literacy, or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or corresponding section of any future federal tax code (hereinafter “Internal Revenue Code”).
 - b. Upon the dissolution of the Inter-American Biodiversity Information Network, Inc., after paying or adequately providing for all debts and obligations of the Inter-American Biodiversity Information Network, Inc., the remaining assets shall be distributed to one or more nonprofit funds, foundations or organizations that have been established for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

2. A Non-Government Organization recognized by the Government of Panama through the Ministry of Government and Justice and / or any other country where register is pursued.

Benefits:

- Allows IABIN to be legally recognized by a national state through a Ministry of Government and Justice Resolution
- Be registered in a Public Register Service as a Legal Entity “Personería Jurídica”
- Enter into negotiations and sign contracts, grants, and other legal documents

- Allows IABIN to comply with potential donors requirements of non-profit status within Panama (not sure about overseas) and for donors to deduct a percentage of donation from their income tax returns
- Set up bank accounts
- Hire and manage personnel
- It is a process that used to be done quickly (3 to 4 months), however, new regulations may make it longer.

Disadvantages:

No real disadvantages are foreseen, except the need to:

- Conduct regular board meetings and kept a register of minutes
- Treasurer needs to do paper work, record keeping (including slips of paper and receipts), annual reports etc in case there is a need to provide or fill an income tax form (not sure about it)
- Conduct audits

Requirements:

- Application
- A constitution stating mission, vision, general purpose and objectives
- A Five year general work plan
- A Board of Directors
- At least 25 members
- A lawyer with power of attorney to represent organization and make all the legal paperwork
- Lawyer's fees and expenses (ca. US\$1,500 to 2,500). There could be some filing fees

3. A International Mission (IM) Status Organization recognized by the Government of Panama through the Ministry of External Affairs and the Head of the Executive branch of government.

Benefits:

- Allows IABIN to be legally recognized by the Government of Panama as an International Mission with all the privileges entitled to and some immunities (although not likely). This is carried out by the Executive Branch of government through a Resolution of the Ministry of External Affairs of Panama signed by the President of the Country and by the Minister of External Affairs.
- Preserves more the international nature of IABIN by recognizing it is formed by many countries, organizations, and partners
- It highlights the nature of IABIN as a international organization seeking to provide biodiversity information for the decision making process throughout the hemisphere and for environmental education
- It gives IABIN recognition as a Legal Entity "Personería Jurídica" that could be, additionally, register in the Public Register

- IABIN could enter into negotiations and sign contracts, grants, and other legal documents
- IABIN could acquire goods and services, be able to administratively and legally represent itself
- Exemption from a broad array of taxes
- Hire and manage local and international personnel
- Exemption for IABIN personnel of immigration restrictions, personal income tax, and others (e.g., car licensing, gas tax, and repatriation taxes)
- Personnel of the Organization receive proper identification documents that accredit their permanence in the country.
- Allows IABIN to comply with potential donors requirements of non-profit status within Panama (not sure about overseas) and for donors to deduct a percentage of donation from their income tax returns **[This whole aspect needs further research]**
- Set up bank accounts
- This process will benefit from the support of City of Knowledge (CoK). They have expressed their interest in supporting this idea. Based on their support and their current leverage at the Ministry of External affairs the process could be fast (4 to 6 months). However, it requires constant follow up.

Disadvantages:

No real disadvantages are foreseen, except the need to:

- Conduct regular board meetings and keep a register of minutes
- Treasurer needs to do paper work, record keeping (including slips of paper and receipts), annual reports etc. As a way of maintaining transparent process it is recommended to submit annual technical and financial reports to Ministry and general public **[This whole aspect needs further research]**
- Carry out annual audits

Requirements:

- Application letter
- A constitution stating mission, vision, general purpose and objectives
- A general work plan to be developed
- Information about Board of Directors and members
- Information about location and staff personnel
- Information about other agreements signed with Government of Panama and / or other entities operating in the country (e.g., City of Knowledge)
- A lawyer with power of attorney to represent organization and make all the legal paperwork
- Lawyer's fees and expenses (ca. US\$1,500 to 2,000). There could be some filing fees.

IV. Analysis of Presented Options

1. Taking into account the benefits and potential drawbacks of all presented options IABIN obtaining Legal Status thru the International Mission option outlined above with the support of City of Knowledge appears to be the best choice. This enables IABIN not only to become a legal entity with all the rights and responsibilities derived from it, but it is seen as the option that better represents and preserves its international nature and goals.
2. Of the options analyzed, incorporation of IABIN as a non-profit organization within the United States allows for individuals, corporations, and foundations based in that country to contribute to IABIN and be able to deduct those contributions from their tax returns. This option, however, involves substantial administrative commitments and, therefore, it is not recommended as the primary option to follow in order to obtain a Legal Status for IABIN. Nevertheless, it could be a second path to be followed once the recommended option is implemented as a complementary venue, if legally possible.
3. The third option recommended is to seek Non-Government Organization recognition. However, this does not have all the advantages of the first recommended option and in furthermore, if pursued, should also be complemented by the second option outlined above.

Notes:

1. An organization can be non-profit and not be 501(c)(3). 501(c)(3) organizations described in IRC Section 501(c)(3) are commonly referred to under the general heading of "charitable organizations" which is different than just a non-profit. Becoming a non-profit is easy and can be done through the state. A non-profit that is not a 501(c)(3) is not eligible to receive tax-deductible contributions (i.e. cannot offer contributors the tax deduction for contributions) but can benefit from all of the other non-profit status benefits.

Non-profit simply means that the entities purpose is something other than making money and that there are no shareholders or stockholders that stand to profit from the entities success. Non-profits can make money and pay salaries etc. just not dividends or profits to owners.

Actually many non-profits are not 501(c)(3). In deciding what path to take it is advisable to talk to a tax expert or a lawyer (in person) the cost and time to get 501(c)(3) status can be significant and may not offer much benefit.

2. A non-profit organization has most of the benefits of a charitable trust but offer better protection against personal liability to its trustees. While becoming and operating a nonprofit corporation requires considerable time and effort, the advantages of this form of legal organization make it the one most groups choose if they require substantial public support, and if they expect their operations to be ongoing. The first step in becoming a corporation is drafting the legal incorporation document –the "certificate" or "articles" of incorporation– and filing the document with the appropriate office within a state government, usually the office of the Secretary of State or Attorney General.

As the articles of incorporation are prepared, it should determine the name of the organization, where the organization will be headquartered, and its overall purpose. When preparing the "purposes clause," it is advisable to state the goals of the organization broadly in order to provide program flexibility in the future, and to not include purposes that will trigger state agency reviews of the proposed incorporation unless the organization in fact plans to conduct those programs.

Prior to the incorporation process, it is also necessary to make a decision whether or not the nonprofit will be a membership organization. Members may have significant rights with respect to internal governance, such as the right to elect and remove directors, vote upon changes in the structure of the organization and amend bylaws. Becoming a membership organization can be beneficial. For example, prominent individuals from existing community groups affiliated with your organization may feel a strong sense of ownership in the effectiveness of the board of directors, and in the overall success of the nonprofit's mission if they are members. However, forming a corporation as a membership corporation also imposes legal obligations in preserving the rights of members to participate in the corporation's governance.

[Source: <http://fdncenter.org/learn/classroom/establish/page01.html>]

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