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**“Managing Legal Considerations
When Operating Internationally”**

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Point of Clarification

The term “affiliate” or “affiliation” as used throughout this presentation is used to describe an indeterminate relationship between two organizations associated for the purpose of accomplishing a shared objective. Because this presentation is not intended to discuss the accounting principles that apply to the relationship between two organizations, these terms are not used as the terms are defined in U.S. generally accepted accounting principles (GAAP) purposes. When used in the context of applying GAAP principles, the term “affiliate” is used when a control relationship in the nature of a parent-subsidary relationship exists.

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- ▼ **How many of your ministries have a central international ministry entity outside of the U.S.?**
 - How do you relate to that entity legally?

- ▼ **For how many of you is your U.S. entity the central ministry entity?**
 - How do you relate to foreign affiliates legally?

- ▼ **To what extent is your international structure one that has just developed ad hoc over time versus a proactive strategic planning process?**

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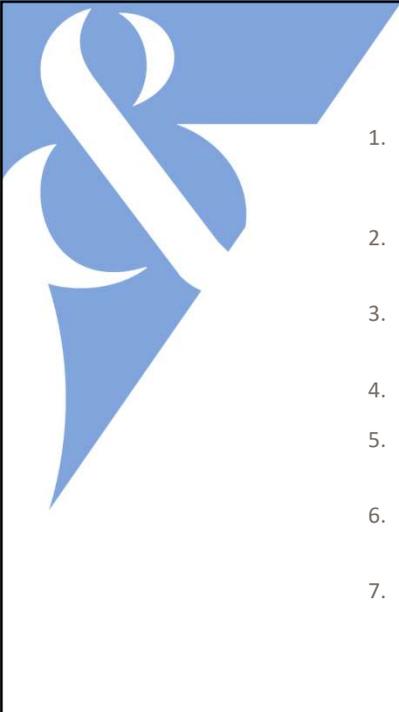


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Factors Impacting International Structure

- ▼ history/origins
- ▼ financial support
- ▼ staffing
- ▼ ministry philosophy
- ▼ control desired
- ▼ legal compliance
- ▼ transfer of funds
- ▼ open vs. restricted/closed countries
- ▼ geopolitical influences
- ▼ staff safety
- ▼ type of activities in-country
- ▼ administrative simplicity
- ▼ administrative costs

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Potential Risks (i.e. What can XYZ Ministry do if ...) ⁷

1. Affiliate moves philosophically or theologically away from XYZ (e.g., differences in code of conduct, variations in statement of faith; “pro-choice” activities, etc.)?
2. Affiliate begins to use XYZ name beyond scope of XYZ activities or in unauthorized ways?
3. Affiliate discontinues affiliation but retains XYZ assets or continues use of name?
4. Affiliate controls trademark registrations in foreign country or countries?
5. Affiliate begins to raise money in U.S. (maybe taking advantage of XYZ’s name or affiliation?)
6. Affiliate does not provide appropriate management or financial accountability to XYZ?
7. Affiliate does not use U.S. grant money for stated purposes?



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Impacting Affiliate Behavior

Types of Legal Control

- governance
- contractual

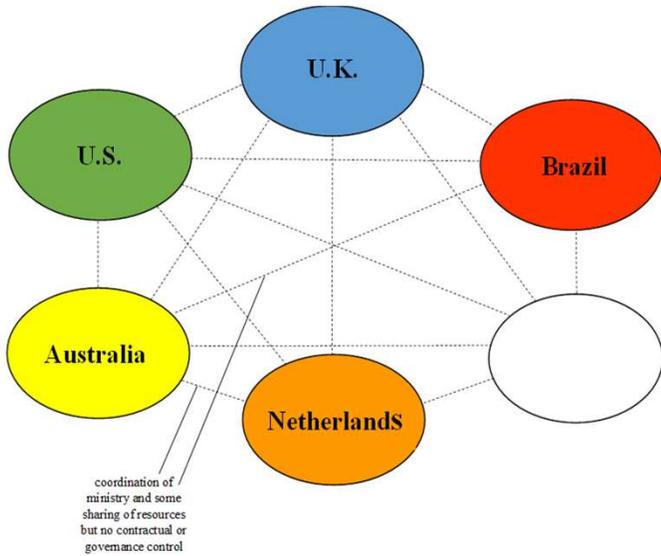
Relational/Spiritual Influence

The Golden Rule





Divisional Model



Loose Affiliation Model



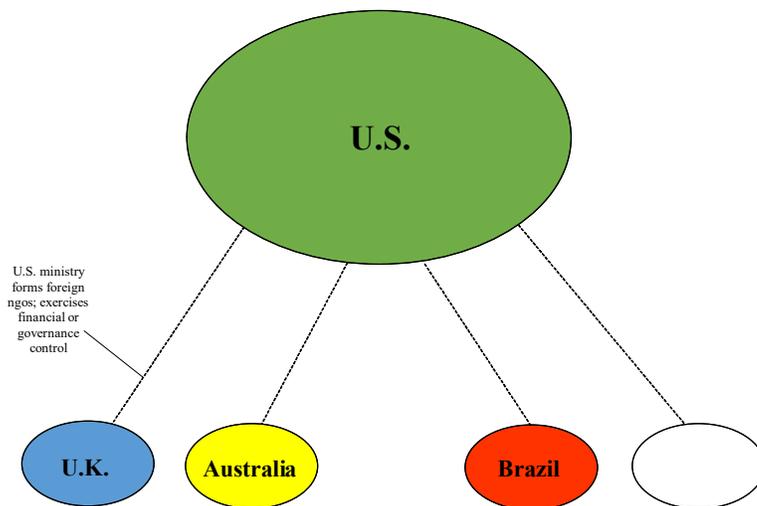
Pros & Cons of Loose Affiliation

PROS:

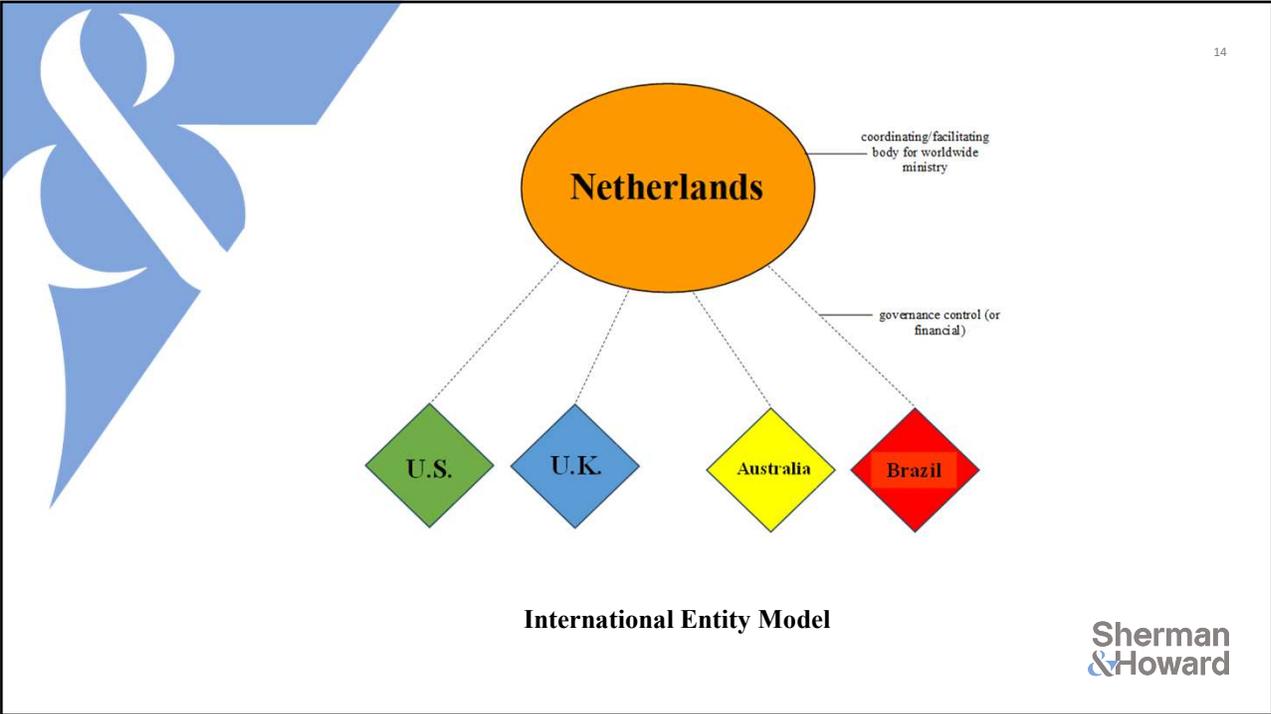
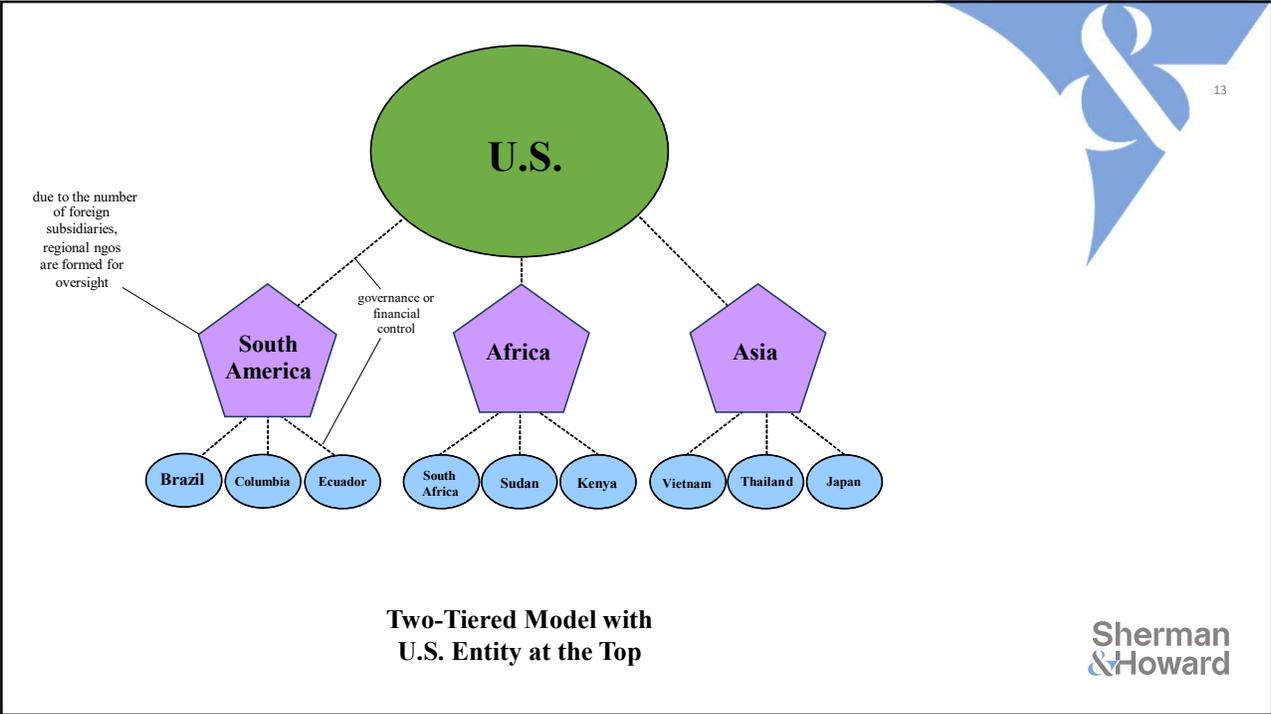
- simple/less expensive
- flexible
- based on trusting relationships

CONS:

- less legal enforceability
- less input/control on key decisions
- “mission drift” more possible
- harder to manage risk



**Tiered Model with U.S.
Entity at the Top**





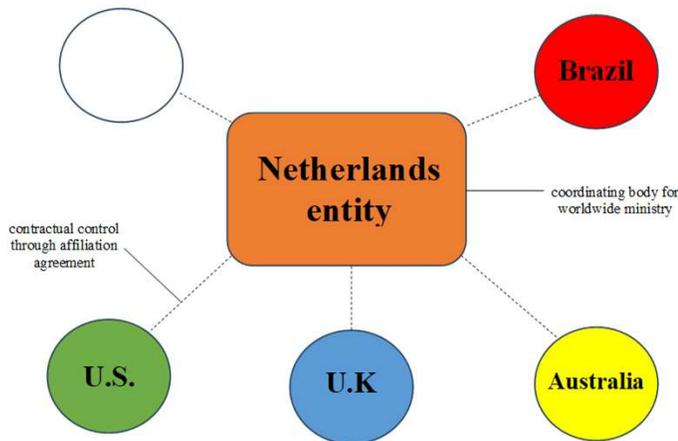
Pros & Cons of More Formalized Structures

PROS:

- “parent” has more control
- control can be enforced legally
- good protection against “mission drift”
- easier to manage risk

CONS:

- more costly and time-consuming
- can be seen as U.S.-centric



Affiliation Agreement Model

Pros & Cons of Affiliation Model

PROS:

- some degree of control (e.g., over IP)
- less costly to administer than more formalized structures
- memorializes values & mission

CONS:

- control must be enforced in court (difficult in 3rd world countries)
- there are wide variations in what is included in the affiliation agreement

Issues to Consider When Forming a Foreign Affiliate

- ngo v. for-profit?
- board composition?
- tax-exempt?
- deductibility of contributions raised in-country?
- “rule of law” followed?
- ease of international banking
- capital projects anticipated (hospitals, schools, orphanages); ownership of real property
- can funding be sent in-country?
- can local donations be exported?
- use expats or foreign nationals?
- visas?
- experienced local counsel?
- is the country Christian – neutral?
- extent of in-country regulation

Possible Affiliation Agreement Terms

- (i) financial reporting and accountability requirements;
- (ii) rights of the U.S. entity to inspect the books and records of the foreign entity;
- (iii) required training levels for staff and volunteers;
- (iv) conduct and belief requirements for staff and volunteers;
- (v) rights for the U.S. entity to receive notice of board meetings and to send a representative to participate in board meetings (and perhaps even to have a representative sit on the board of the foreign entity);
- (vi) term and termination provisions (e.g., identified events that create cause for terminating the agreement, procedures for termination, and disposition of assets upon termination);
- (vii) dispute resolution mechanisms;
- (viii) insurance requirements;
- (ix) hold harmless, release and indemnification provisions;
- (x) license of IP rights; and
- (xi) in-country trademark registrations procedures and requirements.

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Strategic Access

- ▼ **How many of you are working in restricted or closed countries?**
- ▼ **How many of you have formed an “access vehicle” of some type? More than one?**
 - ✔ Where has the access vehicle been formed?
 - in the U.S.?
 - in the closed country itself?
 - in a neutral 3rd country?
- ▼ **How many are using a “BAM” Strategy?**

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Why Form an Access Vehicle?

- access to country
- sustain long-term presence
- visas
- carry on secular charitable activities
- create vehicle for ongoing contact with indigenous people (e.g., coffee shop, ESL)
- provide charitable or educational services as part of holistic approach to ministry (e.g., clean water project, orphanage)
- hire foreign nationals
- access to capital
- safety for expats
- carry on “business” activities
- generate financial support for staff
- create job opportunities in-country

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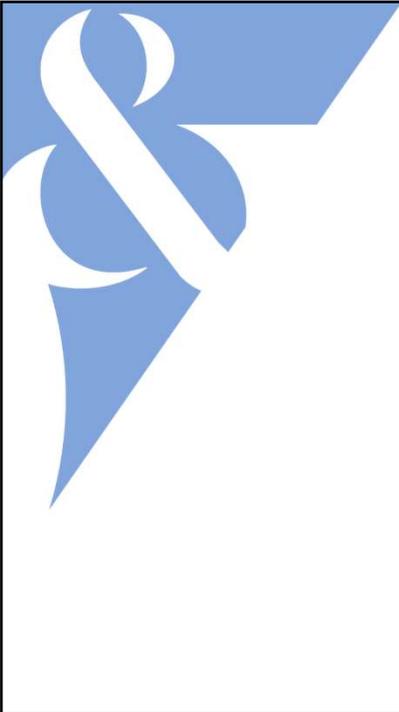
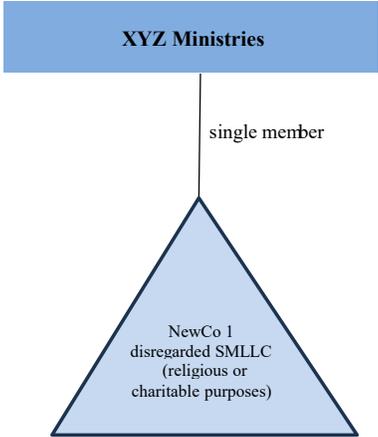
Potential Activities for Strategic Access Vehicles

Qualifying exempt activities	Hybrid activities	For-profit activities
Community relief & development	Medical services consulting	Science/technology
Medical/healthcare	Travel/tourism	Engineering
Schools/scholarships	Education (e.g., high-end computer consulting)	Manufacturing
Social work	Business consulting	IT consulting
Education (schools or literacy)	Agricultural consulting	Research & development
	Health & fitness	Translation services
	Business & life coaching	Marketing
	Media arts	

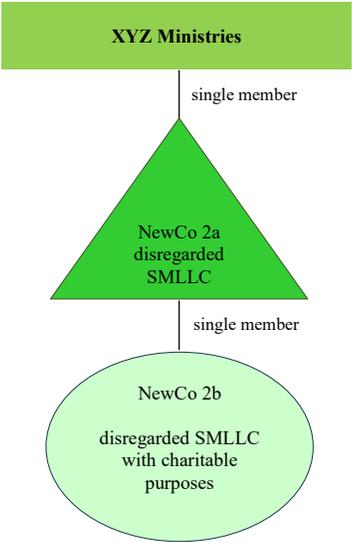
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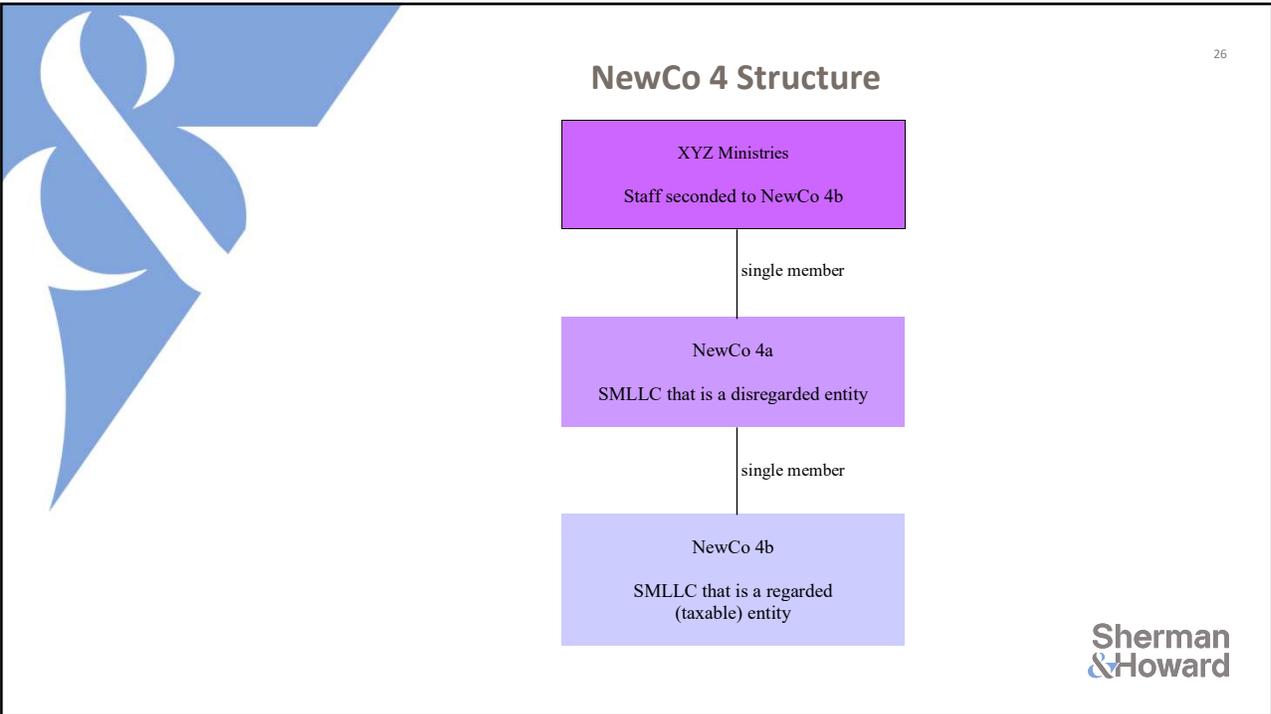
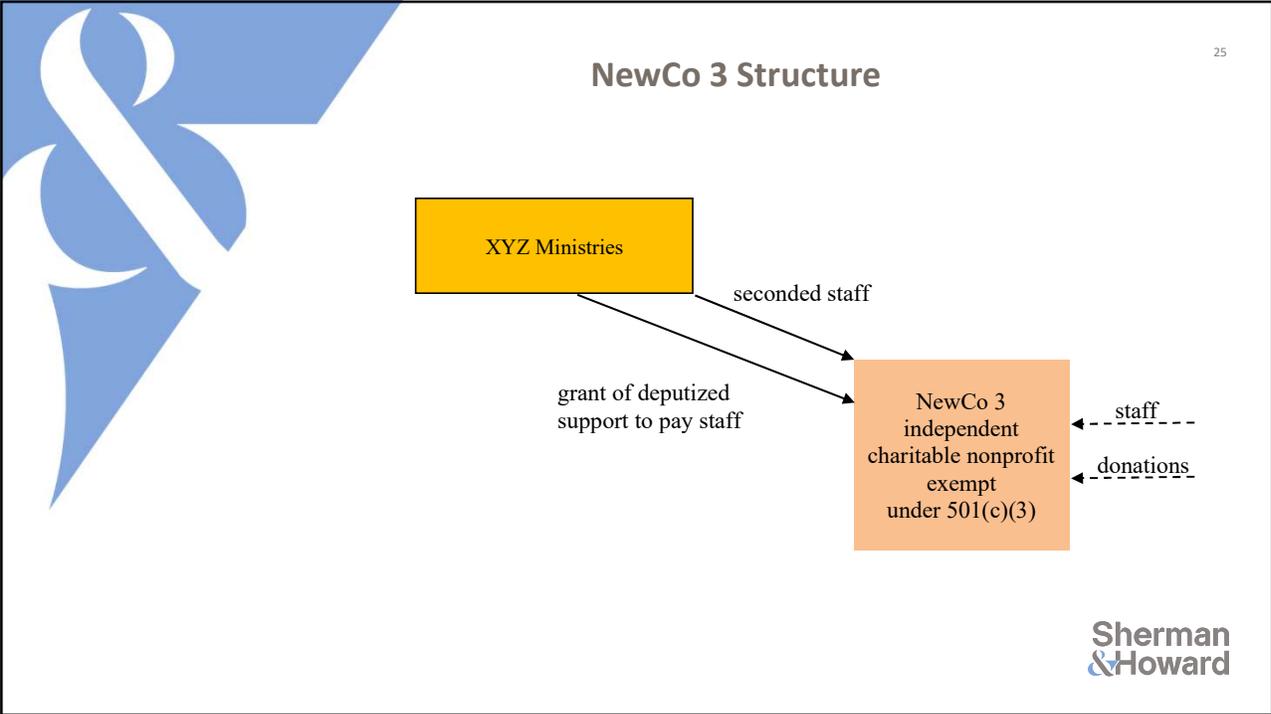


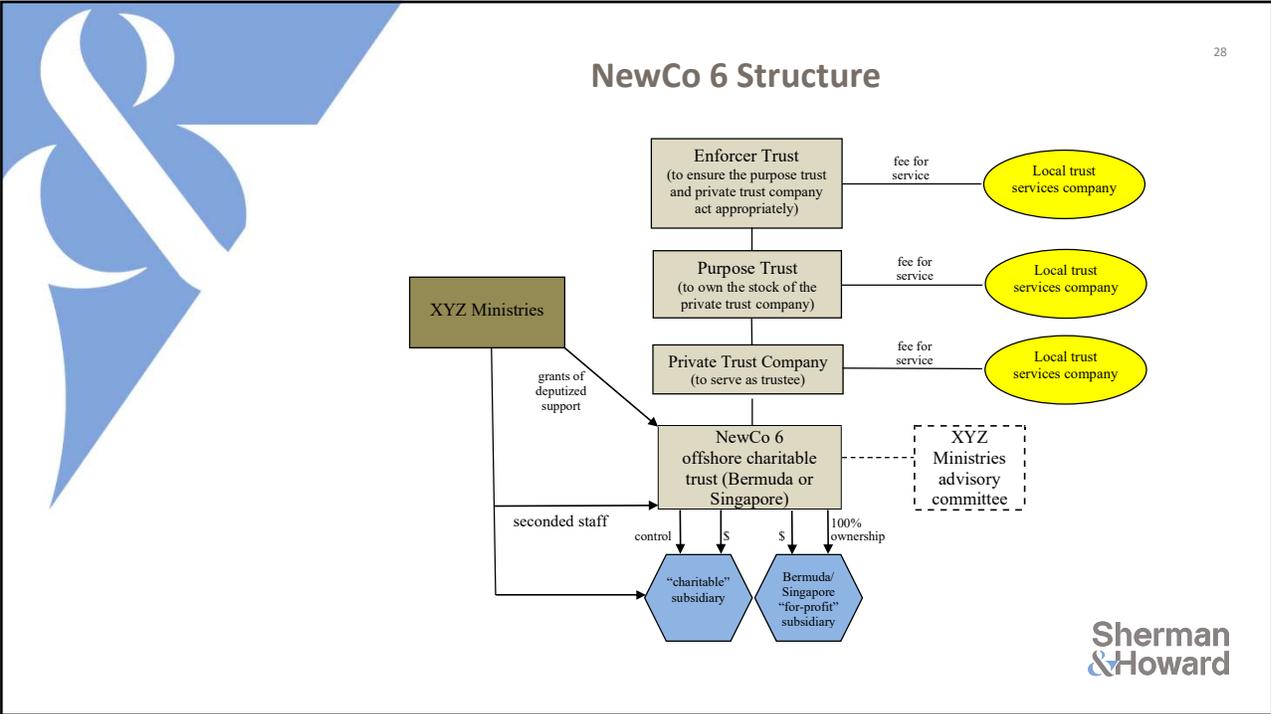
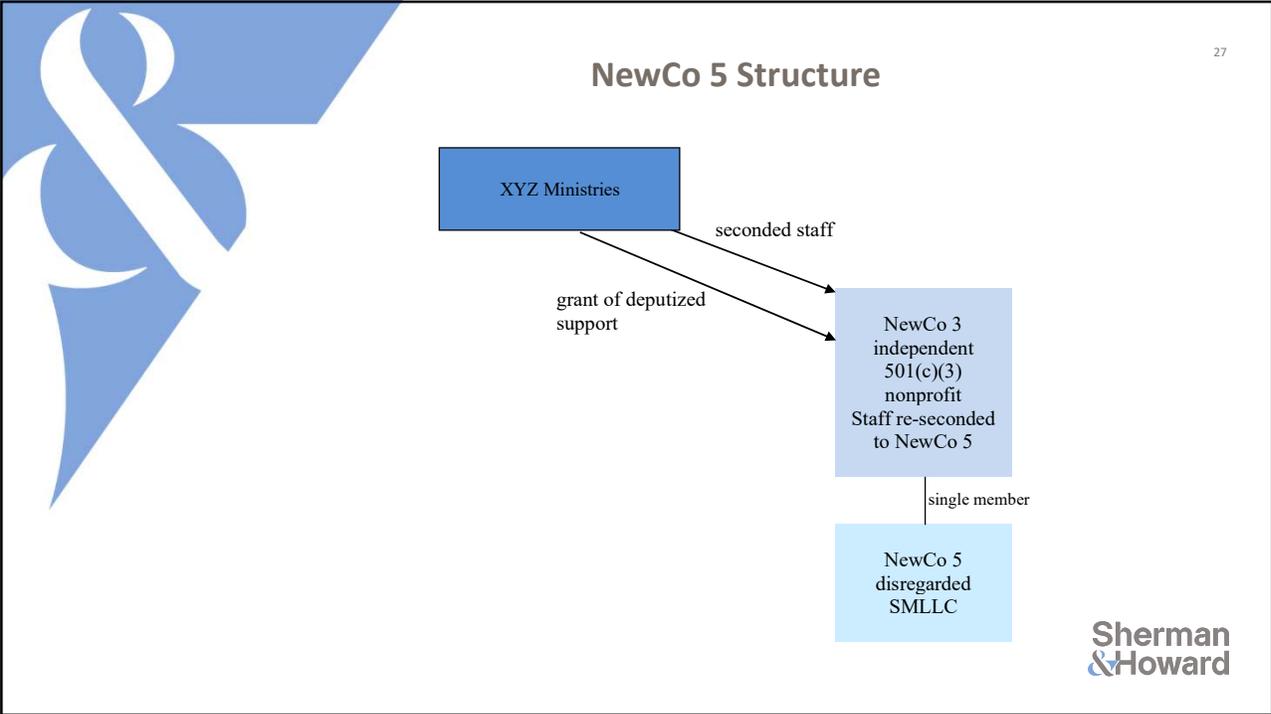
NewCo 1 Structure



NewCo 2 Structure







XYZ Ministries USA – Strategic Access Decision Matrix

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Objectives	Access Vehicle Options					
	NewCo 1 -Disregarded SMLLC -Non-proselytizing religious entity	NewCo 2 -Disregarded SMLLC -Secular charitable activities	NewCo 3 -Independent non-religious 501(c)(3)	NewCo 4 -SMLLC that is taxable	NewCo 5 -Same as NewCo 3 with SMLLC	NewCo 6 -Offshore charitable trust
1. Strengthen & diversify access options	Yes, but perhaps limited utility in Muslim countries	Yes, because non-religious activities carried on	Stronger, because no corporate connection to XYZ Ministries	Yes, because greater separation from XYZ Ministries	Yes, because even greater separation from XYZ Ministries	Yes, to largest degree of the options
2. Continue to compensate staff with deputized funds	Yes, staff seconded to LLC	Yes, staff seconded to LLC	Probably yes, if staff is seconded and grants are made to NewCo 3 for salaries	Presumably yes, but recommend an internal white paper regarding the methodology	Yes, staff seconded to LLC	Yes, staff seconded to charitable trust
3. Continue faith-based hiring standards, training and conduct expectations	Yes, because hiring still by XYZ Ministries	Yes, because hiring still by XYZ Ministries	-Yes, if staff seconded from XYZ Ministries -challenging if NewCo 3 hired its own staff	Yes, but the white paper would be helpful	Yes, because hiring still by XYZ Ministries	Yes, because hiring still by XYZ Ministries
4. Avoid XYZ Ministries owning or conducting a business	Yes, this would be a related activity	Yes, this would be a related activity	Yes, this would be (i) a related activity and (ii) in a separate entity	No, XYZ Ministries would own the business	Yes, because in a separate entity	Yes, because charitable trust would be independent
5. Help facilitate staff safety	Yes	Yes	Yes, but especially if NewCo 3 employs the staff directly	Yes, because clearly for-profit activities carried on	Yes, but especially if NewCo 3 hired its own staff	Yes, to the largest degree of the options
6. Allow staff to present themselves as conducting for-profit activities	Perhaps, depending on the activity	Yes, depending on the activity	Yes, but minimal checking could discover it is actually a nonprofit	Yes	Yes	Yes
7. Protect XYZ Ministries' 501(c)(3) status	Yes	Yes	Yes	Yes, but challenging to transfer deputized funds for salaries	Yes, but potential issues for NewCo 3	Yes
8. Maximize administrative simplicity to the extent possible	The simplest of the options	Reasonably simple	Less simple: unrelated self-perpetuating board, separate financials and 990's; possibly new benefits plans	Less simple: -corporate tax return -separate financials -services agreement or self-sustaining business model needed	Less simple: see notes for NewCo 3 & 4	The most complex and expensive of the options
9. Retain control of entity	Yes, as SM	Yes, as SM	No legal control; indirect control thru friends on the BOD	Yes	No legal control	No legal control (the only "control" is through restricted grants)

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International Grant-Making

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Legal considerations

- IRS – discretion and control
- OFAC – anti-terrorist financing guidelines

Best practices

- Board adopted policy (e.g., use of funds, project evaluation and monitoring, record-keeping and reporting, anti-terrorist financing protocols)
- Written agreements

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Q&A

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