



GEORGETOWN LAW



ASHOKA

## WINDS OF CHANGE

### *How the Yansa Group has Anchored Its Mission of Community Empowerment*

This legal case study explores the organizational structure and governance mechanisms employed by The Yansa Group, a social enterprise that partners with communities to facilitate their direct participation in the development of renewable energy from their collective community assets. Topics discussed include:

- » Anchoring Social Missions with Legal Tools
- » U.K. Community Interest Companies
- » Avoiding Mission Drift Through Corporate Governance
- » Engaging Communities and Mobilizing Community Assets

Bill Cheng and Tiana Hertel, students at Georgetown University Law Center, prepared this case study for Ashoka. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

## INTRODUCING YANSA

By all measures, Sergio Oceransky should have been a distrusted outsider to the indigenous Zapotec community in Ixtepec, located in the Isthmus of Tehuantepec in Oaxaca, Mexico. Having grown up in Spain and studied in Germany, Sergio came to Ixtepec from distant European countries whose corporations have coveted and exploited Oaxaca's rich potential in wind energy. A humble, unassuming man, Sergio toiled for four years learning about the region's struggles while gradually earning the trust of the whole community. He showed the community that he cared not merely about their wind-rich land, but more importantly, about them and their long-term prosperity. In October 2011, standing before an assembly of the local indigenous decision-making body, about 200 people in all, he secured the assembly's unanimous approval of a community-controlled wind farm development partnership between the communities of Ixtepec and Yansa, the organization that he launched to bring long-term, self-sufficient sustainable development to marginalized communities. The conviction in his eyes and the warmth of his voice made the work seem easy: in a span of six seconds—the amount of time that it took for all 200 hands to rise in support of his proposal—Sergio saw the fruits of two and a half years of hard work, but he also knew that many more years of diligence and challenges awaited.



<https://www.youtube.com/watch?v=6prYIiA5CtQ>, as of 10/26/2013

Yansa<sup>1</sup> is not an ordinary wind farm developer—it focuses on galvanizing marginalized communities at the grassroots level to empower them through the development of a self-sustaining income from the wind farm partnership. “Yansa” is the goddess of wind in the Yoruba tradition, and the organization adopted her name to symbolize its aspiration to use the raw power of nature to effect positive social change. To this end, Yansa aims to partner with cash-poor, but wind-rich communities to help them realize their full potential and embark on long-term sustainable development by providing the necessary technology, funding, and resources to build community wind farms. Yansa consists of several organizational components to bring about this paradigmatic shift in approaching community-based renewable energy projects in a principled way.

First, to ensure the organization's commitment to its social mission, the Yansa Leadership has deposited the bulk of its technical assets and knowledge into a Community Interest Company (“Yansa CIC”), a special form of legal entity in the United Kingdom that allows the organization to lock in its assets for its social mission and gives stakeholders greater power to compel regulatory oversight if the organization strays from its mission. Second, Yansa has also set up a 501(c)(3) organization (“Yansa Foundation”) in the United States to drive its educational, fundraising, and human development work. Yansa Foundation's two-tiered governance structure is designed to incorporate community members and experts in the field directly into the most senior ranks of the organization, giving them a low-risk, high-reward opportunity to participate in guiding the development and evolution of Yansa's social mission. The final piece of the puzzle

<sup>1</sup> Yansa is currently comprised of two distinct legal entities: Yansa CIC and Yansa Foundation. The two organizations have an informal relationship (i.e. there is no legal relationship between them), and the Yansa Leadership, comprised of Sergio Oceransky and a team of dedicated social entrepreneurs, currently guides both Yansa CIC and Yansa Foundation. Eventually, a Project CIC will be formed for each specific project's operating company.

Yansa's formal legal entities in Mexico have not been set up; however, in the course of its consultation with the local communities, Yansa has developed a tentative but concrete plan to structure its operations in Mexico. Similarly, Yansa's relationship with the community has thus far been informal, with Sergio acting as the primary link between the two. The relationship could be formalized in a Memorandum of Understanding or Joint-Venture Agreement when the Project CIC is established. Yansa's plans in Mexico are discussed in further detail later in this case study.

lies at the grassroots level, on the ground in Mexico. In conjunction with Yansa, the indigenous community now has the opportunity to leverage its communal land ownership structure to enable it to capitalize on its abundant wind resource using the same tools as multinational corporations in a collaborative rather than adversarial way, allowing it to compete on more even footing with these multinational corporations.

## The Problem in Oaxaca

European energy companies have been eyeing the Isthmus of Tehuantepec, near Ixtepec, for development of large-scale wind farms.



The area is home to numerous indigenous groups (including the Zapotecs, Huaves, Ikojts, and Zoques), and much of the recent wind farm development has occurred on their land. These local communities are often marginalized or ignored in the development process by European energy companies and the Comisión Federal de Electricidad (“CFE”), Mexico’s state-owned electricity utility that is charged with broad powers to regulate and develop the national electric industry. Many of these European corporations have managed

to secure development contracts that marginalize local communities. The CFE often negotiates directly with these corporations over the fate of indigenous lands without consultation with the local communities, ignoring the fact that failure to obtain land use rights from the indigenous communities constitutes a violation of the Mexican constitution. Furthermore, the CFE has allocated communities’ land in a way that effectively creates territorial monopolies for many companies, thereby further reducing each community’s options and bargaining power in the process. There also exists an asymmetry of information between the communities and the energy companies about the potential value of wind energy. Not only do the local communities often not know how much a company should pay to use their land, this asymmetry of information continues throughout the term of a contract, as a turbine’s production value, which is used to calculate the appropriate payment to the community, is self-reported by the company without third party verification. Furthermore, most contracts restrict how local residents can use their own land. Land usage leases can extend up to thirty years and can be renewed by the companies at their sole discretion. During the terms of these contracts, companies have effective territorial control and decide the terms under which a community may use its own territory.

The adversity described above is not unique to the Isthmus of Oaxaca, and what follows is a story of empowerment that can inspire elsewhere. Though Yansa lacks the kinds of financial resources that large European corporations command, through years of Sergio’s grassroots trust-building efforts, it is the only wind energy developer in the region that has access to the region’s most valuable resource—its people. Through its partnership with the communities of Ixtepec, Yansa aspires to change the wind-energy landscape through joint action and active community participation at every step along the way, eventually reinvesting returns from the Isthmus’s wind power back into the community. To realize this dream, Yansa’s tripartite legal toolkit provides a framework for the progression of Sergio’s vision: the CIC in the U.K. allows Yansa to commit fully to its social mission, the 501(c)(3) nonprofit in the U.S. allows Yansa to grow and evolve its social mission, and the groundwork in Mexico culminates in the kind of participatory sustainable development that Yansa embraces and aspires to achieve.

## COMMITTING AND ANCHORING THE SOCIAL MISSION BY FOUNDING A COMMUNITY INTEREST COMPANY (CIC)

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Sergio's colorful life experiences have enabled him to balance pragmatism with visionary social activism. He understands that ideas and inspiration can often fizzle without a practicable real-world plan and that the initial implementation of an idea has long-lasting effects on the idea's development and ultimate success. Upon identifying the problem in Oaxaca and envisioning Yansa's solution to this problem, Sergio set out to find a way to lay down a strong foundation upon which to build his work. The creation of Yansa CIC, an English Community Interest Company, reflects this principled approach to realizing social change. Yansa CIC is the oldest component of Yansa and serves the crucial function of anchoring the bulk of Yansa's technical, project management, and knowledge-based assets for the pursuit of its social mission.

The Community Interest Company is a special classification found across the U.K. for limited companies. It was developed to address the lack of a legal vehicle for social enterprises with revenue generating operations, and is intended to be attractive to investors seeking community, social, or environmental benefits alongside financial returns over long periods—investors whose interests cannot be entirely satisfied by either traditional charities or ordinary for-profit companies. To fulfill its purpose as a middle ground for social investors, unlike for-profit companies that are set up primarily to provide returns to shareholders, a CIC must carry out activities that fulfill a community purpose and evidence this fulfillment through annual reports that document how the CIC pursued this interest, involved its stakeholders, and paid its directors and members. In this way, the CIC strikes a balance between charities and ordinary for-profit companies. A charity receives tax benefits at the cost of stringent regulation, and an ordinary for-profit company has a high degree of flexibility at the risk of undermining its social purpose where one exists. On the other hand, the CIC form provides three key features to safeguard an organization's social mission with non-disruptive regulatory oversight: an asset lock, independent regulatory oversight, and branding advantages.

## Locking in Assets for the Social Mission

A CIC's first aspect that allows an organization to anchor its social mission is that it is an "asset-locked" entity: all assets must be used for the community purpose, and profits may not be distributed to members except in certain circumstances. If the CIC is wound up, its assets must be transferred to another similarly asset-locked body such as another CIC or a charity, and any asset that is sold must be sold for market value and the proceeds must be used for the community purpose. Cash reserves built up out of profits are available for the benefit of the community or reinvestment in the business. While it is permissible for a CIC to pay its officers and directors, salaries are regulated to ensure that they are not excessive, a legal restriction that reassures many socially-minded financiers and helps to avoid some of the executive compensation controversies that have befallen charities in recent years.

### YANSA CIC OBJECTIVES

1. Promote the development and use of renewable energies and sustainable development;
2. Engage in the manufacture of renewable energy equipment;
3. Work with community-based organizations by providing access to renewable energy technologies and training, promoting sustainable use of natural resources, and supporting participatory and democratic processes within communities;
4. Support the work of nonprofit technology centers; and
5. Raise awareness about challenges facing our planet and how to overcome them through positive solutions.

In the case of Yansa CIC, the company has stated five community interest objectives in its incorporation document that revolve around Yansa’s technical assets and knowledge. These objectives, in the context of the CIC’s asset lock, ensure that Yansa’s considerable amount of technology and know-how are committed to the organization’s broader social mission.

## Meaningful Oversight by Stakeholders and the CIC Regulator

The CIC’s second aspect that allows Yansa to anchor its social mission is a capable and meaningful enforcement mechanism that prevents the organization from straying from its social mission. Where there is legitimate cause to believe that a CIC is not pursuing its stated community purpose, the CIC Regulator, after thorough investigation and careful consideration, has certain prescribed powers that are “necessary to maintain confidence in CICs,” including the power to remove directors and confiscate assets. The CIC Regulator’s role is primarily to ensure compliance with CIC-specific features—concerns about activities such as fraud and misconduct are still primarily handled by the Complaint Investigations Bureau. The CIC, nevertheless, is intended to be regulated with a light touch, unlike the stringent oversight for charities—there has been little evidence of the Regulator interfering in the affairs of CICs, and the Regulator responds only to complaints that are supported by evidence. This is not to say that the Regulator is lax or ineffective—the Regulator routinely reviews CICs’ reports and filings to ensure compliance and may appoint independent auditors to assist its work. The primary intent of this restrained and distributed enforcement mechanism is to minimize unnecessary restrictions on a CIC’s activities based on scant evidence while providing a voice to a larger pool of interested parties. Whereas board directors of a traditional for-profit corporation are legally accountable primarily to the corporation’s shareholders, anyone may compel regulatory oversight where evidence exists to suggest that a CIC has strayed from its social mission. In Yansa CIC’s and future Project CICs’ cases, this means that investors are not the only ones who have the power to ensure that the organization follows its stated mission and purpose; members of the indigenous communities may compel oversight as well. Furthermore, the complaint process is publicized on the CIC’s website and the steps and required documents are clearly described to ensure that the process is accessible to everyone.

## Branding the Organization as a Committed Social Enterprise

The CIC’s final aspect that allows organizations to anchor a social mission is the branding effect. Due to its social mission and the functional tools available to protect this mission, the CIC is designed to attract so-called “impact” investors looking for modest rates of financial return, often over long periods, together with social benefits. The intention is that these kinds of investors will see the choice of the CIC form as a sign that an organization is an attractive investment. As its social purpose is protected, the CIC is also capable of attracting the kind of grant-funding that is traditionally directed to charities. Indeed, Sergio has stated that one of the reasons that Yansa launched as a CIC was at once pragmatic and principled: to ensure a long-term commitment to its social mission, Yansa needed to attract impact investors who believed in its mission as supporters and partners. It should be noted that there has been no empirical study on the CIC’s effectiveness as a branding tool; nevertheless, anecdotal evidence suggests that a noticeable branding effect exists for other types of socially focused entities such as the Benefit Corporation and the Certified B-Corp in the U.S. This is an encouraging sign that the CIC’s branding effect will grow as it becomes better known and better recognized as a valuable tool for social entrepreneurs.

### YANSA’S TWO-TIERED MEMBERSHIP STRUCTURE: DEVELOPING AND EVOLVING THE SOCIAL MISSION THROUGH CORPORATE GOVERNANCE

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After Yansa CIC was created in the U.K., the Yansa Leadership determined that Yansa needed to expand into the United States and needed to fund charitable work, such as outreach, education, and fundraising. While the research and development for the wind farm was operating smoothly through the CIC, Yansa needed to use donations to fund its charitable work in Oaxaca. Since a CIC cannot obtain charitable status, making donations to a CIC non-tax deductible, Yansa formed a tax-exempt 501(c)(3) nonprofit to attract more potential donations: Yansa Foundation<sup>2</sup>.

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<sup>2</sup> Yansa Foundation is a public charity and not a private foundation under U.S. law.

On December 11, 2009, the Certificate of Incorporation for Yansa Foundation was filed in New York. The motivating factor for deciding to form Yansa Foundation and establish a presence in the U.S. was the potential donor base—renewable energy and community projects in Mexico attract many American donors. Donors located in the U.S. are familiar with the 501(c)(3) form and the tax consequences of donation. Additionally, the relative geographic proximity and interest from supporters of Yansa Foundation in New York fueled the decision to move Yansa into the U.S. Eventually, Yansa aims to establish a similar nonprofit entity in Mexico to encourage more local donor participation.

#### WHY CREATE A U.S. NONPROFIT

- » Easier to mobilize funding for Mexico-based projects from U.S. donors
- » U.S. donors are familiar with 501(c)(3) organizations
- » Critical mass of people interested in working on Yansa's mission
- » Geographically closer to Mexico-based projects
- » Need for an outlet for charitable work of the organization

The bylaws that Yansa Foundation adopted struck a balance between incorporating all interested community constituencies and maintaining some level of control by the founders at the early stages of project development. From the onset, Sergio wanted to include community members in Yansa Foundation's governance to ensure that the organization would act in furtherance and in response to the communities of Ixtepec; eventually the intention is to have the original Yansa Leadership entirely removed from governance, leaving Yansa Foundation in new hands. The primary concerns when forming the governance structure were (1) burdening community members, and most importantly, (2) avoiding mission drift. To accommodate the two goals of community involvement and long-term mission integrity, lawyers proposed a two-tiered membership structure consisting of a Board of Directors and a Board of Trustees.

## Problem 1: Traditional Director Duties, A Burden to Community Members?

The first issue presented by including community members in the governance of Yansa Foundation was the potential burdens that this responsibility might impose. Under New York State nonprofit law, directors owe fiduciary duties to the nonprofit and have the attendant liability for any breach of duty. If a director does not act in accordance with these duties, he or she can be liable for damages under state law; depending on the type of action in question, liability can be individual or collective. Traditionally, organizations shelter directors from liability through indemnification, insurance, or immunity.

- » Duty of Care: board members must monitor the nonprofit's activities, see that its mission is being accomplished, and guard its financial resources
- » Duty of Loyalty: board members must put the organization's interest before personal interest
- » Duty of Obedience: board members must comply with laws and guard the organization's mission (the duty of obedience is recognized in some jurisdictions, including New York State, but not all U.S. jurisdictions).

A major principle of corporate governance is that the board of directors of a nonprofit must actively manage the organization. This responsibility, derived from the fiduciary duty of care, encompasses everything from maintaining financial accountability of the organization to hiring management.

As regulators have become more aggressive in demanding high levels of involvement from both nonprofit and for-profit boards in the wake of financial scandals in the U.S., nonprofits have rethought the director's role, and Yansa Foundation aims to adhere to industry best practices, which require a director to:

- » Formulate key corporate policies and strategic goals;
- » Be familiar with the business model and sector;
- » Maintain effective oversight mechanisms;
- » Develop and advance the organization's mission;
- » Maintain tax-exempt status;
- » Control and allocate resources, oversee the budget;
- » Authorize major transactions;
- » Mentor and guide senior management.

The Yansa Leadership was concerned that including community members in Yansa Foundation's formal governance structure (i.e. the Board of Directors) would be overly burdensome. Aside from potential liability exposure, Directors manage a large amount of complicated information, requiring significant time and effort. Sergio hopes to recruit "extraordinary people" to oversee Yansa Foundation's future, and typically these kinds of visionaries are in high demand and have busy schedules; therefore, to attract the most qualified members, Yansa Foundation needed to minimize the burdens of participating in governance.

## Problem 2: Mission Drift

All organizations are driven by a mission – a clear statement of purpose and direction for everyone from directors to employees. "Mission Drift" occurs when an entity moves away from the stated mission, and it can be intentional or inadvertent. This concern is especially prevalent when founders aim to entrust the organization to others after it becomes fully operational. Mission drift can lead to inefficient operation, failure to impact the intended community, and failure to reach long-term goals.

The Yansa Leadership was concerned about mission drift after the founders exited from any oversight role. The self-regulating nature of nonprofit boards could potentially allow self-interested Directors to derail the long-term mission of Yansa Foundation. Indeed, without proper safeguards and limitations on authority in place, Directors could ignore the aspirational intentions of Yansa Foundation's mission (expanding the organization's model into new communities) by focusing the organization's resources on the existing communities represented on the Board of Directors. Everyone involved wanted to ensure that Yansa Foundation would be just as effective and mission-conscious in the future without its original leadership.

## The Solution: A Two-Tiered Membership Structure

The Yansa Leadership wanted to adhere to Yansa Foundation's mission by formally integrating community members and community organizers<sup>3</sup> into the decision-making process. Not only did the Yansa Leadership believe that this is the best way to have the community shape Yansa Foundation's continual development and evolution, it also gives the community a sense of ownership in the organization. At the same time, the Yansa Leadership wanted to ensure that the duties, responsibilities, and potential liability associated with boards of directors do not pose a significant barrier or burden to community members' involvement in this process. Most importantly, the Yansa Leadership wanted to create a governance structure that would anchor the organization's mission and ensure that the Board of Directors in the future would not facilitate mission drift.

The lawyers working with Yansa Foundation proposed a two-tiered membership system to resolve the concerns implicated by having community members participate in governance. By creating the Board of Trustees as an additional class of membership in Yansa Foundation, legal counsel allowed more community

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<sup>3</sup> The Yansa Leadership defines a "community organizer" as someone who has built a wide reputation through life-long engagement with community empowerment. These individuals may not work with the specific community that Yansa partners with, but because of their valuable perspective, community organizers can provide meaningful long-term perspective for Yansa Foundation.

members to be formally involved in governance without the onerous burdens that come with serving as a Director. This structure was written directly into Yansa Foundation’s bylaws: the Board of Directors acts as a traditional board with all the traditional powers and duties of a board of directors under New York law, and the Board Trustees, in contrast, acts as an advisory body of non-Director members and has specifically enumerated powers and responsibilities of oversight over the Board of Directors.

	BOARD OF TRUSTEES	BOARD OF DIRECTORS
Characterization	Advisory Body	Traditional Board
Powers and Duties as Directors under New York Law		» Manage Yansa Foundation’s affairs and property
Powers and Duties as Members under Bylaws	» Review and approve Foundation Strategy » Elect Directors » Nominate and Elect Trustees » Remove Directors	» Produce Foundation Strategy and regular updates for Trustee Approval » Nominate new directors
Major Differences	Meetings only every 2 years  Maximum tenure: 18 years  Specifically enumerated powers	Annual meetings  Maximum tenure: unlimited  Duties of active management, writing Foundation Strategy

The two-tiered membership structure also addresses the second concern of mission drift by establishing the Board of Trustees as an oversight body. To keep the Board of Directors acting in line with Yansa Foundation’s mission, Trustees ratify the Foundation Strategy and have control over Board membership. While Trustees are not rigorously involved, their occasional examination of Yansa Foundation’s operations and Board membership serves as an important safeguard against mission drift, either intentional or inadvertent. Additionally, legal counsel established structural safeguards to ensure that any community members seeking to engage in self-dealing could not derail Yansa Foundation’s mission. Having collective action through majority voting requirements ensures that no single person could control decisions, thereby preventing any self-interested action by one community. Another structural safeguard used was the selection method for Trustees, where either Directors or Trustees can nominate candidates, and the

majority of the Trustees must then elect a new member. Sergio is confident that this self-perpetuating governance structure will create a chain of trust by allowing existing members to identify individuals who they believe will serve Yansa’s mission, and who will in turn select other like-minded individuals.

While the two-tiered solution may seem obvious in hindsight, the legal team working with the Yansa Leadership also considered a number of other control mechanisms before proposing the dual-membership structure that was ultimately selected. Each one strikes a different balance between the two goals of community-involvement and long-term mission integrity:

- » Golden Boat – the founding members maintain control in perpetuity, with the ability to transfer their leadership. Lawyers and the Yansa Leadership rejected this structure because it put too much emphasis on control mechanisms while derogating the principle of equality for everyone.
- » Trump Vote – the founding members possess a determinative vote, allowing them to stop any action by Yansa if they disagree with it. This structure was rejected for similar reasons as the Golden Boat; it maintained too much power in the founders while potentially alienating community members with the auspice of heavy-handed control.
- » Community Veto – each community would have the ability to prevent any action by Yansa Foundation. Lawyers and the Yansa Leadership rejected this governance structure because it put too much power in the hands of possibly self-interested communities that may be tempted to act for the interest of the individual community rather than Yansa as whole. Additionally, a community veto could contribute to stalemate and dysfunction.

Going forward, the two classes of members of Yansa Foundation will work in tandem, with the Directors taking responsibility for traditional operational matters and formulating the Foundation Strategy, while the Trustees maintain oversight to avoid mission drift without substantial burdens.

## REALIZING COMMUNITY EMPOWERMENT BY LEVERAGING COMMUNITY ASSETS

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With the large-scale organizational structure in place, Yansa is now focused on realizing Sergio's vision of a sustainable community wind farm in the Oaxacan Isthmus. One of Yansa's most important legal tools in its fight to empower the indigenous and holistic communities of Ixtepec is the leveraging of community assets held by the indigenous population—i.e., the land held in collective ownership. By recognizing the power of collective ownership, Yansa strives to eliminate the inherent disadvantage of cash-poor but wind-rich communities. Under the Mexican Constitution, indigenous groups including those in the Oaxacan Isthmus were collectively granted autonomous land rights, to be managed by the official governing body of each indigenous community—the Assemblies. This land ownership is the largest asset of many of the rural, indigenous communities that Yansa works with, especially in locations like Ixtepec where the land grants access to natural resources like the wind.

In order for any company to build a wind farm in the wind-rich Isthmus, a developer must obtain land use rights. Traditionally, this transaction was predicated on a previous deal between the foreign developer and CFE, ignoring indigenous land rights guaranteed under the Mexican Constitution. Yansa is unique in their inclusion of indigenous communities not just from a social or ethical standpoint, but also because such community involvement is a key component of its business model. Unlike previous developers, Yansa has opted to follow all formal and informal legal and regulatory processes to establish and develop the wind farm. This requires a “community consultation” at every stage in the development process. While this approach requires significant upfront cost and time, it provides a valuable return in the long run—Yansa's partners and investors are assured that the appropriate legal and regulatory process was followed, and that the community supports the proposed wind farm development. Adhering to “community consultation” thus reduces legal and regulatory risks, and attracts potential investors. This illustrates how social and business goals are not mutually exclusive. By securing the full backing of the community, Yansa is positioned to be a true long-term partner in sustainable development and attract the investment that such social business methods accord.

Indigenous groups often do not have access to capital to reinvest in their own communities. By working with the Assembly that already manages collective land rights, Yansa is able to utilize this large asset to connect the communities of Ixtepec with investors and developers, eventually generating long-term benefits for the community. Indigenous land rights cannot be sold or transferred, but the Assembly can authorize a long-term lease that is sufficiently valuable for investment and development. Because the Assembly controls vast amounts of land, the transaction costs of obtaining the leases for the footprint of the wind farm are greatly reduced.

With Yansa's assistance, the Ixtepec community will be a model of how to use collective ownership interest to create a future income that will enrich an entire area. After the Assembly unanimously approved moving forward with the wind farm project, the potential partnership between the Zapotec people and Yansa will permit the organization to leverage the valuable land rights on behalf of this community. Clear and unfettered access to the land allows the partnership between Yansa and the community to begin to compete with the large corporations that have millions of dollars to funnel into the development stage of a wind farm. In the long term, community participation facilitates project development by eliminating tension, and the wind farm will give the communities of Ixtepec a sustainable source of income, empowering the indigenous and holistic communities.

## THE FIDEICOMISO: A LEGAL TOOL ANCHORING YANSA'S MISSION

Mexico has adopted a modified form of the U.S. irrevocable trust, called the fideicomiso. While typically applied in the real estate context, the lawyers working with Yansa envisioned using this traditional legal form to disburse eventual profits received from the wind farm. The fideicomiso is just one part of the eventual operational structure of Yansa that will enable the community to transform their land ownership and access to resources into a sustainable income stream.

Yansa wants to ensure that the money generated by the wind farm directly serves the community, without any danger of mission drift. The concern was mainly about self-interested individuals gaining control over the disbursement, effectively disrupting the collective benefit intended by Yansa. A number of features of the fideicomiso attracted Sergio and legal counsel, namely:

- » A fideicomiso can be irrevocable or terminated only with the consent of the beneficiaries
- » The terms of the fideicomiso (terms of trust) that guide disbursement by the fiduciary official are established at the onset and cannot be modified without substantial agreement

These two qualities of Mexico's version of the common law trust led Yansa's lawyers to believe that putting profits allocated to the community into a fideicomiso will maximize the benefits for the holistic Ixtepec population. The clear principles laid out in the terms of the fideicomiso will reflect Yansa's mission, and these legally enforceable guidelines will perpetuate community benefit without concern for selfish interests or mission drift.

## A PARTNERSHIP FOR SUSTAINABLE DEVELOPMENT

Yansa's synergy with the communities of Ixtepec is a lesson in the power of integrating local people into a renewable energy development project. Sergio saw the marginalization of indigenous people in the Oaxacan Isthmus, and envisioned a way to not just involve the local community, but to empower them. From the beginning, Yansa has aimed to create a viable solution with community input, tapping into the collective consciousness of a disenfranchised community. Legal tools were one small piece of this inspiring story, and ultimately Yansa's story is one about people not the law.



**ASHOKA INNOVATORS FOR THE PUBLIC**

## FURTHER INFORMATION

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This case study was produced for Ashoka by law students at Georgetown University Law Center as part of credit-bearing classwork during the Spring 2013 semester. This case study seeks to illuminate the way in which laws can be navigated and employed for the benefit of social enterprise.

Please contact [socialenterprise@law.georgetown.edu](mailto:socialenterprise@law.georgetown.edu) with questions or comments.

- » Visit [www.yansa.org](http://www.yansa.org) for more information about Yansa.
- » Visit [www.ashoka.org](http://www.ashoka.org) for more information about Ashoka.
- » Visit [www.socialenterprise-gulaw.org](http://www.socialenterprise-gulaw.org) for more information about social enterprise at Georgetown University Law Center.
- » Visit [www.bis.gov.uk/cicregulator](http://www.bis.gov.uk/cicregulator) for more information about the CIC corporate form in the U.K.

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