



# KUWAIT

## Philanthropy Law Report



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# KUWAIT

## PHILANTHROPY LAW REPORT

KEY INDICATORS <sup>1</sup>	
POPULATION	2,832,776 (2016 estimate)
CAPITAL	Kuwait City
TYPE OF GOVERNMENT	Constitutional Monarchy
GDP (PURCHASING POWER PARITY)	\$301.1 billion (2016 estimate)
GDP PER CAPITA	\$71,300 (2016 estimate)
GDP – REAL GROWTH RATE	2.5% (2016 estimate)

## Introduction

The legal framework in Kuwait for civil society and nonprofit organizations (NPOs) is somewhat restrictive. The laws governing this sphere are founded on the notion of almost full control and discretion by the executive branch over NPOs. However, in recent years some positive changes have been introduced, including increased flexibility on the part of the government in allowing the incorporation of public charities and the introduction of nonprofit companies as a legal form.

The culture of philanthropy is well rooted in Kuwaiti society. However, with the discovery of oil in the twentieth century, the government started to develop a welfare system, substantially increasing dependence on the state. As the government welfare system meets most of society's needs, a large percentage of donations from Kuwaitis, including those made through zakat, now target international causes. According to *The Million Dollar Donors Report 2013* by the Coutts Institute,<sup>2</sup> Kuwait ranked second among countries in the Gulf Cooperation Council (GCC) in 2012 in terms of the number of gifts exceeding \$1 million. Furthermore, almost half of the value of all donations from GCC countries came from Kuwait. The majority of donations from Kuwait in 2012 went to overseas charities addressing issues ranging from disaster relief to international security research.

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<sup>1</sup> Central Intelligence Agency, *The World Factbook* (Washington, DC: Central Intelligence Agency, 2016), <https://www.cia.gov/library/publications/the-world-factbook/index.html>.

<sup>2</sup> Coutts Institute, *The Million Dollar Donors Report 2013*, pp. 22-23, <http://philanthropy.coutts.com/en/reports/2013/middle-east-gcc/findings.html>.

## Recent Developments

The government is planning to introduce a new legislative framework for NPOs. Civil society has reacted negatively to the proposed bill. A committee representing seventy-four NPOs and other members of civil society has voiced concern that the bill will impose additional restrictions on the sector. One objection involves proposed restrictions on the ways that NPOs govern themselves. For instance, the bill introduces term limits for board members. NPOs also object to the powers that the bill grants to the government, particularly the authority to dissolve an NPO for the “interest of the public.”

As is the case with current legislation, the proposed bill prohibits the incorporation of foreign NPOs and requires that all founders of an NPO (excluding nonprofit companies, which are regulated under the Companies Act 2016) be Kuwaiti nationals. In addition, NPOs are restricted from receiving support from or affiliating with any foreign entity without the written permission of the Ministry of Social Affairs and Labor.

The bill is not expected to pass without major changes. It should be noted, however, that the restriction on foreign entities is not being discussed locally, as it is perceived not to affect local NPOs and therefore is expected to be incorporated into the new law.

In spring 2016, the Ministry of Social Affairs and Labor announced specific procedures for charitable donations during the month of Ramadan, which is often a time of increased activity by NPOs and hence, of increased scrutiny by the ministry.<sup>3</sup> On July 28, 2016, the Minister of Social Affairs and Labor confirmed that Kuwait’s regulations on charitable work had proven largely effective during Ramadan and that only a small number of violations had been documented.<sup>4</sup>

In September 2016, in reaction to accusations in the media that Kuwaiti charities were funding terrorism, the Assistant Foreign Minister for Follow-Up and Coordination Affairs affirmed his complete certainty that “not a single fil from Kuwait goes to any terrorist organization or person in any part of the world.” He asserted that the Foreign Ministry and Ministry of Social Affairs and Labor cooperate closely to ensure that all laws are properly followed.<sup>5</sup>

The Ministry of Social Affairs and Labor also recently issued a new executive regulation related to fundraising that promotes, among other things, online donations and other electronic forms of fundraising.

On July 9, 2017, Kuwait’s Amended Private Sector Labor Law went into effect. The amendment improved two employee benefits. Under the amended law, “the employee is entitled to his/her

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<sup>3</sup> “Regulations of Donation Protect [sic—i.e., Project] for Ramadan Announced—Charities Barred from Collecting Cash,” *Arab Times*, April 3, 2016, <http://www.arabtimesonline.com/news/regulations-donation-protect-ramadan-announced-charities-barred-collecting-cash/>.

<sup>4</sup> “Kuwait Authorities Keep Close Eye on Fundraising—Minister,” *Kuwait News Agency*, July 28, 2016, <http://www.kuna.net.kw/ArticleDetails.aspx?id=2514210&language=en>.

<sup>5</sup> “Foreign Ministry Denies Reports of Kuwaiti Terrorism Financing,” *Kuwait News Agency*, September 22, 2016, <http://bit.ly/2eMNyCF>.

full service benefits without deducting any social security amounts.”<sup>6</sup> Previously, employers were only mandated to pay the “net difference between the amounts accrued due to the subscription of the worker in social security and the end of service benefit.” The Law also amends annual leave to be 30 days exclusive of weekends, official holidays, and sick leave; it had previously set forth a 30 day period exclusive only of official holidays and sick leave.<sup>7</sup>

In November 2017, the Kuwaiti Ministry of Social Affairs and Labor sent official letters to three telecom companies asking them to disconnect the telephone lines of those who ask for donations through text messages, as they have neither permission nor license to do so. This occurred after a number of complaints were made by people who reported receiving text messages from unknown parties asking for funding for projects outside of the country. If the senders are citizens, they reportedly will be summoned for interrogation, referred to the relevant authority, and asked to sign a pledge not to repeat the behavior. It was reported that if the senders are expatriates, their names will be submitted to the Ministry of Interior for legal action, which may ultimately result in administrative deportation.<sup>8</sup>

INTERNATIONAL RANKINGS		
RANKING BODY	RANK	RANKING SCALE (BEST – WORST)
UN HUMAN DEVELOPMENT INDEX	48	1-188
FOREIGN POLICY: FRAGILE STATES INDEX	111.5	178-1
CAF WORLD GIVING INDEX	19	1-145
• HELPING A STRANGER	3	
• DONATING MONEY	30	
• VOLUNTEERING TIME	83	
HUDSON PHILANTHROPIC INDEX	N/A	1-64

## Relevant Laws

The legal framework in Kuwait is based on the civil law tradition. Kuwait is a hereditary emirate with a constitution that calls for separation of powers between the executive branch, legislative branch, and the judiciary. Shari’a or Islamic law primarily covers personal matters (such as family

<sup>6</sup> “Labor law 85 of 2017 amends law 6 of 2016,” *Kuwait Times*, <http://news.kuwaittimes.net/website/labor-law-85-2017-amends-law-6-2016/>.

<sup>7</sup> “Amended Labor Law in Kuwait's private sector takes effect,” *Zawya*, July 11, 2017, [https://www.zawya.com/mena/en/story/Amended\\_Labor\\_Law\\_in\\_Kuwaits\\_private\\_sector\\_takes\\_effect-ZAWYA20170711040733/](https://www.zawya.com/mena/en/story/Amended_Labor_Law_in_Kuwaits_private_sector_takes_effect-ZAWYA20170711040733/).

<sup>8</sup> “Cut telephone lines over text messages on donations,” *Arab Times*, November 2, 2017, <http://www.arabtimesonline.com/news/cut-telephone-lines-text-msgs-donations/>.

law). The civil code has been modified to make it compatible with Shari’a. For example, usury laws that prohibit the charging of interest have been introduced into the code.

## Constitutional Framework

The Kuwaiti constitution includes several protections relevant to NPOs. Article 43, which protects the right to association, states, “The liberty of forming societies and unions on a national basis and by peaceful means is guaranteed in conformity with the conditions and the stipulations specified by Law; and no person shall be constrained to join any society or union.”

The constitution also protects the right to freedom of opinion and scientific research, as well as freedom of the press and publication, subject to stipulations prescribed by law (Arts. 36 and 37). Since 2006, the media industry has been undergoing liberalization. Barriers to entry have been eliminated and new newspapers and media channels have been established. Before 2006, it was virtually impossible to establish a newspaper outlet, as the government rejected all applications for licenses for more than thirty years.

The constitution also permits public assemblies, processions, and gatherings, provided their objectives and conduct are peaceful and not incompatible with public morals (Art. 44).

The Constitutional Court has been relatively active in this arena, finding that a number of articles in Law No. 65/1979 regarding public gatherings were unconstitutional, in some cases because they violated Article 44 of the constitution. The Constitutional Court ruled, for example, that the law restricted public gatherings by requiring prior approval by the government of any gathering exceeding twenty individuals, thereby violating freedom of assembly.

## National Laws and Regulations Affecting Philanthropic Giving

Table 1 shows the national laws and regulations affecting philanthropic giving in Kuwait.

**Table 1. National Laws and Regulations Affecting Philanthropic Giving in Kuwait**

TITLE OF LAW OR REGULATION	YEAR ENACTED	DESCRIPTION	LINKS TO LAW OR REGULATION
<b>FRAMEWORK LAWS</b>			
<b>LAW NO. 1 OF 2016 ON COMPANIES ACT</b>	2016	Governs nonprofit corporations	<a href="#"><u>Arabic</u></a>
<b>MINISTERIAL DECISION NO. 48\A OF 2015 ON PUBLIC CHARITIES EXECUTIVE REGULATIONS (MINISTRY OF SOCIAL AFFAIRS AND LABOR)</b>	2015	Introduces comprehensive executive regulations governing public charities	<a href="#"><u>Arabic</u></a>

<b>MINISTERIAL DECISION NO. 49\A OF 2015 ON PRIVATE FOUNDATIONS EXECUTIVE REGULATIONS (MINISTRY OF SOCIAL AFFAIRS AND LABOR)</b>	2015	Introduces comprehensive executive regulations governing private foundations	<u>Arabic</u>
<b>THE CABINET'S DECREE NO. 74 OF 1999 CONCERNING PRIVATE FOUNDATIONS</b>	1999	Governs private foundations	<u>Arabic</u>
<b>MINISTERIAL DECISION NO. 48 OF 1999 ON PUBLIC CHARITIES STATUTE MODEL (MINISTRY OF SOCIAL AFFAIRS AND LABOR)</b>	1999	Introduces models for articles of incorporation and bylaws for public charities	<u>Arabic</u>
<b>MINISTERIAL DECISION NO. 132 OF 1999 ON AMENDING MINISTERIAL DECISION NO. 48 OF 1999 (MINISTRY OF SOCIAL AFFAIRS AND LABOR)</b>	1999	Introduces some changes to the public charities bylaws model	<u>Arabic</u>
<b>SPECIFIC PROVISIONS AND THE DECREE ESTABLISHING KUWAIT AWQAF PUBLIC FOUNDATION</b>	1993	Governs the public administration of private foundations	<u>Arabic</u>
<b>LAW NO. 24 OF 1962 ON CLUBS AND PUBLIC WELFARE SOCIETIES</b>	1962	Regulates public charities and public benefit societies	<u>Arabic</u>
<b>1951, THE HIGHER EMIRI ORDER TO APPLY AWQAF</b>	1951	Governs endowments in Kuwait (the sole regulation to do so)	<u>Arabic</u>
<b>LAWS ON FUNDING</b>			
<b>MINISTERIAL DECISION NO. 101 OF 1995 ON ORGANIZING COLLECTING DONATIONS (MINISTRY OF SOCIAL AFFAIRS AND LABOR)</b>	1995	Introduces some guidelines for collecting donations from the public	<u>Arabic</u>
<b>DECREE-LAW NO. 67 OF 1980 ON THE CIVIL CODE</b>	1980	Governs gifts and their legal status	<u>Arabic</u>
<b>1959 LAW REGULATING THE LICENSING OF MONEY COLLECTION FOR GENERAL PURPOSES</b>	1959	Governs fundraising	<u>Arabic</u>

LAWS ON TAXES, DUTIES, AND FEES			
<b>RULES AND EXECUTIVE INSTRUCTIONS OF KUWAIT INCOME TAX DECREE NO. (3) OF 1955 AMENDED BY LAW NO. 2 OF 2008</b>	2008	Governs tax deductions for donations made to public charities	<u>Arabic</u>
<b>LAW NO. 10 OF 2003 ON COMMON CUSTOMS LAW OF THE GCC STATES</b>	2003	Exempts NPOs from custom fees	<u>Arabic (Law)</u> <u>Arabic (Executive Regulations)</u>
<b>LAW NO. 43 OF 1964 ON IMPORT</b>	1964	Exempts NPOs from custom fees	<u>Arabic</u>
<b>EMIRI DECREE NO.5 OF 1959 ON REAL ESTATE REGISTRATION LAW</b>	1959	Exempts NPOs from stamp duty	<u>Arabic</u>
LAWS ON COMMITTEES			
<b>MINISTERIAL DECISION NO. 204 OF 2006 ON THE FORMATION OF THE JOINT COMMITTEE BETWEEN THE MINISTRY OF SOCIAL AFFAIRS AND LABOR AND SOME OTHER RELATED NON-PROFIT NATURE OF CHARITABLE ENTITIES (MINISTRY OF SOCIAL AFFAIRS AND LABOR)</b>	2006	Introduced a joint committee with Public Charities to be a medium of communication and governance	<u>Arabic</u>
<b>MINISTERIAL DECISION NO. 2565 OF 2006 ON FOLLOW-UP FIELD ACTIVITY OF CHARITABLE WORK IN KUWAIT (MINISTRY OF SOCIAL AFFAIRS AND LABOR)</b>	2006	Forms an oversight committee on public charities for inspection purposes	<u>Arabic</u>
LAWS OF GENERAL APPLICATION			
<b>LAW NO. 106 OF 2013 ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM</b>	2013	Relevant provisions relate to NPOs collecting funds for terrorist organizations	<u>Arabic</u>
<b>LAW NO. 85 OF 2013 APPROVING THE ACCESSION OF THE STATE OF KUWAIT TO</b>	2013	Relevant provisions relate to NPOs collecting funds for terrorist organizations	<u>Arabic</u>



## Analysis

The regulatory framework for NPOs in Kuwait is relatively restrictive. The incorporation of public charities and private foundations requires the formal approval of the Ministry of Social Affairs and Labor. Furthermore, ambiguous restrictions on NPO activities vest the government with significant discretion to determine what activities are permissible. For example, NPOs are prohibited from engaging in political activities or inciting religious conflict and tensions, but these terms are not clearly defined, giving the government ultimate discretion to determine what conduct is prohibited.

The current regulatory framework also places severe restrictions on foreign involvement in NPOs. In general, only Kuwaitis are permitted to incorporate NPOs. Nonprofit companies and private endowments are the only exceptions. Foreigners may own a maximum of 49 percent of nonprofit companies (the majority share must be held by Kuwaitis) and may establish private endowments. NPOs are permitted to affiliate and cooperate with foreign NPOs only with the written approval of the Ministry of Social Affairs and Labor.

### Organizational Forms for Nonprofit Organizations

NPOs in Kuwait may be established using one of the following organizational forms:

**Nonprofit Clubs and Public Benefit Associations.** Law No. 24 of 1962 on Clubs and Public Welfare Societies governs the formation of nonprofit clubs and public benefit associations. Such organizations must have cultural, social, religious, or sports-related objectives and are under the supervision of the Ministry of Social Affairs and Labor. The law does not define clubs or public benefit associations and uses these words interchangeably. In practice, clubs tends to focus on sports while public benefit associations are non-governmental organizations (NGOs), such as associations of economists or teachers.

**Public Charities (Associations).** Public charities are considered a subcategory of public benefit associations. A public charity is distinguishable from a non-charitable public benefit association because it engages in charitable activities. Organizations designated as public charities are governed by an additional set of regulations that are not applicable to other public benefit associations, primarily the Ministerial Decision No.48\A of 2015 on Public Charities Executive Regulations.

Public charities can receive authorization to engage in public fundraising and campaigns, and thus organizations that wish to raise funds from the public generally choose to register in this form. Public charities require specific approval from the ministry to engage in public fundraising. Once an organization is incorporated and designated as a public charity, obtaining such approval is a

relatively easy process, although bureaucracy and red tape can cause delays. However, this legal form also presents the most restrictions in terms of formation and management. No public charity may be formed without the approval of the Minister of Social Affairs and Labor. This legal form also prohibits the involvement of foreigners, as all founders and members of the general assembly must be Kuwaiti nationals. Public charities are prohibited from engaging in political activities and activities that incite religious conflict.

**Nonprofit Companies.** A nonprofit company is a shareholding entity that may not distribute dividends to its owners. Nonprofit companies may assume any form of business organization recognized under the Companies Act, with the exception of public companies. This organizational form was first introduced under Kuwaiti law in 2012 and reintroduced in 2016 under the umbrella of the Companies Act. Under Kuwaiti law, nonprofit companies have shareholders, and foreigners are allowed to own up to 49 percent of the shares. Nonprofit companies are subject to the following restrictions:

- They may not engage in political activities, activities that incite religious conflict, or any activity that conflicts with public order;
- Like other providers, they may not work with children, senior citizens, and people with special needs without a license issued by the appropriate authorities; and
- They may not engage in fundraising without the written approval of the Ministry of Social Affairs and Labor. No nonprofit company has tested whether it is actually possible to obtain such permission, but it is generally assumed to be unlikely that the ministry would grant fundraising approval to a nonprofit company.

International affiliation and support is a gray area. Other than limitations on foreign ownership, the Companies Act does not explicitly restrict a nonprofit company's cooperation or affiliation with foreign organizations. However, if the foreign organization is politically active and promotes activities considered to undermine the political system in Kuwait, then such cooperation could lead to criminal charges.

Founders may legally convert nonprofit companies into for-profit corporations without any restrictions whatsoever. The rationale for this is that nonprofit companies are private initiatives that cannot engage in public fundraising, and as their nonprofit assets are not derived from public support, they are permitted to convert them to for-profit assets as they see fit.

**Private Foundations.** Families and established institutions may incorporate private foundations. Private foundations are regulated by the Council of Ministers Resolution No. 74/1999. The formation process requires the approval of the Ministry of Social Affairs and Labor. In 1999, the ministry issued model articles of incorporation that all private foundations must adopt. In 2015, the Ministry of Social Affairs and Labor issued an executive regulation on private foundations. Private foundations are subject to the same restrictions as public charities in terms of the right of foreigners to establish them and their ability to engage in political activities and activities that incite religious conflicts.

**Private Endowments.** Private endowments, which are regulated by the Higher Emiri Order to Apply Awqaf, are the most liberal legal form of NPOs. This form is not restricted to Kuwaitis; any foreigner

may register a private endowment in Kuwait. However, private endowments are not permitted to raise public funds. Private endowments are considered the oldest organizational form under Kuwaiti law and have been regulated since 1959. However, the regulation is incomplete and fails to address many relevant aspects. For example, the regulation does not recognize the concept of incorporation, and therefore there are ongoing discussions as to whether private endowments are considered to be legal persons. In practice, this means that private endowments face challenges operating, even when carrying out such basic tasks as opening bank accounts. On the other hand, government supervision and restrictions on private endowments are very limited. For instance, private endowments do not face restriction relating to political and religious activities.

Information about the number of NPOs in Kuwait is not readily available. As there is no central registry of private endowments, it is not known how many NPOs exist. Similar problems exist with obtaining the number of nonprofit companies, but it is thought that there are fewer than two dozen.

NONPROFIT COMPANIES	PUBLIC CHARITIES (ASSOCIATIONS)	PRIVATE FOUNDATIONS	PRIVATE ENDOWMENTS	TOTAL <sup>9</sup>
	21	88		

Generally speaking, individuals may create informal organizations without forming legally recognized entities. However, this depends on the activities in which they wish to engage. If fundraising will be involved, written approval by the government is needed, which requires the organization to be registered.

### Registration of Domestic Nonprofit Organizations

The registration process for the different types of NPOs is as follows:

**Nonprofit Clubs, Public Benefit Associations, Public Charities (Associations), and Private Foundations.** All of these forms of NPOs are supervised by the Ministry of Social Affairs and Labor. Public charities (associations) require a minimum of fifty founders, while the other forms require at least ten founders. All founders must be Kuwaiti nationals and over twenty-one years of age.

The following documents are required to register these forms of NPOs:

- Civil IDs for founders, all of whom must be Kuwaitis;
- Minutes of the founders’ meeting (the first meeting of the founders);
- Minutes of the appointment of the board of directors;
- A lease for the headquarters (the size of the leased area should not be less than 500 square meters in the case of public charities and 250 square meters in the case of private foundations); and

<sup>9</sup> For additional information on classifying organizations by area of activity, see Appendix A. Information on the number of associations and clubs, nonprofit companies, and private endowments is not available at the time of the publication of this report. ICNL will continue to seek to obtain this data and will provide an update if it becomes available.

- Articles of association based on the model approved by the Ministry of Social Affairs and Labor. While the model articles must be used, NPOs are sometimes able to add additional articles after negotiating with the ministry.

All these forms are exempt from registration fees.

The registration process for public charities, clubs, and public benefit associations is quite difficult, as it requires the approval of the minister and historically has been subject to political influence. However, it should be noted that in the last decade, the registration process has become more liberal. Even so, the process is very bureaucratic and can take more than eighteen months. Private foundations do not require the approval of the minister but face similar challenges when registering. The registration process for private foundations usually takes about a year. It should be noted that these timelines are influenced by an applicant's relationship and connections with the ministry.

**Nonprofit Companies.** Nonprofit companies are subject to the regulatory supervision of the Ministry of Trade and Industry. The incorporation requirements for nonprofit companies are similar to those for any commercial company. The required number of incorporators varies, depending on the corporate form that is chosen; these include general partnerships, LLCs, and private joint stock companies. Founders must be at least twenty-one years of age. Foreigners may own a maximum of 49 percent of a nonprofit company.

The following documents are required to register nonprofit companies:

- Civil IDs for the incorporators;
- Certificate from a bank confirming that the incorporators have deposited the required capital;
- A lease for the headquarters of the company; and
- For foreign incorporators, proof of valid residency in Kuwait.

Nonprofit companies are the only form of NPO that must pay incorporation fees, but these are minimal, not exceeding \$50.

The registration process for nonprofit companies is quite easy. These organizations rarely face any obstacles to registration.

**Private Endowments.** Private endowments are not subject to any direct supervision. They incorporate with the courts through a process of attestation. Private endowments are usually established by individuals and there are almost no requirements regarding the founders. Both Kuwaiti nationals and foreigners can found private endowments. Private endowments do not pay any incorporation fees and rarely face obstacles to incorporation.

## Registration of Foreign Nonprofit Organizations

Foreign branches of NPOs cannot register in Kuwait, as the current law restricts the founders of NPOs to Kuwaiti nationals. A foreign NPO may operate in Kuwait only by affiliating with a domestic NPO, either through a partnership agreement or memorandum of understanding (which requires

the written approval of the Ministry of Social Affairs and Labor), or by incorporating a nonprofit company with Kuwaiti nationals. The only shortcoming of the second option is that the national partners will own a controlling stake of the resulting company. To mitigate this risk, the owners may enter into a shareholders agreement that protects the interests of the minority owners.

## Nonprofit Organization Activities

**Political Activities and Lobbying.** With the exception of private endowments, NPOs are legally prohibited from engaging in political activities. This prohibition has always been an issue of contention between activists and the government. As there are no definitions or guidelines for what constitutes a political activity, the government enjoys great discretion in determining what is prohibited. In some cases, government discretion can be subject to judicial scrutiny. For example, if the government accuses an NPO of engaging in prohibited political activities and as a result dissolves the NPO, the founders may challenge such a decision in court. In the 1970s, some NPOs were dissolved for engaging in political activities. In recent times, however, the government has not restricted NPO activities under the pretext that they are “political” or dissolved NPOs for engaging in such activities.

Lobbying in Kuwait is not regulated and hence there is no definition as to what constitutes lobbying. In reality, NPOs do sometimes influence the legislative drafting process, exercising influence through campaigns, etc. For example, the new proposed law governing NPOs (excluding nonprofit companies) has been the subject of ongoing public debate among associations and the Minister of Social Affairs and Labor. Since it has not been officially determined whether such activities can be classified as “political activities,” NPOs that engage in lobbying or legislative advocacy are at risk of dissolution or imposition of other sanctions.

**Economic Activities.** The regulatory framework restricts public benefit associations, including public charities (associations), clubs, and private foundations, from engaging in commercial activities. The law explicitly prohibits the use of NPO funds for financial speculation. In other words, except in the case of a nonprofit company, an NPO’s main activity may not be economic, such as operating a not-for-profit hospital. The restrictive framework also prevents NPOs from engaging in economic activities via subsidiaries, etc. However, NPOs are usually allowed to engage in simple economic activities, such as charging fees for participation in a seminar, selling publications, or recovering costs by, for example, collecting fees for providing hospital transport for cancer patients.

Nonprofit companies may engage in economic activities. However, like any other business, they must obtain the relevant licenses. For example, establishing a private university requires a license from the private universities council.

**Religious and Other Activities.** All types of NPOs are restricted from engaging in or inciting religious disputes and conflicts. However, these terms are not defined in the legislation. In practice, non-contentious religious activities such as building mosques and religious schools are acceptable and common.

Any involvement in racist and sectarian activities is also precluded. Again, the law does not provide any guidelines as to what constitutes a racist or sectarian activity.

**Restrictions on Operational Activities.** In addition to the above-mentioned restrictions on economic and political activities and religious disputes, there is a general rule that the operations of all NPOs must conform to the objectives for which they were incorporated.

**Prohibition on Distribution of Income or Assets/Private Inurement.** All NPOs are prohibited from distributing dividends to their members or shareholders. For most forms, this restriction includes any payment to members of the board of directors, with the exception of reimbursement of reasonable expenses, such as travel to a board meeting. Nonprofit companies are exempt from this restriction and may provide annual remuneration to their board members.

The Companies Act restricts board members and senior management of nonprofit companies, like those of other companies, from conflicts of interest unless the general assembly approves such activities. This includes any transaction that the company enters into in which board members or their family members have a personal direct or indirect interest. No rules are provided to guide the general assembly on approving such exceptions. Other types of NPOs are not subject to explicit restrictions on conflicts of interest or self-dealing.

**Government Supervision and Reporting.** The Ministry of Social Affairs and Labor is the main regulator of NPOs, with the exception of nonprofit companies, which are governed by the Ministry of Trade and Commerce. In the case of the Ministry of Social Affairs and Labor, the law gives the ministry the right to inspect the books and activities of the NPOs that it regulates and to replace their boards of directors. The Council of Ministers is empowered to dissolve any NPO. In practice, supervision is generally fairly relaxed, with the exception of politically motivated cases, such as the dissolution of Al-Istiqlal Society in the 1970s. Nonprofit companies and private endowments are subject to the least supervision. The Ministry of Trade and Commerce has limited rights when it comes to nonprofit companies. For example, unlike the Ministry of Social Affairs and Labor, the Ministry of Trade and Commerce may not dissolve a company or replace a board of directors. In the case of private endowments, the Awqaf Authority, which was established in 1993, may interfere in a private endowment when the founder grants the Authority the right to do so or there is no trustee to manage the private endowment's affairs.

All forms of NPOs must submit annual financial reports audited by an external auditor to the Ministry of Trade and Commerce. In addition, all NPOs that are engaged in fundraising—regardless of their annual budgets—must report the names of the individuals that manage the fundraising process as well as their criminal records.

## Termination, Dissolution and Sanctions

**Voluntary Dissolution.** Most forms of NPOs may choose to dissolve voluntarily, provided that the decision to do so is taken by an extraordinary general assembly. A private endowment, however, may not be dissolved when its founder dies. When this happens, the private endowment shall continue perpetually under the management of the trustees. If there is no one to manage the endowment, a specialized government agency will take over management.

**Involuntary Termination.** The governing regulatory framework empowers the Ministry of Social Affairs to terminate a public charity, private foundation, club, or non-charitable public benefit association in the following circumstances:

- The number of members falls below the required minimum number of founders—that is, ten in a club, non-charitable public benefit association, or private foundation or fifty in a public charity;
- There has been a material breach of the organization’s bylaws or the organization is involved in activities beyond its objectives;
- The organization is financially bankrupt (that is, cannot meet its financial obligations); or
- There has been a breach of the governing laws in the state of Kuwait.

The determination to terminate is the ministry’s alone, although an NPO does have the right to appeal this decision.

Nonprofit companies are subject to the same rules on termination that apply to commercial companies. In exceptional cases, such as bankruptcy, the courts may dissolve a nonprofit company.

In the case of a private endowment, involuntary termination is possible only when the endowment’s assets are depleted for whatever reason, i.e., it no longer exists. As stated above, this form of NPO is not subject to governmental supervision or powers.

**Distribution of Assets.** Upon dissolution, organizational assets are distributed as follows:

- **Nonprofit Companies.** Assets will return to the founders on the assumption that they do not engage in public fundraising activities.
- **Public Charities (Associations), Clubs, and Non-Charitable Public Benefit Associations.** The articles of incorporation usually stipulate where the funds will be allocated in the case of dissolution (usually to another charity). However, the Ministry of Social Affairs and Labor has the power to redirect these funds to another charity at its discretion.
- **Private Foundations.** The Ministry of Social Affairs and Labor has full discretion to decide where the funds will be allocated.
- **Private Endowments.** In the event of voluntary dissolution during the lifetime of the founders, the assets will return to the founders. After the death of the founder(s), the heirs may not, as a rule, dissolve the private endowment.

**Sanctions.** As a rule, short of termination, the majority of sanctions for violating ministerial resolutions and the law are administrative. This includes written warnings and suspension of an NPO’s bank accounts until the violation is resolved. If the NPO still does not resolve the violation, then the matter will be escalated to the minister to make a final recommendation of termination. If the acts involve fraudulent behavior, then criminal law will be applicable.

## Charitable or Public Benefit Status

NPOs registered as public charities and non-charitable public benefit associations are considered to have public benefit status, which confers some benefits. First, public benefit status enables an organization to raise public funding. Public charities, and in exceptional cases non-charitable public benefit associations, are allowed to engage in public fundraising with the prior approval of the Ministry of Social Affairs and Labor. Other forms of NPOs may not engage the public in fundraising but may solicit private donations at private functions (such as family gatherings), an activity that is considered to fall outside the scope of “public fundraising.” There is no definition of public fundraising, however, and whether a particular form of fundraising is public or private becomes a matter of interpretation. It is not entirely clear, for example, whether grants are treated as “public.” However, if a grant is for developmental purposes, such as building the capacity of the NPO, then most likely it will not be considered a public fund raising activity.

Organizations with public benefit status may theoretically also access support from the government. In the past, the ministry provided such organizations with free office space and other types of support. However, the ministry has more recently refrained from providing financial support to these organizations because of the increase in their numbers.

Public charities are subject to additional reporting requirements in exchange for these benefits. In particular, such organizations must report on the funds collected and the people involved in such an activity.

The Ministry of Social Affairs and Labor maintains a public registry on its website that lists public benefit organizations. However, it should be noted that the website is usually not updated. In addition to the registry, an NPO must have notice of its incorporation published in the official gazette.

## Local and Cross-border Funding

Permission from the Ministry of Social Affairs and Labor is needed to engage in fundraising. Only public benefit organizations, as discussed above, can receive such permission. While there is no definition of what constitutes fundraising, the understanding is that it includes any public and general communication to society requesting its help for a certain cause. It is not generally understood to include proceeds from private functions. To receive approval to engage in public fundraising:

- The fundraising objective must be aligned with the NPO’s objectives;
- The NPO needs to specify the period of the campaign;
- The NPO has to identify the method of fundraising and the names of the individuals involved in the process; and
- If raising funds for an international cause, the NPO must obtain approval from the Ministry of Foreign Affairs to ensure that local funds do not end up supporting terrorism. The ministry has a list of NPOs in many countries that have been verified to make sure they are legitimate. If giving to an NPO not already on the list, the ministry



will conduct due diligence to ensure that the organization is legitimate and then adjust the list accordingly.

Under the current regulatory framework, there are no rules governing the activity of donors. If a donor gives to an organization that does not have approval to engage in public fundraising, the recipient, not the donor, is considered to have violated the law.

Domestic donors are not subject to restrictions on making donations abroad. Any citizen may simply donate to an international organization without the need to get any approvals. However, they must ensure that funds donated internationally are not used to sponsor a criminal or terrorist-related activity.

Local NPOs may operate internationally, although such activity must be in partnership with a foreign NPO, and all affiliations and cooperation with foreign persons or organizations requires the ministry's prior written approval. There are no guidelines governing this process. The ministry has absolute discretion in these matters, and deals with them on a case-by-case basis. In general, however, in countries that lack proper supervision, the Ministry of Foreign Affairs coordinates with Kuwaiti embassies to conduct due diligence before approving any NPO affiliation. These restrictions are not applied in countries in Europe or North America because NPOs in these countries are considered to be under the strict supervision of prudent regulators.

Local NPOs may not receive funding from outside of the country without approval from the Ministry of Social Affairs and Labor. The ministry has not published specific procedures for this process and therefore has absolute discretion in approving or rejecting such funding. In practice, the ministry rarely rejects foreign funding requests. There are no special rules for reporting on funding that an NPO receives from outside of the country. However, this funding must be included in the general financial reporting, including audited reports, which all charities must submit to the ministry.

Donors do not have to be registered in Kuwait. Foreign donors are subject to the same restrictions as local donors, including a ban on supporting political activities and controversial religious activities.

The Ministry of Social Affairs, as supervisor of NPOs, engages in occasional site visits and audits to ensure that NPOs are complying with all applicable rules and regulations. The ministry also must give prior consent for any fundraising campaign. NPOs generally find these procedures to be acceptable, although there are some complaints about delays in getting permission from the ministry. The ministry's vetting focuses on NPO recipients rather than donors. The only potential liability for donors is if a donation is made to an organization that does not have the required approvals from the ministry and is discovered to be associated with terrorism or other criminal activity. Such offenses will be prosecuted, with imprisonment a potential sanction.

## Tax Law

To a large extent, Kuwait lacks a sophisticated tax system. There is no individual income tax on nationals or foreign residents, and the majority of corporations do not pay corporate income tax. The only companies that pay income tax are those listed on the national stock exchange, and their taxes do not exceed 2.5 percent. As a result, all income that NPOs, including nonprofit companies (with or without foreign ownership), receive is not subject to tax. The law does not impose other fees or payments in lieu of taxes on NPOs.

With the exception of nonprofit companies and private endowments that support family members only (that is, do not have a public benefit purposes), all other organizational forms of NPOs are also exempted from:

- All fees relating to the registration of properties, etc. (stamp duty tax), and
- All customs fees (whether importing or exporting).

The exemption is not qualified in any manner beyond the exceptions listed above.

Since foreign NPOs are not permitted to establish branches in Kuwait, the Kuwaiti tax system does not regulate the taxation of such entities.

Because there is essentially no income tax in Kuwait, the tax code does not play a major role in incentivizing philanthropic activities. However, the tax code does offer some tax deductions for philanthropic activities that the tax authority deems charitable, including donations made to the government. These deductions are primarily available to foreign corporations and affect the overall calculation of the minimal tax that applies to companies listed on the stock exchange.

Under Kuwaiti family law, in the case of wills, up to one-third of the value of the estate may be designated for philanthropic activities. However, individuals may transfer as much as they wish to private endowments during their lifetime.

## News and Events

“Foreign Ministry Denies Reports of Kuwaiti Terrorism Financing.” Kuwait News Agency. September 22, 2016. <http://bit.ly/2eMNYCF>.

“Labor Drafts Law on Charities.” Arab Times. March 21, 2016. <http://www.arabtimesonline.com/news/labor-drafts-law-charities/>.

“Regulations of Donation Protect for Ramadan Announced—Charities Barred from Collecting Cash.” Arab Times. April 3, 2016. <http://www.arabtimesonline.com/news/regulations-donation-protect-ramadan-announced-charities-barred-collecting-cash/>.

## Appendix A

	CLASSES OF NON-PROFIT INSTITUTIONS' ACTIVITY	NUMBER OF ESTABLISHMENTS	NUMBER OF PERSONS ENGAGED	
	SOCIAL WORK WITHOUT ACCOMMODATION	2009	9	459
		2010	9	475
		2011	9	453
		2012	9	456
		2013	7	451
	ACTIVITIES OF BUSINESS AND EMPLOYERS' ORGANIZATIONS	2009	4	24
		2010	4	22
		2011	4	27
		2012	4	27
		2013	4	25
	ACTIVITIES OF PROFESSIONAL ORGANIZATIONS	2009	27	320
		2010	29	354
		2011	29	381
		2012	29	384
		2013	29	406
	ACTIVITIES OF RELIGIOUS ORGANIZATIONS	2009	42	1020
		2010	42	987
		2011	41	1046
		2012	41	1094
		2013	41	1148
	ACTIVITIES OF OTHER MEMBERSHIP ORGANIZATIONS	2009	7	194
		2010	7	189
		2011	7	195
		2012	7	205
		2013	7	204
	DRAMATIC ARTS, MUSIC, AND OTHER ACTIVITIES	2009	2	12
		2010	2	11
		2011	2	12
		2012	2	13
		2013	2	14
	SPORTING ACTIVITIES	2009	34	3307
		2010	34	3265
		2011	35	3271
		2012	35	3553
		2013	35	3757
	TOTAL	2009	125	5336
		2010	127	5303
		2011	127	5385
		2012	127	5732
		2013	125	6005

This Philanthropy Law Report was prepared by the International Center for Not-for-Profit Law in partnership with Fahad Al-Zumai and issued in March 2017. It was updated again to reflect changes as of December 2017. The views expressed herein are those of the authors and reflect the authors' understanding of laws and regulations currently in effect in Kuwait, as well as best international practice, and does not constitute a legal opinion or advice.