

Model Arab Foundations Law: Creating an Enabling Environment for Philanthropy May 2013



The Model Arab Foundations Law is based on the output of a consultative meeting, held in Cairo in November 2012 and the output of the various task forces formed by the participants in the consultative meeting. The full reports of the task forces as well as the meeting of the Consultative form the main reference of the various discussions that resulted with this Model Foundations Law. This effort was organized by the Arab Foundations Forum (AFF) in collaboration with SAANED for Philanthropy Advisory and the International Center for Not-for-Profit Law (ICNL).



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Acknowledgement

The effort of all the participants in this effort, which is the first of its kind in the Arab region, is highly appreciated. This report was completed as a result of the dedicated contribution of all members of the task forces that worked on various elements of the Foundations Law, and members of the Arab Foundations Forum that participated in the discussions in May 2013. The present document of the Model Foundations Law in the Arab region has been conceptualized and formulated by the following (listed alphabetically):

1. Adam Taylor Awny – Oxfam-Egypt
2. Atallah Kuttab - SAANED for Philanthropy Advisory – Jordan
3. Ayman Badr - Foundation for the Future – Jordan
4. Barbara Ibrahim - Gerhart Center – Egypt
5. Debbie Smith - Al-Mawred Al-Thaqafy – Egypt
6. Dina Sherif - Gerhart Center – Egypt
7. Ebba Augustin - SAANED for Philanthropy Advisory – Jordan
8. Elie Abouaoun - Arab Human Rights Fund – Lebanon
9. Fateh Azzam - Arab Human Rights Fund – Lebanon
10. Fatimah Baeshen - Emirates Foundation – UAE
11. Gannat El Samalouty - Sawiris Foundation –Egypt
12. Ghassan Kassabreh - NGO Development Center – Palestine
13. Hammam Zare - Majid Bib Abdel-Aziz Society – Saudi Arabia
14. Heba AbouShnief - Gerhart Center – Egypt
15. Hisham al-Roubi – ETIJAH – Egypt
16. Kareem Elbayar - International Center for Not-for-profit Law (ICNL) - USA
17. Luma Hamdan - Arab Foundations Forum (AFF) – Jordan
18. Majid Al-Fahed - Civic Democratic Initiatives Support Foundation (CDF) – Yemen
19. Marwa AlDaly - Waqfeyat Al Maadi Community Foundation – Egypt
20. May Mostapha – Formerly Gerhart Center – Egypt
21. Nadir ElMoumni - University of Muhammad V – Morocco
22. Nesma Gewily - Arab Education Forum (Almultaqa) – Jordan
23. Shenouda Bissada – Alfanar - Egypt
24. Sultana al-Jeham - Civic Democratic Initiatives Support Foundation (CDF) – Yemen

I. Introduction

The Arab region, over the last twenty years, has seen a steady increase in the number of foundations and witnessed increased engagement of corporate philanthropy in support of social/economic initiatives. Arab philanthropists and philanthropic institutions are a natural constituency to engage with policymakers and participate in agenda setting for critical reform issues especially at times of rapid change as in the current Arab Awakening. To leverage and maximize their investments philanthropy institutions and their affiliates should drive self-regulation for better accountability within the sector and use their influence to affect policy making and resource allocation decisions and to advocate with governments for more attentiveness to people's needs and aspirations. However, for such strategy to be effective there has to be engagement to realize more favorable not-for-profit regulations as related to foundations aiming at public benefit, much lacking in the Arab Region.

To this end, the Arab Foundations Forum, as an umbrella organization for foundations in the Arab region, in cooperation with SAANED for Philanthropy Advisory and the International Center for Not-for-Profit Law (ICNL) have convened a one day consultative meeting in Cairo in November 2012. It focused on the question whether foundations, (that constitute a major component of philanthropic institutions) need a special law to define its role in societal development or stay included within the existing law for civil society organizations in general. This was followed by the participants in the consultative meeting forming task forces to work on the key elements of the Foundations Law. The task forces included philanthropic leaders from across the Arab region and specifically: Egypt, Kingdom of Saudi Arabia, Lebanon, Jordan, Morocco, Palestine, United Arab Emirates, and Yemen.

The consultation in Cairo in November 2012 discussed, among other topics, the key question of **“Do we need new foundations laws? If so, why?”**

In arriving for an answer to the above question, three areas of concerns were addressed listed here together with the responses of the participants in the consultative meeting:

a) Advantages and positive aspects of the current status

1. Individual wealth is growing in Arab societies and therefore it is important to build on the rich tradition of giving in the region and make it more strategic.
2. Waqf (religious and civil) has a long history in the region and needs to be included as special form of foundation in any future law.
3. We have some examples of good laws in the region that we can learn from. For example the microlending laws, especially in Jordan, are of special relevance to learn from.
4. Willingness for self regulation by the philanthropy sector, with emphasis on transparency and accountability, will help reduce existing government interference and excessive oversight.
5. The potential for tax breaks will result with more donations to existing foundations (or newly established ones).

6. There are many young people wanting to engage in programs supported by foundations and this will provide a solution for employment problem in the Arab region.
7. The new texts of the constitution drafts, in various Arab countries, encourage freedom of expression and movement, as well as the establishment of organizations, access to information and disseminating the waqf (or endowment) culture.
8. There is increased understanding of the importance of the role of the civic society as a partner in development. This trend could be consolidated by building the capacity of civil society organizations to play this role and disseminating success stories on developing a new culture of positive cooperation between the State, the civic society and the private sector.

b) Obstacles in the current status

1. There is no consistent definition of what a foundation is and this should be clearly defined in the Foundation Law.
2. Lack of specific law for foundations affecting negatively the growth of the sector.
3. Some of the big foundations in the region are established under special “royal” decree. Several foundations saw closure of their doors, as in Egypt, due to such close association with royal/presidential families after revolutions. Foundations should be subjected to same law irrespective of their association of people in power.
4. The tight restrictions on fundraising and too much oversight by government tend to discourage giving within countries and from outside sources.
5. Domination of the State, the culture of suspicion / skepticism and overuse of administrative restrictions. There is a need for a new social contract that encourages cooperation and respect in relationship between various sectors of society.
6. The legislative framework is not motivating and lacks tax incentives to encourage giving.
7. Foundations, in most cases, do not measure impact of their programs.

c) Gaps in the current status

1. There is no cross-border philanthropy, or regional cross-border cooperation.
2. Ambiguity of the definition of foundations.
3. Need clear definition of public benefit.
4. Judicial oversight over foundations should take precedence on administrative oversight.
5. There is no incentive system for donors – no reduction in taxes for contributions.
6. Lack of clear texts pertaining to the “civil waqf”. The foundation law should include this form of giving in the proposed legislative framework.
7. Lack of information and data base about the sector.

Additionally restrictions on setting up foundations include:

- a. Need for a high number of founders and minimum endowment
- b. Difficulty of establishment and registration
- c. Restrictions on activities and fundraising
- d. Inappropriate government supervision and lack of clarity concerning meaning and role of foundations
- e. Failure to distinguish between public and private benefit organizations
- f. Failure to encourage good governance, accountability, and transparency

The participants concluded, based on the above analysis and the list of restrictions on giving and setting up foundations (most wealthy Arab families register their foundations or trusts outside the Arab region to protect their endowments) that a Foundation Law is indeed needed and should build on the “**advantages and positive aspects of the current status**”, eliminate the “**obstacles in the current status**” and works out ways how to fill the “**gaps in the current status**” identified above.

Further to this discussion, the participants concluded that the key elements of an Arab Foundations Law should include:

- 1- **Legal Framework**: Setting up foundations, governance, transparency and accountability
- 2- **Financial Framework**: Incentives for giving, relationship with the private sector, transparency and accountability
- 3- **Social Benefit Return Framework**: Programs, meaning of social benefit, transparency and accountability
- 4- **Relationship with Government**: Enhancing the culture of cooperation, collaboration and accountability (not only government holding civil society organizations (CSOs) accountable but CSOs holding government accountable
- 5- **Definitions, Concepts and Features** related to foundations

Five Task Forces were formed and each worked on one of the above elements.

The report that compiled the work of the various task forces and contained the key elements that should guide the drafting of a Foundation Law, was discussed in the annual meeting of the Arab Foundations Forum in Beirut in 2013. The main conclusions of those discussions were two-fold: one, that the details of such a foundation law will depend on prevailing conditions in each Arab country and accordingly would need customization to suit those special conditions; and second, this work will continue to evolve as things are changing rapidly on the ground and this report will remain a key document for the near future to guide the process of creating a Foundation Law in the various Arab countries.

The output, as reported by the members of the task forces, is presented here in the following sections. It is hoped that this report will provide solid guidelines for the groups that will take upon themselves to advocate for a Foundation law in the Arab region that will encourage giving and philanthropy for a better future of our society.

It is also hoped that different groups including members of the various task forces will try to take steps each in their countries to make Arab Foundation Law a reality. Participants in this effort are aware that this will be challenging and it is no easy task. However, it is also believed that success will be accumulation of small steps with incremental successes. Successes in each country will reinforce successes in other countries around the Arab region.

II. Factors to consider when drafting foundations law

General

1. In a democratic state, the authority is bound by controls as outlined by the rule of the law and the constitution. Imposing legal constraint on Civil Society Organizations (CSOs) in general and foundations in particular, inhibits the chances of their development and independence. The existence of a healthy relationship between the state and civic society guided by a motivating and enabling law will bring benefit to society as a whole and enhance synergy of investments made by government and foundations to maximize benefit to society. This should allow for partnership with the private sector which might opt to support initiatives run by existing foundations or set up foundations with funds earmarked for social investment (or more common, corporate social responsibility) doing good and benefitting from tax breaks for such purposes.
2. The focus of this model foundation law will be on public benefit foundations.
3. Philanthropic foundations are distinguished from other NGO and community or civil society organizations in terms of their nature and operations, governance structure and sources of finance. To maintain the distinction, a public benefit foundation is defined here as “an independently constituted with clear governance structure and managed body, has its own established and reliable source of income, usually but not exclusively from endowment, to be used for public benefit purposes” (extracted from the Arab Foundations Forum bylaws).
4. Foundations have a particular governance structure that aims to achieve both transparency and accountability towards achieving the declared public benefit purpose for which they are established. Most foundations consist of: 1. Founding members who have freely undertaken to establish a foundation and to sustain its operations. 2. A Board that is established for the purpose of overseeing and controlling the foundation to ensure that it is achieving its declared purpose. 3. Executive staff members, either from the founding members or those employed by the board, who are responsible for the day-to-day management of the foundation.
5. It is worth highlighting that foundations do not typically have a membership as is common among private voluntary associations.

6. In the Arab region just like other regions there are several types of foundations, these are: community foundation, corporate foundation, family foundation, membership foundation, public foundation, public-private foundation, and religious or private waqf (though religious waqf has its own legal structure and here it is intended to include private waqf only).¹

Legal Framework

7. Based on the Consultation on 25 November 2012 in Cairo, it was clear that even in countries that do have provisions on foundations, the laws are generally restrictive and do not form incentives for the creation of foundations. These restrictions include:

- g. High number of founders and minimum endowment
- h. Difficulty of establishment and registration
- i. Restrictions on activities and fundraising
- j. Inappropriate government supervision and lack of clarity concerning meaning and role of foundations
- k. Failure to distinguish between public and private benefit organizations
- l. Failure to encourage good governance, accountability, and transparency

8. Legal Personality and Formation

- a. A foundation shall have legal personality. It shall acquire it on the day of its registration with the registration authority under relevant foundation law. It is important to note that registration does not mean request of license, which can be burdensome. It can be registration by notification system and where approval is needed, a default period of one month should be given where no answer means official registration; provided that a receipt for submission of registration forms is given to secure and guarantee the acquisition of legal status.
- b. A foundation can be created as well by notarial or trust deed or by will. This needs to accommodate waqf funds as well.

9. Legal capacity

- a. A foundation shall be free to act in pursuit of its objects in any manner allowed for in its statutes which is consistent with its public benefit status and which is not against the law.
- b. A foundation shall have the right to hold movable and immovable property, and to receive and hold gifts or subsidies of any kind, including shares and other negotiable instruments, and gifts 'in kind' from any lawful source.
- c. A foundation shall have the capacity, and be free, to engage in trading or other economic activities provided that any income or surpluses are clearly and directly used in pursuance of its public benefit purposes and do not constitute the main aim of the foundation.

¹ The taxonomy for foundation classification in the Arab region needs further development especially that some foundations might be a hybrid of more than one type mentioned here in addition to many being either operating, no-operating or both at the same time.

10. Registration Authority

- a. There shall be designated or created a registration authority for foundations.
- b. The registration authority shall be established on a statutory basis and in any individual case shall act independently of any governmental, quasi-governmental, or other public body or institution, and be free of political influence.
- c. It shall be the duty of the registration authority to:
 - i. receive and hold, as public records, documents and other information required for the registration of a foundation and its subsequent operation and to make them available for inspection by the public on request;
 - ii. determine the registration of foundations, and;
 - iii. otherwise ensure that the requirements of the Foundation Law are adhered to.
- d. Applications or Notification for registration as a foundation made to the registration authority shall be accompanied by the following documents:
 - i. the founding documents;
 - ii. a statement of the assets to be set aside for the purposes of the foundation;
 - iii. the statutes;
 - iv. the intended business address or addresses;
 - v. the names and addresses of all members of the governing board;
 - vi. the names, objects and registered offices of founding organizations where these are legal entities, or similar relevant information as concerns public authorities.
- e. The registration authority may not refuse to register an applicant otherwise in conformity with the requirements of the Foundation Law. Any case of denial of registration should be limited and specifically based on grounds prescribed by the law.
- f. The decision of the registration authority shall be published in the Official Journal (or equivalent) together with the information outlined in d(i) – (vi) of this Section.
- g. The registration authority shall reach its decisions without unreasonable delay. A decision should be reached within a month and if no answer within that period then it will be considered approval by default.
- h. A foundation shall inform the registration authority of any changes to the information outlined in d(i) – (vi) of this Section, and the new details shall be published in the Official Journal (or equivalent).
- i. The registration should respect formation of foundations as per section 3 in this document.

Fiscal Framework

11. Endowment

An asset (cash or physical) maintained intact and invested to create a continuous source of income for not-for profit or social entity. An endowment requires that the principal remain intact in perpetuity, or for a defined period of time, or until sufficient assets have been accumulated to achieve the designated purpose.

11.1 Asset Management

The responsibility and accountability should rest with the board members of the foundation, to ensure effective financial management of foundation assets.

11.2 Tax treatment of the foundation, donors and beneficiaries

The rules to apply for tax exemption of the foundation as well as tax incentives for the donor should be clear and user-friendly. Tax relief schemes should be clearly defined in the law and should not be at the discretion of the competent authority.

11.3 Tax Relief

There should be a presumption that all foundations engaged in public benefit activities (*public benefit is defined by the relevant task force*) are entitled to be relieved of the taxes listed below. Tax relief could be dependent on the *expenditure of the foundation's income for public benefit purposes*. In other words, foundations should be expected to spend their resources at a reasonable rate. That rate should not, however, be defined in law. Each case should be treated on its merits. Furthermore, income judged as having been expended on activities other than those defined as being of public benefit should be taxed in the normal way. The various parameters here are:

11.3.1 Income tax

Foundations should be relieved of income taxation on money or other items of value received from whatever legal source e.g. individual donors, companies, governments or other NGOs, whether from home or abroad² whether by donation, grant, contract or testament. Relief should also be given for income from interest on capital or other funds, dividends, rents, royalties or capital gains earned on assets or the sale of assets. Losses of foundations should be taken into account. Realized capital gains and losses should be reconciled with foundations' capital.

11.3.2 Taxation of economic activities

Profits from related economic activities of public benefit foundations should be free of tax as long as they are exclusively applied to the foundation's public benefit purposes.

² One would start by home and keep abroad for long term as it is controversial in the Arab region

11.3.3 Property and land taxes

Foundations should be relieved of all or a proportion of property and land taxes and from duties on the transfer of property or land.

11.3.4 Employment taxes

In principle, foundations have to pay social and other charges or to contribute to pension schemes where appropriate. However, where provisions are made for tax deduction of employment costs or charges, this tax treatment should apply to foundations.

11.3.5 Company and individual donations

Both companies and individuals should be entitled to an income tax deduction or credit with respect to donations made to foundations engaged in activities of public benefit. The limits to be applied should be generous.

11.3.6 Tax treatment of the beneficiary

In principle, where the beneficiary is an Arab non-profit organization, it should be fully exempt from tax on donations received from public benefit foundations.

11.3.7 Value-Added Tax (VAT)

VAT rules and their application should take into account the public benefit nature of foundations and their activities, and should in no case disadvantage foundations.

Advocacy Framework

12. For an effective advocacy campaign it is important to highlight the related benefits for all stakeholders. The existence of a healthy relationship between the state and civic society guided by a motivating and enabling law will bring benefit to society as a whole and enhance synergy of investments made by government and foundations to maximize benefit to society. This should allow for partnership with the private sector which might opt to support initiatives run by existing foundations or set up foundations with funds earmarked for social investment allowing them to do good while benefitting from tax breaks for such purposes. The results should be more independence of the foundation sector, lesser level of oversight, higher level of self regulation, and effective partnerships between foundations, private sector and the public sector.

13. It is important to benefit from the lessons learned of the successful advocacy campaigns for similar causes like the micro-lending campaign in Jordan.

III. Model Foundations Law Articles

Objective

The aim of the model Arab Foundations Law is “**Improve the operating environment of foundations for public benefit**” in terms of addressing the issue of the legal and fiscal operating environment of organized philanthropy in the Arab Region.

Legal

Article 1 Definition of Public Benefit Foundation

A ‘*public benefit purpose*’ should be any lawful purpose that supports or promotes public benefit by supporting or promoting, *for example*, one or more purposes from the following list. It should be noted that this list is intended to be illustrative, not definitive, and that the topics are not in any order of priority or desirability. This list is open to other purposes determined to be of public benefit.

- Arts, culture and historical preservation
- Assistance to, or protection of people with disabilities
- Assistance to refugees and immigrants
- Civil or human rights
- Community Well Being including consumer protection
- Development, international and domestic
- Ecology or the protection of environment
- Education, training, and enlightenment
- Elimination of discrimination based on race, ethnicity, religion, disability, or any other
- legally proscribed form of discrimination
- Health or physical well-being and medical care
- Humanitarian or disaster relief
- Prevention and relief of poverty
- Protection of and support for children and youth
- Protection of and support for disadvantaged individuals
- Science

Article 2 Legal Responsibility

A foundation shall have its own legal responsibility. It shall acquire it on the day of its registration with the registration authority.

Article 3 Legal Capacity

- a. A foundation shall be free to act in pursuit of its objects in any manner allowed for in its statutes which is consistent with its public benefit status and which is not against the law.
- b. A foundation shall have the right to hold movable and immovable property, and to receive and hold gifts or subsidies of any kind, including shares and other negotiable instruments, and gifts 'in kind' from any lawful source.
- c. A foundation shall have the capacity, and be free, to engage in trading or other economic activities provided that any income or surpluses are clearly and directly used in pursuance of its public benefit purposes and do not constitute the main aim of the foundation.

Article 4 Formation

A foundation can be created notarial or trust deed or by will. This needs to accommodate waqf funds as well.

Article 5 Statutes

- a. The statutes of the foundation shall include at least:
 - i. the name of the foundation;
 - ii. a statement of its public benefit purpose;
 - iii. the address of the foundation's registered office;
 - iv. the conditions for the admission, expulsion and resignation of members of the governing board;
 - v. the rights and obligations of the governing board and its members;
 - vi. the procedures for amending the foundation's statutes;
 - vii. the grounds for dissolution and a clear process for that;
 - viii. the distribution of net assets after dissolution; and
 - ix. the rules applicable to the calling and conduct of meetings of the governing board.
- b. The foundation's statutes shall also provide for the avoidance of actual or potential conflicts of interest between the personal or business interests of officers, board members, and employees of the foundation, and the interests of the foundation.

Article 6 Responsibilities of the governing board

- a. Foundations shall have a governing board, composed of at least three members designated by its founders.
- b. It shall be the duty of the governing board to take responsibility for all decisions with regard to the proper administration and conduct of the foundation's affairs. Members of the board, and foundation officers having responsibility under them, shall observe a duty

of loyalty in the exercise of their responsibilities, shall act with diligence and care, and shall ensure compliance with the laws and statutes of the foundation.

- c. It shall be the duty of the governing board and of the foundation's officers to make available to the registration authority all evidence material, such as annual reports, to any enquiry undertaken as per law. The law should be drafted such that this is done with the spirit of ensuring that funds of foundations are spent on public benefit without unnecessary cumbersome reporting procedures.
- d. It shall respect the principle of good governance and self regulation in accordance to the best practices of transparency of accountability detailed in Section 9 below.

Article 7 Liability of the foundation and board members

- a. The liability of a foundation shall be limited to its assets.
- b. The members of the board shall be personally liable to the foundation and to injured third parties for the willful or grossly negligent performance or neglect of their duties, but shall not otherwise be liable.

Article 8 Transparency and accountability

- a. A foundation shall be obliged to keep full and accurate records of all financial transactions.
- b. A foundation shall be obliged to draw up and return to the registration authority full and accurate annual statements of accounts, and an annual activity report, within 12 months from the end of the accounting year. The annual activity report should list the grants distributed, taking into account the right of privacy of the beneficiary.
- c. A foundation with annual revenues in excess of \$50,000 and/or assets in excess of \$500,000³ shall have its accounts professionally audited. It is recommended though that irrespective of revenue or asset size and if financially affordable, external professional auditing to be conducted at least once every three years.
- d. Self regulation, to ensure transparency and accountability, should be on clear measurable data on the following elements: measurable impact of programs ensuring public benefit, responsiveness to community needs, cost of operations, public annual reports and financial statements, declared policies related to conflict of interest, ensuring financial and personal policies are in place, and transparent sources of funds.⁴

³ These figures need to be determined by the peer group of foundation in each country and mentioned here for guiding purposes.

⁴ Guidance on transparency and accountability can be found in document on SAANED website: [www.saaned.com or http://saaned.com/file/Guide_analysis_philanthropic_organ.pdf](http://saaned.com/file/Guide_analysis_philanthropic_organ.pdf)

Article 9 Supervision

- a. The registration authority shall have the duty to ensure that the governing board acts at all times in accordance with the foundation’s statutes and the Foundation Law.
- b. Where the registration authority has reasonable grounds to believe that the governing board of a foundation is not acting in accordance with the foundation’s statutes or the Foundation Law, it shall have the power to enquire into the affairs of that foundation.
- c. In the case that there is evidence that the governing board has acted improperly with respect to the foundation’s statutes, and/or the governing board refuses to act on a warning from the registration authority; then, the registration authority shall have the power to order the governing board to comply with the foundation’s statutes and the foundation law.
- d. If evidence of financial impropriety, serious mismanagement and/or abuse is brought to the notice of the registration authority, the authority may designate an independent expert to enquire into the affairs of a foundation.
- e. In the case of enquiries under items “b” and “d” in this section, the registration authority shall have the power to require the managing board and officers of the foundation to make available all and any evidence material to its effective conduct.
- f. The registration authority shall have the power to require the dismissal of any member of the board or officer of the foundation found guilty by a court of financial impropriety.
- g. Exceptionally, where the registration authority deems that the assets of the foundation are at serious and immediate risk, the registration authority shall have the power temporarily to freeze the foundation’s bank accounts and take such other emergency measures as it sees fit to protect the foundation’s assets until such time as the matter can be brought before a court.
- h. Where the registration authority is satisfied that the foundation is unable to conduct properly its own affairs, it may appoint an independent receiver and manager to act in place of the governing board. The appointment of a receiver and manager must be reviewed by a court within three months⁵.

Article 10 Change of purpose

- a. Any change to the public benefit purpose proposed by the governing board shall require the agreement of the registration authority.
- b. Any amendment of the bylaws, insofar as they affect the purpose of the foundation, should be consistent with the will of the founder.
- c. The purpose of the foundation may only be changed if the purpose has been achieved or cannot be achieved or where the original purposes have ceased to provide a suitable and effective method of using the foundation’s assets.

⁵ The process of appointing an independent receiver and a manager should follow a gradual approach.

Article 11 **Dissolution**

The governing board of the foundation may decide upon dissolution of the foundation only if the aim of the foundation has been achieved or cannot be achieved; the time for which it was set up has expired; or the total loss of assets has taken place. The dissolution proposed by the governing board shall require the agreement of the registration authority. The dissolution decision should include ways to dispose of remaining assets like donating those assets to a foundation with similar objectives or giving back initial investment to founders with surplus going to public benefit cause.

Article 12 **Appeal to the courts**

All decisions of the registration authority shall be appealable to the courts. The type of courts should be selected in accordance to the prevailing conditions in each country such that process will be fair and transparent in accordance to the Foundation Law in place.

Fiscal

Article 13 **Qualifying bodies and expenditure**

- a. In this Law ‘qualifying foundation’ means any foundation established for public benefit purposes according to this Law.
- b. In this Law ‘qualifying expenditure’ means expenditure for public benefit purposes, within the country of residence or abroad incurred by a qualifying foundation in relation to a chargeable period (*i.e. tax year*).

Article 14 **Income tax**

Subject to the above, a qualifying foundation shall be exempt from income tax on its qualifying expenditure, even if it uses a reasonable proportion of its income to preserve its endowment and build up reasonable reserves for the sustainable pursuit of its public benefit purposes. A qualifying foundation shall be relieved of income taxation on:

- (a) **General income**: Income from whatever legal source, including individual donors, companies, governments or other non-profit bodies whether in the form of a donation or grant or by way of testament, or in payment for services carried out in pursuit of public benefit purposes;
- (b) **Interest, dividends, capital gains**: Income from interest on the assets of the foundation, and in respect of any interest, annuities, dividends or shares wherever held;
- (c) **Income related to real estate**: Income arising in respect of rents and receipts from an interest or right in any land; and

- (d) **Trade or business income:** Income arising from trade or business, provided that the profits are applied solely to the public benefit purposes of the foundation, and the trade or business is carried on in the course of the actual carrying out of a primary purpose of the foundation.

Article 15 *Capital gains*

A qualifying foundation shall be exempt from capital gains tax on the realization of any asset whatsoever provided that the income from such realization is either reinvested for the purposes of the foundation or expended under Article 1.b above.

Article 16 *Property and land taxes*

- a. A qualifying foundation shall be exempt from taxes related to the value and sale of property.
- b. Competent authorities shall have the power to exempt registered foundations from local property taxes.

Article 17 *Donations to foundations*

- a. Individuals giving to any qualifying foundation shall be entitled to deduct the amount of the donation from their personal income.
- b. Companies and other corporate bodies giving to qualifying foundation shall be entitled to deduct the amount of the donation from their corporate income.

Article 18 *Beneficiaries*

Public benefit (including NGOs and social enterprises) organizations as beneficiaries should be free of tax on the grants/ donations they receive from qualifying foundations.

IV. Definitions

Taxonomy

From the experience of participating in the effort to produce the WINGS “Global Institutional Philanthropy: A Preliminary Status Report” issued in November 2010 and was the first ever report on global philanthropy, the main participants from the region in the compilation of data for that report agreed on the following types of foundations in the Arab region: community foundation, corporate foundation, family foundation, membership foundation, public foundation, public-private foundation, (and during the work on the Model Foundations Law, religious or private waqf was added - though religious waqf has its own legal structure and here it is intended to include private waqf only). The taxonomy for foundation classification in the Arab region needs further development especially that some foundations might be a hybrid of more than one type mentioned here in addition to many being either operating, no-operating or both at the same time.

Public Benefit Foundation

- a. A public benefit foundation shall be an independently constituted and managed body, having the disposal of assets, and/or income, whether or not in the form of an endowment, which have been irrevocably set aside for public benefit purposes. The Public Benefit will be defined here with the Social Benefit Return (SBR) framework which aims to highlight the potential returns a society stands to reap from providing enabling operating environments for foundations.
- b. A foundation shall have no members as such but will have a board of its founders or their designates.
- c. Foundations may be established in perpetuity or for a specified period of time, as expressed by the statutes.
- d. The foundation’s assets and any income shall be devoted exclusively to the pursuit of its public benefit objects. No benefits shall be distributed directly or indirectly, to any founder, director, officer, or employee of the foundation.
- e. Public benefit foundation can be set up by funds derived from waqf.

Fiscal Definitions

The rules applying to tax exemptions of foundations as well as to tax incentives for donors should be clear and user-friendly. The taxation section of the Model Law is intended to be no more than a first attempt to set out the basic principles in a form which approximates that which might be found in legislation, remembering that such legislation would in practice not form part of the foundation law but would form part of tax legislation more generally.

It also needs to be remembered that in all jurisdictions the precise definition of such apparently clear things, such as ‘land’, ‘rents’, ‘assets’, ‘income’ (as opposed, for example, to ‘capital’) can be vastly complex and therefore as much clarity as possible needs to be reflected into any Model Foundations Law. Further clarification of terms is listed below.

Qualifying bodies and expenditure - In this Model Law ‘qualifying foundation’ means any foundation established for public benefit purposes according to this Law. In order to receive tax benefits, the foundation has to spend its income on public benefit purposes only.

Income tax - The question of what precisely is meant by ‘spending’ its income under Article 13 is dealt with in Article 14, which allows the foundation to preserve its endowment by it holding part of its income and to build up reasonable reserves having regard to its needs and circumstances and the field in which it operates. For the present the text does not deal with the question of the powers of the taxation authority – which will necessarily be distinct from those of the registration authority – to enquire into the affairs of a foundation, (which being registered, is presumed to be of public benefit) in order to establish whether, *in the opinion of the taxation authority*, it qualifies for tax relief. In practice, the fact that a foundation is registered should normally be taken as sufficient *prima facie* evidence that it is entitled to tax relief, though the taxation authorities would be expected to take an interest should the amount set aside by a foundation for preserving its endowment or building up its reserves appear excessive. They may also be expected to have views on any proposal to extend substantially the definition of public benefit. As regards income derived from trade or business, the present text allows only what is commonly called ‘related’ income, that is to say, income from economic activity which is integral to the achievement of the foundation’s basic public benefit purposes. The case of ‘unrelated business income’ or income from trade or business which, though useful as a source of revenue for the foundation, is not integral to the achievement of its purposes, is difficult to deal with in legislation and not considered here.

Capital gains - A qualifying foundation shall be exempt from capital gains tax on the realization of any asset whatsoever provided that the income from such realization is either reinvested for the purposes of the foundation or expended under Article 1.b above.

Property taxes and land taxes - Foundations should be relieved of all or a proportion of property and land taxes and from duties on the transfer of property or land. A qualifying foundation shall be exempt from taxes related to the value and sale of property.

Donations to foundations - Both companies and individuals should receive tax incentives with respect to donations made to resident and foreign foundations engaged in activities of public benefit. The text currently opts for the system of tax deduction, while one may consider going for tax credit instead. The limits to be applied should be generous.

Beneficiaries - In principle, where the beneficiary is an Arab citizen, he/she should be exempt from tax on donations received from public benefit foundations up to a certain ceiling. Public benefit organizations should be fully exempt from tax on donations received from public benefit foundations.

V. References

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