

Global Trends

In NGO law: A review of NGO legal trends around the world

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THE LEGAL LANDSCAPE FOR PHILANTHROPY IN THE ARAB GULF

ICNL recently launched the Philanthropy Law Reports, which provide information on national laws and regulations affecting philanthropy in nine countries.¹ Authored by local experts in partnership with ICNL, these in-depth reports fill a gap in existing knowledge about the legal landscapes pertaining to philanthropic activities.

The reports cover four countries in the Arab Gulf: Kuwait, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).² Each of these states exhibits a vibrant culture of charitable giving³ and extraordinary levels of affluence due to significant petroleum or natural gas revenues.⁴ Guided by a number of Islamic principles that encourage, and in some cases obligate, charitable acts, these four nations share a deep and historic commitment to philanthropy.⁵

In recent years, the Gulf States under review have implemented many legislative and regulatory reforms - in some cases, major reforms - impacting the philanthropic sector.⁶ Some of these changes improve upon the preexisting legal framework and facilitate the ability of philanthropists to operate. Other changes, however, permit preexisting constraints on philanthropy to remain in place, or introduce additional and even more burdensome restrictions.

Regardless of certain improvements, significant legal barriers continue to constrain philanthropic giving from reaching its full potential in each of the four states. From formation to operation to dissolution, philanthropic organizations operating in the Gulf often face extensive government oversight and burdensome legal requirements. According to the Hudson Institute's Index for Philanthropic Freedom, the region encompassing the Gulf is among "the least conducive environments for philanthropy"

1 The Philanthropy Law Reports are available on ICNL's website at <http://www.icnl.org/research/Philanthropy%20Law.html>.

2 In addition to the four countries covered in this issue, the other countries covered in these reports include India, China, Ethiopia, Nigeria, and South Africa.

3 According to the World Giving Index, which measures charitable giving around the globe, many Gulf States top the list in terms of highest levels of giving. Out of the 140 states included in the Index, the UAE ranks tenth, Kuwait #19, and Saudi Arabia #41 in terms of levels of giving. The index is available at: <https://www.cafonline.org/about-us/publications/2016-publications/caf-world-giving-index-2016>. Other reports confirm this. For example, in Cutts 2015 Million Dollar Donors Report, the Gulf States are the highest ranked in terms of million dollar donations, out-pacing both the US and the UK. See <http://philanthropy.coutts.com/>.

4 Many Gulf States rank among the 25 richest countries in the world in terms of GDP. In fact, most are in the top ten, and Qatar ranks first. See, i.e., World Atlas, "The Richest Countries in the World," 2016, available at <https://www.gfmag.com/global-data/economic-data/richest-countries-in-the-world?page=12>.

5 These include zakat, an obligatory charitable contribution of one's income (typically 2.5%), sadaqa, a highly encouraged but voluntary charitable donation, and awqaf, an irrevocable trust set up for philanthropic purposes. Sharia (Islamic law), which is embraced by each of these States but officially enforced in varying ways, includes a significant emphasis on social justice and redistributing wealth to the less fortunate.

6 ICNL, "Philanthropy Law Report: Saudi Arabia," (March 2017), at p. 13 (stating, "NPO structures in Saudi Arabia are undergoing massive regulatory change to offer philanthropists a wider choice of regulated structures.") ["Philanthropy Law Report: Saudi Arabia"].

in the world.⁷ This reality helps to explain why the nonprofit sector, which includes philanthropic organizations, remains relatively small and underdeveloped in most of the Gulf States. In Saudi Arabia, the largest of the states under review, there are only 736 registered nonprofit associations in the entire Kingdom.⁸ In Kuwait, where there is no central registry of philanthropic organizations, there are thought to be fewer than two dozen nonprofit companies and only 88 private foundations;⁹ and in UAE, there are fewer than 100 charitable organizations.¹⁰ Specific numbers are extremely difficult to confirm for Qatar.

In this issue of Global Trends, we examine the laws and regulations affecting philanthropy in Kuwait, Qatar, Saudi Arabia, and the UAE, and highlight the key issues and legal obstacles that a potential philanthropist can expect to face when forming and operating a philanthropic organization, or engaging in philanthropic activities, in these states.

Specific topics covered include:

Significant Legislative and Regulatory Changes: This section provides an overview of some of the key legislative and regulatory changes affecting philanthropy in recent years, or expected in the near future.

Forming Philanthropic Organizations: This section provides a brief overview of the registration process for various types of philanthropic organizations, including restrictions on founders and prohibitions on certain activities.

Restrictions on Foreign Philanthropy and Affiliations: This section examines the burdens and complexities, and in some cases outright barriers, faced by those attempting to engage in philanthropy abroad or to accept foreign donations.

Fundraising and Donation Collection Requirements: This section reviews the requirements on charitable organizations and individuals hoping to raise and collect donations.

Government Oversight: This section looks broadly at the level of government supervision experienced by philanthropic organizations.

Penalties for Violations: This section examines the penalties imposed on organizations and individuals for violating the various rules pertaining to philanthropy.

SIGNIFICANT LEGISLATIVE AND REGULATORY CHANGES

In each of the Gulf States reviewed, the regulatory and legislative environment for philanthropy has changed substantially in recent years, or such changes are expected in the near future.

- In **Saudi Arabia**, an extensive revision of philanthropic law and policy took place in 2015 as part of a broader socio-economic reform program. The Associations and Foundations Regulation and its implementing bylaws, which went into effect in 2016, set forth the first comprehensive legal framework governing nonprofit organizations (NPOs) in the nation's history. The new framework continues to subject NPOs, including philanthropic organizations and recipients of philanthropy, to extensive government oversight,¹¹ but it also introduces many positive changes: philanthropists now have a wider choice of legal forms from which to choose, there are additional opportunities for organizations to receive government aid, the time it takes to register an organization is shorter, and the minimum number of founders required to form a philanthropic association is reduced.
- In **the UAE**, where there is a complex legal and regulatory regime governing philanthropic activity, the International Humanitarian City (IHC), created in 2007, is a free trade zone that serves as the

NUMBER OF NONPROFITS BY COUNTRY:

SAUDI ARABIA

736

*registered nonprofits



KUWAIT

112

*estimate



UAE

<100

*estimate



QATAR

?

*no data available



7 The Hudson Institution, "The Index for Philanthropic Freedom 2015," p. 12, available at <https://hudson.org/research/11363-index-of-philanthropic-freedom-2015>. This Index measures the ease of giving in 64 states; the two Gulf States included in the report, Qatar and Saudi Arabia, ranked absolute last (#63 and #64 respectively).

8 *Philanthropy Law Report: Saudi Arabia* at p. 14. Note that since the issuance of the new regulations in 2016, at least 155 associations and 11 family funds have been registered. There are no available records to confirm the exact total numbers of associations in existence today. These numbers are likely higher, as the numbers quoted were gathered in March 2017.

9 ICNL, "Philanthropy Law Report: Kuwait," (March 2017), at p. 8 ["Philanthropy Law Report: Kuwait"].

10 ICNL, "Philanthropy Law Report: UAE," (March 2017), at p. 2 ["Philanthropy Law Report: UAE"].

11 ICNL, "Civic Freedom Monitor: Saudi Arabia," last updated July 13, 2017, available at <http://www.icnl.org/research/monitor/saudi-arabia.html>.



Photo:
Kuwait Towers,
Hunny Alrohaif/Flickr

"IN EACH OF THE GULF STATES REVIEWED, THE REGULATORY AND LEGISLATIVE ENVIRONMENT FOR PHILANTHROPY HAS CHANGED SUBSTANTIALLY IN RECENT YEARS..."

country's primary hub of philanthropic and humanitarian activity.¹² In June 2017, a new overarching law governing NPOs, Law No. 12 of 2017, was issued in Dubai, which has its own regulator and distinct legal and regulatory framework for the nonprofit sector.¹³ The new 2017 law, which repeals and replaces Law Order No. 96 of 1995, outlines the procedures to establish and operate an NPO in Dubai, but it excludes public-welfare and charitable associations, which are covered by other laws, from its scope.¹⁴ A 2015 law, Decree No. 9, establishes the rules specific to NPO fundraising activities. Decree No. 9 requires philanthropic organizations to seek the advance written approval of the Islamic Affairs and Charitable Activities Department (IACAD), the primary regulator of philanthropic activity in Dubai, prior to fundraising or distributing any fundraising-related communication.¹⁵

- In **Kuwait**, where the legal framework for NPOs is relatively restrictive and designed to ensure "almost full control and discretion by the executive branch" over nonprofit activity, some positive changes have been introduced in recent years.¹⁶ These include increased flexibility in incorporating public charities, the introduction of "nonprofit companies" as a new legal form, and the promotion of electronic forms of fundraising.¹⁷ However, concerns that NPOs have been receiving aid and engaging in activities without the prior approval of the Ministry of Social Affairs and Labor (MSAL), the overseer of all nonprofit organizations in the country, has led to a proposal for a new, more restrictive legislative framework that, if passed, will further constrain the ability of NPOs to operate. The proposed law would allow (or continue to allow) for the involuntarily dissolution of an NPO if deemed in the "interest of the public," prohibit the incorporation of foreign NPOs, ban domestic NPOs from receiving any support or affiliating with any foreign entity without prior written permission, dictate how NPOs should internally govern themselves, and impose harsh penalties for violations.¹⁸ Due to widespread opposition from civil society, the law is not expected to pass without substantial amendment.

- In **Qatar**, which has gained a regional reputation for the variety and scope of its philanthropic institutions, new regulations were adopted in 2014 in response to foreign media reports that philanthropic institutions were aiding terrorists and that a separate regulatory framework was needed to take into account the specific needs of these institutions.¹⁹ Two key laws emerged: (1) Emiri Resolution No. 43, which created a new regulatory authority to supervise humanitarian and philanthropic associations, the Regulatory Authority for Charitable Activities (RACA), and (2) Law No. 15, which outlines all of the rules associated with forming and operating a humanitarian or philanthropic association in Qatar. The new law requires associations to receive RACA's permission before engaging in most activities, including collecting and offering donations, fundraising, or joining a foreign association or club.

FORMING PHILANTHROPIC ORGANIZATIONS

Individuals wishing to found philanthropic organizations in each of the four countries have a variety of legal forms from which to choose, which are overseen by a variety of government entities.

- In **Kuwait**, possible legal forms include nonprofit clubs and public benefit associations, public charities (associations), nonprofit companies, private foundations, and private endowments. The Ministry of

¹² Philanthropy Law Report: UAE at p. 1.

¹³ Philanthropy Law Report: UAE, Update #5, at p. 1. Note that the new 2017 law does not cover public welfare institutions, private associations, institutions established by the Ruler, charitable associations, Quran memorization centers, Islamic institutions, business councils licensed by the Dubai Chamber of Commerce and Industry, and working bodies in the field of youth and sport care.

¹⁴ The new 2017 law applies to only certain non-governmental organizations and associations, which are defined in Article 2. Most organizations involved in philanthropic activities, such as public welfare and charitable associations, are covered by other laws, namely Law No. 2 of 2008 and Executive Council Resolution No. 26 of 2013, respectively. Other organizations excluded from the jurisdictional scope of the 2017 Law are enumerated in Article 3.

¹⁵ Philanthropy Law Report: UAE, at pp. 9, 3.

¹⁶ Philanthropy Law Report: Kuwait, at p. 1.

¹⁷ *Id.*, at pp. 1-2.

¹⁸ *Id.* at p. 2. See also "Labor Drafts Law on Charities," Arab Times, March 21, 2016.

¹⁹ ICNL, "Philanthropy Law Report: Qatar" (March 2017) at p. 3. Prominent Qatari charitable organizations include Qatar Charity, Sheikh Thani Bin Abdullah Foundation for Humanitarian Services, Sheikh Eid bin Mohammad Al Thani Charitable Association, and Al Faysal Without Borders Association ["Philanthropy Law Report: Qatar"].

Social Affairs and Labor (MSAL) supervises all of these forms, except for private endowments, the oldest and most liberal organizational form, which function largely autonomous from state control.

- In [Qatar](#), available legal forms include associations, foundations, private endowments, clubs, and religious centers.²⁰ RACA oversees all humanitarian and philanthropic organizations and the Ministry of Administration Development, Labor, and Social Affairs (MADLSA) oversees all other types of NPOs.

- In [Saudi Arabia](#), legal forms include associations, foundations, family funds, and private endowments. Historically, the Ministry of Social Affairs (MoSA) has overseen the entire nonprofit sector, including all philanthropic organizations. However, in a May 2016 cabinet reshuffle, MoSA merged with the Ministry of Labor to form the Ministry of Labor and Social Development, which has now assumed oversight responsibilities.

- In [UAE](#), forms include public-welfare associations, charitable societies, NPOs, and incorporated NPOs (INPOs). In Dubai, two types of NPOs are permissible under Law No. 12 of 2017: non-governmental associations (NGAs) and non-governmental institutions (NGIs); both are licensed and overseen by the Community Development Authority (CDA).²¹ The Ministry of Social Affairs (MSA) regulates public welfare associations at the federal level, and the Islamic Affairs and Charitable Activities Department (IACAD) regulates private charitable societies, as well as the collection and dispersal of donations, in Dubai.²² The International Humanitarian City (IHC) and the Dubai International Financial Center (DIFC), both in Dubai, are free trade zones with their own set of rules, regulations and oversight authorities. The IHC allows philanthropic organizations to register as NPOs, and the Dubai International Financial Center (the DIFC) allows them to register as NPIOs.

The rules and regulations pertaining to who can form philanthropic organizations in the Gulf have many commonalities, with slight variations. Saudi Arabia, Qatar and the UAE (at the federal level) require the founders of most NPOs to be citizens and at least 18 years old; and in Kuwait founders must all be citizens and at least 21. In Dubai, founders of non-governmental associations must similarly be 21, but only two of the founders must be UAE citizens;²³ for private charitable societies, no minimum age is specified for founders, only a requirement that they have “legal capacity” and the solvency and financial capacity to fund the activities of their society, among other requirements.²⁴

The required number of founders varies from at least 50 in Kuwait (for public charities), to ten in Saudi Arabia and Dubai (for Non-Governmental Associations), or one for Non-Governmental Institutions in Dubai. In other parts of the UAE and in Qatar, a minimum of 20 founders is required to found a public welfare association or a nonprofit association, respectively. Some exceptions exist: foreigners can hold up to 49 percent ownership in nonprofit companies in Kuwait and can create private endowments; a charitable foundation can be created by only one individual in either Qatar or Saudi Arabia; and a family fund, requiring only ten related individuals, can be formed in Saudi Arabia. Qatar, Saudi Arabia, and the UAE also require founders to be free of conviction of a crime involving dishonesty or moral turpitude.

The complexity of navigating the registration process varies from country to country and depends on the organizational form chosen.

- In [Kuwait](#), the registration process for public charities (associations), clubs, and public benefit associations, which reportedly takes about a year, is described as “very bureaucratic,” “difficult,” and “subject to political influence.”²⁵ While the process has become more accessible in recent years according to some reports, registration decisions continue to be influenced by an applicant’s

Photo: Building detail -
Doha, Qatar,
Kris Krüg/Flickr

²⁰ The first three forms are most relevant to philanthropic activity.

²¹ Philanthropy Law Report: UAE, Update #5, at pp. 1-2. The CDA is responsible for licensing NPOs and their branches, investigating complaints against NPOs, identifying violations and setting forth appropriate punishments, and proposing legislation governing NPOs.

²² For additional details on the MSA and IACAD, including their different authorities and jurisdictional scopes, see *Id.* at pp. 8-9.

²³ However, all other non-citizen founders must be legal residents of the UAE for at least three years and nationals of a fellow Gulf Cooperation Council State.

²⁴ They must also have never been sentenced for a felony or misdemeanor involving moral turpitude or breach of trust, or dismissed or stopped from working with any other charity or philanthropic organization. *Id.* at p. 10.

²⁵ Philanthropy Law Report: Kuwait at p. 9.



"IN ALL OF THE GULF COUNTRIES, PHILANTHROPIC ORGANIZATIONS MUST RECEIVE GOVERNMENT PERMISSION BEFORE AFFILIATING WITH FOREIGN ORGANIZATIONS, ENGAGING IN ACTIVITIES ABROAD, ACCEPTING FOREIGN DONATIONS, OR GIVING TO FOREIGN CAUSES."

personal connections with the staff at MSAL, which makes all registration decisions.²⁶ Ambiguous restrictions on certain activities, discussed below, allow MSAL significant discretion when making these decisions.²⁷

- In [Qatar](#), registration applications for nonprofit associations must be responded to within 30 days, and can be rejected for reasons of “public interest,” a term undefined in the law. However, rejections (as well as requests for further documentation), which are issued by RACA for humanitarian and philanthropic organizations, must be explained in writing and are appealable within 30 days. If no response is given within this time frame, a rejection is implied.²⁸ The process for founding a charitable foundation is similar.

- In [Saudi Arabia](#), the registration process for a nonprofit association by law cannot take longer than 60 days; if it does, an acceptance is presumed. In practice, however, this rule is difficult to enforce.²⁹ Applications can be denied if an association’s activities are deemed impermissible.³⁰ The new 2015 Associations and Foundations Regulation expanded the list of permissible activities, and allows MSA to approve additional activities at its discretion. However, “political activism,” a term undefined within Saudi law, continues to be prohibited. The process to form a philanthropic foundation is similar.

- In [the UAE](#), MSA has 60 days to approve or reject applications from public welfare associations. Applications can be submitted online free of charge. Rejections must be justified, though the law does not list permissible grounds for rejection. If a rejection (or no response) is issued, the applicant can file “a grievance” with the MSA, and subsequently, can appeal the decision to a court. In Dubai, the CDA has 30 days to issue a provisional approval of an NPO’s application for registration; the applicant then has six months to complete all additional licensing requirements. During this six month period, the applicant is not permitted to operate, and if the additional requirements are not fulfilled, its provisional approval is withdrawn. The CDA is permitted to request “any” details or “documents, approvals or permits” it deems necessary during the application and licensing process.³¹

PROHIBITIONS ON CERTAIN ACTIVITIES

All philanthropic organizations operating in the Gulf States under review are restricted from engaging in certain activities, notably including political activities, sectarianism, and acts contrary to Islamic law. The prohibition on “interfering in politics” or “political activities” (the precise phrasing varies) is undefined in the relevant laws in all four countries, granting broad discretion to each of their governments over its scope and application. However, lobbying, including legislative advocacy, does not appear to be included in this prohibition. In fact, lobbying by NPOs is common, and tolerated, in all four Gulf countries.

Acts instigating religious controversy are similarly prohibited, albeit undefined, in all four countries, leaving the full scope of what conduct is and is not permitted unclear. In practice, non-contentious religious activities, such as building mosques or establishing religious schools, are generally permitted.

RESTRICTIONS ON FOREIGN PHILANTHROPY AND AFFILIATIONS

In all of the Gulf countries philanthropic organizations must receive government permission before affiliating with foreign organizations, engaging in activities abroad, accepting foreign donations, or giving to foreign causes. If permission is obtained, an organization can expect increased government oversight and additional reporting obligations.

- In [Kuwait](#), foreign NPOs hoping to operate in the country can only do so with MSAL’s permission

²⁶ Id. According to this report, it can take more than 18 months for an applicant charity or association to get the necessary government approval to form, and for private foundations, which do not require government approval but do have to register, the registration process can take a year.

²⁷ Id. at p. 6. Note that NPCs reportedly have an easier time registering: they register with a different ministry, the Ministry of Trade and Commerce. Private endowments incorporate with the courts through a process of attestation and rarely face obstacles to incorporation.

²⁸ Id. at 12.

²⁹ Id. (discussing Article 8 (3) of the Associations and Foundations Regulation, which includes the 60 day rule).

³⁰ Id. at p. 17.

³¹ Law No. 12 of 2017, Art. 8(3)(L), Art. 11(B).

and by first formally affiliating with a domestic NPO either through a partnership agreement or a memorandum of understanding (which itself requires MSAL's approval), or by incorporating a nonprofit company with Kuwaiti nationals. Similarly, domestic NPOs can operate internationally only with MSAL's written approval and in partnership with an authorized foreign NPO. There are no details within the law regarding how to receive this permission; MSAL appears to have absolute discretion. In practice, the requirements are less strictly enforced with respect to partnerships in North America and Europe.³² All NPOs in Kuwait are prohibited from accepting donations from abroad without MSAL's prior approval, which is typically granted. While individual foreign donors do not have to be registered in Kuwait, they are subject to the same restrictions as local donors, including the ban on supporting political activities and controversial religious activities.

- In **Qatar**, charitable associations and foundations are prohibited from joining or participating in the activities of any charity, authority, or club located outside the country without RACA's approval. The law is silent on the legality of domestic NPOs forming partnerships or joint projects with foreign charities, but such alliances exist in practice.³³ While foundations, unlike associations, are permitted to establish branches abroad, only one foundation to date, the Qatar Charity, reportedly has offices abroad.³⁴

Charitable associations and foundations are also prohibited from receiving or sending loans, grants, donations, wills, endowments, or other funds abroad, whether to an individual or charity, without a government-issued permit. The rules for obtaining this permit are detailed and complex. The applicant must describe the project to be financed, demonstrate that an actual need exists, and state the exact amount to be transferred, the names of all beneficiaries, and the expected phases of execution. All assertions must be supported with documentation attested to by the Qatari embassy or its substitute in the beneficiary's country. Once approved and the donation given, the Qatari organization must then conduct regular field visits to its intended foreign beneficiary in order to monitor the project's progress and existence, among other requirements.³⁵

All licensed associations and foundations are obligated to obtain prior approval from RACA before collecting donations or receiving transfers from abroad. Once approved, the association or foundation must send RACA copies of all related payment slips and receipts, clearly indicating the name and address of the sender and the recipient. Associations and foundations must maintain records of all donations for at least 5 years.³⁶

- In **Saudi Arabia**, MSA's permission is required before associations and foundations can do most anything abroad: participate in activities, provide services, join international organizations, and establish branch offices (only associations are permitted to do the latter).

Permission is similarly required before a charitable association or foundation can receive foreign funds or donations, including any resources from outside the country. Donations from non-Saudi citizens are not officially allowed under current laws. While foreigners may donate to a waqf, the beneficiaries of all donations must be Saudi citizens or NPOs.³⁷

- In **the UAE**, it is nearly impossible for foreign philanthropic organizations to register.³⁸ However, there are a few exceptions. Foreign NPOs can establish branch offices in the IHC free trade zone, and expatriates wishing to form a philanthropic organization can apply to MSA through their embassies or consulates.

Any distributions made to a foreign entity, including grants, gifts, donations, or transfers of any kind, are forbidden without prior ministerial approval.³⁹ This tight control over foreign giving

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China

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Philanthropy Law Report.pdf](http://www.icnl.org/news/China%20Philanthropy%20Law%20Report.pdf)



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Nigeria

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Qatar

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Saudi Arabia

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South Africa

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Africa Philanthropy Law Report.pdf](http://www.icnl.org/news/South%20Africa%20Philanthropy%20Law%20Report.pdf)



UAE

[http://www.icnl.org/news/UAE
Philanthropy Law Report.pdf](http://www.icnl.org/news/UAE%20Philanthropy%20Law%20Report.pdf)



³² Philanthropy Law Report: Kuwait at p. 14.

³³ "Qatar Charity Joins Bill Gates in Fight Against Polio," *Doha News*, April 24, 2013.

³⁴ Philanthropy Law Report: Qatar at p. 17.

³⁵ *Id.* at p. 24.

³⁶ *Id.* at p. 25.

³⁷ Philanthropy Law Report: Saudi Arabia at p. 23.

³⁸ Philanthropy Law Report: UAE at p. 14.

³⁹ The Federal Law No. 2 (2008), Art. 43.



"IN ALL FOUR COUNTRIES, MINISTERIAL PERMISSION IS REQUIRED BEFORE A CHARITY CAN ENGAGE IN ANY SOLICITATIONS, FINANCIAL AND OTHERWISE, OR RECEIVE ANY DONATIONS. STRICT GOVERNMENT OVERSIGHT OVER FUNDRAISING ... IS COMMON."

extends to foreign disaster relief as well. If an NPO wishes to send money abroad for the purposes of disaster relief, it must do so exclusively through the Red Crescent Society of the UAE. Additionally, philanthropic organizations wishing to hold conferences, forums, meetings, or events in which non-UAE nationals will participate must first notify the MSA. Conversely, a charitable society requires IACAD's prior written approval before it may receive gifts, benefits, aid, donations, or grants from inside or outside of the UAE.

• In **Dubai**, the CDA's prior approval is required before an NPO can affiliate with, participate in, or join any association or institution outside the UAE. Written approval from the CDA is similarly required for an organization's participation in conferences, lectures, seminars, and meetings held outside the country.⁴⁰ An NPO may not open a branch outside the UAE or become a branch of any foreign institution, form an entity in coordination with any other foreign association, or "enter into agreement, coordination or cooperation with any institutions or entities outside the State."⁴¹ IACAD will register a foreign society that represents an Islamic community if all of its members conduct commercial or professional activities in the UAE, have legal capacity, are over 20 years old, show "good conduct," and are free of convictions punished by imprisonment.⁴²

FUNDRAISING AND DONATION COLLECTION

Fundraising and the collection of donations are essential activities for many civil society organizations, particularly those involved in philanthropy. In all four countries, ministerial permission is required before a charity can engage in any solicitations, financial and otherwise, or receive any donations. While the rules and procedures vary from one country to another, strict government oversight over fundraising activities and donation collections is common.

• In **Kuwait**, public charities, and in exceptional cases, non-charitable public benefit associations, are permitted to engage in public fundraising only with MSA's prior approval. To receive approval, the public charity must specify the duration of the fundraising activity, the methods to be used, and the names of all individuals involved. It must also show that the fundraising objective is aligned with its overall organizational objectives, and if funds are being raised for an international cause, an additional layer of permission must be sought from the Ministry of Foreign Affairs (MFA).⁴³ This process is generally considered acceptable by those NPOs permitted to fundraise, although there are complaints about delays in receiving the necessary approvals.⁴⁴ Nonprofit companies similarly require permission to fundraise, but none has made such a request.⁴⁵

• In **Qatar**, a charity must receive a government-issued permit before raising donations, which allows it to fundraise for a specific purpose for a defined period of time.⁴⁶ The application requires extensive and detailed information, including the purpose of the donations; methods used; precise collection locations; and names, addresses, and ID numbers of any donation collectors. The law provides detailed rules governing donation boxes, which include requirements to create a three-person committee to open the box together, to submit a report detailing the amounts gathered, and to deposit the donations in a pre-approved bank account within one day.⁴⁷ Similarly, religious centers can collect or accept donations only with prior government approval.⁴⁸

• In **Saudi Arabia**, registered NPOs must receive government permission before engaging in any kind of fundraising at least one month in advance, or fifteen days in advance if the funds are being raised for

⁴⁰ Law No. 12 of 2017, Art. 38(11).

⁴¹ Id. at Arts. 38(17)-(18). The Law is not clear as to how "agreement, coordination, or cooperation with institutions or entities outside the UAE" differs from affiliating with an entity outside of the UAE, and whether an NPO can enter into an agreement, coordinate, or cooperate with entities outside of the UAE if it obtains the CDA's permission.

⁴² There are a few other narrow exceptions to the general rule that foreigners cannot register philanthropic organizations in the UAE.

⁴³ The MFA is tasked with ensuring that the funds do not go toward criminal or terrorist activity.

⁴⁴ Philanthropy Law Report: Kuwait, at pp. 14-15.

⁴⁵ Id. at p. 7.

⁴⁶ Qatar e-government website, "Charity," 2017, available at <http://www.hukoomi.qa/wps/portal/topics/Religion+and+Community/Charity+Work>.

⁴⁷ Philanthropy Law Report: Qatar at p. 24.

⁴⁸ Id. at p. 23.

a natural disaster or other emergency. However, there is one exception: public benefit associations may collect donations directly without MSA's prior permission. A philanthropic association can acquire "public benefit status" if it serves a public objective, devotes all of its activities to a targeted but not exclusive society, has an open membership, and has committed no previous financial, technical, or administrative contraventions.⁴⁹ In many cases, donors must donate through pre-approved government channels. For example, donations directed toward the Syrian conflict or to earthquake victims must go directly to the King Salman Humanitarian Aid and Relief Center. Most other donations made by the public must go through the government's "Global Goodness" program, which has pre-selected and vetted beneficiaries that donors can choose. The public may donate via text message to a pre-approved government telephone number, which requires the donor to disclose identity and contact information. While under the old law, donors could deposit their donations directly into an NPO's bank account, this is no longer permitted under the new law due to tighter counterterrorism rules. Donations from non-Saudi citizens are not officially allowed under current laws.⁵⁰

• In **Dubai**, all donations, grants, and gifts received by NPOs governed by Law No. 12 of 2017 must be approved by the CDA and in accordance with the Decree No. 9 of 2015, which also requires NPOs to obtain the CDA's written consent prior to collecting donations or advertising fundraising activities, including through social media.⁵¹ A charitable society, which is overseen by IACAD, must similarly submit a formal request for approval to IACAD prior to engaging in any fundraising activity or advertising a fundraising campaign, and such requests must also comport with Decree No. 9. Fundraising requests must include detailed information regarding the fundraising activity, the names of any individuals involved, and the location, collection methods, beneficiaries, and expected amounts to be raised. This lengthy request must be completed separately for each distinct fundraising activity. Individuals are not permitted to fundraise; soliciting and gathering donations, including anything from sponsoring a walk in support of a cause to collecting books for a charity, can only be done by organizations and societies licensed by (or pre-approved by) IACAD.⁵² Any donations collected in violation of these rules can be seized directly from the fundraisers' bank account, and the fundraiser can be subject to fines, imprisonment, or both.⁵³

GOVERNMENT OVERSIGHT

The monarchies heading each of the Gulf countries covered in this analysis maintain tight control over the internal affairs of philanthropic organizations, often in the name of increasing transparency. The government entities responsible for overseeing philanthropic organizations in the four countries reviewed are granted significant and broad oversight authorities over the daily operations of NPOs in their territories, including the ability to conduct unannounced inspections, to demand access to an NPO's records, and to require that an NPO obtain prior permission before holding meetings.

• In **Kuwait**, MSAL has the right to inspect an NPO's books and activities, replace its board of directors, conduct a site visit, order an audit, and decree the involuntary dissolution of an NPO that is, in MSAL's opinion, involved in activities beyond its stated objectives.⁵⁴ In practice, supervision is generally relaxed, with the exception of politically motivated cases, though these have not occurred for decades.⁵⁵ As for NPCs, which are overseen by the Ministry of Trade and Commerce (MTC), the government's oversight authorities are more constrained. For example, the MTC cannot dissolve an NPC or replace its board of directors. There is even less government oversight over private endowments, which are handled by the Awqaf Authority. The latter can only interfere when the endowment's

⁴⁹ Philanthropy Law Report: Saudi Arabia at p. 27.

⁵⁰ Id. at p. 28.

⁵¹ Law No. 12 of 2017, Art. 39.

⁵² "Fundraisers Must Get Official Permission Before Asking for Money," *The National*, December 17, 2010.

⁵³ IACAD has recently updated its website to clarify the process of applying for a license to conduct charitable activities, including collecting donations through approved charities in Dubai. Organizations who apply for a permit to collect donations must submit their request online and can expect the processing to be complete within 15 business days.

⁵⁴ Philanthropy Law Report: Kuwait at p. 12.

⁵⁵ For example, in the 1970s, Al-Istiqlal Society, the mouthpiece for the secular opposition, was involuntarily dissolved, and the elected boards of most other associations controlled by leftist or nationalist groups were replaced with government-appointed boards.

OVERSIGHT OF NONPROFITS BY COUNTRY:

5. ARABIA:

Govt has wide latitude to oversee internal operations & to suspend, dissolve, or merge NPOs. Govt reps must attend board meetings at which voting occurs. They cannot vote, but they can ask questions & cancel a board vote.



KUWAIT:

MSAL may inspect an NPO's books & activities, replace its board of directors, conduct a site visit, order an audit, & order involuntary dissolution. Oversight of NPCs is more constrained.



UAE:

MSA has extensive oversight over internal affairs, especially with respect to finances: it can examine their books, records, & documents, & must be notified of a bank change within 10 days.



QATAR:

RACA must be notified at least 7 days in advance of any meeting & can attend any meeting. They can also inspect an association's premises without advance notice, & examine, retain, or copy any documents.





IN QATAR, THE PENALTY FOR ILLEGALLY COLLECTING DONATIONS, WHICH PRESUMABLY INCLUDES COLLECTING DONATIONS WITHOUT GOVERNMENT PERMISSION, CARRIES A PUNISHMENT OF UP TO THREE YEARS IN PRISON OR UP TO \$27,000 IN FINES, OR BOTH.

founder explicitly permits it to do so, or where the endowment lacks a trustee.

- In **Qatar**, RACA has extensive control over the internal affairs of all philanthropic foundations and associations. RACA must be notified at least seven days in advance of any meeting, otherwise it will be deemed invalid. In addition to having the right to attend any meetings, RACA can require their postponement so long as three days advance notice is given. Moreover, RACA has the authority to inspect an association's premises without any advance notice, and to examine, retain, or copy any of its documents.⁵⁶

- In **Saudi Arabia**, the government has wide latitude to inspect and oversee NPOs' internal operations, and ultimately, to suspend involuntarily, dissolve, or merge them. Government representatives must attend board meetings at which voting occurs and may attend other meetings if they wish. While they are not permitted to vote, they can ask questions, and they can cancel a vote by the board, so long as the order is justified in writing.⁵⁷ As a result of such extensive oversight, most of the country's NPOs are directly connected to or affiliated with the royal family.⁵⁸

- In **the UAE**, the MSA has extensive oversight authority over the internal affairs of PWAs, especially with respect to their finances: it can examine their books, records, and documents, and must be notified of a bank change within ten days. Additionally, the MSA can require those staffing PWAs to attend training courses or consultations.⁵⁹

- In **Dubai**, IACAD similarly has extensive oversight authority over charitable societies, including the power to request detailed information regarding the personal and professional identities of employees, their organizational structures, and their internal rules and operating guidelines, among other details. IACAD can suggest that a charitable society make changes to its board of directors or management team, or propose that certain regulations, rules, and organizational structures be adopted. Moreover, the CDA enjoys the authority to access the physical premises of an NPO, to supervise the organization, and to demand its records and documents. The CDA has expansive monitoring powers over NPOs, which are required to provide the CDA with any requested information regarding their organizational affairs and foreign and local activities.

PENALTIES FOR VIOLATIONS

Penalties for legal and regulatory violations by philanthropic organizations range from administrative warnings to involuntary dissolution, the latter of which is typically seen only in extreme circumstances, but remains a possibility in all states under review.

- In **Kuwait**, MSAL can involuntarily terminate a philanthropic organization on a number of grounds, including if the number of founders falls below the required minimum, it materially breaches its bylaws, or it engages in activities beyond its stated objectives. It is harder, however, for the government to involuntarily dissolve a nonprofit company or private endowment. The latter can only be dissolved if its assets become depleted; and the former, only in exceptional cases and on the same grounds that apply to commercial companies. The majority of sanctions that pertain to philanthropic organizations are administrative.⁶⁰ While violations of the law are relatively uncommon, MSAL rigorously monitors and enforces such violations. In July of 2016, MSAL reported that after carrying out 465 inspections at mosques and humanitarian organizations, it discovered 25 breaches by 12 different organizations, 41 instances where groups had illegally used social media to fundraise, and 31 cases of individuals collecting funds without first obtaining a license.⁶¹ Among other outcomes, this investigation led to the shutting down of 75 kiosks used to collect clothing for the needy found to be in violation of the law.⁶²

⁵⁶ Philanthropy Law Report: Qatar at p. 17.

⁵⁷ The law does not specify under which circumstances a cancellation may occur.

⁵⁸ ICNL, Civil Freedom Monitor: Saudi Arabia, last updated: July 13, 2017, available at <http://www.icnl.org/research/monitor/saudiara-bia.html>.

⁵⁹ For the details of this process, see Philanthropy Law Report: UAE at p. 17.

⁶⁰ Philanthropy Law Report: Kuwait, at p. 13.

⁶¹ Id., Update #1, June-July 2016.

⁶² Also in July 2016, MSAL involuntarily dissolved the Al-Bunyan Charitable Society due to a number of reported violations, including

- In **Qatar**, charitable associations can be involuntarily terminated by the government agency responsible for their oversight under the following circumstances: if membership falls below the required minimum, if there is a violation of the 2014 Law or the associations' articles of association, or if the association engages in "political activities." RACA may also suspend an association's board of directors and appoint a replacement board for a one-year period if deemed in the "public interest"; this is appealable within 30 days. The penalty for illegally collecting donations, which presumably includes collecting donations without government permission, carries a punishment of up to three years in prison or up to \$27,000 in fines, or both. The rules on dissolution are less clear for foundations, but religious centers are similarly subject to harsh penalties for violations of the law.⁶³

- In **Saudi Arabia**, MSA can issue an order for the suspension, termination, or compulsory merger of an association for a variety of reasons, including if the association fails to comply with public order, public morals, or Islamic law, or if it commits an act that will adversely affect national unity. In practice, the Ministry views termination as an extreme measure used in exceptional situations only, such as when an organization is found to have links to terrorism.⁶⁴ More typically, MSA imposes sanctions gradually, first by sending warnings and offering 30 days to rectify the violation, and if the violation is not rectified after two warnings, then choosing from among a menu of sanctions: suspending the responsible staff member, preventing the responsible staff member from working for another association or foundation, dismissing one or more of the board members, temporarily suspending the organization's activities, or merging the organization with another one.⁶⁵

- In **the UAE**, MSA has the power to dissolve a PWA involuntarily under certain circumstances, but its decision must be based on a recommendation from a MSA-appointed committee. Grounds for seeking dissolution include failure to maintain the minimum number of founding members, failure to fulfill its purposes, or refusal to submit to inspections.

- In **Dubai**, the Director-General of the CDA may dissolve an NPO for a variety of reasons, including if the entity engages in acts contrary to the public order or morals. The new Law No. 12 of 2017 allows the CDA, in cases of violations, to issue a formal warning to an NPO, impose fines up to approximately \$27,000 (which can be doubled if the same offense is committed within a year of the first offense), order a temporary suspension for up to three months, dissolve the NPO's board, or revoke their license.⁶⁶

CONCLUSION

In the Gulf States of Kuwait, Qatar, Saudi Arabia, and the UAE, a strong and historic philanthropic culture coexists alongside a complex legislative and regulatory framework guiding charitable activities. In recent years, new laws and regulations have been passed or proposed to revamp the philanthropic legal landscape in each of the four countries. In some cases, such as in Saudi Arabia, this framework is the first of its kind in the nation's history. In other cases, such as in Kuwait, which has had a nonprofit legal framework in place for many years, new legal forms are emerging that grant greater autonomy from government oversight, such as the nonprofit company.

In general, however, the regulatory environment in these countries remains restrictive. Philanthropic organizations are prohibited from engaging in a wide variety of activities without prior government permission, such as fundraising, donation collection and accepting foreign transfers of any kind; and they are prohibited entirely from engaging in "political" activities, a term left undefined in all four countries. Additional legislative and regulatory reforms have the potential to allow philanthropic giving to reach its full potential in the four Gulf States. 🌐

engaging with foreign entities without prior permission.

⁶³ Philanthropy Law Report: Qatar at p. 21, 23. If religious centers perform most any activity, accept any service, or engage in any fundraising, without prior government permission, the individuals involved are subject to the same steep penalties that apply to those who engage in impermissible donation collections: up to three years in prison, up to \$27,000 in fines, or both.

⁶⁴ Philanthropy Law Report: Saudi Arabia at p. 24.

⁶⁵ Id. at p. 26.

⁶⁶ Law No. 12 of 2017, Arts. 46-47.



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