

Final Report: Key Elements of an Arab Foundations Foundation Law



This report which contains the key elements of the Arab Foundations Law is based on the output of a consultative meeting, held in Cairo in November 2012. These key elements are reflected in the output of the various task forces formed by the participants in the consultative meeting. The full reports of the task forces are included as well in this report. 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).



Table of Content

- I. Foreword
- II. Summary and Next Steps
- III. Output of Task Forces:
 - 1- *Legal Framework*
 - 2- *Financial Framework*
 - 3- *Social Benefit Return Framework*
 - 4- *Relationship with Government*
 - 5- *Definitions, Concepts and Features* related to foundations

I. Foreword

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.

This report compiles the work of the various task forces and contains the key elements that should guide the drafting of a Foundation Law. The details of such a law will depend on prevailing conditions in each Arab country. We are sure 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.

Finally, we are thankful to all the participants in this effort, which is the first of its kind in the Arab region. This report was completed as a result of the dedicated contribution of all members of the task forces.

Dr. Atallah Kuttab
SAANED

Ms. Dima Jwihan
ICNL

Ms. Luma Hamdan
AFF

II. Summary and Next Steps

The consultation in Cairo in November 2012 concluded that the key elements of an Arab Foundations Law are:

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

It is 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 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.

III. Output of Task Forces:

This section includes the output of all task forces organized as per the following:

- *Legal Framework*
- *Financial Framework*
- *Social Benefit Return Framework*
- *Relationship with Government*
- *Definitions, Concepts and Features* related to foundations

by Ganat AlSamalouty, Dima Jweihaan and Atallah Kuttab

April 2013

Contents

1.	Preamble	2
2.	Definition of a Public Benefit Foundation	2
3.	Legal Personality and Formation	3
4.	Legal capacity	3
5.	Registration Authority	3
6.	Statutes	4
7.	Responsibilities of the governing board	5
8.	Liability of the foundation and board members	5
9.	Transparency and accountability	5
10.	Supervision	6
11.	Change of purpose	7
12.	Dissolution	7
13.	Appeal to the courts	7

1. Preamble

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:

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

The consultation created several task forces to work on various elements of the Arab Foundation Law. This task force worked on the legal framework with focus on public benefit foundations including waqf set up for public benefit including setting up of foundations or waqf, governance structures, transparency and accountability. The management of financial resources and financial incentives by government including tax breaks, government relationship with government in general, and definition of public benefit, will not be considered in this section as they are the mandate of other task forces.

2. Definition of a 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 (term to be defined by the task force working on meaning of public benefit).
- 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.

3. 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.
- b. A foundation can be created as well by notarial or trust deed or by will. This needs to accommodate waqf funds as well.

4. 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.

5. 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 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 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.

6. 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.

7. 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 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.

8. 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.

9. 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 \$500,000¹ 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.

¹ These figures need to be determined by the peer group of foundation in each country and mentioned here for guiding purposes.

- 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.²

10. 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 months.

² Guidance on transparency and accountability can be found in document on SAANED website: [www.saaned.com](http://saaned.com) or http://saaned.com/file/Guide_analysis_philanthropic_organ.pdf

11. 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.

12. 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.

13. 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 Framework of Model Foundations Law

by Elie AbouAoun and Atallah Kuttab

December 2012

Table of Contents

Objective	2
Factors to Consider	2
a. Endowment	2
b. Asset Management.....	2
c. Tax treatment of the foundation, donors and beneficiaries.....	2
(i) Income tax.....	3
(ii) Taxation of economic activities.....	3
(iii) Property and land taxes.....	3
(iv) Employment taxes.....	3
(v) Company and individual donations	3
(vi) Tax treatment of the beneficiary.....	3
(vii) Value-Added Tax (VAT).....	3
Draft Foundations Law Articles.....	4
Article 1 - Qualifying bodies and expenditure	4
Article 2 - Income tax.....	4
Article 3 -Capital gains	4
Article 4 - Property and land taxes.....	5
Article 5 - Donations to foundations	5
Article 6 - Beneficiaries	5
Definitions.....	5

Objective

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

Factors to Consider

a. 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.

b. Asset Management

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

c. 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.

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:

(i) 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 abroad³ 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

³ One would start by home and keep abroad for long term as it is controversial in the Arab region

Draft Foundations Law Articles

Article 1 - 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 2 - 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 3 -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 4 - 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 5 - 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 6 - Beneficiaries

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

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 1 is dealt with in Article 2, 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.

Note: Main references are minutes of 25 November 2012, Turkish Law and EFC Model Law.

Defining Public Benefit for Model Foundations Law

April 2013

Contents

1. Introduction	2
2. Definition of social benefit return framework.....	2
3. Objectives of foundations.....	2
4. The notion of ‘public’	3
5. Public benefit purposes & importance for stakeholder	3
6. Sustainable development	4
7. Measuring impact effectively	6
8. Appendix	8
9. References	8

1. Introduction

The Public Benefit will be defined here with the Social Benefit Return (SBR) framework section of the Foundations' Law Proposal and aims to highlight the potential returns a society stands to reap from providing enabling operating environments for foundations. This aim cannot comprehensively be met without broadly distilling the below elements:

- SBR definition
- Foundation objectives
- Notion of 'public'
- Importance for stakeholders
- Foundation's sustainability (regional case study)
- Measuring impact of foundations

2. Definition of social benefit return framework

A comprehensive definition on SBR is difficult to definitively summarize. The below will suffice to explain the collective SBR definition for the purpose of this proposal:

“Social benefits are the total of private benefits and any external benefits: the increase in the [welfare](#) of a society that is derived from a particular [course of action](#). The total benefits of a [a given] activity to both the individual and the spillover effects to third parties...the costs and benefits to society as a whole that result from [these] decisions. These include private costs (the financial cost of production incurred by firms) and benefits.”

3. Objectives of foundations

Having defined the SBR, equally as important is to outline the objectives of Foundations' activities. A general review of respective foundations' objectives allow for the understanding of their potential value in any given society.

- **Empowering individuals and creating social linkage:** Organized philanthropy is very much about increasing the efficiency of citizen participation by strengthening civil society.
- **Promoting equal access and quality of access:** In an economic context, foundations are about a more equitable and sustainable environment and distribution of wealth where all members of society can find a useful role whatever their talents, possibilities or, indeed, disabilities.
- **Building social capital:** Foundations are too often only considered as financial retailers and venture capital banks for civil society. They are above all bodies of knowledge and expertise whose primary purpose is to create added value in

society in their respective fields of operation. They can play a valuable role as leaders daring to step onto contentious territory, where government could not venture, to help to introduce new variables into society's discourse.

- **Sustaining research to act upstream:** Foundations work to help tackle the root causes of problems, rather than just alleviating negative impact and effects. The bulk of their action is to address causes and try to anticipate changes in particular by supporting research, building expertise and testing new approaches.

4. The notion of 'public'

Given that foundations typically operate as 'public' entities; this section demarcates the general operative parameters of a foundation. This is essential to the SBR piece; as outlining the notion of 'public' will transparently define a foundation's means of operating.

- To qualify as being of public benefit, a foundation should serve the whole public or significant group within the general population. Its purposes should be amongst those enumerated in the principle on public benefit purposes above and not disallowed for any reason.
- In no case could the foundation serve essentially private interests.
- Assets, earnings, and profits of a foundation should be used to support the public benefit purposes of the foundation and should not be directly or indirectly used to provide benefits to any founder or donor (*qua founder or donor*) of the foundation.
- On dissolution, any remaining assets should be spent on public benefit or made over to another public benefit organization with objectives as similar as possible to those of the defunct organization.

5. Public benefit purposes & importance for stakeholder

This critical facet of the SBR segment aims to explicitly outline the various areas in which foundations can add value. 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

6. Sustainable development

Foundations need to have sustainable basis for their strategies and operations to have the most efficient and impactful business model; hence providing the most benefit and return to their respective societies.

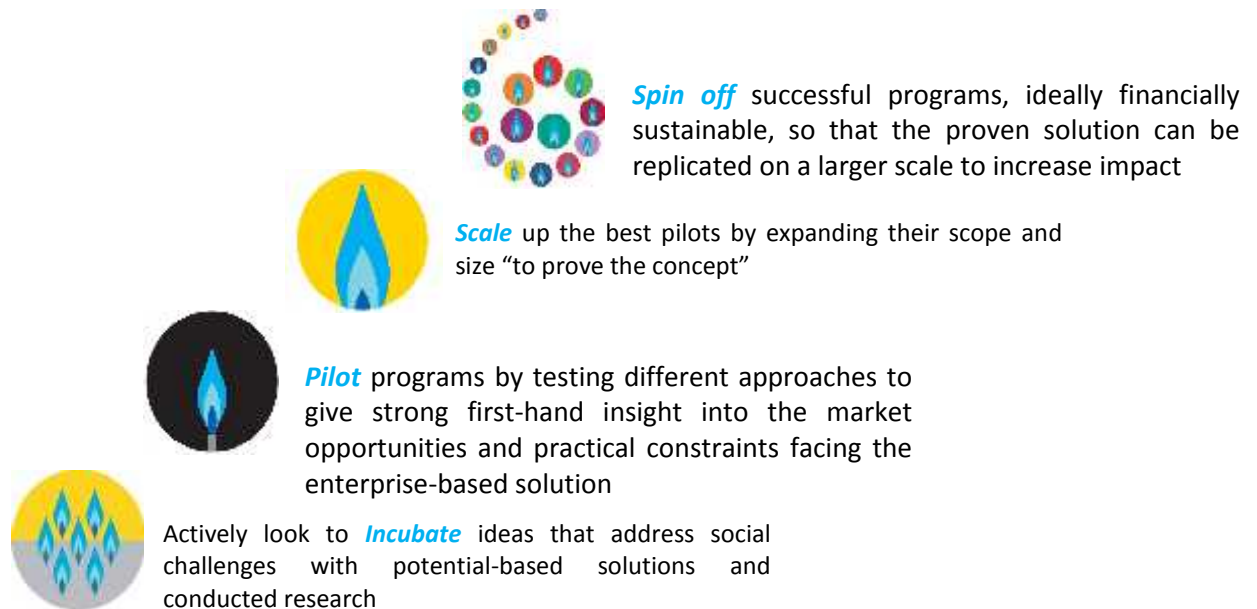
“A business model describes the rationale of how an organization creates, delivers, and captures value (economic, social, or other forms of value)” (Zott et al. 2010).

In theory, a business model has been defined from different perspectives including exchange, organizational, resource, and financial (Shi et al., 2009) all of which present the arrangements and mechanism of planning and implementation of organization activities. From these definitions the sustainability model in the context of this project is meant to be the internal and external mechanisms that are used in the planning and implementation of foundations’ activities in order to achieve sustainability. They can take different shapes depending on size, nature, type, culture, etc. of the organization.

Although several models for foundation program implementation come to mind when considering sustainable approaches; one seemingly feasible model is the venture philanthropy one; whereby a foundation moves from being a traditional, grant-giving organization to *investing* in long-term social programs.

Table 1: Venture Philanthropy vs. Traditional Philanthropy		
	Venture Philanthropy	Traditional Philanthropy
<i>Risk</i>	<i>Adapt risk management principles of risk taking and rewarding</i>	<i>Avoid risk because they are not rewarded one way or the other for taking risk. Accordingly, foundations compromise the likelihood of measurable return</i>
<i>Performance Measures</i>	<i>Focus on performance measures that will lead to long-term growth</i>	<i>Focus on short-term program outcomes and avoid the question of long-term consequences</i>
<i>Closeness of Relationship</i>	<i>Comfortable with close working relationships with investees. They are involved in deal flow, CEO selection, strategic planning, etc</i>	<i>Tend to keep their distance in their relationship with grantees. In addition, they tend to be totally uninvolved in operations</i>
<i>Amount of Funding</i>	<i>Fund few deals but they put enough money in chosen deals to make a difference. They will also help with subsequent funding needs</i>	<i>Fund a small part of each deal. They tend to undercapitalize and seldom help with subsequent funding needs</i>
<i>Length of Relationship</i>	<i>Will stay involved over a number of years, and this is known to all participants</i>	<i>Seldom stay involved for more than two or three years</i>
<i>Exit Strategy</i>	<i>Have an exit strategy identified at the point of entry. Often the exit is made possible by another VC firm</i>	<i>Rarely have an exit strategy</i>
Source: Morino Institute and Community Wealth Ventures n.d.		

As a result of this shift, a potential new business model -“social enterprise” can be adopted to manage programs’ planning and implementation (see figure below).



7. Measuring impact effectively

The most vital piece to assessing the SBR of any given foundation is measuring its impact. To what extent is a foundation adding value and impacting its respective community?

Foundations are all striving to affect change in one way or another: change in the way social problems are addressed and/or change in the lives of the constituents foundations serve. How will foundations know when they have succeeded? Every social entrepreneur struggles to identify when he or she has moved beyond implementing a good idea to achieving real change. As change agents, the success of our endeavors depends on our ability to demonstrate the impact of our work to staff, funders, clients, other stakeholders and the general public.

Undoubtedly, there are many barriers to measuring social impact—the first being the perception that social change cannot be measured or defined by metrics or data points. Many take the “I know it when I see it” approach; in other words, change is measured by anecdotal evidence gathered when clients and constituents are seen benefiting from services, not from numbers and statistics. Some foundations believe that qualitative information can be very effective in measuring social change (Fr example Innovation

Network). The challenge is to be systematic in how you collect and use qualitative data to evaluate your work.

The second challenge is the tendency to equate program performance or program activities with impact. Measuring social change is not only about counting the number of people served, number of micro loans made or new health clinics established. These benchmarks can help you confirm if you are on the right track, but they don't tell the full story about your impact. Measuring impact is akin to asking: Foundations served these people, foundations made these loans but so what? What change occurred as a result of our work?

To measure impact, you need to draw on the same creative and critical thinking skills used to launch your program. In order to measure social impact, you need to get concrete about what you hope to achieve. It's your vision—so you have to define your own success.

The basis for your success is the outcomes or expected change you hope to see among clients, communities, systems or organizations as a result of your work. In general, your outcomes should:

- Represent changes that can logically be expected to result from activities articulated in a logic model,
- Be within the program's sphere of influence,
- Be generally accepted as valid by various stakeholders of the program,
- Be phrased in terms of change, and
- Be measurable.

Often entrepreneurs are tempted to stay focused on the big goals that they have set out for their programs. However, foundations have found that it is helpful to think about outcomes along a continuum of change starting with what is in your immediate control at one end to what you hope to accomplish in the long-range at the other end. Think about:

- What changes do you expect to see?
- What changes would you want to see after that?
- What changes would you hope to see after that?

This helps you to ensure that your outcomes are measurable and realistic. Identifying outcomes provides structure to your vision by articulating where you want to go and what you hope to achieve. How will you know when get to where you want to go? You need evidence or indicators that signal that you have succeeded in achieving the desired outcomes.

Indicators can be quantitative or qualitative. They should be meaningful, direct, useful, and practical to collect. In creating indicators of your success, think about the following:

- What? Describe the condition, behavior, or characteristic that you will measure.
- Who? Specify the target population you will measure.
- How Much? State the degree of change you expect to see.
- How many? Identify the amount of change among your target population that would indicate a successful level of achievement. This sets the target for your work; base this on an understanding of your baseline and a level of change that is reasonable for your program.
- When? Note the timeframe in which this change should occur.

Once you have defined your outcomes and indicators, you are well on your way to measuring social impact in a systematic and credible way!

8. Appendix

SBR CLUSTER MEMBERS:

- HAMMAM ZARE-MAJID SOCIETY
- RIYAD ARAFAH- SYNERGY GROUP
- LUMA HAMDAN- ARAB FOUNDATION'S FORUM
- GHALIB ALQUDRAH-JORDAN RIVER FOUNDATION
- SAMAH HAMAD- PALTEL GROUP FOUNDATION
- FATIMAH BAESHEN-EMIRATES FOUNDATION

9. References

Emirates Foundation, 2009, 2010, 2011. *Financial Statement 2009-2010, 2010-2011*, Abu Dhabi.

Emirates Foundation, 2009. *Emirates Foundation Sustainability Report 2008-2009*, Abu Dhabi.

Emirates Foundation, *Emirates Foundation Sustainability [DRAFT] Report 2012*, Abu Dhabi.

McKinsey, 2011. *Emirates Foundation Strategy Document*. [Internal document]

Shi, Y., & Manning, T., 2009. Understanding business models and business model risks. *The Journal of Private Equity*, 12(2), p.49-59. Retrieved from <http://search.proquest.com/docview/236389083?accountid=14116>

Zott, C. Amit, R. and Massa, L., 2010 *The Business Model: Theoretical Roots, Recent Developments, and Future Research*, WP-862, IESE, - revised September 2010 in http://en.wikipedia.org/wiki/Business_model

Content was sourced from the Emirates Foundation's Research & Advocacy team

Supportive Institutions to Philanthropy The Civic Society and The State

By: Hisham Al-Rouby

This paper focuses on the dilemma of the relationship between state and civic society. We shall attempt to address several often posed queries in this concern:

- What is a civic society?
- Does the relationship between state and civic society have to be reversible?
- The existing weaknesses in state institutions, is it in the interest of the civic society? The retreat of the civic society and weakness of its foundations, is it in the interest of the state? How can there be a balance between the powers of the civic society and the democratic institutions to formulate a strong state?
- Who is responsible for development?

These are posed questions by this paper, as it attempts to address them.

- **What is a civic society?**

It became a known fact that the civic society plays a crucial role in many countries and political regimes around the world. Roles of the civic society differ among countries and regimes, where civic sector organizations (CSOs) are actively playing effective roles in one country and a secondary and less effective roles in another. This is attributed to the nature of relations among CSOs, state and the surrounding environment with its policies, laws, cultures, customs and traditions.

Many researchers conducted studies within their scopes of interest to find a clear and specific definition that conceptualizes a civic society. Given the importance, many literatures focused on the civic society as an entry point in analyzing, studying and understanding political regimes.

Many researchers studied the evolution of the concepts of the civic society in political and philosophical thought, not to mention the development of many forms of civic society emitting out of its existence amidst human communities of many forms and types. Many definitions emerged in attempt to explain CSOs.

Some define a civic society as a group of social, political, economic and culture institutions that function in its different and respective domains to meet urgent local communities' needs. It is semi-independent from the state and corporate capitalism within the private sector. The civic society participates in decision-making outside political institutions, has goals and unions to defend its economical interests, while aiming to elevate the levels of professionalism and expressing the interests of its members. It seeks no power nor authority in any way.

The concept of the civic society in sociology, political social science and political sciences, includes the following definitions:

- A civic society is “all the institutions that avails to citizens accessibility to goodness and benefits void of state intervention and mediation”
- A civic society is “the political and developing context whose existence represents the highest most role model in observing political participation”
- A civic society is “a group of free and voluntary formulations that fill up the general scope between family and state to achieve the interests of its individuals, hence heeding the values and standard of respect, compromise, tolerance, management of diversities and dispute” (*Mohammad Zahi Al-Mughairbi, Page 5*)

If we look into the reality of the civic society in our Arab world, we find it has but a secondary and ineffective role in the community, that is if it were to compare to its counterparts in the western world. The surrounding environment of these formulations differs in terms of regulative laws of the functions of these institutions; the differences in the nature of the political systems between East and West, deeply impacts civic society activities, in every community. The nature of the western political systems adopt democratic methodologies, that are positively reflected in dealings and relationships between state and civic society or individuals, since democracy depicts interactivity between individuals and the political system through political participation in addition to allowing for an active role to the civic society; this is made possible by little imposition over these institutions via western governments, which considers them protectors to individuals’ rights within constitutional controls that oversee various CSOs.

Despite the multiple participation in scoping the civic society concept, one could therefore say there are mutual elements that are agreed upon by all those who speak of civic society within the framework of a democratic state. Some of the most important factors are:

- The existence of CSOs is based on satisfaction and selection by its individuals. It includes the existence of levels, organizations and intuitions that are different from the state, most important of which are: political parties, professional unions, workers syndicates, private associations, clubs and voluntary formulations.
- Belonging to the civic society is based on equity. The authority that is practiced by the state in the face of this society is not an arbitrary authority, but an authority that is bound by controls and conditions, and governed by laws and constitution. The state has to comply with these controls and boundaries, based on the legitimacy of the state, yet, these elements are not definitive of a state, since these elements can also be found in a state that adopts a socialist system or national linearization; naturally, these states would be different from those recently-known to socialist communities in East Europe, or those in the Arab World where historical leaderships fought the colonial powers, seeking national independence.

Imposing legal boundaries on CSOs inhibits the chances of their development and achieving harmony within the community, between the state and its responsibilities, and its CSOs and the latter’s respective roles.

The existence of a healthy relationship between state and civic society ruled by a motivating law that allows for a strong civic society comprising the base in its turn to the state. This is because a state is based on respecting accepted principles by the community, hence the latter becoming more ready to support the state in all scopes and areas. A state in turn will go after gaining community support in order to convince citizens of its policies that will serve their interests, and rid itself of means of oppression used to rally obedience by citizens to its will. Obedience may prevail for a while but apt to convert itself into a violent revolution, sooner or later.

- **Does the relationship between state and civic society have to be reversible ?**

It is important to ensure, from the onset, that a civic society is not intended initially to provide political resistance that faces the state, since the efficiency of a civic society, with all of its organizations or constituents, harbour much broader and deeper goals than mere opposition. It harbours real participation in development in its broader sense, politically, economically, socially and culturally. Yet, such a participation is what allows the civic society and avails it the opportunity to monitor all development projects, inclusive state institutions, and to control and correct its respective paths. Within the context of logic, it is not necessary to have hostility nor contradiction between state and civic society, yet, the relationship from both ends of the spectrum has to be governed by a basic rule that aims for the preservation of the independence of the civic society.

- **Do we really want a true civic society or not?**

If we really and truly seek a proactive civic society emitting out of the fact the we are living in a democratic state with civic society, then earnest and hard work has to be exerted to allocated laws the permit the civic society to function, participate, self-monitor its foundations and monitor state institutions and developmental projects that state institutions base themselves on. The state should not regard this as a decrease or belittling of its powers and authorities but as support to it and its institutions so that we can achieve state goals, which are the bases of attainment of enhanced living standards and respect of citizens.

The essence of the civic society dilemma in Arab countries is focused on the dominance of state authority on all aspects of social life, rendering it a tools of constant observation and surveillance, and an eternal hindrance facing any possibility of freeing its individuals, and the independence of its CSOs. The fact remains, that this stubbornness of the state does not necessarily reflect is power, the vast power a state enjoys, and that it had bestowed upon itself and its institutions, and the desire to occupy all spots, in addition to its various equipment and machineries undoubtedly conceals a fundamental weakness and fragile existence that will soon reveal itself, no matter how long it prevails.

- **Who is responsible for development?**

This is a self-imposed question when talking about development and the real responsible entity to realize development. We have to agree, from the onset, on a development that focuses on the human, its (the development) creator– in order for us to play a more definitive role, we have to acquaint ourselves with the various civic sectors and shed light on the role of each sector in the development operations:

- **The government sector**, represented by all of its state institutions - and we can say it is the most complex and internally interlaced sector, where decisions have to be mostly made based on centralization, lacks resilience and flexibility particularly where proper utilization and direction of its resources is concerned. It is the sector that owns the power and authority. Historically speaking, governments used to look upon development and community advancement as one of its roles and accomplishments, where private sectors worked more modestly as complimenting entities for private interests.
- As the roles of the **private sector** started to gain more importance, the government sectors started to look towards it differently, it became evident that real and comprehensive development cannot happen void of full participation of all sectors: civic, public and private – so that each sector has relative importance that the other two do not possess. While we may find that the private sector is the closest to the people and their problems, we also see it has the owner of experience and efficiency, rendering it advanced and developed, whereas the government sector owns the authority and infrastructure, hence both have to exist to achieve real development.
- It is imperative to realize that all sectors of the community have characteristics that the other sectors have to realize, in addition to realizing that development operations require aggregated efforts and the participation of all sectors.

Development is a joint responsibility among all sectors of the community.

At the end of the day: a strong state is that which owns a strong civic society.

Philanthropic Foundations: Concepts and Definitions

by Heba Abou Shnief

The following section addresses concepts and definitions that encompass the main types of prevalent philanthropic foundations. Philanthropy is defined as the institutionalized pooling and distribution of private resources with the goal of building capacity, sustainable financing and expertise for long-term societal benefit (Ibrahim and El Sherif 2009). While philanthropic foundations are often subject to the same laws and policies as governing other civil society and community organizations, in practice they have significant distinctions. Philanthropic foundations are distinguished from other NGO and community 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 and managed body, [engaged in] 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” (European Foundation Centre 2003).

Nature and Operations

One of the main characteristics of public benefit foundations is that they are donor driven organizations. Foundations fund not-for-profit interventions and development programmes conducted by charities and civil society organizations, and individuals engaged in social, educational or cultural projects. The interventions they fund may be in a variety of areas which serve the public good: social services, humanitarian assistance, scientific research, economic development, health, education, environment, culture and sports or any other public benefit purposes. By law, foundations usually do not engage in political activities or generate profits. In instances where foundations engage in economic activity or generate profit (as from investment accounts) those assets must be utilized solely on behalf the public purposes of the foundation or to defray programmatic costs. If a foundation does make profit, returns are neither distributed to founders, board members or those managing the foundation nor is it exempt from taxes.

Sources of Finance

Foundations depend on private sources of funding from one or a number of natural or legal persons or both, with the exception of Public-Private Foundations that depend on both private and governmental or quasi-governmental sources of funding. Foundations may rely on trusts, invest returns, or periodic transfer of funds from a range of monetary and in-kind resources such as money, stocks, bonds, or physical assets like properties and other forms of assets, including the talents and skills of voluntarism.

Governance

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.

It is worth highlighting that foundations do not typically have a membership as is common among private voluntary associations.

There are several common types of foundations, these are:

1. Family Foundations

A private non-profit institution set-up to achieve one or more social cause and is funded by members of a single family. Founding family members usually play an active role in the governance of the foundation, either as trustees or board members. *Examples:* Mohammed bin Rashid Al Maktoum Foundation in UAE and the Sawiris Foundation for Social Development in Egypt.

Source: Adapted from the Worldwide Initiatives for Grantmakers Support (WINGS) Glossary.

2. Corporate Foundations

A private non-profit institution setup to achieve one or more social cause and is funded by a for-profit corporation but is legally separate from it. *Examples:* Mansour Foundation for Development in Egypt.

Source: Adapted from the Worldwide Initiatives for Grantmakers Support (WINGS) Glossary.

3. Religious Awqaf

The endowment of a certain property for the sole benefit of a certain philanthropy with the intention of prohibiting any use or disposition of the property outside that specific purpose; applies to nonperishable property whose benefit can be extracted without consuming the property itself. The three most typical kinds of waqf are religious (mosques, as well as real estate that exclusively provides revenues for mosque maintenance and service expenses), philanthropic (support for the poor and the public interest at large by funding such institutions and activities as libraries, scientific research, education, health services, and care of animals and the

environment), and posterity or family awqaf (whose revenues are first given to the family's descendants; only the surplus, if any, is given to the poor.

Source: Oxford Islamic Studies Online

<http://www.oxfordislamicstudies.com/article/opr/t125/e2484>

4. Public Foundations

An independent, non-profit institution based on which a group of two or more entrepreneurs pool in resources from the general public to address a common social cause. *Examples:* the Egyptian Food Bank; Ruwwad in Jordan.

Source: Adapted from the Worldwide Initiatives for Grantmakers Support (WINGS) Glossary.

5. Public-Private Foundations

An institution based on joint funding from private and governmental or quasi-governmental sources, where the parties agree to the terms of achieving a social cause. *Examples:* Emirates Foundation for Youth Development in Abu Dhabi, UAE.

Source: From Charity to Social Change: Trends in Arab Philanthropy, 2009.

6. Community Foundations

An independent, nonprofit institution working in a specific geographic area or addressing a local problem by pooling in the resources (whether cash or real property) from a number of donors in the community. It's a sustainable form of philanthropy that tends to rely on endowments and uses the investment earnings towards addressing local needs. Community foundations are governed by a board of citizens. *Examples:* King Hussein Cancer Foundation in Jordan; Wakfeyit El Maadi -El Maadi Community Foundation- in Egypt and Dubai Cares in the UAE.

Source: Adapted from the Worldwide Initiatives for Grantmakers Support (WINGS) Glossary.

References:

European Foundation Centre. 2003. "Model Law for Public Benefit Foundations in Europe." Discussion Document. Brussels.

Ibrahim, B. and Sherif, D. (eds). 2009. *From Charity to Social Change: Trends in Arab Philanthropy*. Cairo: AUC Press.