

# SAUDI ARABIA

## Philanthropy Law Report



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# SAUDI ARABIA

## PHILANTHROPY LAW REPORT

KEY INDICATORS <sup>1</sup>	
POPULATION	28,160,273 (2016 estimate)
CAPITAL	Riyadh
TYPE OF GOVERNMENT	Absolute Monarchy
GDP (PURCHASING POWER PARITY)	\$1.731 trillion (2016 estimate)
GDP PER CAPITA	\$54,100 (2016 estimate)
GDP – REAL GROWTH RATE	1.2% (2016 estimate)

## Introduction

The Kingdom of Saudi Arabia has a unique system for classifying and determining the hierarchy of its legal sources. At the heart of Saudi legislation is the Basic Rule of Governance (more commonly known as the Basic Law), which effectively acts as the country's constitution.<sup>2</sup> The Basic Law defines the roles of state authorities and the relationships among them and also determines citizens' rights. The Basic Law provides that the state shall apply Shari'a or Islamic law and that the decisions of judges shall not be subject to any authority other than Shari'a.

Shari'a's primary sources are the Quran, or holy book of Muslims, and the Sunna, or traditions of the Prophet Muhammad (PBUH), both of which are regarded as laws. The other important sources of Shari'a are consensus and analogy, which are used to derive rules from the Quran and the Sunna to apply to situations not explicitly addressed by those sources. On a practical level, analogy can lead to differing scholarly opinions about legal matters, depending on the methodology used. One relevant example involves games of chance at charitable events. Should they be prohibited, because Islam prohibits gambling? Or should they be allowed, because the intention of the participants is actually to donate rather than gamble? As a result of varying approaches to the use of analogy, four major schools of Sunni jurisprudence have emerged in Muslim countries. While Saudi Arabia does not formally adhere to any of them, Saudi courts are most influenced by the

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

<sup>2</sup> The Arabic terms *dustoor*, "constitution," and *qanoon*, "law," are not officially employed, although the English terms are used when documents are translated into English.

Hanbali School, which is the dominant system of jurisprudence followed by the majority of Saudi citizens.

Unlike civil law countries, Saudi Arabia does not have codified general legal principles, such as contract law, tort law, or rules of interpretation. However, many aspects of daily legal practice have been codified, including the rules applicable to companies and nonprofit organizations (NPOs).<sup>3</sup> These codes, known as regulations, are issued by the legislative body known as the Shura Council as well as the Council of Ministers. After approval by royal decree, they are published in the official gazette. Regulations essentially have the power of law and are applied by the courts. From a strictly theoretical perspective, a regulation may be questioned if it contradicts Shari'a, but this is an unlikely event since regulations are screened for conformity to Shari'a while still in draft form. In addition, executive branch bodies may issue legal instruments to govern the implementation of regulations. These instruments are known by various names, including bylaws, executive bylaws, and rules. They may not contradict binding regulations.

Thus Shari'a and regulations together regulate NPOs in Saudi Arabia. Shari'a has had a positive impact on Saudi law and the attitude of the country's Muslim citizens towards philanthropy. It must be remembered that Shari'a is not only a body of laws but includes religious teachings. The Holy Quran and the traditions of the Prophet Muhammad encourage compassion, charity, and *takaful*, or social con-solidarity,<sup>4</sup> as the means to earn God's love and salvation. Among the basic provisions of Shari'a that shape the practice of philanthropy in Saudi Arabia are zakat, sadaqa, and waqf.

- **Zakat.** According to Islamic teachings, Islam is based on five pillars, the third of which is zakat, or alms. Zakat is a form of wealth tax imposed on the rich, usually amounting to 2.5 percent of their savings and other assets. Zakat is distributed for specific purposes, including helping the poor and needy and freeing people from bondage. Today zakat is regarded mostly as public revenue to be collected and spent by the government. In Saudi Arabia only Saudi nationals pay zakat.
- **Sadaqa.** Any form of donation other than zakat is known as sadaqa. It can take the form of money, time, effort, or even a kind smile. Sadaqa is highly encouraged as a voluntary act left to the discretion of the donor. Accordingly, there are no regulations governing sadaqa.

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<sup>3</sup> For purposes of this paper, a nonprofit organization (NPO) is any type of legal entity recognized under the country's laws that is not part of the apparatus of government; that does not distribute profits to its directors, operators, or other persons; that is self-governing; and in which participation is a matter of free choice. NPOs may include associations, foundations, societies, nonprofit companies, etc., both domestic and foreign. An NPO can be organized for either mutual benefit or charitable or public benefit purposes.

<sup>4</sup> *Takaful*, "consolidarity," means that the whole community is responsible before God for the wellbeing of society. For example, if a child is dying of cancer and his parents cannot afford treatment, the community is responsible and answerable before God for providing support. If some members of the community provide aid, then the community's responsibility is satisfied. So it is unlike other obligations, such as prayer, for which each person is responsible individually.

- **Waqf.** Shari'a has developed a form of trust or endowment for philanthropic purposes that is known as a waqf (plural: awqaf). A waqf is the permanent donation to beneficiaries of the proceeds of an asset according to terms and conditions set by the donor. Because it is permanent, a waqf may not be revoked or cancelled or have its assets divested or confiscated except in certain specific circumstances (see below). A waqf may be general—for example, the donation of proceeds from a commercial building to provide aid to medical students at a specific university or to support a charity that helps cancer patients—or it may target families, as when a donor allocates the proceeds of a farm to help a needy member of his own family. The waqf deed is the document in which the donor identifies the donated assets and the beneficiaries and may also set out terms and conditions for managing the waqf donation, which must be observed. A waqf is a corporate legal entity that can incur obligations and litigate. Accordingly, each waqf must have a waqf nazir, or trustee, to manage the endowment, distribute its proceeds, and serve as its representative. A waqf may also conduct its operations via a company known as a waqf company.

## Recent Developments

Saudi philanthropic law and policy underwent extensive revision in 2015 as part of a broader program of socio-economic policy reform that aims to shift the economy away from its heavy dependence on oil and create work opportunities for Saudi youth. In January 2015 the Council of Ministers was restructured and a new Council of Economic and Development Affairs (CEDA) was established. CEDA now plays a key role in carrying out the strategic plans and visions for the country. In 2015 the Ministry of Social Affairs (MoSA) and the Ministry of Labor launched the joint From Guardianship to Sustainable Development campaign, which promoted the idea that NPOs should not limit their work to aid and charity but should also focus on sustainable development, mainly by helping beneficiaries become financially independent.<sup>5</sup> The push for economic reform was re-enforced by the government's 2030 Vision plan, released in April 2016, which envisions, among other things, a more effective nonprofit sector.<sup>6</sup> MoSA began to develop new criteria for

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<sup>5</sup> Government of the Kingdom of Saudi Arabia, Ministry of Labor and Social Development, "Wazeera Al-Amal Wel Shuoon Al-Ijtimaiyya Yatlaqan Birnamij Min Al-Rawiyya Ila AlTanmawiyya [Minister of Labor and Social Affairs Launches Campaign From Guardianship to Development]," news release, 13.1.1437, equivalent to October 26, 2015, <http://mosa.gov.sa/node/2867>. A new draft regulation known as the Productive Families Draft Regulation also encourages the self-employment of families.

<sup>6</sup> Vision 2030 makes the following statements: "Today, we have fewer than 1,000 nonprofit and charitable foundations and associations. They contribute only 0.3 percent of our GDP, much less than the global average of 6 percent. Currently, only 7 percent of projects are focused on generating social impact or are aligned with the long-term national priorities. By 2020 more than one third of our nonprofit organizations' projects should have measurable and deep social impact." "The recently published regulations on nonprofit organizations and on the General Authority for Endowments will help the nonprofit sector become more institutionalized, formalized and more efficient. We will accelerate this shift further by supporting projects and programs with high social impact and by facilitating the establishment of nonprofit organizations by high net worth families, which will promote rapid growth of the nonprofit sector. We will support this growth by creating a supportive and cooperate environment in which the sector's institutions and government agencies can collaborate." "At

classifying NPOs, which stress sound corporate governance and transparent financial reporting, along with other measures to enhance the professionalism of NPO work.<sup>7</sup> Finally, in a May 2016 cabinet reshuffle,<sup>8</sup> MoSA and the Ministry of Labor were merged into the Ministry for Labor and Social Development (MoLASD).<sup>9</sup> The new minister of MoLASD has emphasized policies geared towards realizing 2030 Vision's plan for social development.

The new policies have broadened the scope of government aid available to NPOs. For example, MoSA may provide registered associations with direct financial aid to hire Saudi (rather than foreign) managers. More significantly, the Human Resources Development Fund (HRDF), which falls under the Ministry of Labor, provides financial support to all entities, including NPOs, for the vocational training of Saudi workers in areas ranging from work readiness to advanced technical skills. NPOs may benefit from HRDF's generous funding by providing training to other groups (provided they are licensed to do so) or training their own staff.

On the legislative side, important new regulations have been issued in recent months. A new Associations and Foundations Regulation was released in 2015, followed by relevant bylaws in early 2016, to facilitate the establishment of philanthropic foundations and associations. The new regulation and bylaws aim to cut red tape by obliging MoSA to complete licensing within sixty days; reduce the number of founders for an association to ten; widen the scope of permissible activities to include, for example, sport; and clarify the concept of public benefit status. New applicants must comply with the new requirements, while registered associations and foundations have one year to implement any changes necessary to ensure compliance. Since the Associations and Foundations Regulation came into effect, a total of at least 155 new associations and eleven new family funds have been registered.<sup>10</sup>

In addition, a regulation created in 2015 established the Waqf Authority, which will monitor and promote waqf donations. Family Fund Rules, which provide for the establishment of an Associations Aid Fund, and a Nonprofit Companies (NPC) Draft Regulation, which allows for the registration of social enterprises, were issued in 2016. The Ministry of Commerce and Investment

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the same time, we will encourage the nonprofit sector to apply proper governance standards, facilitate high quality training to staff and promote a culture of volunteering and full-time careers in the sector." The full text of Vision 2030 may be found on the official government website at <http://vision2030.gov.sa/en>.

<sup>7</sup> "Iitimad Nizam Litasneef We Taqdeem Al-Jamiyyat Al-Khayriyya We Lijan Al-Tanmiyya [Approval of New System for the Classification and Evaluation of Charity Organizations and Community Centers]", *Alyawm*, June 15, 2015, <http://www.alyaum.com/article/4074790>.

<sup>8</sup> See, for example, Angus McDowall and Katie Paul, "Saudi Shake-Up Rolls On with Big Reshuffle of Economic Posts," Reuters, May 8, 2016, <http://www.reuters.com/article/us-saudi-reshuffle-idUSKCN0XYODX>.

<sup>9</sup> In this paper we will continue to refer to MoSA and the Ministry of Labor in describing the work of the ministries both before and after their merger.

<sup>10</sup> Between the time that the Associations and Foundations Regulation came into effect through mid-August 2015, 109 new associations were registered. Thereafter through September 30, 2016, eighteen associations and four family funds were registered. Between October 1, 2016, and November 30, 2016, twenty-six associations and seven family funds were established, for a grand total of 153 associations and eleven family funds. Two additional associations were registered thereafter. "Ilanat Al-Wizara [Ministry Announcements]," Ministry of Labor and Social Development.

(MoCI; formerly the Ministry of Commerce and Industry) solicited public opinion on the draft NPC regulation through May 2016.<sup>11</sup> Finally, the Saudi Shura Council recently rejected a proposal to adopt a new Corporate Social Responsibility Regulation, which could have boosted the work of the philanthropic sector.

For their part, Saudi NPOs undertook three important, related initiatives in 2015, all of which were endorsed by MoSA. The first initiative, known as Shaghaf, is a campaign launched by King Khalid Foundation to train young Saudi graduates at top U.S. universities and later encourage them to work at NPOs. Second, the Edama project came out of a strategic partnership between Al Subai'ee Foundation and King Fahad University and seeks to train volunteers while helping philanthropic organizations build professional volunteer departments.<sup>12</sup> Third, the Saudi Organization for Chartered Accountants (SOCPA) began to develop new standards for NPOs.<sup>13</sup> Also worth mentioning is the issuance by the Saudi Chamber of Commerce of the first certificate for waqf management in Saudi Arabia.<sup>14</sup>

INTERNATIONAL RANKINGS		
RANKING BODY	RANK	RANKING SCALE (BEST – WORST)
UN HUMAN DEVELOPMENT INDEX	39	1-188
FOREIGN POLICY: FRAGILE STATES INDEX	97	178-1
CAF WORLD GIVING INDEX	41	1-145
• HELPING A STRANGER	10	
• DONATING MONEY	46	
• VOLUNTEERING TIME	96	
HUDSON PHILANTHROPIC FREEDOM INDEX	64	1-64

## Relevant Laws

### Constitutional Framework

The Saudi Basic Law provides generally that the state shall protect human rights in accordance with Shari'a. Saudi Arabia has also endorsed the Universal Declaration of Human Rights.<sup>15</sup>

<sup>11</sup> For more information on the draft NPC regulation, see the MoCI website at <http://mci.gov.sa/LawsRegulations/Projects/Pages/npc.aspx#0>.

<sup>12</sup> For more information on the Edama project, see its website is at <http://www.volunteeredama.org/ar/index.php>.

<sup>13</sup> For more information on the new accounting standards for NPOs, see the SOCPA website at [http://www.socpa.org.sa/Socpa/Home/Projects/3-\(1\).aspx](http://www.socpa.org.sa/Socpa/Home/Projects/3-(1).aspx).

<sup>14</sup> "Al-Saudia Tashhad Awil Rokhsa Motakhassisa Fe Momarasa Idara Al-Waqf [Saudi Arabia Witnesses First Certificate in Waqf Management]," *Asharq Al-Awsat*, March 26, 2016, <http://aawsat.com/home/article/63926>.

<sup>15</sup> For more information on Saudi Arabia and international human rights, see United Nations Human Rights Council, "National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1—Saudi Arabia," A/HRC/WG.6/4/SAU/1, December 4, 2008, <http://www.refworld.org/docid/496b40710.html>; National Society for Human Rights, *Conformity of the Saudi Rules and Regulations with the Conventions on Basic*

Although the Saudi Human Rights Commission is entrusted with ensuring that the government’s human rights commitments are incorporated into the legal framework, Saudi law, including the Basic Law, does not refer explicitly to the rights of citizens and residents to assemble and form associations. Despite the silence of Saudi law on the right of association, NPOs are encouraged insofar as Article (27) of the Basic Law stipulates clearly that “the State shall . . . encourage organizations and individuals to participate in philanthropic activities.”

No NPO may undertake activities prohibited under Shari’a, including usury, sex trade and trafficking, the eating of pork, the use of intoxicants (including wine), gambling, and *gharar*, or ambiguous dealings in which the obligations of participating parties are not clearly determined. NPO activities that involve assemblies, such as conferences, require regulatory approvals, which may or may not be given. The process of obtaining such approvals are described by many as time consuming.<sup>16</sup>

Saudi Arabia criminalizes money laundering and the financing of terrorism. The government has adopted legislation aligned with the recommendations of the inter-governmental Financial Action Task Force (FATF). The responsible enforcement authority is the Saudi Financial Investigation Unit (SFIU), which falls under the Ministry of the Interior. NPOs must inform SFIU about suspicious financial transactions without alerting the donors of such scrutiny. NPOs must also provide banks with the details needed to meet know-your-customer requirements and retain for at least ten years records and financial documents as well as copies of the identity cards of founders, general assembly members, board members, workers, and other contractors. In associations the financial manager will assume the role of compliance manager responsible for meeting these requirements.

## National Laws and Regulations Affecting Philanthropic Giving

Table 1 presents a list of implemented and draft regulations, bylaws, and standard documents that shape the registration and day-to-day work of NPOs in Saudi Arabia.

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

REGULATION TITLE	YEAR ENACTED	DESCRIPTION	LINK
BASIC LAW OF GOVERNANCE, ISSUED PURSUANT TO ROYAL ORDER No. (A/90), DATED 27.8.1412H, CORRESPONDING TO MARCH 1, 1992	1992	Serves as the Saudi constitution or bill of rights	<a href="#">English</a>

*Human Rights*, [nshr.org.sa/en/wp-content/uploads/2013/12/81\\_PDF11.pdf](http://nshr.org.sa/en/wp-content/uploads/2013/12/81_PDF11.pdf); and the web page on Saudi Arabia of the United Nations Office of the High Commissioner of Human Rights, <http://www.ohchr.org/EN/Countries/MENARRegion/Pages/SAIndex.aspx>.

<sup>16</sup> Worth noting is that the most famous assembly in Saudi Arabia was the Pink Ribbon campaign on December 12, 2015, in which 8,264 people participated to achieve a world record in raising awareness about breast cancer.

<b>EXECUTIVE BYLAW FOR THE COLLECTION OF ZAKAT, ISSUED PURSUANT TO MINISTERIAL RESOLUTION No. 393, DATED 6.8.1370H, EQUIVALENT TO MAY 13, 1950</b>	1950	Transposes zakat into a binding regulation	<u>Arabic</u>
<b>SOCIAL INSURANCE REGULATION, ISSUED PURSUANT TO ROYAL DECREE No. M/22, DATED 6.9.1389H, EQUIVALENT TO NOVEMBER 15, 1969, AND ITS BYLAW</b>	1969	Imposes on NPOs and other entities the obligation to pay social insurance subscriptions for employee annuities and accidents or vocational illnesses	<u>Arabic</u>
<b>BASIC REGULATION FOR SPORTS UNIONS AND THE SAUDI OLYMPIC COMMITTEE, DATED 14.7.1407H, EQUIVALENT TO APRIL 10, 1987</b>	1987	Sets out special rules applying to sports unions and the Saudi Olympic Committee under the General Presidency of Youth Welfare	<u>Arabic</u>
<b>EXECUTIVE RULES FOR THE ESTABLISHMENT OF HIGHER EDUCATIONAL CHARITY FOUNDATIONS, DATED 25.6.1410H, EQUIVALENT TO JANUARY 23, 1990</b>	1990	Sets sector-specific rules for NPOs that run not-for-profit higher education establishments	<u>Arabic</u>
<b>STATUTE OF THE COUNCIL OF HIGHER EDUCATION AND UNIVERSITIES, ISSUED PURSUANT TO ROYAL DECREE No. (60), DATED 4.6.1414H EQUIVALENT TO NOVEMBER 18, 1993</b>	1993	Regulates the work of the Council of Higher Education and Universities, which governs associations established by universities	<u>Arabic</u>

BYLAW ON THE COLLECTION OF DONATIONS, ISSUED PURSUANT TO MINISTERIAL RESOLUTION No. 547, DATED MARCH 30, 1996	1996	Applies to the collection of donations	<u>Arabic</u>
REGULATION ON THE ACQUISITION AND TEMPORARY POSSESSION OF REAL ESTATE FOR PUBLIC BENEFIT, ISSUED PURSUANT TO ROYAL DECREE No. (M/15), DATED 11.3.1424H, EQUIVALENT TO MAY 13, 2003	2003	Applies to NPOs that meet public benefit criteria and sets out rules and requirements for acquiring land	<u>Arabic</u>
INCOME TAX REGULATION, ISSUED PURSUANT TO ROYAL DECREE No. (M/1), DATED 15.1.1435H, EQUIVALENT TO MARCH 6, 2004	2004	Exempts donations from the tax base	<u>Arabic</u>
LABOR REGULATION No. (M/51), ISSUED PURSUANT TO ROYAL DECREE No. (M/51), DATED 23.8.1436H, EQUIVALENT TO SEPTEMBER 27, 2005	2005	Establishes that workers at NPOs are subject to the Labor Law	<u>Arabic</u>
ZAKAT AND INCOME TAX CIRCULAR No. (9/2574), DATED 14.5.1426H, EQUIVALENT TO JUNE 21, 2005	2005	Transposes zakat into a binding regulation	<u>Arabic</u>
HUMAN RIGHTS COMMISSION REGULATION, ISSUED PURSUANT TO [COUNCIL OF MINISTERS] RESOLUTION No. (207), DATED 8.8.1426H, EQUIVALENT TO SEPTEMBER 12, 2005	2005	Regulates the commission responsible for incorporating international human rights commitments into Saudi law	<u>Arabic</u>
GOVERNMENT TENDERS AND PROCUREMENT LAW, ISSUED BY ROYAL DECREE No. M/58 DATED 4.9. 1427H, EQUIVALENT TO SEPTEMBER 27, 2006	2006	Applies to contracts signed between an association with public benefit status and the government	<u>Arabic</u>
SOCIAL DEVELOPMENT CENTERS BYLAW, ISSUED BY COUNCIL OF MINISTERS RESOLUTION No.	2007	Regulates government-run social development	<u>Arabic</u>

(161), DATED 11.5.1428H, EQUIVALENT TO MAY 28, 2007		centers, which are similar to foundations and associations	
ANTI-MONEY LAUNDERING BYLAW, ISSUED 17.4.1438H, EQUIVALENT TO MAY 4, 2007	2007	Provides details on the application of the anti-money laundering regulation	<u>Arabic</u>
GOVERNMENT TENDERS AND PROCUREMENT BYLAW, ISSUED PURSUANT TO MINISTER OF FINANCE RESOLUTION No. 362 DATED 20.2.1428H, EQUIVALENT TO MARCH 10, 2007	2007	Applies to contracts signed between an association with public benefit status and the government	<u>Arabic</u>
BYLAW REGULATING THE SOCIAL CENTERS AND IMPLEMENTING RULES, ISSUED PURSUANT TO COUNCIL OF MINISTERS RESOLUTION No. (161), DATED 11.5.1428H, EQUIVALENT TO MAY 28, 2007	2007	Regulates social centers, which are established by the government and fall outside the scope of the definition of NPOs in this report	Arabic
COOPERATIVE ASSOCIATIONS REGULATION, ISSUED PURSUANT TO ROYAL DECREE No. (M/14), DATED 10.3.1429H EQUIVALENT TO MARCH 18, 2008	2008	Regulates cooperative associations, which are profit-making private entities	<u>Arabic</u>
GUIDELINES ON THE ESTABLISHMENT OF NONPROFIT TECHNICAL AND VOCATIONAL TRAINING UNITS, ISSUED PURSUANT TO COUNCIL OF MINISTERS RESOLUTION No. (17), DATED 11.5.1430H, EQUIVALENT TO MAY 6, 2009	2009	Provides sector-specific rules for NPOs that run not-for-profit technical and vocational training entities	<u>Arabic</u>
REGULATION ON THE CHARITABLE SOCIAL FUND, ISSUED PURSUANT	2010	Regulates the Charitable Social	<u>Arabic</u>

TO COUNCIL OF MINISTERS RESOLUTION NO. (85), DATED 22.3.1431H, EQUIVALENT TO MAY 8, 2010		Fund, which is expected to support NPOs financially	
ANTI-MONEY LAUNDERING BYLAW, ISSUED PURSUANT TO ROYAL DECREE NO. (M/31), DATED 11.5.1433H, EQUIVALENT TO APRIL 3, 2012	2012	Defines and penalizes crimes of money laundering in various sectors, including NPOs	<u>Arabic</u>
SAUDI ARABIAN MONETARY AGENCY RULES GOVERNING ANTI-MONEY LAUNDERING AND COMBATING TERRORIST FINANCING—FOR ALL BANKS AND MONEY EXCHANGERS AND FOREIGN BANKS' BRANCHES OPERATING IN THE KINGDOM OF SAUDI ARABIA, THIRD UPDATE, ISSUED FEBRUARY 2012	2012	Illustrates the rules that must be observed when NPOs and other entities open bank accounts and conduct banking operations	<u>Arabic</u>
REGULATION ON THE NATIONAL CENTER FOR SOCIAL STUDIES, ISSUED PURSUANT TO COUNCIL OF MINISTERS RESOLUTION NO. (220), DATED 7.7.1433H, EQUIVALENT TO FEBRUARY 28, 2012	2012	Regulates the National Center for Social Studies, a public entity that indirectly benefits NPOs by conducting research	<u>Arabic</u>
SHARI'A COURTS' PROCEDURES REGULATION, ISSUED PURSUANT TO ROYAL DECREE NO. (M/1), DATED 22.1.1435H, EQUIVALENT TO NOVEMBER 25, 2013	2013	Includes a chapter on the court's authority to issue waqf deeds and permissions for waqf trustees	<u>Arabic</u>
REGULATION ON TERRORIST CRIMES AND THE FINANCING OF TERRORISM, ISSUED PURSUANT TO ROYAL DECREE NO. (M/16), DATED 24.2.1435H, EQUIVALENT TO DECEMBER 27, 2013	2013	Defines and penalizes the crime of money financing of terrorism in various sectors, including NPOs	<u>Arabic</u>

<b>EXECUTIVE RULES ON PRIVATE SOCIAL RESEARCH CENTERS, ISSUED PURSUANT TO RESOLUTION NO. (12713), DATED 9.12.1435H, EQUIVALENT TO DECEMBER 9, 2013</b>	2013	Regulates the establishment of social research centers, which may indirectly benefit NPOs by conducting research	<u>Arabic</u>
<b>INSURANCE AGAINST UNEMPLOYMENT REGULATION, ISSUED PURSUANT TO ROYAL DECREE NO. (M/18), DATED 12-3-1435H, EQUIVALENT TO JANUARY 13, 2014</b>	2014	Imposes on NPOs, among others, the obligation to pay social insurance against unemployment	<u>Arabic</u>
<b>ADMINISTRATIVE AND FINANCIAL BYLAW REGULATING THE WORK OF PROPAGATION, GUIDANCE AND AWARENESS RAISING, ISSUED IN RAMADHAN 1435, EQUIVALENT TO 2014 (EDITION 2)</b>	2014	Regulates charity offices established for the purpose of the propagation of the Islamic faith under the supervision of the Ministry for Islamic Affairs, Endowment, Dawah, and Guidance (MoIA)	<u>Arabic</u>
<b>ASSOCIATIONS AND FOUNDATIONS REGULATION, ISSUED PURSUANT TO ROYAL DECREE NO. (M/8) ON 19.2.1437H, EQUIVALENT TO DECEMBER 1, 2015</b>	2015	Provides a core regulatory framework for charitable foundations (including family funds) and charitable associations	<u>Arabic</u>
<b>GENERAL AUTHORITY FOR WAQF REGULATION, ISSUED PURSUANT TO ROYAL DECREE NO. (M/11), DATED 26.2.437H, EQUIVALENT TO NOVEMBER 24, 2015</b>	2015	Sets out rules for endowments and awqaf as well as the new Waqf Authority, which	<u>Arabic</u>

		has yet to be activated	
<b>COMPANIES REGULATION, ISSUED PURSUANT TO ROYAL DECREE NO. (M/3) ON 28.1.1437 H, CORRESPONDING TO DECEMBER 4, 2015</b>	2015	Will apply to NPCs to the extent that it does not contradict the NPC regulation	<u>Arabic</u>
<b>WHITE LAND TAX REGULATION, ISSUED PURSUANT TO ROYAL DECREE NO. (M/4), DATED 12.2.1437H, EQUIVALENT TO NOVEMBER 24, 2015</b>	2015	Imposes fees equivalent in amount to zakat on unused land in urban areas	<u>Arabic</u>
<b>FAMILY FUNDS RULES, ISSUED ON MARCH 24, 2016</b>	2016	Sets out rules that apply to family funds	<u>Arabic</u>
<b>FAMILY FUND BASIC BYLAW, DATED APRIL 14, 2016</b>	2016	Gives standard bylaws for family funds, charitable foundations, and associations	<u>Arabic</u>
<b>FOUNDATION BASIC BYLAW, PUBLISHED ON APRIL 14, 2016</b>	2016		<u>Arabic</u>
<b>ASSOCIATION BASIC BYLAW, PUBLISHED ON APRIL 14, 2016</b>	2016		<u>Arabic</u>
<b>DRAFT EXECUTIVE BYLAW ON THE WORK OF PRODUCTIVE FAMILIES, ISSUED ON MARCH 29, 2016</b>	2016	Seeks to promote family's economic self-efficiency	<u>Arabic</u>
<b>FIRST DRAFT OF THE NONPROFIT CORPORATE REGULATION (SUPPLEMENTED WITH EXPLANATORY NOTES), ISSUED BY THE SAUDI MINISTRY OF COMMERCE AND INDUSTRY ON APRIL 11, 2016</b>	2016	Regulates nonprofit companies (NPCs), including waqf NPCs	<u>Arabic</u>
<b>CHARITY ASSOCIATIONS AND FOUNDATIONS BYLAW, ISSUED ON 11.6.1437H, EQUIVALENT TO MARCH 22, 2016</b>	2016	Regulates foundations and associations	<u>Arabic</u>

# Analysis

## Organizational Forms for Nonprofit Organizations

NPO structures in Saudi Arabia are undergoing massive regulatory change to offer philanthropists a wider choice of regulated structures. Previously, philanthropists seeking to establish associations expected the registration process to last an average of eighteen months, and the number of founders during the process of establishment could not drop below twenty. The other available options were to establish a philanthropic foundation or register a waqf. However, the problem with foundations is that they could not raise funds from the public or receive government aid. Awqaf, for their part, require the donation of property, such as a farm or hotel, to raise revenue. So both foundations and awqaf were choices that were not affordable for most philanthropists, who usually need support to complete and sustain their philanthropic projects.

Thus the main concern of many philanthropists was to benefit from public funding and aid without compromising efficiency. Attention was turned to the experiences of social enterprises and NPCs in other countries. As a matter of practice, the Ministry of Commerce and Industry started to register waqf companies to allow them to operate on a commercial basis. Waqf donors also started to draft more sophisticated waqf deeds to allow their awqaf to be soundly managed according to rules of governance similar to those followed in commercial companies.

This was an important achievement but still posed a limited option for two reasons. First, it did not solve the problems encountered by an already established waqf. Second, philanthropists who could not donate to a waqf could not establish NPCs. Even if they established a company for an undeclared philanthropic purpose, they still had to pay zakat and essentially had no access to government aid. So a new draft regulation has been proposed that allows for the registration of NPCs, thus solving the problems of awqaf and making the registration of associations easier.

Is there an optimal structure for an NPO after all of the reforms that have taken place? The NPC regulation is still in a draft form, and regulatory authorities have not yet been tested in their application of the recently issued regulations. So while it is too early to provide firm views on the advantages of different types of NPOs, this brief overview suggests that the choice depends mainly on the priorities of the founders.

- If the founders or donors need to tap into donations and public aid, then they may well choose to work through an association. Associations may receive grants from the government, especially MoSA, and may collect donations. The main problem with associations used to be the delays in licensing. Now, however, the law has imposed a two-month limit on the licensing period, and MoSA is processing applications for registration online. If all works according to plan, then associations will be the best choice for founders who need funding. Public benefit associations have advantages over other types of structures, especially because they can manage public projects. However, the meaning and application of the term “public benefit” are ambiguous.

- If the founders' focus is on operational flexibility and they are able to sustain their organization on a commercial basis, then the optimal choice for them may be to establish an NPC in the form of a limited liability company (LLC). This option allows for tax exemptions and the receipt of donations. However, the NPC regulation is still in a draft form and it is too soon to predict for certain what the pros and cons of this structure will be.
- Awqaf provide another important option for donors who have an asset that yields proceeds. With a well-drafted deed, a waqf can survive in a commercially viable way and channel revenues as ongoing aid to associations, foundations, or an NPC chosen by the waqf donor.

Saudi law does not recognize unregistered forms of NPOs.

**Associations.** An association is defined in Article (2) of the Associations and Foundations Regulation as an organization that is established by natural or corporate persons for a limited or unlimited time and does not aim to earn profits. An association either serves a public benefit or targets a specific group of beneficiaries, such as those belonging to the same profession or sharing a common interest. Prior to the regulatory reforms of April 2016, the most updated data available from MoSA indicated that there were 736 registered associations in Saudi Arabia.<sup>17</sup> The *Atlas of Associations* published in 2004 by MoSA showed that the Mecca region had the highest concentration of associations, followed by the Riyadh region. Since the issuance of the new regulations in April 2016, at least 155 associations and 11 family funds have been registered. There are no available aggregate records to confirm the exact total numbers of associations.

**Foundations.** A foundation is defined by Article (2) of the Associations and Foundations Regulation as an organization comprised of one or more natural or corporate persons that seeks to achieve a public benefit or a specific benefit and does not seek to make profits. The regulation does not address the difference between public and specific benefits, but according to MoSA officials, public benefit is generally understood to be a benefit geared towards the whole community, while specific benefit is generally understood to be a benefit directed towards a specific group. There are no clear criteria for distinguishing between public and specific benefits. In an announcement made in October 2016, MoSA confirmed that companies in Saudi Arabia may establish philanthropic foundations. There has been no clarification about whether foreign companies registered in Saudi Arabia may exercise the same right.<sup>18</sup>

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<sup>17</sup> This figure and the number of foundations that follows are from a speech by the former minister of MoSA, Al-Qasabi, Majed, "Al-Qasbi: Nizam Al-Jamiyyat Wel Mosasasat Al-Ahliyya Yuassis Limarhala Jadeeda Fe Maseera Al-Amal Al-Tanmawy [Al-Qasbi: System of Associations and Foundations Establishes A New Development Path]," *Riyadh*, April 21, 2016. The number of associations is clearly growing. MoSA earlier stated on its website that there were 686 registered associations in Saudi Arabia. See <http://www.mosa.gov.sa/ar/services/615>.

<sup>18</sup> Ministry of Labor and Social Development, "Al-Amal Wel Tanmiya Al-Ijtimaiyya: Yahiql Lil Sharikat Tasees Mosasasat Ahliyya Takhdim Al-Mogtama [Ministry of Labor and Social Affairs: Companies Have the Right to Establish Philanthropic Foundations]," October 25, 2016, <https://goo.gl/Nlv51r>.

There are two distinguishing features of foundations. First, unlike associations, they may be established by a single person; and second, they rely on the founder(s) as the source of funds for awqaf or grants. Most recently available records show that there are 164 foundations registered in Saudi Arabia.

**Family Funds.** Family funds are a kind of foundation and are subject to the same legal rules as foundations unless regulations provide otherwise. They aim generally to support family ties, benevolence, good deeds, and the reconciliation of family disputes. There are no statistics available on the total number of family funds.

**Awqaf.** On a practical level, donors may register waqf companies as a form of social enterprise. But as yet there is no regulatory framework that applies to them and caters to their specific needs, awqaf are subject to the rules governing commercial companies. Notable examples of awqaf include the Al Rajhi Endowment, KFUPM University Waqf, King Saud University Endowment, and Waqf Enaya for the Aid of Patients, which was launched in April 2016.

**Entities Similar to NPOs.** The following entities share some features with NPOs but do not fully meet the definition of NPO and thus are not addressed further in this report.

- **Cooperatives.** These are a form of voluntary association in which a group of people cooperate for their mutual benefit and may seek to raise profits to distribute among themselves. For example, farmers may open a dairy shop and share its proceeds. Cooperative associations are regulated under Saudi law and must be licensed and supervised by MoSA.
- **NPOs established by royal decrees.** These philanthropic entities may take various forms, such as royal awqaf or charitable funds. Examples are the Social Philanthropic Fund and the Consumer Protection Association. All such awqaf are subject to Shari'a requirements and the Associations and Foundations Regulation and its bylaw to the extent that the latter do not contradict the terms of the founding royal decree.
- **Sports unions.** These organizations, if established by the government, do not fit the definition of NPOs. An example is the Saudi Olympic Committee.
- **Associations within universities.** Such associations used to be the responsibility of the Council of Higher Education and Universities, but higher education in Saudi Arabia is undergoing a restructuring and the council has been replaced by a temporary committee.
- **Professional associations and union.** This category includes associations established both by the private sector and the public sector. Examples include the Lawyers Committee, established under the auspices of the Saudi Chamber of Commerce, and the Saudi Lawyers' Association, under the Ministry of Justice.

## Registration of Domestic Nonprofit Organizations

MoSA has a general mandate to register and supervise all associations and foundations. If the work of an NPO involves an activity that is regulated and licensed by another governmental authority, such as television broadcasting, MoSA will not register the applicant until it first obtains the approval of the other regulatory agency. After registration, the regulatory agency will have a role in monitoring fulfillment of technical requirements, but the main burden of financial and administrative supervision will be borne by MoSA. NPOs that provide certified technical and vocational training must be licensed and monitored by the Technical and Vocational Training Corporation. However, if they provide general workshops that do not include certifications, there is no need for the additional licensing.

**Associations.** For registration associations must have at least ten founding members who meet the following eligibility criteria: they are Saudi nationals; they are at least eighteen years old; they have full legal capacity; and they have no criminal record for a crime of dishonesty or moral turpitude, unless the criminal record has been cleared.

The founding members must agree on the provisions of the articles of association and select a representative from among themselves whom they authorize to complete the application for registration. The application to MoSA must be accompanied by the following documents:

- A completed and signed application form, stating the founders' approval to establish the association. In the case of corporate entities, the application must be signed by the legal representative. A third party such as a lawyer may assist with the application if acting under power of attorney.
- The name and full contact details of the association representative, along with a photocopy of that person's national identity card.
- The names, professions, and full contact details of the founding members, along with photocopies of their national identity cards. Corporate entities must submit information on their headquarters and branch locations, along with copies of their commercial registration or waqf deeds, zakat and income-tax certificates, and social security certificates.
- The articles of association signed by each founding member. MoSA has issued standard articles of association for associations, family funds, and foundations, which, as a matter of practice, MoSA has insisted that applicants generally follow. The articles of association must provide rules of operation for the general assembly, board of directors, and executives. Every association must have a senior executive and a financial manager. Special committees such as an internal audit or control committee may be added, provided a member of the board sits on the committee. There is a degree of flexibility in determining the number of members, membership criteria, and other details, provided they are within the parameters of the law.
- The names of the members of the first board of directors.

MoSA does not mandate that applicants must also submit a feasibility study. But it looks more favorably on applications supplemented by financial and administrative action plans, as they give

evidence that the founders are organized and reasonably prepared to manage their operations and funding.

There is no registration fee. Submission of the required information must be completed by the date of licensing. For example, if one of the founding members is convicted of embezzlement, his or her name must be struck from the application documents and a new name added, so that the total number of founding members does not fall below the minimum threshold of ten. After the application is received, MoSA will communicate with the regulatory agency to obtain its approval of relevant activities. Once the registration process is completed, MoSA will issue an association license with a specific license number and will publish the articles of association of the new organization online. According to Article 8 (3) of the Associations and Foundations Regulation, the registration process may not take longer than sixty days. Once sixty days has passed, the registration will be considered approved by default. In practice, this rule may be difficult to implement. For example, if MoSA does not respond to the registration application, does that mean the association may operate without an official license? Even if, in this situation, it is legal to operate without a license, how will the association be able to raise funds, receive donations, subscribe to social insurance, or even open a bank account? Article 8 (3) does not address these issues and thus should be amended—for example, by introducing a grievance procedure if MoSA does not respond to a registration application.

Permissible activities for associations, according to the Associations and Foundations Regulation, include charity and social philanthropy, care, and general services; service towards religious objectives, as determined by the Ministry for Islamic Affairs, Endowment, Dawah, and Guidance (MoIA); social, cultural, health, environmental, developmental, informational, technical, and seasonal services; scientific, educational, and behavioral guidance, research, and training; vocational, professional, child, women, and youth tourism and volunteering; consumer protection and family protection; response to disasters, crises, and public safety matters; family and social development; and any other activity approved by MoSA. The list of activities presented in the regulation is not meant to be exhaustive, since MoSA can approve additional activities. Having said that, the list is important, as it provides reassurance to the employees of MoSA that it is not illegal to register an association focused, for example, on sports.

Historically, NPOs that provide religious education and guidance, such as Quran memorization, recitation competitions, or training on pilgrimage rituals and the maintenance of mosques, have been registered and supervised by MoIA. The new Associations and Foundations Regulation indicates that the activities of religious NPOs now fall within the scope of associations licensed by MoSA. However, there is no provision stating clearly that the supervisory responsibility for these organizations will be transferred from MoIA to MoSA, and there is as yet no indication how this matter will be resolved.

**Foundations.** The registration of foundations is fairly similar to that of associations, with three main exceptions. First, a foundation may be established by only one person. Second, while associations are not subject to capital requirements, the founding members of a foundation must deposit SAR 5 million (approximately \$1.3 million) into the foundation's bank account within its first year of

operation or register assets under its name that yield annual revenues of the same amount. Third, a foundation must be governed by board of trustees. Foundations may pursue activities with social, social consolidation, and cooperative purposes.

**Family Funds.** There are certain differences between the registration of foundations in general and family funds in particular. For example, a family fund must reflect the first, middle, and family name of a natural person, and its founders must be individuals. Moreover, a family fund needs to deposit only SAR 20,000 (approximately \$5,000) in its bank account, and the board of trustees may be comprised of family members only. An applicant may seek to register a family fund in his own name, provided another nine members of the family join him as founders. Alternatively, the applicant may register the family fund in the name of a relative, in which case all of the sons of the person for whom the family fund is named (or sons of a deceased son) must join the registration, provided the minimum number of fund members is no less than ten. MoSA will publish an announcement of the application to establish a family fund, along with the applicants' names and the articles of association, on its Internet site for thirty days to ensure that no one holding the family name objects to the registration. If there is an objection, MoSA has one month to decide whether to register the family fund.

**Awqaf.** Various entities under MoIA have traditionally had supervisory responsibility for waqf trusts. Recently, the government issued a new regulation that shifts responsibility to a new Waqf Authority, which has the mandate to register, monitor, and develop awqaf without compromising Shari'a requirements or the terms and conditions set by donors. The new regulation has yet to be implemented.

Waqf deeds usually entail the registration of real estate as an asset. The registration of awqaf, including land-based awqaf, is currently the responsibility of the courts as part of their non-litigious procedures. The new waqf regulation does not indicate whether the registration of real estate will shift to the Waqf Authority.

According to Shari'a, there is no limit on the scope of activities that may be performed by a waqf trust. Typically, donors in Saudi Arabia give priority to aiding the poor and needy, patients, orphanages, students, pilgrims, and mosque buildings. More recently, donors have been growing increasingly aware of the importance of funding institutions such as universities, hospitals, and research centers.

**Nonprofit Companies (NPCs).** Shari'a does not prevent the adoption of new forms of NPOs, and the Saudi Minister of Commerce and Industry recently announced the development of a new draft regulation on NPCs, which is derived from the laws of New York, Canada, and Jordan. The new regulation is expected to sort out the problems currently faced by philanthropists, who have been put off by the lengthy process of registering with MoSA but do not want to register regular companies to act as social enterprises, since such companies cannot raise funds through donations or obtain tax exemptions. The new regulation on NPCs promises to address this problem, but it is still under development and there are as yet no registered NPCs.

The MoCI will be responsible for the registration of NPCs. If the activities of an applicant NPC involve a regulated activity, the relevant regulatory authority must provide its approval first. The registration of a waqf NPC falls under Shari'a court procedures—which is to say, that the competent Shari'a court first registers the waqf deed, after which MoCI registers the waqf company. Awqaf channeling funds and operating through waqf companies enjoy the flexibility of companies in decision making and daily operations.

An NPC may take the form of either an LLC or a closed joint-stock company (JSC). Both forms allow members and shareholders to enjoy limited liability. As a general rule, an LLC does not have a minimum capital requirement, while a JSC has a minimum capital requirement of SAR 500,000 (approximately \$133,000). It is also easier and less time consuming to register an LLC. Accordingly, LLCs are the favored choice of most Saudi investors, and it is expected that NPCs will follow suit. Although its shares may not be listed on the stock exchange, an NPC may issue exchangeable bonds to raise funds from the public.

There is no NPC-specific requirement for registration, and it seems that the process will be similar to that of commercial companies. The founders of commercial Saudi-owned companies will need only to submit identification and corporate documents online and have the articles of association notarized. Once that is accomplished, the commercial registration is issued. Unless there are regulatory approvals to obtain for specific activities, the entire process usually takes two to three weeks. Registration fees for NPCs will be determined later under a new bylaw.

The NPC Regulation includes a concept of membership. NPC members may be either natural persons or corporate entities. Natural members and representatives of corporate entities must have full capacity and may not have been declared bankrupt or been accused of undefined immoral conduct (unless cleared by due process). There is no provision indicating whether members may be either Saudi or non-Saudi. However, the regulation should not be read separately from the Saudi Foreign Investment Regulation, which mandates that foreigners may operate in Saudi Arabia only after obtaining a foreign investment license, which grants permission to undertake one of five specific categories of business, none of which includes philanthropic activity.

An NPC's articles of association may define various categories of membership and assign different rights to each category (such as voting rights in special assemblies or the right to appoint representatives to the board of managers or directors). The articles of association may also provide rules for membership in each category, such as a minimum contribution of funds. Under all circumstances, members of each category must be subject to similar membership rules.

The regulation does not specify rules for management and decision making in the NPC. It is understood that the Saudi Companies Regulation will apply by default. Accordingly, a NPC in the form of an LLC may have either a manager or a board of managers, while a NPC in the form of a JSC must have a board of directors comprised of three to eleven members.

There are two types of NPCs. Public NPCs provide services for a public cause or benefit, including education and research, health and medication, poverty eradication and aid, environmental

protection and development, arts, culture, and heritage, sport, social development, human rights and reconciliation, maintenance of public utilities and buildings, Islamic affairs, or any other public cause added by the bylaw. Private NPCs may provide any of the above services or engage in other activities, but they may not manage general waqf trusts or collect donations and grants from the public. Otherwise, the regulation does not impose restrictions on the activities provided by an NPC, as long as they fall within the scope of the articles of association.

## Registration of Foreign Nonprofit Organizations

There are no known procedures for registering any form of foreign NPO in Saudi Arabia, as seen below.

**Foundations and Associations.** MoSA's position is clear that branches of foreign associations and foundations (including family funds) may not be registered in Saudi Arabia. But it is less clear whether locally established foundations and associations may have foreign founders. Saudi law provides that all founders, whether individuals or corporate entities, must be Saudi nationals. It clearly follows that an application to establish a foundations and association by any non-Saudi individual will be rejected. However, the case is less clear with corporate entities, because there is no legal definition as to what constitutes a foreign corporate entity for the purposes of the Associations and Foundations Regulation. For example, if a foreign renewable energy company licenses a subsidiary in Saudi Arabia and would like to establish an association with Saudi scientists for the purposes of protecting the environment, would the company be allowed to co-found the association? More specifically, would it be considered a Saudi company because it is established in Saudi Arabia or would it be considered a foreign company because its shareholders are non-Saudis? The answers to these questions are not obvious.

**Awqaf.** Foreigners may become waqf donors in Saudi Arabia but the beneficiaries must be Saudi citizens or Saudi NPOs, and the waqf is subject to the Waqf Authority.

**NPCs.** There is nothing in the NPC Regulation that indicates whether foreigners, either alone or with Saudi citizens, may own shares in an NPC. If the final regulation remains silent on this point, then it is unlikely that the registration of foreign NPCs will be allowed, since by default the foreign investment regulations will apply, and they do not provide for this form of company.

## Nonprofit Organization Activities

In general, NPOs are subject to two basic restrictions.

First, they may not distribute profits to their founders and members. With regards to the distribution of assets, the legal position of the NPC draft regulation is clear that an NPC may not distribute any of its profits to shareholders, managers, directors, or any staff member, except when such remuneration falls within the scope of its nonprofit cause (that is, when the recipient is eligible for the donation as a targeted beneficiary). In contrast, the Associations and Foundations Regulation is silent on this point. As a matter of practice, however, MoSA questions certain payments by an association to beneficiaries on its staff, such as above-market salaries and

donations. But there is no blanket prohibition on hiring a person who is also a beneficiary of the services provided by the association.

Second, NPOs may not engage in political activism. While there is no explicit provision about this in Saudi law, it is an established practice that NPOs may not engage in political activity. There is no legal definition as to what constitutes political activity, but it is generally understood to be an activity that relates to the country's governance. Lobbying, on the other hand, is not identified in legislation or even in the political culture, yet is a common practice and often yields results. For example, the committees of the Saudi Chamber of Commerce, including the waqf committee, meet to discuss common concerns and pass them along through the chamber's channels to the Shura. This de facto form of lobbying takes place in a culture of conciliation, in which the search for a middle way rather than hostile opposition is prized. So lobbying normally concludes with a letter of petition stating a grievance and proposing a solution. Meetings with officials or Shura members to discuss issues of concern are common, but providing funds to an official or member of the Shura or municipal council is strictly avoided, as lobbying is not regulated and such payments could be regarded as bribery. It is less clear whether supporting a candidate for election to a municipal council is considered a political activity. Accordingly, associations are advised to avoid such activity until the law is clear on this point.

**Associations and Foundations.** Foundations and associations may not provide services outside of the geographic area or region in which they are registered to conduct approved activities. They may open branches outside of their approved administrative region only with the prior approval of the MoSA (for example, a charity registered to provide services in Riyadh will need approval to open a branch in Jeddah). To open a local branch, a foundation must submit evidence that the board of trustees approves of its establishment, identify the location of the branch, describe the activities it will pursue, identify potential employees, and allocate SAR 2 million (approximately \$533,000) to the new branch or register assets in its name that will generate the same amount. Associations do not need approval to open a local branch within the already approved region, provided they remain within the boundaries of their licensed activities.

The common understanding of the law and established practice provide that associations are restricted from all activities aimed at raising profits. Revenues from economic activities are considered a permissible source of funding, although the regulations do state specifically what economic activities are allowed. In addition, when donations are received for a specific project, an organization may not spend the money on other projects. All associations and foundations must appoint a licensed financial auditor and employ a financial manager under the supervision of the board. They must also maintain records of their sources of funding, including a special file on zakat donations. Associations also maintain another file specifying donors' identities and the terms of donations. They must prepare their accounts according to SOCPA requirements and deposit their funds in a licensed bank, with spending from the account requiring the approval of two of the organization's executives. Associations may not invest their funds in financial speculations.

The rule on conflict of interest for associations and foundations is that members who have an interest in a resolution may not vote on it. In addition, members may not be employed by MoSA or a regulatory authority responsible for supervising the organization.

MoSA has the authority to supervise the administration and finances of associations and foundations and to review and obtain all association and foundation records, ledgers, and correspondence. Associations and foundations must supply MoSA with their annual financial statements approved by the general assembly no more than four months after the end of the fiscal year. In addition, association board election committees must provide MoSA with the names of candidates fifteen days before an election takes place. An association's executives may not be elected to the board except with the approval of MoSA, and employees of MoSA or the responsible regulatory authority may not become members of association or foundation boards. MoSA representatives must attend board meetings at which the voting occurs and may attend other meetings of trustee boards and association assemblies and boards (although the law does not indicate the reasons they may choose to do so). The MoSA representative may not vote at meetings but may raise questions. An association must supply MoSA with copies of the minutes of the general assembly and the voting record no more than fifteen days after the meeting date. MoSA may cancel a vote by a board by issuing an order along with a justification in writing. The law does not indicate the permissible grounds for cancelling votes. Re-election of board members should take place fifteen to thirty days later.

MoSA may also impose sanctions. For example, MoSA may dismiss the elected board of an association or a foundation board and replace it with a temporary board if the number of board members is less than that needed for a quorum and the board has been unable to increase its numbers, or the board has failed within one month of receiving a written notice from MoSA to comply with the Association and Foundation Regulation or its own articles of association.

**Awqaf.** Waqf activities are restricted to the terms and conditions set by the donor. A waqf is by its very nature meant to be profitable—that is, produce an income that can be applied to the cause for which the waqf was founded. However, the trustee of a waqf endowment may not sell its assets, replace one asset with another, lease the waqf asset for more than ten years, or impose a security on the waif without the prior approval of the court. The fact that the waqf trustee is bound by the terms and conditions of the waqf deed can be a problem if the deed does not provide for funds to be set aside for maintenance of the trust. Another problem, especially with older waqf deeds, is their brevity. Some are less than a page long and fail to provide rules that would ensure that the waqf is well administered and has adequate funds to preserve its assets. Many family awqaf are moribund because the donor has died and the share of each beneficiary has been divided among heirs so many times that the share is insignificant and the heirs do not attempt to collect their checks. Modernized and more sophisticated waqf deeds, such as that of Al Rajhi Awqaf, are better able to ensure good governance and meaningful continuity of the waqf assets. For example, the nazir is not a single person but rather a board having ex officio and independent members and succession rules; the board has the flexibility to set aside amounts of revenue for maintenance and exercise change management; and the board has sound internal control mechanisms to ensure that its authority is not misapplied. The problems with older waqf deeds

are expected to be alleviated when the new Waqf Authority is activated. Among other things, the Waqf Authority will be able to act as the nazir and have the authority to establish a waqf.

**NPCs.** The NPC Regulation restricts NPC boards from selling, buying, leasing, or imposing a security on real estate and fixed assets except when permitted to do so in the articles of association or by a shareholders' resolution. The regulation also prohibits the chairperson of the board of directors from assuming a role as executive in the NPC. A member of the board may not head the internal audit committee, and members of a JSC who have an interest in a resolution may not vote on it. Any amendment to an NPC's articles of association may be changed provided that the approval of MoCI is obtained if the changes affect the rules on the divesture of assets, the objectives of the company, or the authorities of the board of directors. An NPC's managers and auditors are liable and subject to sanctions if they neglect their legal obligation to maintain updated registrations and listings with the Companies Directorate and submit audited financial statements. Otherwise, NPCs are subject to less stringent rules than other NPOs. However, the explanatory notes to the new regulation suggest that private NPCs will be subject to stricter corporate governance rules and more regulatory oversight, although there is no indication how this will take place.

## Termination, Dissolution, and Sanctions

**Associations and Foundations.** The Minister of Social Affairs may issue an order for the suspension, termination, or compulsory merger of an association if the total number of members falls below five; the association exceeds its scope of activities or commits "grave" contraventions of the Association and Foundation Regulation or its own articles of association; the association is unable to meet its payment obligations; the association uses funds for unlicensed causes; or the association fails to comply with public order, public morals, or Shari'a or commits an act that will adversely affect national unity. In addition, if an association gravely breaches a contract with the government, MoSA may suspend the contract until the breach is rectified or may terminate the contract altogether. A newly licensed association that fails to begin its licensed activities within one year may have its registration extended for another year, during which it must start its activities or MoSA may withdraw its registration. All orders for compulsory merger, liquidation, or suspension must be justified—that is, the minister must present reasons for such a decision in writing.

Associations may voluntarily terminate by following the process of liquidation specified in their articles of association.

A foundation may be dissolved in three situations: it is unable to meet its financial obligations; it is unable to perform its objectives; or it fails to commence its activities within one year of its license. MoSA will appoint a liquidator to take charge of the liquidation process. The foundation's funds are distributed to the entities determined by MoSA in accordance with the donors' terms and the rules provided in its articles of association. In the case of family funds, the rules applicable to inheritance and wills under Shari'a must be observed. The voluntary termination of foundations is subject to the same rules that apply to associations.

On a practical level, MoSA sees termination as an “extreme measure” and accordingly seeks to terminate associations and foundations only in extreme situations, such as a discovery that an organization has links to terrorism. When MoSA terminates an association, it determines the liquidation process and appoints a liquidator to take receipt of the funds and documents. The termination decision must specify the entities that will receive the funds, which should be either an association pursuing similar activities or the Associations Aid Fund. The funds are then distributed according to the donors’ terms and the articles of association. The association’s management may not divest the organization’s properties or documents except when necessary (for example, by selling perishable foodstuff).

MoSA may impose sanctions on associations and foundations gradually, first by sending a warning to the organization to rectify a situation within thirty days and then by sending a second and a final warning with a similar thirty-day grace period. If the organization does not comply, the minister may suspend a staff member (usually because that person has responsibility for rectifying the situation); prevent the staff member from working at another association or foundation; dismiss the board or one of its members; temporarily suspend the organization’s activities; merge the organization with another organization (foundations may be merged only with the approval of the founder(s) or according to its articles of association); or dissolve the organization altogether.

**Awqaf.** One of the characteristics of a waqf is its permanence. Once a valid waqf is executed it may not be rescinded, and the underlying property may not be sold, returned to the donor, inherited, or subject to legal transactions. This may cause problems if the investment needs to be replaced, as sometimes happens with old buildings and commercial projects that have lost their commercial value. In such cases, the trustee of the waqf may refer the matter to the courts to decide whether to allow the sale and replacement of the waqf asset, based on expert opinion. If the waqf is a general waqf, the court must obtain the prior approval of the Waqf Authority before allowing the sale of assets or any other actions, which is a time-consuming procedure. Problems also arise when the waqf trustee passes away and the deed of waqf is silent on the appointment of a replacement. To address these challenges, the new Waqf Regulation empowers the Waqf Authority to act as the waqf trustee and divest donated assets by sale, replacement, or conversion to shares for the purpose of developing the waqf. The Waqf Authority may also deduct 25 percent of the waqf proceeds for investment purposes, so that it produces income to assist in the maintenance and repair of the waqf asset and avoids the need to sell it. Finally, the Waqf Authority is the trustee of any waqf that otherwise has no trustee. There are no sanctions imposed on waqf trusts, but the trustee may be replaced if neglecting his or her duties.

**NCPs.** The NPC Regulation allows an NPC to be transformed into a profit-making company without going through a liquidation process. A private NPC may merge with another private NPC or with a commercial company. A public NPC, in contrast, may merge only with another general NPC. According to the NPC Regulation, general NPCs must obtain the approval of MoCI prior to liquidation. Once an NPC is liquidated, its assets will be distributed according to the articles of association and the waqf or grant donor’s wish. If the articles of association, grant will, or waqf deed is silent on this issue, the assets will be distributed to another philanthropic entity that serves similar causes.

## Charitable or Public Benefit Status

The definition of “public benefit” is not completely clear in Saudi regulations. According to Article (25) of the Associations and Foundations Regulation and Articles (41) and (42) of its bylaw, an association has public benefit status if the following requirements are met:

- It serves a public objective, such education or health and safety;
- Its activities are provided to all of its targeted society, not only to a select group of persons;
- It is licensed to provide the public objective;
- Its membership is open;
- It has committed no previous financial, technical, or administrative contraventions; and
- Its board includes two experts in private philanthropy who have masters’ degrees and at least five years of experience.

After registration, the Minister of Social Affairs may issue a decision granting public benefit status if these criteria are met. The law does not specify an application process. The minister may also withdraw public benefit status if an association later fails to meet any of the eligibility criteria. The withdrawal will not legally affect contracts concluded with the association.

Public benefit associations are subject to the same legal rules as general associations, with certain exceptions. First, they may benefit from the application of the Regulation on the Acquisition and Temporary Possession of Real Estate for Public Benefit issued pursuant to Royal Decree No. (M/15), 2003, which allows the government to confiscate land to be used for a public benefit, such as roads, and give the land to a public benefit association in return for fair compensation. In the case of associations, the decision to confiscate land must be issued by the Minister of Social Affairs. Second, governmental and private entities may conclude contracts with public benefit associations for the management of institutions and programs related to the association’s scope of work. Non-public benefit organizations are not eligible for such contracts. If the contract is concluded with the government, it becomes subject to the Government Tenders and Procurement Law, issued by Royal Decree No. M/58 in 2006, as well as the Government Tenders and Procurement Bylaw, issued pursuant to Ministerial Decision No. 362 in 2007. Finally, a public benefit association may collect donations directly, while other types of association are required to obtain the prior approval of MoSA.

## Local and Cross-Border Funding

The collection of donations for all types of NPOs is governed by the Bylaw on the Collection of Donations, 1996, which mandates that MoSA must approve all fundraising activities, such a conference or dinner party, one month in advance (or fifteen days in advance if an emergency collection). The public may donate via text message to telephone numbers that are approved by MoSA and publicized on the MoSA website or through an online MoSA program named Global Goodness.<sup>19</sup> This program provides information on all licensed associations and projects needing

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<sup>19</sup> For more on Global Goodness, see <http://www.gg.org.sa/sts/static?pageName=aboutus&title=About%20Globalgoodness>.

donations. To use it donors must provide their names and contact details. Previously donors were also allowed to make deposits to association bank accounts registered with MoSA, but this mode of donating is no longer available because of tighter rules to combat financial crimes and terrorism. Collections of aid for crises abroad, such as the Syrian conflict or earthquakes, must be channeled through the King Salman Humanitarian Aid and Relief Center.

Article 21 (12) of the Associations and Foundations Regulation provides that an organization may not receive subsidies from outside of the country unless approved by MoSA pursuant to a bylaw. The bylaws implementing the new regulation do not address the process for gaining MoSA approval. Formally, donations from non-Saudi citizens are not allowed.

**Associations and Foundations.** Associations and foundations may not participate in activities abroad, provide services outside of Saudi Arabia, or become members of international organizations without the prior approval of MoSA and the regulatory authority. Approval is obtained by submitting an application with information about the desired activity, membership, or service and its relationship to the applicants' scope of services. Foundations may not open branches abroad. An association may establish a branch outside of Saudi Arabia with the prior approval of MoSA. Saudi law does not specify the criteria for obtaining permission, but at a minimum the application should conform to the requirements for opening a local branch—namely, identify the location of the branch and its scope of its activities, provide information on potential employees, and provide evidence that the general assembly approves of the foreign branch and the association will be able to manage the office and cover its costs.

Permissible local sources of funding for an association are diverse. They include membership fees, if applicable; revenue from economic activities (although the regulations do not state specifically which economic activities are allowed); investment revenue, as from a waqf registered in the name of the association; sadaqa, grant, and waqf donations; and zakat, provided the association provides relevant services such as aid to the poor and the needy. Associations with public benefit status may also earn revenue from managing public projects.

Government aid varies. MoSA sometimes provides a lump sum to an association once its registration is completed. MoSA will then monitor the association to make sure that it has the capacity to manage its finances and administration, and after one year it may provide further aid for projects. Government aid also often takes the form of in-kind donations, such as urban land allocations or a vehicle to ensure that beneficiaries such as the handicapped are able receive the services of the association. In the case of in-kind donations, the application must explain the reason that certain items are needed and document their costs, with quotes from three vendors. All associations are eligible for this support. To access government funding, associations usually apply to MoSA after registration. Applications for financial aid are normally accepted one year after establishment with proof that the association is well managed and active in society.

The HRDF provides financial support for training programs. The new Associations Aid Fund will also distribute donations, but there is no information available yet about the start-up date of this fund and its policy of donation selection.

Foundation funding mainly comes from the funds, grants, waqf, wills, and zakat allotted by the founders. Other sources of revenue are investments or a waqf registered in the foundation's name. Unlike associations, foundations do not receive public aid. They may also not collect donations except with the prior approval of MoSA. It is yet to be seen whether these sources of funding will continue to be allowed or all funding will be channeled through the Associations Aid Fund.

Family fund revenues typically include funds, grants, waqf, wills, and zakat allocated by founders and their family members; monthly dues of the family fund members, if any; and investment revenues.

**Awqaf.** A waqf may receive zakat and donations in addition to the revenues generated by the asset donated in the deed.

**NPCs.** An NPC may earn income from business transactions. Although it may only spend its profits on the causes specified in its articles of association, an NPC may set aside a certain proportion of profits to fund its own operations (subject to ceilings that will be determined by a new bylaw). The regulation also stipulates that only public NPCs may collect donations, receive grants, benefit from wills and general awqaf, and undertake the management and investment of its funds, which must be performed in accordance with the terms and conditions set out by the donor, if any.

## Tax Law

There is no payroll tax in Saudi Arabia, including on foreign workers. However, all employers in Saudi Arabia, including NPOs, must register with the General Organization of Social Insurance and make monthly social security payments. For Saudi employees, the amount of these payments are, for annuities, 9 percent of the employee's salary, paid by the employer, matched by 9 percent from the employee; for accidents and vocational hazard, 2 percent from the employer; and for unemployment, 1 percent from the employer, matched by 1 percent from the employee. For foreign employees, the employer pays 2 percent of the salary for accidents and vocational hazard only.

Taxable corporate bodies are subject to a dual taxation system in Saudi Arabia. Corporate entities wholly owned by Saudi nationals or nationals of countries in the Gulf Cooperation Council (GCC)<sup>20</sup> pay only zakat. The zakat rate is 2.5 percent of the zakat vessel, including the value of assets. Foreign corporate entities established in Saudi Arabia pay only income tax, which amounts to 20 percent of profits. In case of a corporation owned jointly by Saudi and foreign nationals, the company pays zakat for the share of the Saudi owners and income tax for the share of the foreign owners. Income generated in Saudi Arabia from trading activities by local and foreign individuals is subject to zakat and income tax according to the same rules. Saudi Arabia also applies withholding tax, which includes a 5 percent deduction on profits transferred from outside the country. Corporations and individuals subject to zakat and income tax must register with the

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<sup>20</sup> Bahrain, Kuwait, Qatar, Oman, Saudi Arabia, and United Arab Emirates. To qualify as a GCC corporate entity, all owners must be from the GCC.

Department of Zakat and Income Tax and submit their tax forms along with financial statements within the first four months of the following year, according to either the Gregorian or Hijri calendar.

Philanthropic associations, foundations, and awqaf are not subject to any form of income tax or zakat. It is a well-established practice that they do not file yearly submissions or pay taxes. The draft NPC regulation provides that NPCs do not pay zakat, and the cover note to the draft regulation refers to an exemption from income tax as well. It is not clear why zakat is not paid by NPCs—some observers believe that this could simply be a drafting mistake. The regulation is also vague about criteria for ascertaining whether an NPC operates on a nonprofit basis. If and when the NPC Regulation is passed and NPCs begin to be registered in Saudi Arabia, these and other questions, such as the effect of foreign ownership of an NPC, will have to be addressed.

Donations to associations and philanthropic charitable entities are deductible provided the recipient organization is duly registered in Saudi Arabia, does not earn profits, and is licensed to receive donations. The license and articles of association of a recipient association or foundation and the waqf deed should confirm that these criteria are met. Donors commonly assume that if they pay 2.5 percent of their income to a charity they will be totally exempted from zakat, which is also 2.5 percent of income. However, their donations are deductible only from the zakat base and are not a substitute for zakat. The donor will still have to pay zakat on the remaining income.

The draft NPC Regulation is unclear about the deductibility of donations to NPCs. It seems that donations to public NPCs are tax exempt, but there is no reference to the deductibility of zakat.

Shari'a includes detailed rules concerning inheritances and wills.<sup>21</sup> An inheritance must be divided among the next of kin according to fixed ratios. The inheritance is distributed after debts are settled and bequests are paid, which may not total more than one-third of the entire inheritance after the settlement of debts. For example, if a man dies leaving behind SAR 1 million (approximately \$265,000) and no debt, but has stipulated in his will that a charity is to receive SAR 400,000, the charity will actually receive only SAR 300,000 unless the heirs approve payment of the additional SAR 100,000. The recipient of the bequest may not be an heir.<sup>22</sup> The NPO that receives the bequest must record it in its accounts but will not be taxed.

## News and Events

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<sup>21</sup> Shari'a rules about inheritance and other family matter are not imposed on non-Muslims.

<sup>22</sup> Shari'a defines the automatic heirs of the deceased and the share of the inheritance that they receive. For example, if a man or woman leaves behind children, the children automatically inherit and the testator cannot disinherit or change the share of any one child. The testator's authority is limited to making provisions for non-heirs. So if a man dies leaving behind children, he may give a portion of his wealth to his brother, since the brother is not an automatic heir.

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