



TADMOR & Co.

Public Benefit Foundation Reform

October 2011

For additional
information regarding
this matter, please
contact:

Yoel Neeman
+972-3-6846020
yoel@tadmor.com

Yaniv Aronowich
+972-3-6846021
Yaniv@tadmor.com

This publication provides
general information and
should not be used or taken
as legal advice for specific
situations, which depend
on the evaluation of precise
factual circumstances.

Tadmor & Co.
5 Azrieli Center
Square Building
132 Menachem Begin Rd.
Tel Aviv 67021
Tel. +972-3-6846000
Fax. +972-3-6846001
www.tadmor.com

Dear clients and friends,

The Israeli Ministry of Justice recently published a legislation memorandum regarding a suggested amendment to the Israeli Companies Law, 1999 (the “**Companies Law**”), aimed at establishing a legal framework for Public Benefit Foundations (“**PBFs**”).

The main goal of the contemplated reform is to promote an effective “third sector” and philanthropic instrument, by creating a form of corporation with a specific philanthropy-aimed regulation regime, which will include enhanced accountability and corporate governance measures.

According to the legislation memorandum, “Public Benefit Foundations” are Public Benefit Companies (as defined in the Companies Law) with an exclusive purpose of granting endowments to other Public Benefit Companies or public associations (“*amutut*”). Being Public Benefit Companies, PBFs will enjoy the benefits (tax and others) afforded to Public Benefit Companies.

The legislation memorandum contemplates three classes of PBFs: (i) Family PBFs (which, amongst others, must have at least ILS 10,000,000 in pecuniary equity and may not accept donations from more than ten donors in total); (ii) Privately Managed PBFs (which, amongst others, must also have at least ILS 10,000,000 in pecuniary equity, may not accept donations of less than ILS 50,000 and may not accept donations from more than 20 donors during each fiscal year); and (iii) Publicly Managed PBFs (which, amongst others, must have at least ILS 5,000,000 in pecuniary equity and may not have a controlling stakeholder).

It is further contemplated that each class of PBFs will be subject to a different regulation regime, based on the nature of such class. Such regulation regime is expected to deal with, amongst others, receipt of donations; asset and expense management; transparency and accountability; corporate governance; external and internal supervision and permitted economic activity. A general description of some of such provisions is detailed below.

Donations in Kind. Donations that are granted in kind (*i.e.*, not in cash) will have to be disposed of prior to the end of the second fiscal year from receipt thereof, subject to the board of director’s discretion to extend such period under certain circumstances.

Distributions. A PBF shall make distributions according to the provisions of its articles of association and the rules and criteria set by its board of directors from time to time (based on the advice and decisions of its distribution committee), provided that the amount of distributions during each year does not fall below the higher of (i) 5% of the value of the PBF’s assets at the end of the preceding fiscal year; (ii) double the PBF’s management expenses during the preceding fiscal year; and (iii) with respect to Family PBFs and Privately Managed PBFs, an amount of ILS 400,000 and with respect to Publicly Managed PBFs an amount of ILS 250,000. Grants to other PBFs do not count towards the aforementioned minimum distribution requirements. PBFs will be obligated to publicize, at least once a year, the criteria for distributions and the methods of applying for grants.

Beneficial Loans. Distributions may be exercised through granting of beneficial loans. “Bad debt” will be deemed a distribution for the purposes of the minimum distribution requirements. The Minister of Justice may promulgate regulations mandating beneficial loans, provided that such do not exceed 30% of the minimum distribution requirements.

Investment of Surplus Amounts. Surplus amounts must be invested according to the provisions of regulations concerning trusts. If a PBF has surplus amounts exceeding ILS 30,000,000, it must appoint an investment committee, which shall have the authority to determine the methods of investment, subject to the aforementioned regulations concerning trusts.

Corporate Governance. At least two Independent Directors (as defined in the Companies Law) must be appointed to the board of directors of Privately Managed PBFs. The board of directors of Publicly Managed PBFs must be comprised of Independent Directors only. In addition, a PBF may incur management expenses that do not exceed the higher of 2% of (i) its pecuniary equity at the time of its designation as a PBF, and (ii) the value of its assets during the preceding fiscal year. PBFs will be obliged to appoint internal and external auditors, and Privately Managed PBFs and Publicly Managed PBFs must appoint audit committees.

Reporting Duties. PBFs will have reporting duties to the Registrar of Companies and the Registrar of Endowments, as well as obligations to post reports on the Internet. Reports filed by a Family PBF will be made public after redaction of names of donors (with certain exceptions).

Sanctions. The Registrar of Companies may impose monetary sanctions of PBFs that violate reporting duties or fail to comply with certain corporate governance provisions. The Registrar of Endowments may force an Officeholder in a Public Benefit Company to indemnify the company for certain fines if such Officeholder knew or should have known of the underlying violations.

Prior to becoming a legislation bill to be presented to the Israeli Parliament (the Knesset), the legislation memorandum is open to comments from the public until October 30, 2011.