The Basics
Alternatives for founding a philanthropic foundation in Israel

Firstly, this document cannot replace the opinion of an attorney or an accountant, but was written in order to give a general explanation of the existing options. We recommend that you consult with attorneys before making a decision.

We believe that the legal structure must first and foremost serve the goals and objectives that have been set for the philanthropic activity and not vice versa. The chosen form of incorporation of the philanthropic activity will have a long-term effect on the regulation that will apply and the tax status it will carry. It is worthwhile and recommended to invest thought before the act of incorporation, since changing the legal status later on will be a complex task which carries quite a few costs.

The advantages of establishing a support mechanism for philanthropic activity – a family foundation:

In recent years, more Israeli families have become interested in structuring their philanthropic giving. In order for them to build a long-term change and implementation strategy, there is a need for a legal and tax infrastructure that will provide an appropriate response to their needs and wishes.

The purpose of the document is to summarize in a short and succinct manner information about existing legal instruments in Israel that enable an infrastructure for establishment of a philanthropic foundation or a legal channel for philanthropic action.

There are today five forms of private philanthropy in Israel:

1. Formation of a Registered Association (RA) – עמותה רשומה ע’ר
2. Formation of a Public Benefit Company (PBC) – חברה לתועלת הציבור- חalmart
3. Formation of a Public Benefit Foundation (PBF) – קרה לתועלת הציבור קל”צ
4. Formation of a public endowment – ההקדש ציבורי
5. Independent donation without any accompanying incorporation – תרומה עצמאית

The last two forms are not separate legal entities and thus carry legal implications, primarily in terms of liability, tort claims, and employee/supplier claims. If you choose either of them, you should therefore consult with professionals to ensure maximum protection.
The following provides a summary of the essential information for each of the options:

1. **Association - (Amuta) (ועמותה)**

   - An association (Amuta) is established by a minimum of two members. However, it is usually recommended to set up an association with seven members in order to allow the receipt of status for tax purposes (exemption from tax on revenues on the association’s side, and recognition of donations for tax purposes for the association’s donors – Article 46).

   - Any person over the age of 17 may apply to become a member of the general assembly of the association, and a good reason is required in order to deny him/her.

   - There is no ownership of an association.

   - The association is limited in the objectives for which purpose it was established and to which end it can only operate.

   - In order for the association’s donors to receive recognition of a donation for tax purposes, and for the chance of conducting joint projects with the GOI – the Government of Israel (matching – and/or receipt of support funding) and to receive a certificate of proper management, the board needs to have a majority of non-family members.

   - Board members must be members of the association, and they sit in both the general assembly and on the board. There can of course be additional members of the association and there is no restriction whatsoever on the number of members in the association.

   - **Stages of registration**

     ✓ The year of incorporation – An application for registration of an association is submitted and a certificate of incorporation received from the Registrar of Non-Profit Organizations (Rasham Ha’amutot). It is recommended at this stage to check whether there is a need to adapt the model bylaws to the specific needs of the association and if so, this should be done in parallel with filing the application.

     ✓ Second year – A confirmation of commencement of activities may be received from the Registrar of Non-Profit Organizations. This confirmation is important in order to later receive a certificate of proper management, which allows submission of an application for Article 46 status, and collaboration with the GOI.

     ✓ Third year – At the end of the second year, an application may be filed for a certificate of proper management from the Registrar of Non-Profit Organizations, which must be applied for annually. As stated, the certificate is required in order to receive recognition under Article 46 and to implement collaborations with the GOI (matching and/or receipt of support funding).
In the same year, after receipt of a certificate of proper management, an application may be filed for approval under Article 46 of the Income Tax Ordinance and Article 61 of the Real Estate Taxation Law. It is very important to note that an association with Article 46 status may donate exclusively to associations that have this status, which most associations in Israel still do not have. It is therefore necessary to verify that submission of an application for Article 46 status does not impact on the work of the association.

It is also important to mention that although obtaining a certificate of proper management is not mandatory, it is a preliminary condition for receiving approval from the tax authority under Article 46, and for collaborating with the GOI and state agencies.

The model bylaws of an association are generally insufficient (for example, in matters such as D&O insurance, taking decisions in writing and more) and therefore there is a need to set up the association with detailed bylaws, a process that could continue for several months until approval is received (no operations are possible until registration and receipt of approval of the bylaws).

Transparency – all the information about the association is published on the Internet website of the Corporations Authority – Non-Profit Organizations. Therefore, this channel does not allow for anonymous operations.

It is possible to set up a designated fund, an endowment, for the association and to use it for the exclusive donation of the profits. There is a concern that in this scenario, the Registrar of Endowments will require registration of the endowment but as of today, the legal situation is vague and may be handled through legal advice.

Members of the family may manage the association for pay, provided that they are not members of the board or the audit committee. At the same time, if the association has Article 46 status, then the Income Tax Authority prohibits employment of a family member of the founder of the association and/or a current board or audit committee member.

Formally, the association has a limitation on the accumulation of surpluses (i.e., situations where the fund is much larger than the annual grants could be perceived as problematic).

It is possible to donate a physical asset to an association, and with proper planning this could lead to tax savings.

2. A Public Benefit Company (PBC) - (חברהلتועלת ציבורית)

A PBC may have one control holder (according to the Companies Law), but in order to receive recognition under Article 46 there must be at least seven shareholders, the majority of whom have no familial connection with one another.
• A PBC is limited in the goals for which it is founded and for which it can operate.

• Appointment of directors can be done by the control holder and there is no limitation on the appointment of family members. However, in order to receive recognition under Article 46, the majority cannot have family relations between them.

• With correct wording of the Articles of Association, it is possible to dismiss directors and there is no need to wait for the general assembly.

• In the event that a PBC has approval under Article 46 as an association, then the PBC can only donate to an organization that has Article 46 status.

• All the reporting duties that apply to an association also apply to a PBC, as well as the provisions relating to proper management.

• Transparency – all the information about the PBC is published on the Internet website of the Corporations Authority – Non-Profit Organizations. Therefore, this channel does not allow for anonymous operations.

• Members of the family may manage the PBC for pay, provided that they are not members of the board of directors or the audit committee. However, if the PBC has Article 46 status, then the Income Tax Authority prohibits employment of a family member of the founder of the PBC and/or a member of the board of directors/audit committee.

• Formally, the PBC also has a limitation on accumulation of surpluses (i.e., situations where the fund is much larger than its annual grants could be perceived as problematic).

• It is possible to donate a physical asset to a PBC, and with proper planning this could lead to tax savings.

3. A Public Benefit Foundation (PBF) – (קרן ל услуги לציבור ללא ייצוג)

• This is a new entity in Israel, and there is very little experience of it.

• It is established within the legal framework of a PBC.

• There is a minimum requirement of five million shekels for its establishment.

• A PBF is liable to all the reporting obligations applicable to an association and a PBC, as well as the provisions regarding proper management. A PBF also has enhanced reporting obligations regarding its activities and actions.

• If a PBF has Article 46 status, it may only donate to an organization that has Article 46 status.
• Transparency – all the information about the PBF is published on the Internet website of the Registrar of Non-Profit Organizations. Therefore, this channel does not allow for anonymous operations.

• It is possible to donate a physical asset to a PBF, but the law requires that it be sold within a few years.

4. A Public Endowment (הקדש ציבורי)

This legal entity is recognized by law but is not a corporation or a legal entity separate from its trustees.

• There is no ownership of an endowment.
• A person with capital establishes an endowment by transferring capital to the recipient.
• The endowment may be managed as such and receive tax exemption from capital gains.
• A tax benefit on the donation will only be received when it is made to a body that has Article 46 status.
• The details of the endowment must be meticulously structured, including the investment conditions, on the day of formation of the endowment.
• Any change in the endowment requires application to a district court, unless the matter was properly arranged in advance and prior to the formation of the endowment.
• Seven trustees must be appointed for an endowment — some of them may be family members, but at least four of them cannot be family members.
• An endowment is the only entity that restricts the investment channels of the endowment although it is possible to arrange everything in the documents setting up the trust. In legal terms, however, it is the only body that allows for use of the yield only and no of the principal.
• Anonymity – as of today, the details of endowments are not published on the website of the Corporations Authority – Non-Profit Organizations. Details of the endowment (trustee, address and objectives) are; however, open to public inspection at the offices of Corporations Authority – Non-Profit Organizations.
• An endowment is approved by the Registrar of Endowments within the Corporations Authority – Non-Profit Organizations.
• There is no obligation to appoint a CEO.

• A 22% restriction is applicable to general & administrative expenses.

• The trustee’s fee is limited in Regulations.

• It is the simplest instrument of all to establish, but it is irreversible.

• A physical asset may be donated to an endowment.

5. An independent funder without incorporation

• Such a funder donates from his or her private money, and gets a receipt for a tax refund from organizations with Article 46 status, which can be submitted for a 35% tax refund (up to a cap).

• The funder can control the use of the donated money by means of a contract with the donation recipient that designates the donated funds.

• Anonymity is possible, but it is necessary to submit an application through the association receiving the grant to the Registrar of Corporations – Non-Profit Organizations, for the details of the funder not to be published along with the details of the recipient body. In the case of a donation greater than NIS 500,000, the donor must be party to, and explain the reasons for, an application for confidentiality submitted by the receiving organization.

• This channel enables exclusive, unregulated control over the funder’s decisions and actions.
For your convenience, below is a table of comparison between the various forms of action:

<table>
<thead>
<tr>
<th>Objective of the association</th>
<th>PBC</th>
<th>PBF</th>
<th>Association</th>
<th>Endowment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only an objective detailed in the law</td>
<td>Only an objective detailed in the law</td>
<td>Only objectives that fall within the framework of issues determined in the law</td>
<td>Only objectives that fall within the framework of issues determined in the law</td>
<td></td>
</tr>
</tbody>
</table>

| Minimum allocation for the activity | X | X | X | X |

| Endowment of an asset for the activity | Permitted | Permitted, but there is a duty to sell | Permitted | Permitted |

| Minimum distribution each year to philanthropic activity | ✔ | ✔ | ✔ | ✔ |

| Payment of a salary to shareholders / founders / settlor | Prohibited | Prohibited | Prohibited | Prohibited |

| Number of shareholders / members of the association / trustees by law | 1 | 1 | 2 | 1 |

<p>| Number of shareholders / members of the association / trustees for Article 46 status | 7 | 7 | 7 | 7 |</p>
<table>
<thead>
<tr>
<th></th>
<th>PBC</th>
<th>PBF</th>
<th>Association</th>
<th>Endowment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of board of directors / board members – by law</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 with at least one being independent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty to appoint an audit committee / audit body</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>Duty to appoint an internal auditor</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>x</td>
</tr>
<tr>
<td>Duty to appoint an auditing accountant</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Reporting to the Corporations Authority – Non-Profit Organizations</td>
<td>✓</td>
<td>Yes, very wide</td>
<td>✓</td>
<td>Yes, narrow</td>
</tr>
<tr>
<td>Anonymity</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>✓</td>
</tr>
<tr>
<td>Separate legal entity</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>