tv. 3. §]. The public benefit companies are non-profit organizations, and some of their activities - e.g. the protection of monuments - are exempt from the corporation tax. The Royal Palace of Gödöllő Public Benefit Company, being in charge of the Gödöllő Project mentioned twice already, is working in this form, and most recently the Helikon Palace Museum Public Benefit Company in Keszthely, occupying and maintaining one of our most outstanding country houses.

The public benefit company is one of the possible future organizational forms of the aforementioned Institute for the State Care of Monuments which has been established on the model of the *national trusts* working successfully in several countries and of other foreign state or civil institutions with similar duties. The Institute is now maintaining five historic country houses, with the help of a budget coming from the State. Its main ambitions are to enlarge its activity and to draw private capital and the general public into the undertakings.

The legislation and the organization of the protection of monuments in Hungary faces changes again. After eight years of preparation Parliament is just discussing the draft of the new Historic Preservation Act.[2] The bill includes quite a lot of new and progressive elements, among others, the inalienability of certain outstanding monuments owned by the State, the special care of historic gardens, cemeteries, underground remains of built structures or fragments of monuments taken to museums, the principles of financing, and the preservation penalty. Nevertheless, I am not quite satisfied with this bill, because it continues to build upon the rights of the State and the duties of the owners, and does not really strive for cooperation and reciprocity. The local self-governments are given less authority than would be necessary, the civil sphere, the non-governmental organizations are not encouraged at all. In other words, the bill seems to protect the monuments more against the people than with them. I am convinced, and the examples of several highly developed countries show, that the monument protection of the future must be built upon cooperation and the unity of interests.

Footnotes

1 There is a third Hungarian item on the World Cultural Heritage List, too, the building complex of the Benedictine Abbey of Pannonhalma.
2 The act was passed on June 10, 1977 and will come into force from January 1, 1998 as 1997: LVI tv.

GIDEON KOREN

Legal Forms of Sponsorship in Israel

The State of Israel is barely 50 years old. However, the land of Israel has a heritage dating back centuries. The history of the country stretches over a period of some five thousand years. During this time the land of Israel was governed by many different nations, with each one leaving its imprint on the legal system. Due to this extraordinary history, the legal situation in Israel, in any field, is difficult to understand without describing, at least in brief, the "background" of the origins of the legal system. This is especially true when discussing real property laws.

Between the years 1516 to 1917, the land of Israel was part of the Ottoman Empire. The Ottomans legislated the main real property law in 1858. Its main effect was to divide real property into five categories, each one subject to different rules. Such a system was suitable for the primitive agriculture society that was governed by the feudal Ottoman structure of that time.

This law was amended and totally changed in Turkey years ago. It is a historical curiosity that today the only recognizable remains of this law are within the Israeli legal system. The main reason for this is the legal system that existed in Palestine under the British Mandate, between the years 1917-1948. The mandatory legislator left the Ottoman laws "as they were" until and unless changed by new statutes. In some fields new ordinances were legislated, introducing into the legal system "norms" based on the common law tradition. In 1922, a new ordinance established that any "gap" (lacuna) in the local law would be "filled" by referral to the English legal system. Due to the fact that the Ottoman legislation was not very developed or comprehensive, a substantial amount of legislation was "injected" into the legal system as a result of this ordinance.

In 1948 the State of Israel was declared and the war of independence broke out immediately. The new government had to deal with fending off the attacks on the fledgling country and had little time for legislating. The government did pass one main ordinance. It stated that all the mandatory statutes would stay in effect as long as they did not contradict future Israeli statutes. Therefore, the 1922 mandatory ordinance remained influential on the Israeli legal system for more than 30 years, until the Israeli parliament decided to abolish it in 1980. Even then, the new statute declared that the "gaps" filled in accordance with the 1922 ordinance, i.e. by referral to English Law, would remain so filled.

At the same time, the Israeli parliament was very active in legislating new statutes in all fields. Some of the new statutes enacted were modeled after continental laws. Others followed the common law traditions, while others still were based upon American concepts. In some cases, it is fair to say that the legislator referred to no source other than his own creativity (or imagination).

Thus, finding an answer to a simple question, or describing the legal situation regarding a specific issue can be rather complicated. Sometimes this may seem to be very "unofficial" to those accustomed to a more "mature" and comprehensive legal system.

Background

Many will agree that the best example for the complexity of the Israeli legal system is real property law. Here one can find a microcosmos of almost every traditional legal system. The "Land Law" is a modern Israeli law, yet some questions are still governed by Ottoman rules. Contract law, trust law and the law of gifts are based upon continental concepts. The law of association and company law are based upon common law traditions, while administrative law is based on the American concept.

Consequently, even a simple concept like "preservation" does not have a single specific or clear expression in Israeli legislation. Upon perusal of the Israeli legislation, one can find that in addition to"preservation" the following expressions are mentioned or applied too: "conservation", "stabilization", "maintenance", "consolidation", "restoration", "rehabilitation", "re-adaptation", "heritage conservation", "prevention of deterioration", "reconstruction", "replication", "reconditioning", "reassembly" and "reproduction". Within the scope of this paper, it will be impossible to describe the legal connection or the specific statute related to each expression. However, it should be clear that dealing with preservation and trying to promote it within the context of all the different legal wording is the basis of a lot of confusion and uncertainty. The problem is aggravated due to the youth of the Israeli legal system and its understandable relative underdevelopment.

Therefore, taking a stranger to the Israeli legal "garden" for a stroll along its paths is not easy. I will try to do so by first demonstrating that private participation in the preservation of some sites is not much encouraged, because of specific statutes. Second, I will explain why some of the legal forms used in other countries to promote private participation in preservation are not applicable to buildings and sites in Israel. Third, I will mention the legislative framework for dealing with preservation – The Law of Planning and Building. Finally I will discuss tax incentives for private participation in the preservation of buildings and sites in Israel.

Antiquities

The building culture in the land of Israel of ancient times is anchored in the "Law of Antiquities", which recounts and guarantees the continued existence of buildings and sites established up to the year 1700.

This law placed an official government organization – the Antiques Authority – in charge of all antiquities. This authority is financed in the state budget. In general, wherever an antiquity is found or excavated in Israel, it is automatically "owned" by this authority, and placed under its control and obligation, thus opening no gap for private participation in dominating or even influencing the destiny of the site.

Trust

Israeli law defines a trust as the duty imposed on one party to hold or otherwise deal with assets under its control for the benefit of another party or for some other purpose.

The *law of trust*, as its name suggests, introduced and regulated various forms of trusts resembling the Anglo-American model. A trust has no necessary form, and no particular procedure is necessary to form a trust that falls within the law. Trust purports to cover any situation in which someone has the power to deal with property, not for his own benefit, but for the benefit of someone else. It is not possible to dwell in more detail on the scope of this law, but in general an Israeli trust has the following features:

a) The trustee is endowed with control over the assets but there are no particular conditions as to the manner of control.

b) The trustee must exercise his control over the assets for the attainment of the purpose of the trust. Thus, a trust will be valid and enforceable where there is a definite beneficiary. It will also be valid where there is no definite beneficiary, as long as there is some clear purpose to the trust.

c) Any legally binding relationship, whatever its legal source, which imposes those duties on the trustee, may serve as a basis for the creation of a trust.

As may have been noted, there has been no mention of the term settlor. A settlor is a necessary party to a voluntary trust. He is the creator of the trust. However, the Israeli concept of trustee also covers relationships where there is no settlor. Thus,under the definition of trust fall all statutory fiduciaries, many of them appointed by the court, such as guardian, administrator of the estate of the deceased, liquidator of a company, etc.

The above mentioned conditions are not necessarily suitable for the preservation of buildings and historic sites. Many sites require significant limitations to be imposed over the so-called "control" the trustee is endowed with, to the extent that the trustee may not affect the way the trust assets will be dealt with; in fact, the "purpose" of trust may be in contradiction to the purpose of preservation and the beneficiary may even be obligated to object to such preservation.

It is also important to note that whether a trust arises within a certain legal relationship is not subject to the will of the parties: the parties are not at liberty to decide whether the law will or will not prevail. It is the contents of the relationship that should reveal whether, in that relationship, there arises a trust. Therefore, parties may assume to promote the preservation of a site by creating a trust, but eventually will fail to do so.

When the trust is to be carried out within the life of the settlor (*inter vivos*), control over the assets which are to become the trust assets should be given to the trustee. Therefore, owners of sites are quite reluctant to give away every possible influence on the site during their lifetime. On the other hand, if the trust is to be carried out only after the death of the settlor (*mortis causa*), it is considered to be a will; the deed must be in the form of a will, anyone may object to its execution, based on different arguments, and again, there is no certainty of success.

Another problem in using trust for the purpose of preservation relates to the beneficiary. Most of the duties of the

trustee are more connected to private interests than to a situation, such as in preservation of sites, where the beneficiary is, usually, the public as a whole. Therefore, the conclusion is that Israeli law serves as an effective instrument mainly for fiduciary arrangements and is not so effective as a legal form for preservation.

Public endowments

A public endowment is a legal form "close" to a trust, of which one objective is the furtherance of a public purpose. The term "public" is to be contrasted with "personal". The meaning of the word public is that the beneficiary is not a particular person or a certain institution. The word does not need to refer to the public as a whole. It can also refer to a specific group of persons with a particular characteristic, for example, a group of handicapped persons.

Under the Trust Law, a trust, one of the objectives of which is the furtherance of a public purpose, should be registered. In the leading precedent connected to public endowment, the court held that a public endowment is comprised of four elements: the expression of the creator's intent to form a trust; the specification of the objectives of the trust, including the beneficiaries or the purposes of the trust; the identification of the trust properties; and the definiton of the trust terms, *inter alia*, under which conditions properties or benefits should be transferred, the duration of the trust and the conditions for its termination.

Therefore, a public endowment may be utilized as a legal form for a variety of interests, including preservation. Nevertheless, the problems mentioned above apply to many public endowments as well, making this legal form not always applicable for encouraging private participation in preservation.

Association and foundation

An association or a foundation, as such, is not a legal form in Israel. To become a legal form, the association must "dress" itself to be a recognized legal entity, such as a company, private or public, a partnership, a cooperative society, or an "*Amuta*", Israel's main legal form for a non-profit organization being none of the above mentioned legal forms. Until they chose one of these legal forms, the association or foundation has no legal entity but the private one of the people creating it and participating in its activities. Therefore, we shall have a brief look into the different forms which do exist.

Companies, cooperative societies and partnerships

The company is Israel's most common form of business organization. The founders of a company must create a memorandum of association, which will include the purpose for which the company was founded. The characteristics of an "Israeli" company, which differ from companies elsewhere, have no application connected to public participation in preservation.

Cooperative societies have long existed in Israel. Their aim is to further the particular interests of their members. They cover a wide range of economic activity: transport (the major public bus firms), marketing, agriculture (moshavim and kibbutzim) and loan societies.

A partnership is defined as a body of persons operating a business for purposes of deriving a profit. A corporate body may be a partner, general or limited. Partnerships are established on the basis of contracts between partners. These contracts may be oral, although this is rare. Partnerships may be general or limited.

We included companies, cooperative societies and partnerships in one chapter, since their common goal is to maximize their profits or the profits of the private people incorporated. This goal usually contradicts the preservation of sites, which demands expenses and funds and does not contribute to profit. Therefore, in some cases, the director of a company may even find himself liable towards the shareholders, for spending money for a cause not related to maximizing the profit. Even when in recent years directors, owners or partners felt safe enough to spend money for preservation of buildings and sites, they did so for a profit (- such as increasing the value of buildings owned by them) or in cases where the amount spent on the preservation was tax deductible.

Planning and Building Law

Due to the fact that the "traditional" legal forms are not sufficient for the preservation of buildings and sites, a search started for a suitable "host" for dealing with the legal needs of preservation. The partial solution was found eventually in the Planning and Building Law. This law's main thrust was to establish a network of national, regional, local and detailed planning schemes and to ensure that all building and development took place within the framework of an approved scheme. It is interesting to note, with respect to the stability of the Israeli legal system, that this law has already been amended not less than 43 times.

Even though this law established a relatively complex planning bureaucracy from the government itself and "down" to ministers, councils and commissions: national, district and local, it was felt that within its scope, many solutions to problems connected to preservation of buildings and sites may be found.

In 1991 the Israeli parliament passed an amendment to the Planning and Building Law. The amendment deals with the preservation of sites. Under this amendment, governmental authorities or interested parties, such as owners of land or organizations recognized for this purpose, may propose that a site should be preserved. The definition of "site" is "a building, or group of buildings or a part of them, including their immediate surroundings, which in the opinion of a planning institute are of historical, national, architectural or archaeological importance." The amendment directs every local authority to establish a committee for the preservation of sites. All such committees are to prepare a list of sites worthy of being preserved within the local authority's jurisdiction and advise various government bodies with respect to the preservation of such sites. In addition, the committees have the authority to prevent immediate damage to or destruction of existing sites, and to expropriate sites worthy of preservation. Once a proposal for the preservation of a

site is submitted, such a fact is published, and restrictions are placed upon the granting of building permits in connection with the site for a period of one year. The period of the restrictions may be extended for an additional year. A proposal for the preservation of a site must be deposited, and notice of such sent out to all owners or possessors of the site. If the owners or possessors do not act upon receipt of such notice, they will be stopped from voicing objections at later dates. Once a proposal for the preservation of a site is submitted, the owners or possessors of the property must act in accordance with the proposal should they wish to change or use the site, inside or outside.

Funding problems connected to proposals for the preservation of sites are dealt with very carefully in this amendment. There are four categories of funding problems connected to the preservation of sites, according to this law:

1. *Monetary damages awarded by law*
By law, there is a right to compensation for devaluation of property as a result of the approval of a scheme. Property is not considered devalued should the proposal contain certain conditions, such as restrictions on changes to regions and the use of land within them, and restrictions on changes to uses of buildings. No compensation is paid if the infringement is not unreasonable in the circumstances and it would be unjust to award compensation.

The courts in Israel have concluded that there is a difference between compensation due for devaluation of property and compensation due for expropriation of property. Since the ultimate decision as to the entitlement to compensation rests with the courts, and since such a procedure may take many years, a local authority may not estimate correctly and budget for the cost of awarding compensation. Consequently, the local authority may decide that the cost of preservation is unjustified and therefore may, at any time, withdraw the proposal or cancel the scheme.

2. *Betterment tax*
The levy of betterment tax serves local councils as a source of funding for preservation activities and as a source for compensating owners of properties of which proposals for preservation have been withdrawn. It does not have an influence on the private participation in the preservation of sites.

3. *Maintenance and renovation expenses*
The committees for the preservation of sites have the authority to interfere with the property rights of landowners and possessors. They must be wary that conditions warranting the intervention of the committee for preservation exist.The first condition is that an engineer of the local council give his or her opinion with respect to the state of the property stating that there is a real danger to the preservation of the site. Then, the committee for preservation will decide if there is in effect a danger to the preservation of that site.

Should the committee decide that such a danger exists, it may require the owners to undertake maintenance work within a prescribed period of time. Should the owners fail to do so, and there is a danger that the site may be destroyed, the committee may undertake such work as is necessary to prevent the destruction of the site. The committee can then, at its discretion, bill the cost of such work to the owners.

4. *Expropriations*
The most serious infringement upon property rights is expropriation. Expropriation is mandated only in cases where the owners or possessors of property have failed to undertake maintenance work necessary for preservation or the prevention of the destruction of the site. Another pre-condition for expropriation is that there exists a real danger that the site will be damaged in such a way as to endanger the goal of preservation. Expropriation may be made to all or part of a site. Since expropriation is such a drastic action taken against owners or possessors of property, it may be done only with the permission of the regional council.

Israeli law provides for the procedure for expropriating land. Once land has been expropriated the local authority may sell it or lease it, on condition that preservation of the site is guaranteed by the buyer or tenant. For a period of 60 days, the previous owners or tenants of the site have the exclusive right to purchase or lease the site, as the case may be. Of course such right is conditional to the same guarantee of preservation noted above. It can be assumed that if the previous owners or possessors did not undertake the actions necessary for the preservation of the site upon being requested to do so originally, a strong guarantee will be requested of them should they wish to exercise their exclusive right to repurchase or re-lease the property.

This new legislation is only six years old, but it already has had its influence on the preservation of buildings and sites in Israel. The main effect of this amendment lies exclusively in the various local authorities. If they wish to provide preservation, this legislation supplies these authorities with additional legal forms to do so. The subject of preservation still depends on the good will and the financial willingness of each local authority. The ones wishing to devote resources to preservation could have done so before the amendment, and the ones reluctant to include preservation on their public agenda are still under no obligation whatsoever to promote preservation. The fact remains that in relation to the subject of this paper, this amendment did not create any significant incentives for private participation in preservation.

Tax incentives

Naturally, the various tax ordinances in Israel do not relate directly to preservation. The basic principle in tax law is, in general, that tax is imposed on all of a taxpayer's income accruing in, derived from, or received in Israel. On the other hand, all disbursements and expenses wholly and exclusively incurred in the production of the income may be deducted from it. This principle applies to private people, companies, and other forms of conducting business alike. In general, "spending" money on preservation cannot be deducted from income, since there is no direct connection between the expense and the production of income, but there are a few exceptions:

First, if the preserved building is owned by the same legal entity putting forward the money for its preservation, the expense will, in general, be tax deductible.

Second, a legal business entity, such as a company, may gain some publicity or "image improvement" in the eyes of the public, as a result of investing efforts in preservation. In general, any amount spent on advertising by the company

can be tax deductible. Thus, a company may claim that its involvement in preservation improved the public attitude towards the company and should, therefore, be recognized as advertising. Since the company will still have to prove the existence of a direct connection between the expense and its income, it may find itself, at the end of the day, with an expense not recognized by the tax authorities. Therefore, a company, or any other legal form of business, will probably prefer to invest in a different area of public benefit, such as sport or cultural activities sponsorship,where its expense is more likely to be tax deductible.

Third, according to the tax ordinance, contributing money to a non-profit organization is tax deductible. A few conditions limit this option:

1. The organization must be a separate legal entity. As we already mentioned, in relation to some buildings and sites which need preservation such a legal entity does not necessarily exist.
2. The legal entity, mainly the endowment or the *"Amuta"*, must be formed by private individuals, interested in promoting the preservation and creating the legal entity others can donate money to. There is no incentive for establishing such a legal entity, and no way to enforce the existence of one.
3. If the entity is established, it has to be recognized by the tax authorities as a non-profit organization. There are a few conditions the entity has to fulfill to get such recognition, some of which limit the scope of activities such an entity may exercise.
4. The amount one can contribute to a non-profit organization is limited, both by the total amount and by the percentage of the contributor's income, which may be tax deductible. These conditions vary from one legal form of the contributor to another.
5. The non-profit organization may not be involved in any "business-like" activity. If it conducts any activity which is done by business entities as well (such as selling products, tickets, etc.), it may lose its recognition. One of the outcomes of this rule is that, in general, the non-profit organization has no "V.A.T. income" from which V.A.T. expenses may be deducted or set off. Thus, the cost of the preservation itself, borne by a non-profit organization, is generally much higher.

Nevertheless, using a non-profit organization, mainly in the form of *"Amuta"*, is the most common way of enjoying private participation in the preservation of buildings and sites in Israel. Due to the fact that there are a few disadvantages to this form as well, new ways are being sought all the time.

This year another amendment to the Planning and Building Law is being prepared. It includes new ways to encourage preservation, with some emphasis on ways to encourage private participation in the preservation of buildings and sites.

Among the suggestions being discussed are the granting of an exemption from municipal taxes, reducing betterment taxes, recognition of expenses connected with preservation for deduction from land appreciation tax levied on the sale of a property and earmarking of building license fees collected for creating a special budget for preservation.

TOSHIYUKI KONO

The Public Benefit Corporation and Taxation in Japanese Law

I. The Public Benefit Corporation in Japanese Law

1. The principle of the Japanese Civil Code

Chapter 2 in the General Rules of the Japanese Civil Code (§§ 33-84) as the fundamental corporation law in Japan distinguishes two types of corporations. One is the "for-profit corporation" to which the Japanese Commercial Code is applicable (§ 35). The other is the "public benefit corporation" which is dedicated to public interests such as religion, charity,and science (§ 34). Most of the provisions in chapter 2 of the Japanese Civil Code are concerned with the latter type of corporation.

When one category is "for-profit", its counterpart should be "non-profit". However the Japanese Civil Code takes the position that only the public benefit organization among all types of non-profit organizations can be incorporated. In other words, Japanese Law does not know the non-profit corporation as a legal form. All other non-profit organizations therefore remain as unincorporated associations: These organizations cannot legally be the contract party, nor the owner of real estate. Although some provisions in the Japanese Civil Code could apply *mutatis mutandis* to these organizations, there is no appropriate legal framework for them.

The Japanese Civil Code distinguishes the public benefit corporation further into two categories depending upon the nature of the organization: "incorporated public benefit association" and "incorporated public benefit foundation". The core of the first one should be individuals or organizations that form a group of people for the same purpose, whereas certain assets for specific purposes is the essence of the latter.

Besides the public benefit corporations based on the Japanese Civil Code, there are several special laws such as the Religious Corporation Law, the Private School Law, and Social Welfare Law[1] which are the legal basis for specific types of public benefit corporations. In practice they are the majority. Public benefit corporations based on the Japanese Civil Code make up only ca. 10 % of 230,000[2] public benefit corporations in Japan.

2. How to incorporate the public benefit corporation

When one wants to incorporate a public benefit corporation, one must apply for the permission of the administrative organ in charge of the field to which the purpose of the corporation is related. For example, a public benefit corporation for the purpose of education must be permitted by the Ministry of Education[3], while a public benefit organization for safe traffic must be permitted by the Ministry of Transportation. If the purpose of a public benefit corporation covers these two fields, then it must be permitted by both. Giving