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MAXIMIZING SOCIAL IMPACT THROUGH WAQF SOLUTIONS



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LIST OF ABBREVIATIONS

AMLA	Administration of Muslim Law Act
APIF	Awqaf Properties Investment Fund
Awqaf SA	The National Awqaf Foundation of South Africa
BNM	Bank Negara Malaysia
BOT	Build-Operate-Transfer
CBD	Central Business District
CC	Charity Commission for England and Wales
CSR	Corporate Social Responsibility
DDR	Domet Dhuafa Republika
GDW	General Directorate of Waqf
HCE	High Council of Endowments
IsDB	Islamic Development Bank
IPO	Initial Public Offering
IRCICA	Research Centre for Islamic History, Art & Culture
IRW	Islamic Relief Worldwide
ISF	Islamic Social Finance
IWB	Indonesian Waqf Board
JAWHAR	Department of Awqaf, Zakat and Hajj
KAPF	Kuwait Awqaf Public Foundation
LIWF	Labuan International Waqf Foundation
MUIS	Islamic Religious Council of Singapore
NPO	Non-Profit Organization
OIC	Organization of Islamic Cooperation
PBO	Public Benefit Organization
ROT	Rehabilitate, Operate and Transfer
SCE	Sub-Council of Endowments
SDGs	Sustainable Development Goals
SIRC	State Islamic Religious Council
SRI	Sustainable Responsible Investment
VAT	Value Added Tax
WRS	Waqf Revitalisation Scheme
YWM	Yayasan Wakaf Malaysia

EXECUTIVE SUMMARY

Waqf is a potent tool for mobilizing resources to meet societal needs by the self-sustaining contributions of private donors rather than by governmental borrowing or spending of tax money. In waqf the donor declares an asset inalienable, meaning it cannot be sold or disposed of in any other way. Meanwhile, the proceeds are periodically spent for the beneficiaries designated by the waqf founder. Instead of a one-off act of charity, waqf is the "gift that keeps on giving". It not only continues to benefit the recipients, it provides a means for the donor to keep reaping rewards even after their death.

Waqf played a major historical role in providing infrastructure, education, medical care and many other essential services in Islamic civilization. Colonization and cultural stagnation led to the decline of waqf in the 19th century, but the political independence of Muslim lands in the 20th century led to efforts to revitalize the waqf institution. Some major problems must be solved, however, in order for waqf to realize its immense potential.

Although waqf is essentially a type of private charity, administered by private managers appointed by the waqf founder, governments everywhere have seen the need to involve themselves in supervising them. One way they do so is by providing regulatory frameworks to ensure that the management of *awqaf* (pl. of waqf) meets certain minimum standards of competence and integrity. Most of them also set up institutions that, at the very least, monitor the behavior of waqf administrators. Governmental or quasi-governmental waqf authorities in some jurisdictions take a much more active role in directly administering waqf assets.

The lack of a professional management culture among waqf administrators has been a problem in many jurisdictions. Kuwait and Singapore are notable exceptions, applying modern management techniques competently and transparently. Their achievements have provided a powerful incentive for others to study them and adopt their most effective practices, adapting them to local conditions as needed. Emulation should not stop at particular detailed practices but should extend to outlook. A systematic problem-solving approach is called for that critically re-examines inherited opinions and procedures in light of the Shariah objectives that waqf was originally intended to achieve.

One of the problems that confronts waqf throughout Muslim lands is the very problem of lands. A huge amount of arable land in Muslim countries has been designated as waqf. No one knows exactly how much because of haphazard registration and inefficient administration in many countries. The majority of these lands lie idly unproductive because of the lack of funds to maintain and develop them. Moreover, the lack of readily accessible public information about their status makes them vulnerable to corrupt administrators or unscrupulous third parties taking them over and treating them as their own.

Another major impediment to unleashing waqf's potential is a classical fiqh ruling that cash is an invalid subject matter for waqf. This is based on the concept that the endowed asset must be of a permanent nature, a concept that was itself a matter of dispute among classical scholars. Even some of those who accepted the concept that waqf must be permanent understood cash waqf as having that intrinsic capacity. One way to realize it is to treat the cash as capital for investment, with the proceeds being spent on the designated beneficiaries and the capital being left intact. Another method is to use part of the endowed cash for *qard hasan* (interest-free loans) that is continuously recycled as new loans when old loans are repaid.

Cash waqf opens up opportunities for a much wider pool of donors to contribute to social good and reap eternal rewards than waqf restricted to immovable property. Not many people can afford to make waqf of a piece of land, but almost anyone can contribute to a cash waqf. The marked success of Turkey's experience in pioneering cash waqf has attracted the attention of policy makers in other Muslim countries, who have modified their laws to accommodate it. Cash waqf has become one of the burgeoning frontiers for making waqf an effective tool for social finance in the 21st century.

The successful use of cash waqf has opened up thinking on how to make waqf of financial instruments like corporate shares. Singapore and Saudi waqf authorities have pioneered the use of sukuk to finance the revitalization of rundown waqf properties in prime locations for attractive projects that generate solid income. Sukuk could also be used to finance infrastructure projects that become *awqaf* after the investors have been paid off. The possibilities for the creative use of financial instruments are manifold. The primary limitations are limitations of imagination.

Many people are reluctant to donate to waqf institutions because they doubt the honesty of the administrators and do not know how their donations will be used. Lack of transparency has been a huge problem in waqf administration.

Blockchain, a distributed public ledger that records transactions, is a technology that has recently begun to make a major impact on the financial system. It is predicted that its role and applications will continue to increase in the future. Integrating blockchain with waqf could go a long way to addressing the problems of transparency and trust that currently hamper broad-based public participation in waqf. Blockchain is still a developing technology, however, and there are Shariah issues that need to be resolved before applying it to waqf and other venues of Islamic finance.

Although many issues and problems must still be solved in order to unlock the potential of waqf, great advances have been made in the last fifty years or so. Improved management approaches, enabling legislation and regulatory frameworks, the willingness to re-examine inherited juristic opinions, creative thinking and new technology are all converging to provide good reasons to be optimistic about the future of waqf.

REMARKS BY THE WORLD BANK GROUP



Dr. Firas Raad

Country Manager for Malaysia

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The discussions on waqf are aligned with the World Bank's twin goals to end extreme poverty and promote shared prosperity in every country in a sustainable way. These goals imply a reduction in the number of those living in extreme poverty (defined as under \$1.90 per day) from 10.7 percent globally in 2013 to 3.0 percent by 2030 and fostering income or consumption expenditure growth among the poorest 40 percent of the population in each country. These two goals are part of a wider international development agenda and are intimately related to the United Nation's Sustainable Development Goals (SDGs) 1 and 10, respectively, which have been adopted by the global community.

Islamic social finance (ISF) tools including waqf have been instrumental in socio-economic development and the alleviation of poverty for over 1,400 years. Throughout Islamic history, waqf was a major provider of social services that are today financed by the state. These services include the provision of education, healthcare, infrastructure development as well as social assistance to the poor and vulnerable. Waqf institutions have also supported improvements in income and wealth equality as wealthy individuals and families released property into the service of people who deserved the support of others.

Waqf institutions have the potential to expand available long-term financing for developmental purposes. Long-term financing is used to fund various types of projects that can expand the productive capacity of an economy. There is broad consensus that the world needs to invest more in long-term sustainable projects to deal with the complex challenges of climate change,

growing urbanization, and social imbalances, Although estimates of long-term investment financing needs vary considerably, available data indicate that the needs are extremely large. Infrastructure financing gaps alone, for instance, are estimated at over \$1 trillion annually. ISF including waqf can help bridge this long-term financing gap by capitalizing on important features such as risk-sharing, asset-backing and financial partnerships.

Despite their social and economic importance, the potential of waqf remains largely unrealized because of the critical challenges of liquidity management and the shortage of viable investment opportunities. The portfolio of existing waqf assets is highly imbalanced in favor of physical assets. Waqf are rich in one of the important factors of production—land—but are short on other factors such as capital, labor, and organization. To date, large parcels of waqf land have remained undeveloped due to lack of sufficient funds and entrepreneurial initiatives. These issues need to be addressed if this important segment of the Islamic finance industry is to realize its true potential.

At the World Bank, we are proud to promote the redistributive role of waqf institutions as part of our broader efforts to achieve the Twin Goals by 2030. I hope this report can support the institutions and individuals across the world who are involved in this important and growing development agenda.

REMARKS BY INCEIF



Prof. Dato' Dr. Mohd Azmi Omar
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Finance (INCEIF)

Waqf as an institution played a significant role in meeting the socio-economic needs of Muslim societies throughout Islamic history. Waqf through its characteristics of irrevocability, perpetuity and inalienability provides financial support for charitable activities intended for the public including the provision of healthcare, education, agriculture, infrastructure, loans to small businessmen, and of course religious institutions. Although waqf was adopted from earlier civilizations, it was Islam that expanded waqf and gave its distinguishing feature as a separate body which is neither owned by the state nor a private individual. This distinguishing feature has enabled waqf, together with other ISF instruments such as zakat, *sadaqah* and *infaq*, to have been used successfully to alleviate poverty and promote socio-economic development for centuries. However, in recent times the ever-increasing income inequality gap and political instability in many majority Muslim countries have increased the need for social finance and economic empowerment.

The latest statistics in the United Nation's Global Issues report show that almost half the world's population or over 3 billion people live on less than US\$2.50 a day; 640 million live without adequate shelter; 925 million people suffer from hunger; 400 million have no access to safe water; 270 million have no access to health services; 10.6 million die before reaching the age of 5, and 1 billion are illiterate. Therefore, the urgency in implementing funding instruments such as waqf that are aligned with the belief system of contributors and needy communities alike, has not been more pronounced than now.

Already there are a number of innovative waqf projects which were designed to achieve social goals and economic empowerment, and these can be replicated and scaled up and adopted in Muslim countries and societies. A notable example of an innovative financing scheme for waqf property development was the issuance of *sukuk musharakah* to help finance the redevelopment of an old mosque into a mixed complex comprising a mosque, a commercial complex and 103 service apartments in Singapore. In Penang, Malaysia, another model is used whereby a state religious authority together with a property developer under a profit-sharing agreement jointly developed a vacant waqf land (Wakaf Seetee Aisah) into terrace houses and shop offices. The Islamic Development Bank (IsDB) has established the Awqaf Properties Investment Fund (APIF) and uses leasing and *istisna'* for construction of residential buildings, office/commercial buildings and mixed-use development of waqf lands.

In the area of healthcare, Waqaf An-Noor is another example that can be emulated by others. It provides healthcare and dialysis services to the less fortunate segments of the society in Malaysia, both Muslims and non-Muslims alike. Vehbi Koç Foundation (Vehbi Koç Vakfi) in Turkey is perhaps the first documented case of corporate waqf. Its numerous philanthropic activities have focused mainly on three sectors, namely education, healthcare and culture.

Notwithstanding the success stories of awqaf mentioned earlier, however there are concerns that must be addressed if waqf is to fully take its meaningful role in meeting the socio-economic needs of Muslim societies. At the top is the lack of supervisory and governance standards. Bank Indonesia and the Islamic Research and Training Institute (IRTI) have developed such standards and shared them for adoption by Muslim countries. Standardized reporting of operational and financial activities of waqf bodies should be developed in order to provide transparencies to all stakeholders. As waqf becomes more ubiquitous in Muslim societies, performance and impact assessment measures must be developed in order to evaluate the impact of waqf in achieving its objectives.

As a university that strives to be a thought leader on Islamic Finance, INCEIF intends to lead the progress on research on waqf as an essential pillar of the Islamic economy, embracing technology in order to enhance efficiency in endowment acquisition and its long-term management. We believe that it is our duty to play a significant role in building a sustainable community and that sharing knowledge of ISF such as waqf is one way to do so.

REMARKS BY ISRA



Prof. Dr. Mohamad Akram Laldin
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for Islamic Finance (ISRA)

The last decade has seen positive growth in the types of *awqaf* properties and their development in many Muslim countries. One of the most discussed contemporary measures in waqf development is cash waqf, an innovative mechanism of varied forms such as deposit cash waqf, corporate waqf, and waqf of shares. These and other asset investment methods have taken a leading role in generating income for the benefit of significant sections of society. Cash waqf is now actively used in many Muslim countries as an effective tool for social finance and welfare programs such as promoting educational scholarships and healthcare facilities. Moreover, these new instruments have the potential to generate benefits for most or all of society. Cash waqf collection in Indonesia alone is predicted to reach IDR 188 trillion (roughly USD 13 billion) per year. Islamic banks have a key role to play in this regard. There are currently 15 Islamic banks registered as official Islamic Financial Institution Recipients of Cash Waqf (IFI-RCW).

Similarly, in Malaysia, the 2007 national fatwa permitting cash waqf brought about diversification of *awqaf* properties through the introduction of several cash waqf schemes by local banks, Yayasan Wakaf Malaysia ('YWM' or the Malaysian Waqf Foundation) and the State Islamic Religious Councils (SIRC) as well as public higher education institutions. A number of Islamic banks in Malaysia promote and practice cash waqf. For instance, in September 2012, Bank Muamalat Malaysia Berhad (BMMB) introduced a cash waqf scheme in collaboration with Perbadanan Wakaf Selangor (PWS) (Selangor Waqf Corporation). Likewise, Maybank Islamic announced the establishment of a waqf fund of RM20 Million in collaboration with the Federal Territory Islamic

Religious Council. While declaring this donation, Maybank Islamic affirmed that profits realised from the portfolio will be used to develop education, health care, infrastructure and the skills of young entrepreneurs.

Another initiative in developing *awqaf* is to connect waqf with securitization. In line with this endeavor, the International Shari'ah Research Academy for Islamic Finance (ISRA) is currently working together with the IsDB on issuing *awqaf sukuk* worth USD100million. The funds will be used to set up and operationalize sheep and dairy farms and renewable energy projects in selected jurisdictions. The income generated will benefit *awqaf* beneficiaries and will be used for charitable and social purposes all over the world. This is considered an innovative project both from the economic and Shariah perspectives. If properly realised, it could catapult the development of the *awqaf* sector globally.

Despite the widespread presence of waqf institutions and the significant strides in waqf property management and development, waqf faces a number of issues and challenges. Prominent among these is the need to create public awareness and acceptance, to create comprehensive and enabling regulatory frameworks, and to empower professional waqf management. Another critical challenge is the collection of cash waqf through online platforms. There is still no regulatory framework to ensure transparency and integrity of such collections vis-à-vis the stakeholders. Nevertheless, recent developments in the digital economy can play a crucial role in addressing the issue of transparency and trust. These include facilitation of payments through digital wallets and the possible use of blockchain technology.

This report, which is jointly produced by The World Bank Group, INCEIF and ISRA, highlights the importance of waqf in mobilizing and maximizing resources to meet societal needs. The report also emphasizes the legal and regulatory frameworks that enable the implementation of waqf in selected countries. The report is expected to raise awareness on the importance of waqf and its huge potential for public good.

I would like to take this opportunity to express my gratitude to The World Bank Group and INCEIF for partnering with us in producing this report. My profound thanks also go to all the contributors to this report. Congratulations to the production team from The World Bank Group, INCEIF and ISRA for this great achievement. This report would not have been possible without your earnest support.

CHAPTER 1

An Overview of the Waqf Landscape

Islamic finance continues to grow at a double-digit rate of more than 10% per annum. During the last five years, ISF, one of the important components of Islamic finance, has also picked up. The main reason for the renewed interest in ISF is the emergence of the United Nations' SDGs. Two of the main instruments of ISF are zakat and waqf, which are not only apt for fulfilling the objectives of the Shariah but can also address most of the SDGs. ISF also makes use of other instruments such as *qard hasan*, *sadaqah* and *hibah*. All these instruments have the potential to go beyond the normal practice of Islamic finance, which only caters to a certain class of people. They can address the financially excluded and thus deal with some of the pressing socio-economic issues of the modern era. The approach of ISF is holistic in nature, and more importantly, its benefits are not limited to Muslims alone. It can also cater to the non-Muslim segments of society.

Waqf, in particular, has a long, outstanding track record in this regard. It is a Shariah-compliant instrument by which the person who donates their assets to a waqf institution no longer remains the owner of those assets. When the ownership has been transferred to a waqf institution, the assets are now considered to belong to Allah. Meanwhile, the job of the waqf trustee is to manage the waqf properties honestly.

According to Kuran (2001), trust (similar to waqf) is an institution that can be dated back to the time of ancient peoples such as the Romans, Jews, Byzantines and others. However, it can be argued that Islamic civilisation institutionalised the practice to an unprecedented extent, making it more widespread and deep-rooted than in any other civilisation. The most authentic and detailed evidence for waqf can be found in the *hadith* in which Umar ibn al-Khattab sought the advice of Prophet Muhammad (peace be upon him) regarding a piece of land that he had recently acquired. The Messenger told him, "If you like, you can make an endowment of the land and give [the fruit] in charity" (Al-Bukhari, 1422H, no. 2737). The practice became so widespread among the Prophet's Companions that practically every one of them who could afford to do so made a charitable endowment of land (Ibn Qudamah, 1968, 6:4).

Throughout Islamic history waqf played an important role in the development and socio-economic life of Islamic society. Wealthy people used to donate their assets to waqf institutions, and the benefits were used for purposes such as building mosques, schools, hospitals and rest houses for travellers. In the golden era of Islam, waqf institutions played a significant role in the upliftment of society, especially through poverty alleviation. Crusaders who observed the operation of waqf in funding various social institutions in the Middle East took the concept back with them to Europe. Endowments were established for academic institutions such as Inns Court and Merton's College of Oxford University in the United Kingdom (Gaudiosi, 1998).

In the Ottoman Empire, waqf institutions gained importance as they assisted the government in provision of public goods and services. Waqf services were so widespread at that time that it was said that a person could complete their entire life cycle within waqf environments. People were born in waqf property, educated in waqf schools, worked in waqf enterprises, received medical treatment in waqf hospitals and were buried in waqf lands. The benefits of waqf were not only limited to the Muslim and non-Muslim population of the Islamic state but extended to the wellbeing of animals too. According to Bremer (2004), "Islamic philanthropy has been able to play these important and diverse roles in part because it is among the most transparent, formalised and rule-based segments of Islamic society." The praiseworthy services provided by waqf institutions at that time were due to the continuous dedication of pious Muslims.

During the Ottoman era, there were two types of waqf institutions: public waqf and family waqf. The family waqf was managed by the people who had donated their assets to the waqf institutions while, on the other hand, the Shariah court was the controller of the public *awqaf* (pl. of waqf). The income from waqf contributed over one-third of the Ottoman state's total revenue. During this period, fatwas allowing waqf of movable properties greatly expanded the scope of waqf, which had previously been largely confined to immovable properties (Kuran, 2001).

The golden age of waqf withered away owing to two main factors, namely greedy and selfish rulers who could not resist the magnitude of profit that was generated by the waqf institutions; and imperialist colonizers who suppressed the waqf institution and introduced modes of financing that were debt-based as opposed to equity-based (Elasrag, 2017). Waqf institutions reached their nadir in the wake of the Ottoman Empire's collapse (Abdel Mohsin 2009; Bremer, 2004).

In recent times, discussion of the services and the benefits of waqf was initially spearheaded by non-Muslim scholars, who organized the first academic seminar on the topic in Jerusalem back in 1979 (Hoexter, 1988). Bremer (2004) shed further light on non-Muslim contributions to the process, saying, "The waqf model is beginning to enjoy a rebirth, although this process is proceeding more rapidly in non-Islamic democracies, such as the United States, than in Islamic countries." However, in the last few years, the discussion of waqf and the interest in reviving such institutions has also increased in Islamic countries. The discussion has mainly centred on the applications and benefits of waqf. Along with conferences and seminars by Muslims in many countries, the IsDB has also made a concerted effort to rediscover and catalogue waqf institutions. The recent The World Bank Group, INCEIF and ISRA Roundtable Discussion on Waqf discussed and deliberated on waqf success models that can be replicated globally by the relevant stakeholders. The emergence of SDGs and Corporate Social Responsibility (CSR) has made people think of waqf as a potential instrument to address these goals, which has led to more and more non-Muslims becoming aware of the concept.

Nowadays, there is an increasing tendency to analyse financial instruments not only from the feasibility and applicability perspective but also from the perspective of whether or not they contribute to society and whether or not they help achieve SDGs. From this perspective, the waqf institution is the most flexible and powerful instrument that can be effectively used to address the concerns raised in SDGs. Estimates of the value of waqf assets in the world range from USD 100 billion to USD 1 trillion. More importantly, waqf lands comprise more than one-third of the cultivable lands of Muslim countries (IDB, 2014). Nazim (2010) concludes that a significant majority of the waqf assets are in the form of real estate and could be as high as 70 to 80 % of the total sector assets. The remaining money is invested in Shariah-compliant money markets, mostly with regional financial institutions. Cash waqf alone is estimated at USD 35 billion.

The last few years have witnessed an increase in the number of waqf properties not only in Muslim-majority countries but also in some Muslim-minority economies where the legislation is based on western legal models. The institution of waqf is so flexible that it can easily be incorporated in western legal systems with little or no tweaking. The modern concept of cash waqf has also broadened the scope of waqf as it allows the acceptance of waqf donations in the form of money and other movable assets. One of the attractive features of the waqf instrument is that it is perpetual in nature and is not dependent on the life of the donor or the manager.

In recent times, many models have been proposed to maximize the impact of waqf. Some of these models are waqf-based Islamic microfinance institutions, independently managed charity organizations, a hybrid model of Islamic bank and waqf, and an organization based on a combination of *takaful* and waqf. The objective of all these models is to address the economic and social issues of deprived classes and make them economically independent. Such institutions can help achieve these goals by providing them good education, offering them health facilities and bringing them into a financially inclusive society. Access to finance and credit can improve the lives of the deprived. Waqf institutions can be of great assistance as they can provide financing to the poor class of society not only for their basic needs but also in starting small-scale businesses. These small start-ups can provide the poor permanent sources of income and make them economically sustainable.

As in the golden age of Islam, when waqf played an important role in providing social and economic services, waqf can help countries in the modern day by developing infrastructure and thus reducing the cost of doing business. Waqf properties could also be used as underlying assets for the issuance of sukuk; the money received could be used on social services like hospitals, schools, community halls, etc. These sukuk could also be issued while taking into consideration the Sustainable Responsible Investment (SRI) perspective, which could further extend the benefits to the society at large. Waqf institutions also have the capability to address some of the important SDGs, especially those in line with the objectives of Shariah (*maqasid* Shariah) such as eradication of poverty and hunger and provision of education and health services. A United Nations report of 2016 identified ISF instruments such as zakat and waqf as capable of addressing the humanitarian crises in the Muslim world.

Waqf institutions could be made more impactful by bringing them into the Islamic capital market, which could provide professional services such as portfolio management that would help manage the assets efficiently. In Malaysia, waqf-based shares have been issued under the social enterprise model whereby the money received from the Initial Public Offering (IPO) will be channelled to improve the Larkin Sentral bus terminal in Malaysia. After buying the shares, the shareholders can donate their shares to the trustee and manager of the waqf so the dividends can be used to support the deprived class of society and single-mother families. Opportunities are also being provided to small business owners to open shops at the terminal at discounted rental rates. This initiative can be viewed as consistent with the United Nations SDG 10: reducing inequality (IFN Asia, 2018).

As mentioned by Bank Negara Malaysia (BNM) Assistant Governor Encik Marzunisham Omar (2018) at the Forum on 'Waqf: An Economic Perspective' in Kuala Lumpur, there are three strategies we can explore to unlock waqf's full potential as a platform for ISF:

The first is to broaden waqf assets and their applications. Fundamental to this is the need to correct the perception of waqf. One of the biggest misconceptions is on its usage. Waqf is to benefit all. While waqf land has traditionally been used to build mosques, cemeteries or schools for memorization of the Qur'an, nothing in the Qur'an or Sunnah prohibits wider use of waqf to meet the needs of the community. In fact, there is no requirement for a waqf donor or beneficiary to be a Muslim. There are instances from past Islamic civilisation where the use of waqf extended beyond matters directly related to the religion and specific needs of the Muslims. Waqf land and buildings were used to build schools, hospitals and infrastructure to benefit both Muslims and non-Muslims alike. Al-Azhar University is an excellent example of a waqf asset. Limiting waqf to land and immovable property is a misconception. With the emergence of Islamic finance and contemporary reinterpretations of fiqh rules, new perspectives can be injected into the life of waqf.

The potential of applying financial innovation in waqf has proven a success, as demonstrated by *waqf sukuk* in countries like Saudi Arabia and Singapore. The examples in these countries include sukuk issued to raise capital for the development of waqf land, which led to the revitalisation of an old mosque and modernisation of shops that were in a rundown condition. The concepts of replacement, conversion, substitution and exchange, which are allowed in Islam, provide flexibility in the way waqf assets are invested so that they can be most productively deployed. This example can be replicated here as a means to obtain funds to renovate old, neglected or under-developed real estate properties into highly valued and desirable prime properties. The process can create value in land or property that would have otherwise been underutilised and undervalued.

The second strategy is to ensure that we achieve the goals of social equity and economic efficiency in operationalisation of waqf projects. While projects developed from waqf proceeds should benefit society at large, it makes sense from an economic efficiency standpoint to allow the market mechanism to allocate these scarce resources. As waqf is intended to generate benefits in perpetuity for all generations to come, operating the fund on commercial terms allows it to be invested and managed in a manner that ensures preservation of capital. Prioritising economic efficiency can

help strengthen the position of waqf to carry out its social equity objectives effectively.

The third imperative is to professionalise and modernise waqf management. For waqf to progress strongly, it requires a new character and a more modern image. In this regard, we can identify two priorities, namely professionalising those who are entrusted to manage waqf and putting in place a proper governance framework. The management of waqf must be entrusted to experienced and knowledgeable experts with the highest integrity – that is, people with the right calibre, right competency and right character. For example, the USD 37.1 billion Harvard Endowment is run by some of the best minds in finance, who determine the most optimal asset allocation strategies that deliver the best sustainable returns for the university. In 2017, the endowment contributed more than a third of Harvard's operating revenue. Returns from the fund help to provide scholarships and to fund ground-breaking research. Another important aspect in professionalising waqf management is instilling good governance. It is unfortunate that management of waqf has had some governance challenges.

Waqf authorities should explore partnering or collaborating with experts from the private sector to commercialise or monetise waqf assets. Partnerships with Islamic financial institutions can help waqf authorities develop waqf assets productively with the required financial expertise on board. A good example is the partnership between Majlis Agama Islam Wilayah Persekutuan and Lembaga Tabung Haji in developing Menara Bank Islam on a 1.2 acre piece of waqf land in Kuala Lumpur. The RM151 million project is a milestone achievement, being the first large-scale commercial development project on a waqf property in the country.

The reintroduction and revival of waqf concepts in modern times face many challenges, including:

- 1- The low credibility of waqf management;
- 2- The limited scope of research on waqf, training of personnel, and public awareness of the huge potential of waqf for public good;
- 3- The lack of proper waqf legislation;
- 4- The limited number of well maintained waqf assets/properties;
- 5- The limited number of modern innovative investment strategies.

Although waqf institutions face many challenges, measures and solutions that overcome the challenges can help to revive waqf institutions and introduce new forms so that they can play a pivotal role in fulfilling socio-economic needs of communities in modern times.

CHAPTER 2

An Enabling Legal and Regulatory Framework for Waqf Institutions

INTRODUCTION

The institution of waqf has witnessed tremendous growth in terms of its asset classes, governance structure and legal and regulatory framework. Innovative waqf models and instruments are visible in emerging markets, along with diverse regulatory approaches and strategies. Some countries such as Indonesia and India have opted to regulate waqf through a unified statute while others like Malaysia have allowed separate enactments to govern waqf in each of its states. While waqf is a concept that originates in the teachings of Islam, the design of waqf governance is greatly shaped by local historical and social factors like colonization, school of Islamic jurisprudence, and societal norms and needs. These factors form the basis for choices in the design of a country's legal and regulatory framework. The ramification of such choices on the growth of waqf is captured by the stories of the countries selected in this chapter. The chapter analyzes the legal and regulatory frameworks that enable the implementation of waqf in the selected countries, highlighting the relevant laws and policies that govern waqf institutions in the countries chosen. Thereafter, the relevant issues and challenges surrounding waqf implementation in these respective jurisdictions are briefly discussed. The chapter ends with the way forward based on the lessons learnt, especially for policy makers who are looking for an effective enabling waqf regulatory framework for their nation's economic and social development.

I- The Enabling Waqf Regulatory Framework

We currently find diverse approaches in waqf legal and regulatory frameworks from one country to another. The frameworks of some countries have led to stagnancy in their development of waqf practice while other frameworks have enabled greater advancement. This section describes some key laws and policies affecting waqf in Saudi Arabia, Malaysia, Nigeria, Turkey and Indonesia.

a) Saudi Arabia

Saudi Arabia has been chosen as it is where the concept of waqf originated in the era of Prophet Muhammad (peace be upon him). Waqf is an important source of revenue for the Kingdom. Prior to December 2015, public revenues like waqf and zakat as well as royal revenue in Saudi provinces such as Hijaz, Asir and Al-Hasa were collectively governed by the Royal Diwan¹, the Ministry of Finance and the Ministry of Religious Affairs. However, in some areas such as Najd there were no specific laws that governed the locals in their affairs; hence they were all indirectly dealt with by the King through his appointed 'governor-emirs' (Vassiliev, 1998).

However, since December 2015, all waqf institutions in the Kingdom have been governed by Royal Decree No. 35/M. This law comprises sections that outline the job scope and responsibilities of the two waqf governing bodies, namely, the High Council of Endowments (HCE) and the Sub-Council of Endowments (SCE). In the event of conflict between these two bodies, the decision of the HCE will prevail. The centralization of governing bodies to supervise and monitor waqf implementation throughout the Kingdom signals a positive development. Among the key provisions in the said law is that it empowers the HCE to register, restrict and supervise waqf institutions, to decide on applications to change the purpose of waqf, and to monitor the compliance of waqf institutions with the relevant laws and regulations. Supervision includes assessing, on an annual basis, the profitability of waqf institutions to ensure their effectiveness. The way waqf institutions make their profits is by investing the waqf funds in ventures that have a high chance of success (Ahmad, 2015). In addition, the HCE is also required to conduct meetings annually and to consult experts in order to foster the growth of waqf institutions.

b) Malaysia

Malaysia is a developing country with a mature Islamic finance industry. However, its waqf sector has yet to match that advanced development. The thirteen states of the country govern their waqf institutions independently under their respective state enactments while waqf in the three federal territories is governed by one federal law. Out of the thirteen states, five have enacted specific waqf laws: Johor, Selangor, Negeri Sembilan, Terengganu and Malacca. The remaining states and the federal territories have enacted waqf provisions in their general administrative laws (Kader, 2015).

¹ For more details on the Royal Diwan of Saudi Arabia please refer to: <http://countrystudies.us/saudi-arabia/48.htm>

One point of commonality between the state enactments is that each has appointed its respective SIRC as the sole trustee (*mutawalli*) of all waqf properties declared in the state. This provision means that all waqf properties (movable and immovable) will be registered under the name of the respective SIRC. This happens either through an application by a waqf founder to the respective SIRC for the land to be registered as a waqf or by an application made by the SIRC to the court for the court to declare the land as waqf property (Kader, 2015).

Regarding fund management, generally, the waqf institution of the SIRC of the respective state will manage the waqf funds. However, a distinction needs to be made between a waqf for general purpose and one for a specified purpose. When the waqf funds are collected for a general—i.e., unspecified—purpose, then the funds are entirely managed by the waqf institution of the particular state. However, if the waqf is for a specified purpose, then the fund could be managed by other than the SIRC's waqf institution. This allows for any competent and qualified entity with an interest in the development of the waqf project to manage it, although the SIRC of the respective state will still act as the ultimate supervisor (Mohsin and Mohammad, 2015). This is seen as a positive development in 'modernising' the waqf fund management by the states' SIRC's.

To coordinate the waqf development in every state, in 2004 the Malaysian government established the Department of Awqaf, Zakat and Hajj (JAWHAR). Among the roles and responsibilities of JAWHAR are: to recommend standard practices for waqf to be adopted by the SIRC's; to monitor waqf development projects throughout Malaysia; and to act as a bridge between the SIRC's and the federal government. A government-backed waqf foundation was formed in July 2008 known as YWM. It was set up under the Trustees Incorporation Act 1952 as the national waqf entity. YWM's functions include the collection of waqf funds, development of existing and new waqf assets, implementation of welfare and social programs honoring the intentions of waqf donors, undertaking investment programs to sustain disbursements to waqf beneficiaries, and promotion of YWM's activities (Alias & Alina, 2011).

Waqf appeared in the Islamic capital market regulatory framework in 2015 when the Malaysian Securities Commission issued Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework. Chapter 7 of these Guidelines incorporates provisions, including tax incentives, pertaining to sustainable and responsible investment (SRI) sukuk. Waqf properties and assets as well as any projects that undertake the development of waqf properties or assets are deemed part of the SRI-eligible sector. The

Guidelines thus promote the issuance of sukuk for the development of waqf properties and assets. Later in 2017, the Malaysian Securities Commission issued the Islamic Fund and Wealth Management Blueprint. The Blueprint caters to potential waqf vehicles for social development, public good and wealth distribution as well as increasing the level of sustainable waqf assets through fund management or capital raising.

Another development took place in Labuan, the Malaysian offshore financial center, where the Labuan International Waqf Foundation (LIWF) was established. LIWF is an Islamic foundation established under the Labuan Islamic Financial Services and Securities Act 2010. Its purpose is to hold waqf properties on trust with the objective of managing them for identified beneficiaries in accordance with the Shariah principles of waqf.

In the latest development in 2018, the Central Bank of Malaysia along with six participating Islamic banks introduced the MyWakaf Initiative. The collaborative initiative between the SIRC and these participating Islamic banks aims to effectively drive the collection, management and distribution of funds donated by banks as well as the general public for waqf development purposes (myWakaf, 2019). The uniqueness of this MyWakaf Initiative is that, unlike the previous practice, the funds are now being managed by the expert, reputable and trusted banks in Malaysia as opposed to the former practice that saw the SIRC of the respective state as the sole manager of the waqf funds.

c) Nigeria

Nigeria is one of the few African countries apart from South Africa and the Republic of Guinea that has waqf institutions. This is perhaps due to the fact that Islam reached Nigeria as early as the 11th century. However it was only in 1979 that Islamic law was officially recognized in the country's constitution as one of the three main governing laws in the country. The application of Islamic law in Nigeria is limited to personal matters such as matrimonial matters and waqf. Another statutory development took place in 1986 with the passage of Decree 26. The effect of this law was to place all Islamic civil matters, including waqf, under the jurisdiction of the Shariah Court of Appeal. The jurisdiction of the Shariah court is, however, confined to Muslims (Sodiq, 1992).

It is interesting to note that the constitution names the Maliki School as the applicable school of jurisprudence for Islamic personal matters. A salient feature in the Maliki School is that a waqf can be revocable. This means

that a waqf founder (known as *waqif*) could set up a waqf for a particular objective (i.e., temporarily) and once that objective is achieved the waqf asset would go back to the *waqif*. In addition, it disallows a *waqif* to benefit from the proceeds of the waqf as he only holds the legal rights to the property whereas the beneficial rights are exclusively reserved for the beneficiaries (Oseni, 2012).

Unlike Malaysia, waqf funds in Nigeria are managed by the trustees/*mutawallis* themselves. The waqf governance in Nigeria is, however, not regulated by any statutes or by-laws. This could breed abusive practices in the waqf fund management and hence lead to a trust deficit toward waqf institutions in the society.

d) Turkey

Turkey has inherited the illustrious waqf legacy of the Ottomans. Despite the collapse of the Ottoman Empire after World War I and its falling into the hands of Mustapha Kemal Ataturk, the secular founder of the Turkish Republic, the institution of waqf continued to make great contributions to the socio-economic welfare of the people of Turkey (Fanani, 2011). The first provisions governing waqf were introduced in the 1967 Civil Law of the Republic of Turkey. The idea to officially regulate waqf was propelled by one Vehbi Koc, a businessman who was well acquainted with the benefits of waqf. It is said that he obtained the inspiration from the American foundations and the 1935 French Waqf Law (Çizakça, 2014).

Key amendments pertaining to waqf were incorporated into the Civil Law, amongst them:

- 1- It prohibited the revoking of a waqf after its establishment; however it reaffirmed the legality of exchange (*istibdal*) of a waqf in cases where the waqf asset or business has not been operating at its full potential.
- 2- It made it possible for waqf institutions to be tax exempt, upon the approval of the Council of Ministries, when 80% of their revenues are for public purposes.
- 3- It allowed waqf entities to establish companies and account their revenues under the waqf; likewise, companies could also establish their own waqf.

The statutory provision that allowed waqf to be corporatized and enjoy

revenues from the waqf ventures has spurred another important milestone in the development of waqf in Turkey. It is arguably the most significant development as the prevailing practice during the Ottoman Empire restricted waqf institutions to interest they would charge on the money they gave out. This later amendment has enabled waqf entities to enjoy the profit of their investments, in the form of *mudarabah*, with other corporate waqf institutions or companies they establish (Çizakça, 2000).

The introduction of such innovative and modernized waqf provisions ensued from numerous discussions and engagements between waqf sector players and policy makers. Such provisions were based on the observation that investing only in real estate does not guarantee a return in investments as real properties are still subject to natural disasters and economic downturns. To address this, the waqf asset class was then extended to corporate shares. The impact and effectiveness of the 1967 amendments on waqf were tremendous. The result is evidenced by the significant increase in the creation of *awqaf* before them and after. A mere 73 *awqaf* were created from 1923 to 1967 while the number climbed to well over 1,000 between 1967 and 1985 (Çizakça, 2014). Further innovative developments were implemented via the Act of the General Directorate of *Awqaf* 1999. This Act allowed waqf entities to purchase shares in a company that has yet to be declared to the public, a move that has enhanced the cash waqf-venture capital (*mudarabah*) model (Çizakça, 1998).

The waqf laws went through a drastic change in the late 1980s when the government learnt that a number of waqf institutions were engaged in funding fundamentalist groups in the country. To address this, the government redrafted the entire Turkish Civil Code. The effect of the redrafting exercise made it harder for individuals or entities to establish waqf corporations unless they could prove that the waqf had a corpus sufficient for its maintenance. In addition to that, the government empowered the Ministry of the Interior to shut down any waqf institution suspected of engaging in unauthorized activities. The drastic change to the law prompted a huge public backlash. Due to this, the President of the Republic decided to review the 1998 bill and resolved the matter by deciding to leave waqf-related matters to the Prime Minister and maintain the tax exemption on waqf institutions that have 80% of their revenues devoted for public purposes (Çizakça, 2000).

Another regulatory evolution of waqf in the Republic of Turkey has been the shift of authority from the Ministry of *Awqaf* to the General Directorate of Waqf (GDW). The GDW made it a requirement for every waqf institution to set up a management board. In addition, in 1992 the GDW made it obligatory

for all waqf institutions to pay it certain fees to carry out its auditing and supervisory duties. Even branches of these waqf institutions were required to bear this responsibility (Çizakça, 2011).

In the latest developments, in 2008 a number of regulatory changes were introduced under the Foundation Law affecting the waqf governing framework. Among the changes:

- 1- It created a Council of *Awqaf* and vested in it the power to appoint waqf trustees.
- 2- It reduced the amount needed to establish a waqf to a decent 50,000YTL, which is equivalent to 9,316USD², and thereafter gave the Council of *Awqaf* the authority to set the minimum amount required to establish a waqf.
- 3- It further removed the prior requirement of approval and resolved that prior notification should suffice.
- 4- It allowed foreigners to be both founders and board members of waqf institutions as long as the country the foreigners come from has amicable relations with Turkey.
- 5- It also allowed waqf entities to engage in international activities.
- 6- It no longer imposes gift and inheritance tax on donations made to foundations.
- 7- Contributions made to foundations for the purpose of maintaining, repairing or restoring waqf are now fully deductible from income taxes as opposed to the former law, which had set a 5% limit on the tax deduction³. Corporate contributions are tax exempt unless 50% or more of the company's shares are owned by the founding waqf institution or the GDW, in which case 10% of the total revenue would have to go to GDW, which shall use it to develop and restore the waqf asset (Article 28).

² The price exchange is as of 16/1/2019 from XE Currency Converter <https://www.xe.com/currencyconverter/convert/?Amount=50000&From=TRY&To=USD>

³ For more details on the Foundations Law in Turkey please see: <https://www.tusev.org.tr/en/civil-society-law-reform/foundations/the-new-law-on-foundations-is-in-effect>

e) Indonesia

Indonesia is the largest Muslim country in the world with its Muslim population of 225 million. Waqf permeates the society and economy of Indonesia and has played an instrumental role in the development of its socio-economic sector. Since its independence, the Indonesian government has enacted a number of laws related to the governance of waqf lands; for example, Government Regulation No. 10 of 1961 relating to Land Registration, and Government Regulation No. 28 of 1977 relating to Endowing Privately Owned Land. The

preamble of the 1945 Indonesian Constitution requires that the government promote "public welfare". Although it is a generic term, the meaning would include institutions like waqf that have proven to bring extensive benefit to the society over the years.

Waqf in Indonesia is governed by an independent body: the Indonesian Waqf Board (Badan Wakaf Indonesia - IWB), established in 2004. Its mandate is to develop the institution of waqf in Indonesia. It supervises, regulates and guides the trustee administrators (*nazirs*) in managing and developing waqf assets, and it can also dismiss and replace *nazirs*. In addition, it manages and develops waqf properties at the national and international level as well as providing policy advice to the government.

Members of the IWB are appointed and dismissed by the President. The length of service is three years, and a member can be reappointed for one more term. The total number of IWB members are between 20 to 30 persons, chosen from various elements of society. The members of the first period were proposed to the President by the Minister of Religious Affairs. For the next period, the members were proposed by a select committee formed by the IWB. Meanwhile, IWB representatives are appointed and dismissed by the IWB. The IWB management structure consists of the Advisory Council and the Executive Agency. Each of them is led by a chairman, who is one of the members whom the others have elected to lead them.

Another key establishment in managing waqf asset is the Dompot Dhuafa Republika (DDR). Though DDR is a national zakat collection and distribution institution, it is also active in waqf asset management. The DDR started to collect waqf assets in 1999 before it was formally registered as a waqf foundation in 2001. To ensure efficiency in both zakat and waqf management, the DDR established a separate division, known as the Indonesian Waqf Fund (IWF) in 2005. The IWF offers a platform for investment of waqf corpus for risky yet desirable avenues (microenterprise development) such as in the tofu industry, livestock business and Islamic microfinance (Siswanto *et al.*, 2014).

The emergence of cash waqf globally, particularly in the Republic of Turkey, has attracted the interest and attention of the government of Indonesia. Prior to 2001, cash waqf was not recognized as an effective tool for waqf enhancement. However, due to the growing appetite for, and application of, cash waqf globally, the government of Indonesia realized that cash waqf is a relevant mechanism to augment and sustain waqf institutions. Upon this realization, the religious authorities issued a fatwa allowing the application

of cash waqf. This development was followed by the introduction of the Act of Republika Indonesia No. 41 of 2004 that paved the way for a broader implementation of waqf (Indonesian Waqf Board, 2012).

Numerous initiatives have been introduced under this new Act, particularly regarding waqf management and securitization of waqf assets. In relation to waqf management, the law has introduced standards regarding the qualification and efficacy of waqf managers. Whether they are individuals, organizations or corporations, they are required to demonstrate a certain level of competence and faithfulness. In terms of waqf asset securitization, the law requires that all waqf entities be certified before being able to monitor and govern the waqf assets. It also mandates the appointment of qualified legal personnel to attend to disputes that may arise involving waqf assets. The role of appointing waqf personnel has been assigned to the Directorate General of the Islamic Guidance Society (Prakasa, 2017).

Further developments took place in 2006 with the introduction of Government Regulation 42/2006, which extended the waqf asset class to include moveable assets other than cash, such as capital market instruments. In 2009, the BWI Regulation 1/2009 came into being which further divided cash waqf into two categories. The first category is cash flows or gain from investment activities, while the second category is cash contributed by the *waqif* to be used to invest in real estate. In addition, the 2009 regulation mandates that the first type of cash waqf be done through the recognized Islamic financial institutions (LKSPWU) whereas it would suffice for the second type to occur through any duly certified *nazir* (Prakasa, 2017).

In the latest development, in 2018 the Bank of Indonesia, IWB, and Islamic Research and Training Institute, together with a selected number of waqf bodies' representatives, launched the Core Principles for Effective Waqf Operation and Supervision. The said Core Principles are to ensure sound supervisory waqf management that reinforces confidence and trust; innovative and sustainable waqf structures; and impactful waqf projects for the community, environment and economy.

II- Legal Issues Affecting the Development of Waqf

As shown by the experiences reviewed above, the structure and design of a country's legal and regulatory framework impact the growth and development of its waqf sector. This section briefly discusses the relevant issues and challenges surrounding waqf implementation in these selected

countries, namely, Saudi Arabia, Malaysia, Nigeria Turkey and Indonesia. The issues discussed relate to the key legal areas of jurisdiction, governance, dispute resolution, registration and taxation.

a) Saudi Arabia

The Issues of Jurisdiction and Governance

The first article of the Kingdom's Constitution, as adopted by a Royal Decree in March 1992, stipulates that God's Book (the Quran) and the Sunnah of His Prophet are its constitution. As such, it affirms all practices approved by Prophet Muhammad (peace be upon him), which includes the practice of waqf. Having said that, it is common for disputes to arise from the waqf implementation. To have an effective dispute resolution mechanism, there is a need for a centralized authoritative body or court which has the final say in resolving matters relating to waqf institutions. As it is now, different Shariah courts throughout the country's history have implemented different waqf rulings and standards based on their understanding and interpretation of the Quranic texts and Prophetic teachings.⁴

⁴ This is due to their lack of expertise in matters relating to real estate assets and/or finance.

The Issue of Dispute Resolution

Royal Decree No. 35/M, Article 11, makes it mandatory for the HCE to appoint experts in economics and finance to render their expertise to it on matters pertaining to waqf. This provision does not seem to have been able to solve the issue of contradictory judgments being passed by the various Shariah courts. This inconsistency and lack of precedence in law creates more confusion and serves as an impediment to individuals and institutions that are looking to establish a waqf.

The Issue of Registration

Non-registration of waqf is a common phenomenon in the Kingdom. According to Arab News, the Waqf Minister indicated that the great majority of the total 124,000 waqf assets in the country are undocumented. This leaves room for abuses and/or unlawful encroachments on these waqf lands which, again, would result in a major decline in waqf assets, as was recorded by the Waqf Ministry back in 2015 (Habtör, 2015).

b) Malaysia**The Issues of Jurisdiction and Dispute Resolution**

The issue of which court shall decide waqf disputes continues to embroil the civil and Shariah courts in Malaysia. In terms of jurisdiction, the Federal Constitution stipulates that the respective states (Shariah Courts) shall have jurisdiction to deal with matters listed in the State List of the Ninth Schedule of the Federal Constitution. Among the matters listed are 'Wakaf and the definition and regulation of charitable and religious trust' (Kader, 2013). In addition to that, Article 121(1A) of the Constitution also stipulates that civil courts are not allowed to deal with matters that fall within the jurisdiction of Shariah courts. This basically means that waqf is to be governed by the state (Shariah court) and not the federal government (civil court).

Despite these provisions, the civil courts have continued to deal with cases involving waqf. The arguments that have been put forth by these civil courts is that the Shariah courts have no authority to grant reliefs such as damages, injunctions or estoppels as those are powers conferred to the Civil High Court by default.

The Issue of Governance

Each respective SIRC is given the power to govern and administer the assets of waqf. There have been concerns over the incapability and incompetency of the SIRCs in enhancing the commercial value of the waqf assets. The lack of expertise hampers the development and growth of waqf institutions. As mentioned earlier, joint efforts have been undertaken lately by some Islamic banks and SIRCs to commercially develop waqf properties.

The Issue of Taxation

The tax facilitative regime for the waqf sector has yet to develop to the scale as experienced by the zakat (tithes) sector. In Malaysia, by paying zakat to the authorized zakat bodies, the Muslims enjoy tax rebate which provide the Muslims the needed tax relief. In other words, the income tax on the chargeable income is reduced by the rebate. However in the case of waqf, to benefit from the tax deduction under the Income Tax Act 1967, the waqf institution or organization or fund must be approved as tax exempted institution by the income tax authority. The effect of this approval is that it will allow individual and corporate donors to get tax deduction of only 7% for individuals and 10% for corporation from their aggregate income.

c) Nigeria

The Issues of Jurisdiction and Dispute Resolution

Similar to Malaysia, there is a battle over jurisdiction in Nigeria. Although the Constitution of the Federal Republic of Nigeria provides for all Islamic personal matters such as marriage, divorce, waqf, gifts, etc. to be under the jurisdiction of the Shariah Court of Appeal, it is not sufficient. The reason is that the Land Use Act, the highest law relating to land matters in the country, gives the High Court the absolute authority to deal with all land matters. It does not exclude waqf or endowed lands from the High Court's jurisdiction. In addition to this, there is no specific legislation that governs waqf as an institution. The absence of exclusive legislation to govern waqf leaves room for the civil court to intervene and deal with disputes involving waqf properties. In addition, the structure of hierarchy of courts in Nigeria is organized in a way that allows an appeal by Muslim parties regarding matters of personal law from a lower court to a higher court to be handled by the Shariah Court of Appeal. However, when the dispute relates to land matters, the jurisdiction is shifted to the High Court and not the Shariah Court of Appeal (Oseni, 2012).

The Issue of Registration

Waqf registration in Nigeria, as in the Kingdom of Saudi Arabia, is plagued by a large number of waqf assets that are not registered according to the law and are therefore susceptible to violations, such as trespass and forfeiture (Abubakar, 2015).

The Issue of Governance

As mentioned earlier, there is no legislation specifically dedicated to waqf governance. The Nigerian Constitution has merely placed all personal matters involving Muslims under the jurisdiction of the Shariah Court of Appeal. The Shariah courts, as a way to govern their waqf institutions, have opted to solely implement the Maliki views pertaining to waqf. This includes the view that waqf is capable of being revoked. The implication of this has led to instances in which a mosque, founded as a waqf, was later revoked by the heirs of the *waqif* (Abubakar, 2015).

d) Turkey

The Issue of Taxation

Turkey has adopted measures that have enabled the development of its waqf institutions. However, taxation remains an issue. A basic economic principle states that an increase of tax on a certain asset decreases the amount of consumer spending on the said asset. This applies to waqf assets. According to Çizakça (2014), waqf entities are not automatically entitled to tax exemption. Instead, the decision is subject to the discretion of the General Directorate. This privilege is only enjoyed by about 0.05% of waqf institutions in the country. He further adds that despite statistics indicating an increase in the number of *awqaf* created between 2008 and 2014 of around 70% per annum, this seems to be a deceleration from the previous 100% per annum from 1986 to 1996. In addition, there has been a decline in the amount of donations since 2009.

The Foundations Law 2008 has imposed further tax burdens and does not seem to attract market players or provide them with the autonomy to experiment with new things. Though waqf institutions are qualified to be exempted from the corporate tax, capital gain tax and property tax, the imposition of a whole lot of other taxes has deterred the progress of waqf institutions. This resulted in the decline in the amount of donations from 382,568 YTLs in 2009 to 158,224 YTLs in 2013 as well as a reduction in the number of *mulhak awqaf*⁵ created from 287 *awqaf* in 2009 to 277 *awqaf* in 2013 (Çizakça, 2014).

Some examples of taxes that have been imposed on waqf-related assets by the 2008 Law are:

- 1- 20% of the gross revenue of *awqaf* is to be transferred to the GDW.
- 2- The benefits received by beneficiaries of a waqf are subject to income tax.
- 3- A waqf institution's purchases are subject to a 5% tax while its sales are subject to a 10% tax.
- 4- The rent income received by all *mulhak awqaf* is subject to a 20% tax.
- 5- Tenants of *mulhak awqaf* are not exempted from paying the value added tax (VAT).
- 6- The profit share (debt financing) of entities that contribute to *awqaf* without interest is subject to a 15% tax.

⁵ In terms of management, a *mulhak waqf* is a waqf that is managed by its own board of trustees whereas a *mazbut waqf* is managed by the GDW. Both have legal personalities.

- 7- Commercial enterprises established by *awqaf* are subject to corporate tax regardless of whether they are profit, non-profit or charitable organizations.
- 8- The associated units of waqf entities that engage in continuous⁶ commercial activities are subject to corporate tax.

⁶ Due to the vagueness in defining the word 'continuous', the engaging of a waqf entity in a similar trade more than once would qualify its series of similar trades as continuous and subject it to paying tax.

The same article goes on to highlight the fact that a survey conducted amongst 1,500 participants indicated that well over 50% of them were of the view that the imposition of tax had an effect on their contributions to waqf institutions. This is in addition to the current legal framework and the excessive interference of the GDW when it comes to assessing these assets (Çizakça, 2014).

e) Indonesia

The Issue of Registration

Law No. 41 of 2004 attempted to address a number of key areas in order for effective development to take place in the field of waqf. Its provisions include expansion of the subject matter of waqf to include movable assets and introduction of BWI to govern all waqf institutions. However, despite these developments, there have been shortcomings in the registration of *awqaf*. According to the data collected by the Waqf Empowerment Directory of the Indonesian government, only about 66% of *awqaf* throughout the country are registered or legally recognized as waqf. The remaining 34% are not. The gravity of this number can be compared with the total land size of waqf property, which has reached up to 4,142,464,287 square meters in 2014 (Hardinawati & Mughnisari, 2015). The reason given was that the state did not allocate any budget for the certification of waqf assets (Huda *et al.*, 2017). The effect of the non-registration is that it leads to numerous false claims on waqf lands. It has also triggered disputes between waqf managers and waqf beneficiaries.

The Issue of Governance

Although Article 40(1) of the 2004 Act enhanced the responsibility of BWI to include holding waqf assets on trust, there still seems to be a lack of competence and expertise among the appointed *nazirs*/trustees. The rationale given was that limited funds had been allocated in the government budget for the management of waqf, particularly to remunerate the trustees

of waqf (Huda *et al.*, 2017). This inadequacy of the state budget has served as a disincentive for the trustees/*mutawallis*, resulting in their lack of dedication towards the development of waqf in the country. Therefore, trustees are not motivated to innovate or develop movable waqf assets such as cash beyond the typical immovable *awqaf* such as masjids and religious centers.

The Issue of Taxation

Currently, the government has yet to introduce any form of tax incentive for the purpose of promoting waqf among the masses. The lack of transparency and data reporting by BWI on the existing waqf institutions is another challenge that hinders potential waqf contributors from contributing to waqf institutions (Nasir & Ihsan, 2017; Indonesian Waqf Board, 2009-2012).

The Way Forward

The waqf institution is a proven tool that is capable of enhancing a country's social and economic development. What it requires is an effective legal and regulatory system that enables and facilitates the required development. To groom the waqf institutions to be more effective in meeting the objectives desired of them, there are a few suggestions that policy makers could consider. A specific law on waqf must be enacted that deals with all waqf institutions in a country. The law must be comprehensive; i.e., neither vague nor restrictive, and it should address all aspects of waqf governance, from the requirements of creating a waqf to the mode of settling disputes. Furthermore, the significance of allowing waqf institutions to invest in, buy and sell non-waqf assets cannot be stressed enough as it equips waqf institutions with the means to become independent, self-sufficient and sustainable. At the same time, however, it is mandatory for waqf governors or authorities to ensure that the guidelines that they set out are effective but, again, not restrictive.

The waqf governing body must be a body that is properly regulated and administered. This would include the creation of specialized entities within the governing body that deal with the specific aspects relating to waqf, such as the establishment of a Shariah board to cater to matters related to Shariah; a risk management board that deals with matters related to financial risks and investments; and a tribunal to deal with disputes and transgressions that occur in relation to waqf assets (Rashid, 2011). This could be done by way of mandating a consistent reporting system. Furthermore, every waqf institution must be subject to an external, professional and independent

body that conducts auditing and supervisory inspection. The external body would also monitor the operations and projects of waqf institutions to ensure their productivity and report any shady transactions.

Finally, the waqf governing body, with the help of the government, must implement or introduce creative methods to promote waqf throughout the country. This can be done through tax incentives, Friday sermons, talks/lectures, public events by qualified individuals and many other forms of awareness campaigns. With the adoption of the abovementioned regulations and best practices, waqf institutions throughout the world would be bound to flourish and, hopefully, in due time surpass previous nations that greatly benefitted from the noble institution.

CHAPTER 3

Actualizing the Potential of Waqf Institutions

INTRODUCTION

The regulatory framework for waqf in a country will determine the business model of waqf institutions there (Ahmed, 2004). A combination of governmental and private entities for managing waqf assets has been adopted in Kuwait and Singapore. While in South Africa and the United Kingdom, waqf are run by community-based trust and charitable institutions. Below are the snapshot of waqf institutions in these respective jurisdictions in particular their achievements and mandate in empowering communities by investing endowment funds for various community development programs. It may be noted that other models exist besides these; some of them are discussed in other articles in this Report.

a) Kuwait

Kuwait has a population of roughly 4.13 million people, of which 1.27 million are local and the remaining 2.86 million are expatriates (World Bank, 2019). Kuwait is a constitutional monarchy. It can be categorized as a high-income country with the GNI per capita at \$31,430. The Ministry of *Awqaf* was established in 1962 when Kuwait gained its independence. Between 1949 and 1961, most of the *awqaf* assets were used for health care services.

Kuwait Awqaf Public Foundation (KAPF) was established in 1993. All *awqaf* affairs formerly under the Ministry of *Awqaf* have been transferred to KAPF. KAPF is an independent governmental body which administers all aspects of *awqaf* in Kuwait including investing and managing the assets, administering the deeds, training waqf personnel, and raising public awareness about waqf (Abdul Karim, 2010).

KAPF's main responsibilities include encouraging people to establish new *awqaf*, managing existing *awqaf*, and allocating funds for activities and for investment of the assets. In addition, KAPF coordinates with governmental and non-governmental bodies for the establishment of Shariah-compliant *awqaf* projects to achieve waqf objectives (Ahmad *et al.*, 2015). *Awqaf* funds in Kuwait have independent management teams that contribute to their development with integrated vision aimed at achieving the community's needs (Ahmed Khalil *et al.*, 2014).

Ahmed Khalil *et al.* (2014) observed that proper corporate governance has been established and that KAPF has also engaged a professional fund manager. The revenues of its investments between 1994 and 2010 increased from \$30.13 million to \$110.82 million. During the same period its capital assets increased from \$373.1 million to \$759.2 million, and the market value of its investments in securities increased from \$46.58 million to \$975.93 million.

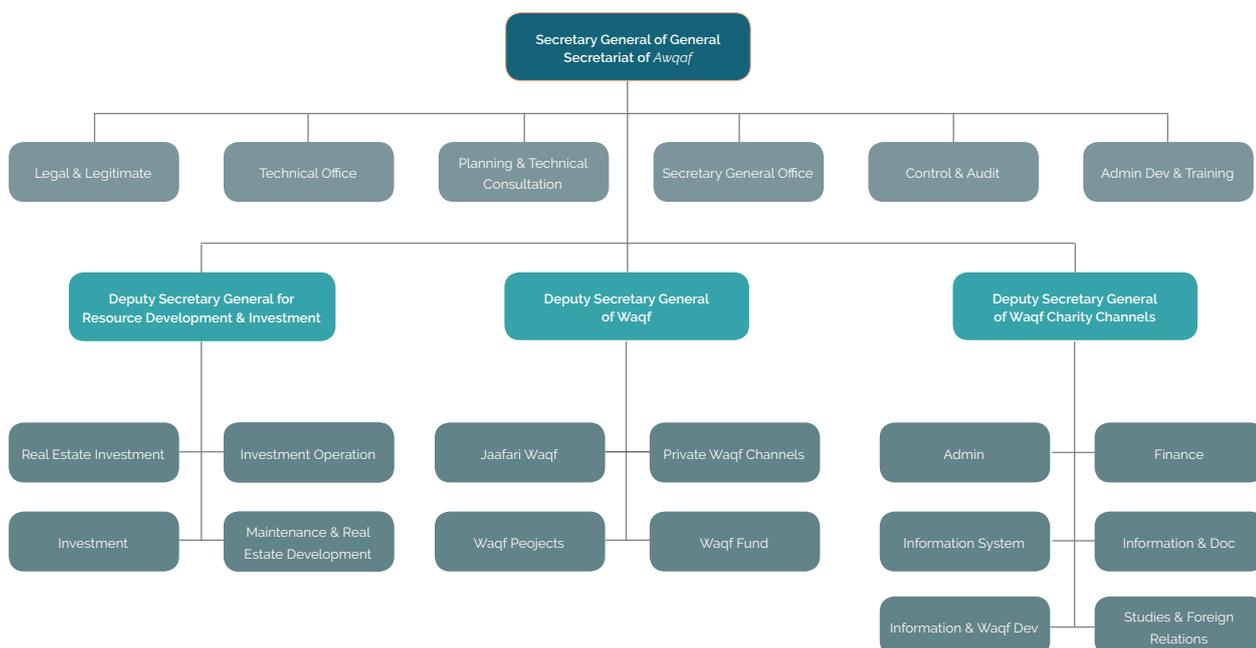
KAPF operates at a high level of transparency, with all its activities viewable by all *awqaf* stakeholders. The *Awqaf* Affairs Council oversees the operations and investments of KAPF. The Council is chaired by the Minister of *Awqaf* and Islamic Affairs, and its members include the Director-General of the Social Insurance Institutions, the Director-General of Zakat House, a representative from Ministry of Finance, an officer for investment, and three experts in various fields appointed by the Council. Additionally, one important aspect of its corporate governance is the division of the board into three permanent committees assigned with various duties:

- (i)- Committee on Shariah issues;
- (ii)- Committee on policies for investment of *awqaf* resources;
- (iii)- Committee on policies and strategy for execution of projects with *awqaf* resources. (Ahmed *et al.*, 2015)

Below is KAPF's organizational structure:⁷

⁷ <http://ww2.awqaf.org.kw/ENGLISH/ABOUTMUNICIPALITY/GENERALSECRETARIAT/OFWAQAF/Pages/AwqafAffairsBoard.aspx>

Diagram 1: Organizational Structure of Kuwait *Awqaf* Public Foundation



KAPF's Special Investment Unit is responsible for investment in real estate, direct long-term investment in non-governmental educational institutions and Shariah-compliant equities including medium- and long-term mutual funds locally, regionally and in the global markets. KAPF adopts the following strategies in its investment:

- (i)- minimize risk and protect capital;
- (ii)- diversify investment instruments with different portfolios;
- (iii)- diversify sectors including financial, real estate and services;
- (iv)- diversify based on geographical locations; and
- (v)- set investment ceilings for each sector (Karem, 2010).

According to Karem (2010) KAPF investments in 2006 were distributed as follows: 41% in the financial sector, 52.6% in the real estate sector and 6.4% in the services sector. Geographical diversification is reflected in the fact that 13% of its investments in the same year were outside Kuwait. Hence, it can be observed that the *awqaf* are not heavily focused in the traditional real estate sector. She observed that KAPF's diversification in asset allocation and its focus on capital preservation in its *awqaf* investment objectives have brought success to its overall investment portfolio of *awqaf* assets.

Table 1: Assets Allocation Portfolios of KAPF in 2006

Asset Allocation	KAPF
Equities	47%
Commodities and Real Estate	53%
Total	100%

b) Singapore

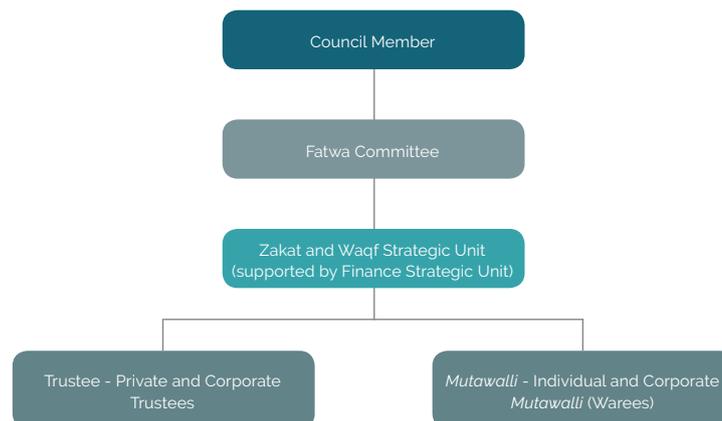
The population of Singapore is roughly 5.6 million people, of whom 45.4% are international migrants (World Bank, 2019) and 13.4% are Muslims (IndexMundi, 2018). Singapore, with GNI per capita at \$54,530, is in the top ten of high-income countries.

The Islamic Religious Council of Singapore (MUIS), under the Administration of Muslim Law Act (AMLA), governs the religious affairs of Muslims in Singapore, including the administration of zakat, halal certification, management and

administration of *awqaf*, hajj, mosques and *madrasahs* (MUIS, 2017). AMLA also states that any persons can be appointed to administer a waqf, subject to the approval of MUIS. MUIS provides internal guidelines and ISO processes for the appointment of *mutawallis*. These processes include statutory screening for criminal and bankruptcy records. Other criteria include age and educational background. Where there are no private trustees for a particular waqf, MUIS becomes the trustee.

The organizational structure is depicted in the diagram below, which shows that Council members, who comprise representatives from the private sector, play a role in monitoring the operations and investments by all types of *mutawallis*.

Diagram 2: Waqf Administration Organizational Chart



The zakat and waqf strategic unit of MUIS oversees the *awqaf* administration and overall compliance with regards to the three types of waqf administrators: (i) publicly listed company – British and Malayan Trustee and BMT is a publicly listed trust company which manages some *awqaf*; (ii) private trustees, who manage and run *awqaf* set up for particular families; and (iii) a wholly owned subsidiary of MUIS, Warees Investments Pte Ltd., which manages the rest of the *awqaf*. MUIS plays the regulatory role and improves the corporate governance of *awqaf* while the trustees and *mutawallis* play the managerial role and need to report and seek approval for the sale and purchase of assets. Annually, without fail, they must submit a full set of accounts to MUIS within a stipulated time in accordance with the Act.

MUIS has also established a Waqf Dispute Resolution Committee. Existing *mutawallis* and trustees can choose to resolve internal disputes through mediation and, if needed, an inquiry process, without resorting to litigation.

In terms of administrative striving for excellence, MUIS has achieved an ISO 9001 rating for its management and administration of *awqaf*. MUIS is constantly striving to improve its excellent management systems. It has achieved certification by the Singapore Quality Institute, which marks the commitment of the organization to meeting standards of excellence in its result-oriented processes, leadership, attitude to customers and achievements.

Warees Investments Pte Ltd was established in 2002 by MUIS to manage all *awqaf* assets including tenancy matters, development, sales and purchases, and maintenance of properties. Warees receives commissions for the services it renders based on the gross income of a waqf. This incentivizes Warees to maximize returns for the *awqaf* as its income is based on the returns (Warees, 2017).

Since its establishment, Warees has successfully transformed a number of unproductive *awqaf* lands into huge commercial/residential areas. The source of financing is mainly cash waqf contributed monthly by Muslims in Singapore. All *awqaf* are vested under the Singapore Islamic Religious Council (MUIS). Currently there are 140 waqf properties and 84 waqf accounts, of which 64 waqf properties and 60 waqf accounts are managed by MUIS while another 76 waqf properties and 24 waqf accounts are managed by other *mutawallis* respectively.⁸ MUIS appoints *mutawallis* for privately managed *awqaf* and approves any development or redevelopment or purchases by them. It holds the title deeds of all, including the privately managed *awqaf*.

The progressive regulatory changes taken by MUIS have provided a conducive environment for financial innovation. These include allowing the leasing of waqf property for up to 99 years without transferring the ownership to the lessee and also permitting the sale of waqf properties completely and replacing them with new, higher-yielding freehold properties (*istibdal*). A prime example is the *sukuk musharakah* issued by MUIS in 2002 to finance the redevelopment of an old mosque on Bencoolen Street into a multi-use complex comprising a modern mosque, a three-story commercial building, and fully-serviced 12-story apartment block with 84 units. *Sukuk musharakah* have allowed investors in Singapore and abroad to participate directly in developing various waqf assets. Between 2001 and 2002, Warees raised \$SGD 60 million through the issuances of *sukuk musharakah* to develop two

⁸ Presentation by Warees at the WB-INCEIF-ISRA Waqf Roundtable 2018

waqf lands in Singapore (KFHR, 2012). Additionally, the amendment of AMLA to establish a sinking fund for waqf will allow better budgetary planning for the upkeep and development of waqf properties.



**2002: Sukuk Musharakah
(SGD35m)**
51 Bencoolen Street



**2005: Sukuk Musharakah
(SGD25m)**
11 Beach Road

Source: Presentation by Warees at the WB-INCEIF-ISRA Waqf Roundtable 2018

The waqf assets in Singapore are primarily real estate, valued at SGD 750 million, and the total assets under management for all the waqf funds as at December 2017 were \$SGD 947 million. The breakdown of waqf assets is as follows:

Table 2: Types of Waqf Assets as at 31 Dec 2017

	2017	2018
Assets		
Non-current assets		
Property, plant and equipment; Investment properties; Investment in a subsidiary; Available-for-sale financial assets; Trade and other receivables	852,895	748,641
Current assets		
Trade and other receivables; Advances to subsidiary; Investment properties held for sale; Other assets; Cash and cash equivalents	94,309	78,012
Total assets	947,204	826,653
Total Liabilities	90,763	89,574
Total Waqf Funds	856,441	737,079

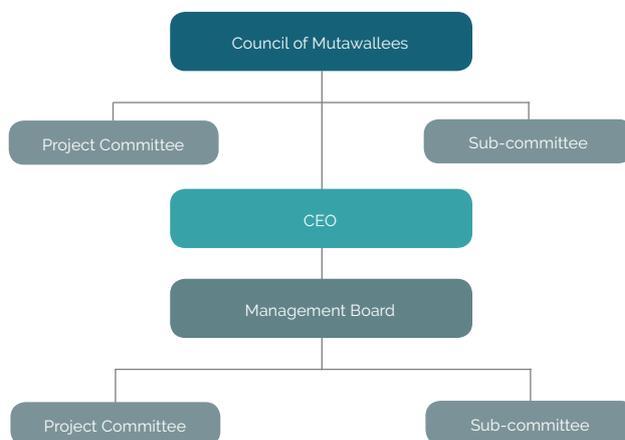
Source: MUIS FY2017 Annual Report

c) South Africa

As a non-Muslim country, zakat and *awqaf* institutions in South Africa have been established under the Non-Profit Organization (NPO) Act of 1997. The Act provides an administrative and regulatory framework for NPOs. According to the Act, each NPO must have a constitution that outlines the objectives and the various issues related to the membership and operations of the organization. An NPO must also specify the organizational structures and mechanism for its governance, keep accounting records of its income, expenditure, assets and liabilities in accordance with generally accepted accounting practices, and prepare annual financial statements. The Act encourages NPOs to maintain adequate standards of governance, transparency, and accountability (Ahmed, 2004).

The National Awqaf Foundation of South Africa (Awqaf SA) was established in 2000 as an NPO. This community-based charitable organization is aimed at investing endowment funds for various community development programs. Though Awqaf SA was informally initiated in 2000, it was registered as a trust in 2003 under the Trust Property Control Act 57 of 1988. Subsequently, it was registered as an NPO in 2004 and as a Public Benefit Organization (PBO) in terms of the Income Tax Act in 2005. Prior to registration as a trust, the organization operated as an "association not for gain". Awqaf SA was involved in the development of the widely adopted NGO Corporate Governance Charter. It also drafted its own Corporate Governance and Ethics Charter. Awqaf SA is governed and managed by a volunteer Council of Mutawallees (Trustees) and a Board of Management. These structures are currently being expanded to become more representative of the community. The organization is also governed by a constitution and various pieces of legislation.

Diagram 3: The Organizational Structure of Awqaf SA



Source: Awqaf SA⁹

⁹ <https://awqafsa.org.za/about-awqaf-sa/corporate-profile/>

People, Projects and Paisa (PPP) are the three pillars that have guided Awqaf SA in its operations. "People" refers to the resources they provide for waqf by either their wealth or their efforts. They help the organization in structures, funding, advising, and broadly in community service. "Projects" means the delivery instruments and leadership incubators of community development. Through projects, Awqaf SA ensures that the organization achieves its mission and goals. "Paisa" (money) is the core business of the organization: the mobilization of funds in the form of waqf, *lillah*¹⁰, and zakat. Without a sustainable means of funding projects, Awqaf SA community development projects would cease to exist.

¹⁰ *Lillah* (for Allah) comprises any form of charity given in the cause of Allah on a pure voluntary basis.

Since inception, the organization has been growing its waqf funds and corresponding investments. It follows a principle of "no capital usage", which means one hundred percent investment of capital and utilization of returns alone, keeping the waqf corpus intact. It raises waqf resources through the following products: (i) monthly debit orders (a given percentage of monthly earnings); (ii) lump sum payments; (iii) *al-tijarah* (giving a percentage of profits or equity in a business or transaction); (iv) *al-mal* (donations of property); and (v) *al-wasiyyah* (bequests through wills).

Current investments of Awqaf SA are focused on Shariah-compliant properties. The investment strategy guidelines adopted by Awqaf SA are as follows:¹¹

¹¹ <https://awqafsa.org.za/about-awqaf-sa/corporate-profile/>

Table 3: The Investment Strategy Guidelines Adopted by Awqaf SA

Strategy	Remarks
Location	Combination of community, provincial, national and offshore
Returns	Balance of social and financial returns within constraints of strategy with a bias to maximization of financial returns
Diversification/Risk	Spread risk with bias at low risk, diversified portfolio
Investment portfolio	Combination of property, equity (<i>musharakah, mudarabah</i>) and financial (<i>ijarah, murabahah, takaful</i>)
Equity participation	Public/ <i>awqaf</i> /institutional partnership possibilities
Currency & Inflation	Hedge/factor into strategy
Restrictions	Awqaf SA may not invest in unethical or Islamically unacceptable projects

Awqaf SA ensures that 100% of the donated waqf funds are invested and always remains capital. Only the income derived from the underlying investments is spent. As a registered PBO, Awqaf SA enjoys various tax benefits. Donations to Awqaf SA, subject to certain limits, are also tax deductible. Awqaf SA is associated with several international organizations such as the Organization of Islamic Cooperation (OIC); Research Centre for Islamic History, Art & Culture (IRCICA); Islamic Research & Training Institute (member of the IsDB); Muslim Religious Council of Singapore; IHH (Istanbul); Deniz Feneri (Istanbul) and the KAPF.

Diagram 4: Waqf Fund Received

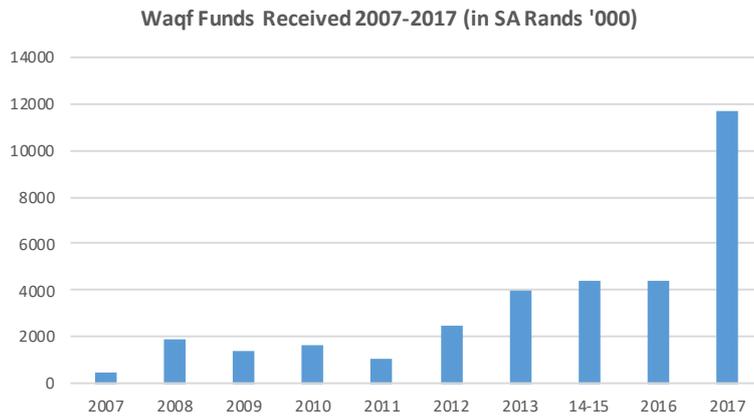


Diagram 5: Cumulative Investment

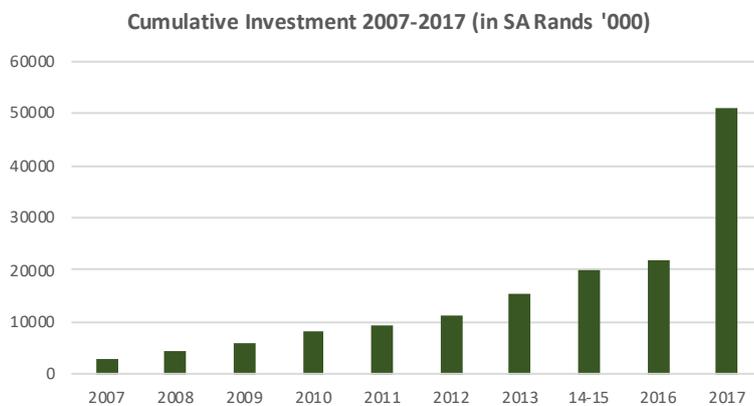
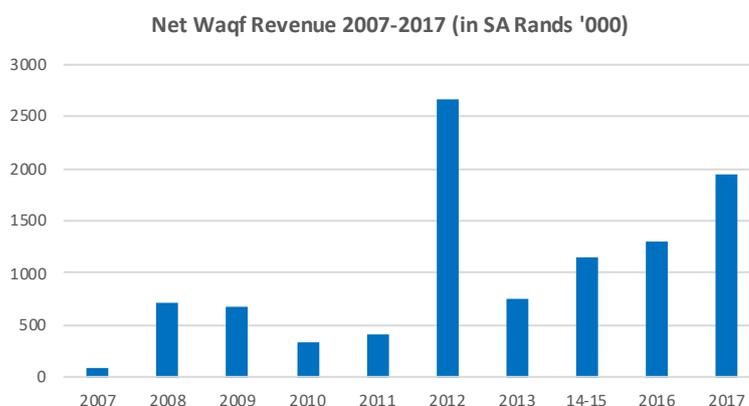


Diagram 6: Net Waqf Revenue



Source: Awqaf South Africa¹²

¹² <http://www.awqafsa.org.za/waqfs-and-us/reports-2/>

Awqaf SA's performance in managing the waqf assets can be seen from the data above. During the last four years, waqf funds received have grown more than quadrupled, reaching almost 12 million South African Rands (ZAR) in 2017 (Diagram 4), thanks to the effective awareness campaigns over the years. Waqf revenues have also increased steadily and in tandem. It seems 2012 was a particularly good year for Awqaf SA. The waqf products offered by Awqaf SA are Education Waqf; Health Waqf; Youth Waqf; Masjid & Madressah Waqf; Micro Finance/Investment; Trade, & Skills Waqf; Media & Publications Waqf; Dawah Waqf; Arts, Culture & Heritage Waqf; Food, Trees & Water Waqf; Ramadaan Iftaar Waqf; Capacity Building Waqf; Hajj & Umrah Waqf; Qur'an Waqf; Family Waqf; Palestine Solidarity Waqf Fund; Corporate Staff Waqf Fund; Discretionary Waqf; and Designated Waqf (Obaidullah, 2014).

d) United Kingdom

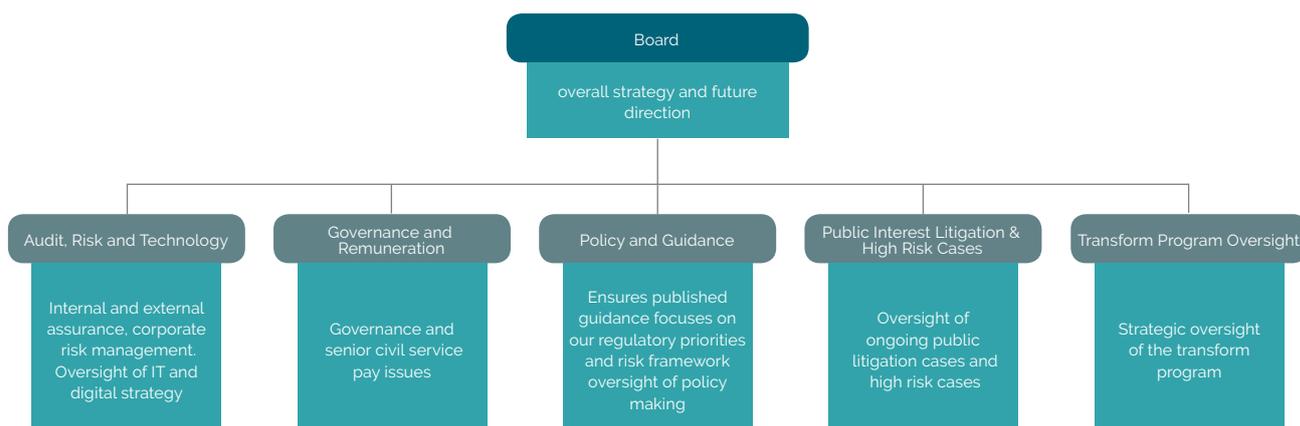
Charity Commission for England and Wales (CC) acts as a regulator to register and supervise charities there to ensure that the public can support charities with confidence (gov.uk, n.d.). The Commission is an independent, non-ministerial government department accountable to Parliament. The Commission is also accountable to the First-tier (Charity) Tribunal and the High Court for the exercise of its quasi-judicial powers. The Commission has five statutory objectives:

- (i)- increase public trust and confidence in charities;
- (ii)- promote awareness and understanding of the operation of the public benefit requirement;
- (iii)- promote compliance by charity trustees with their legal obligations in exercising control and management of their charities;

- (iv)- promote the effective use of charitable resources; and
- (v)- enhance the accountability of charities to donors, beneficiaries and the general public (UK Charity Commission, 2017/2018)

The Commission's Board is responsible for strategic oversight of the Commission. In particular it is responsible for developing strategy, monitoring progress, overseeing legal matters, providing corporate governance and assurance, and managing corporate risks. It comprises a Chair, two members with legal qualifications, one member with knowledge of the conditions in Wales and four additional members with relevant skills and expertise in technology, accountancy, risk, security and the charity sector. The Board is currently supported by five committees. The commission's governance structure is shown below:

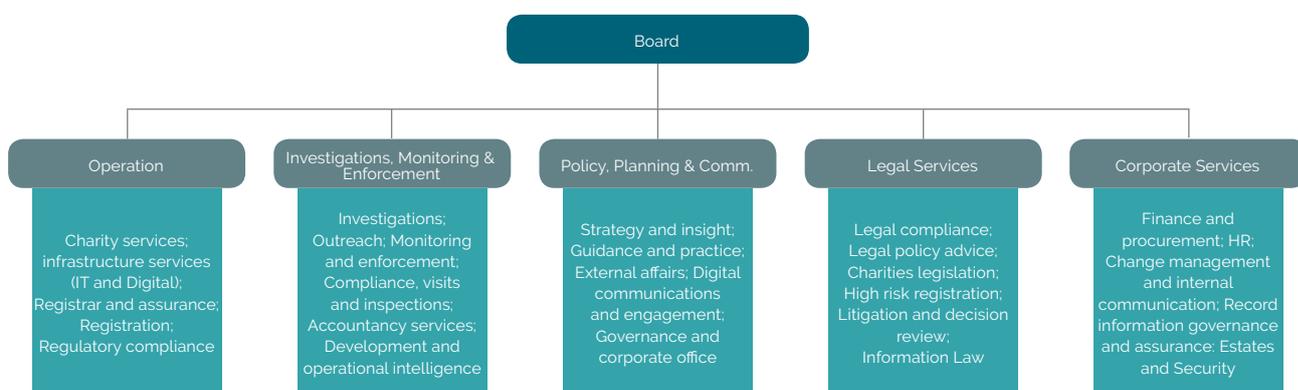
Diagram 7: Structure Governance of UK Charity Commission



Source: UK Charity Commission¹³

¹³ <https://www.gov.uk/government/organisations/charity-commission>

Diagram 8: The Organizational Structure of the UK Charity Commission



Source: UK Charity Commission¹⁴

¹⁴ <https://www.gov.uk/government/organisations/charity-commission>

At 31 March 2018, there were over 168,000 charities on the register. During the year, the Commission regulated £76 billion of charity income (2016-17: £74.7 billion) and over £73.5 billion (2016-17: £71 billion) of charity spent.

Islamic Relief Worldwide (IRW) is one of the charity organizations registered under the UK law. IRW started its work in 1984 and has expanded to many parts of the world. Inspired by Islamic humanitarian principles, it seeks to help people in need in any part of the world irrespective of their color, creed or race. IRW has aligned its five-year strategy (2017-2021) with the United Nations' SDGs, especially in addressing the root causes of poverty and improving lives in a sustainable way. In 2017, IRW supported 4.3 million people in 34 countries, many of them through integrated programs that help communities become self-sufficient by tackling multiple issues. IRW improved livelihoods through microfinance loans and provided better access to clean water, sanitation, healthcare and education. It delivered projects for climate adaptation and food security to reduce vulnerability, which—in line with its strategic objectives—empowered women, promoted inclusion, and built the capacity of faith institutions to contribute to community development.

Diagram 9: Structure Organization of Islamic Relief Worldwide



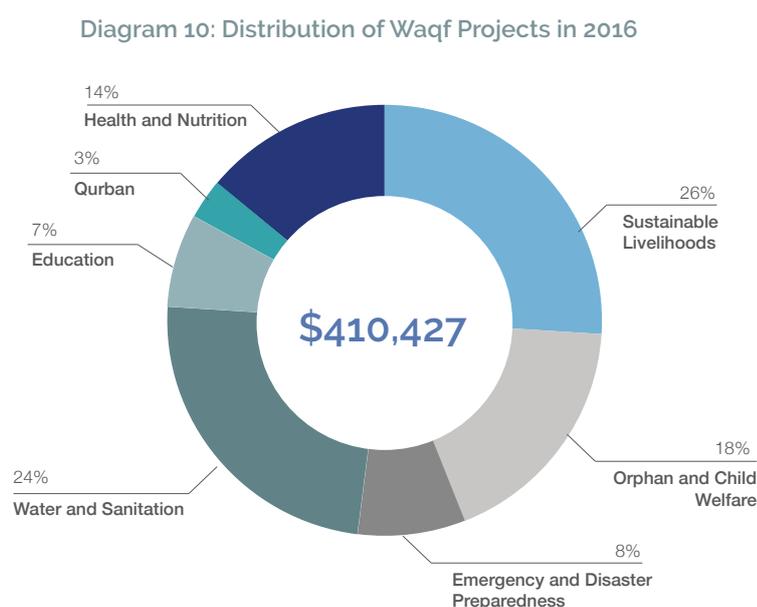
* The Board of Trustees monitors management directly or through board sub-committees.

³⁵ <https://www.islamic-relief.org/wp-content/uploads/2018/10/Islamic-Relief-Worldwide-Annual-Report-and-Financial-Statements-2017.pdf>

Source: IRW³⁵

Waqf Funds is one of the financial instruments established by IRW to support its humanitarian projects. In 2017, Islamic Relief Waqf Fund (IRWF) generated income of £687,786 which supported seven humanitarian projects in six countries. Of the total income, £255,496 came from waqf shares, *sadaqah jariyah* and Waqf Support Fund donors, while £432,290 came from returns generated by investments. (IRW, 2016). Waqf funds created by Islamic Relief Waqf will offer donors an option to invest in waqf shares of a fixed value

or to contribute smaller amounts towards the Waqf Support Fund for the following areas: (i) emergency relief and disaster preparedness; (ii) water and sanitation; (iii) orphan and child welfare; (iv) education; (v) health and nutrition; (vi) livelihood support; (vii) qurbani; and (viii) general. Over the past 15 years, the return on investment from Islamic Relief Waqf has funded 118 humanitarian relief and development programs around the world. Money spent on waqf projects in 2016 is as follows:



Source: IRW Annual Report 2017

CONCLUSION

Several business models for waqf institutions have been discussed in this chapter. KAPF, Warees, which runs as an investment asset management company, and Awqaf SA, registered as a nonprofit institution, have shown the importance of waqf institutions being managed by a professional manager with good corporate governance. Additionally, the approaches taken by governmental religious agencies will also have an impact on the development of waqf assets. They can play the limited role of a regulator only for trustees, as does the Charity Commission in the United Kingdom. Alternatively, they can act as the mutawalli while at the same time allowing other entities to participate as waqf trustees, as does MUIS.

Outsourcing to an external fund manager and property management company can be another option in developing the waqf assets efficiently while at the same building the capability and skills of trustee (*mutawalli*)

through knowledge transfer programs. Mohammad Faiz Azmi emphasized that waqf properties should be managed solely by qualified Muslims in order to ensure that the objectives of the waqf system are upheld (SC-OCIS, 2014). Performance measurement mechanisms for waqf institutions need to be developed to assess the efficiency and effectiveness of *mutawallis* and to rectify issues of accountability and transparency (Obaidullah and Muhamed, 2016).

CHAPTER 4

Enhancing Waqf Instruments

INTRODUCTION

Islamic law (Shariah) may not have invented the concept of charitable endowment or waqf, but it did provide a legal framework and practice that has impressed the world for centuries. Enhancement of the concept and rules of waqf was provided at the advent of Islam and the formation of the Shariah. There are, however, very few Shariah texts that provide specific rules for waqf; thus, jurists extrapolated on them to respond to detailed issues that arose over time. In this chapter, we consider some of these enhancements in practice and consider what the future may hold for more sophisticated application and packaging of waqf instruments without veering from waqf's accepted underlying principles. Rising interest in concepts like sustainable development and value-based intermediation, as well as awareness that many nations are over-reliant on taxation, have provided new impetus for the emergence of enhanced waqf applications to meet the needs of modern society.

Retaining Islamic Civilisation through Waqf

The case for waqf revival has already been made, and the process has even been initiated in some jurisdictions. Before reviewing the potential for current enhancement, we will briefly review some advancements over the centuries. As a key contributor to the economic success and expansion of the Islamic civilization, waqf developed into a network of social institutions supporting the basic needs of communities without dependency on government. History attests to the fact that waqf was the main provider for a plethora of social services for both Muslims and non-Muslims that included education, health services and municipal services.

The success of the waqf institution in Turkey has contributed a viable model for waqf perpetuity. A recurring feature is a combination of functions; for example, a masjid coupled with a school, coupled with healthcare and other social services, and supported perpetually with rentals from business premises owned by the waqf. The waqf as an entity managed by trustees receives sufficient revenue to not only maintain its own infrastructure but also expand its asset base in order to increase the impact for the designated beneficiaries.

Retaining Islamic Civilisation through Waqf

In the case of Malaysia, there are more than 13,000 hectares of old waqf properties that require funds for the restoration process.¹⁶ This is not restricted to Malaysia; since the 20th century, much of the stagnation in the development of waqf land and property globally has been due to poor governance and narrow interpretations of waqf law. For example, certain jurisdictions and opinions recognise only land or property as valid contributions to waqf and exclude cash. This may be due to the perceived requirement of perpetuity for waqf assets and the perception that cash may be consumed by inflation over time. However, cash waqf, when competently managed, enables virtually every Muslim to contribute to the value of waqf for the benefit of societal development whereas very few people have the means to make endowments of real estate.

Some of the specific challenges in the development of productive waqf assets may be expressed as follows:

- Underdeveloped waqf property and land

Most waqf founders tend to opt for the most convenient and indisputable mandate for waqf property in the form of mosques, schools and cemeteries. Unfortunately, very few properties end up generating revenue for their management, maintenance and potential enhancement. As a result, many lie idle in disrepair or are taken over by unscrupulous landlords or derelicts.

Land that is endowed in Malaysia often remains underdeveloped; current statistics show that Malaysia has approximately 13,400 hectares that are left idle and unproductive. A mere 2% of the total acreage has been developed. A 2004 study by the IsDB revealed the same state of affairs across the nation. For example, in Perak, Malaysia, 78% of waqf land was reserved as cemeteries at that time, while the rest was used for mosques and schools.

One of the main reasons for underdevelopment may be their locations. Although some are in strategic locations in the middle of the city, others are scattered across rural areas with limited potential for development.

- Limited Islamic financial sector participation

This may be due to a number of reasons, including issues of legality of ownership in waqf land, lack of expertise in understanding the legal and/

¹⁶ <https://www.nst.com.my/opinion/columnists/2018/02/338153/waqf-gaining-trust-social-economic-sustainability>, accessed 31 January 2019.

or shar'i (Islamic legal) implications of waqf development, and inadequate cash-flow plans and revenue forecasting, among others. Also, Islamic financial institutions must ensure the protection of their deposits and value generation for their shareholders, all whilst managing risk. It is possible that the risk of financing such projects may simply be too high.

- Perceived inadequacy in transparency and governance of waqf

The high financial risk is often supported by a perceived lack of transparency and governance in the management of waqf assets. Waqf founders, for example, tend to create waqf assets informally, driven by the intention to do good and reap the rewards in the hereafter. They frequently have little to no knowledge of waqf requirements and potential. In Malaysia, SIRC's act as waqf administrators. They face problems in the registration of waqf land titles as properties sometimes cannot be identified and registered. Without the land title, it becomes difficult for the SIRC's to develop waqf land.

As the realisation dawns regarding the need for an upgraded approach to waqf instruments and for the redevelopment of old waqf properties to maximise social impact, we may consider the following:

- 1- Enhancing the structures of traditional modes of waqf,
- 2- Garnering the support of Islamic financial institutions for the rejuvenation and/or development of waqf assets,
- 3- Using innovative technology for efficiency, transparency and expansion.

Traditional modes of finance such as *ijarah*, *hikr* and *istisna'* are being utilised in redeveloping old waqf properties in, for example, the United Arab Emirates, Malaysia and Singapore. Innovative financing for waqf is also underway through Islamic banks such as the IsDB, APIF, Bank Muamalat Malaysia Berhad, and Bank Islam Malaysia Berhad, using instruments such as *sukuk al-intifa'*, *musharakah mutanaqisah*, BOT (Build-Operate-Transfer) and *sukuk musharakah*. The use of innovative technology such as blockchain and smart contracts is expected to reduce the challenges in transparency and disclosure. For larger and more complex waqf projects, BOT or even ROT (Rehabilitate, Operate and Transfer) may be coupled with Islamic finance solutions that utilize more sophisticated capital market approaches such as hybrid waqf-sukuk as a source of funding.

Advances in Moveable Waqf

Waqf of moveable properties, most typically in the form of cash waqf structures, has led the innovation and enhancement of the waqf institution globally. Versions of the concept have emerged in different countries, providing credible evidence of the opportunities that lay ahead in waqf innovation. Some examples include direct cash waqf, deposit cash waqf, waqf shares, and corporate waqf. These will be explained briefly.

1- Direct Cash Waqf

This is the most popular form of cash waqf. A noteworthy example in practice is what has been done in Singapore for the purpose of assisting orphans, Islamic schools, charity, and burial of poor Muslims. Another example is the practice in New Zealand for similar groups of beneficiaries. Dividends of cash waqf are utilized for Islamic schools, marriage guidance, orphans and other social services for the expat Muslim communities living there. In India, cash waqf is used for those with disabilities, distribution of food during Ramadhan and general support of Muslim communities.

2- Waqf Shares

Waqf shares have been issued by KAPF, Islamic Relief Waqf in the United Kingdom and Perbadanan Wakaf Selangor in Malaysia, among others. The purpose of this type of waqf is to support the needy through an easily understood share purchase. The dividends arising from the investing activities of the waqf institution that is tasked with managing the shares become the benefit to be distributed to the needy and destitute. The benefits of these waqf shares would be for global distribution, wherever a need may arise. Since the designated beneficiaries are assigned through the waqf deed, there is no restriction to spend locally before considering global needs, as in the case of zakat. Islamic Relief in the UK has applied the purchase of waqf shares by donors for many of the projects and initiatives they manage such as an education waqf scheme, water and sanitation waqf scheme, orphans waqf scheme, and others.

3- Deposit Cash Waqf

Selected Islamic banks in Malaysia provide a product facility for the collection of cash waqf through a deposit scheme. Bank Islam Malaysia Berhad, Bank Muamalat Malaysia Berhad and Maybank Islamic Berhad all provide a deposit service for the collection of funds to redevelop old waqf property. In Malaysia, a significant amount of old waqf assets

comprise undeveloped land. There is an urgency for the provision of financing from Islamic banks that would support the development of these assets so that they may finally provide benefit as intended by the *waqif* (founder). An Islamic bank in Bangladesh also has similar schemes, utilising returns for socially responsible initiatives.

4- Corporate waqf

This is a very successful model adopted by corporates that would like to manage their social responsibility initiatives in a way that will extend even beyond the lifespan of their own companies if the need arises. Although different versions exist, it is most widely practiced in Turkey, Malaysia, India, Pakistan and Oman. In Oman, for example, some private property developers assign a portion of the property, say 20%, for the purpose of waqf. This means that all rental from the assigned waqf would be channelled to the beneficiaries for education scholarships, microfinance programs and other initiatives. Another example is Waqf An-Nur in Malaysia that focusses on health services. It also provides microfinance funding through *qard hasan* (benevolent interest-free loans).

The application of cash waqf is constantly evolving and improving. However, these developments have not been without challenges. Typical obstacles to its progress include lack of knowledge and awareness of the concept, low levels of collection for cash waqf, and lack of transparency in channelling the funds to the specified beneficiaries. This may be overcome through workshops, awareness programs and the use of technology to provide adequate disclosure, thereby enhancing the trust and confidence of the public.

Waqf Sukuk

A more recent innovation in raising finance for waqf development is the *waqf sukuk*. The applications are boundless as funds may be raised for public sector projects such as highways, hospitals and schools. Sukuk refer to investment certificates that represent ownership in underlying projects. This ownership may be directly linked to the underlying asset or to the securitised cash flows of the underlying project. The advantages of applying a sukuk structure include the fact that sukuk are generally rated, have significantly reduced risk and provide consistent returns to investors, similar to conventional bonds. Revenue-generating, public service projects may require initial funding before cash flows offset the financing acquired

over a specified period. For example, a toll highway may require funding for construction in a BOT structure. At the time of transfer (usually back to government), the project would have fully paid the initial funding required together with an annual or semi-annual return. Whilst the initial structure is sukuk, at handover or transfer, the highway is converted to a waqf for the benefit of the public. Revenue generated from the highway may continue and this may be used for maintenance or expansion of the waqf, etc.

A similar structure, referred to as a temporary cash waqf, may also be a consideration. Simply, the founder (*waqif*) provides a loan for a specific duration. The justification for temporary cash waqf is based on the view of some Muslim jurists that it is permissible to make a conditional waqf. It may be argued, however, that in order to avoid the controversy around temporary cash waqf, the structure of a *waqf sukuk* may apply the standard structure of investment until maturity, followed by conversion of the underlying project into waqf. In this case, no temporary cash waqf is required as initial contributions would be treated as investments.

Mini Case Study - MUIS

The successful example of Majlis Ugama Islam Singapura (MUIS) in the rejuvenation and enhancement of waqf assets provides a model for possible emulation. MUIS established a subsidiary in 2001 that became operational in 2002 with the objective of accelerating waqf development throughout Singapore. The subsidiary is managed by qualified professionals from the industry and operates with an asset management approach, focusing on building a portfolio of waqf properties in strategic locations that provide high rental returns.

Waqf assets in Singapore are valued at approximately SGD 750 million.¹⁷ Annual valuation amounted to SGD 370 million; gross income was SGD 7.8 million, which resulted in a gross yield of approximately 2.1%. More than SGD 3.1 million was disbursed per annum across various beneficiaries: 49% to masjids, 13% to madrasahs, and 22% to organisations.

The potential of waqf in Singapore is immense as existing waqf assets are in prime locations including the Central Business District (CBD), property prices have been on the increase for over a decade, and there are high returns on rentals.

However, this progress requires support from government, religious bodies and a visionary board of trustees.

¹⁷ Osman, Z (2018): Presentation at World Bank-INCEIF-ISRA Roundtable on Waqf, 13 September 2018, Sasana Kijang, Kuala Lumpur, Malaysia.

As for the government, a legal framework to safeguard and support waqf management have been in place since 1968, with an amendment in 2017. The AMLA gives autonomy to MUIS as the waqf regulatory body for Singapore. This allows for better management and efficiency as MUIS is able to advise on the appointment of trustees, ensure that enough sinking funds are available, etc. Such an arrangement is, however, a double-edged sword; if MUIS was inefficient and/or negligent, it would negatively impact all waqf assets in the country. Regular reviews and amendments are needed to ensure AMLA stays relevant in meeting the changing needs of society.

The Fatwa Committee of Singapore has also been supportive. In 1988, the Committee issued a ruling that allowed for the implementation of istibdal (asset migration or substitution). With this permission, higher value assets were acquired by selling off poorly performing assets, assets in danger of acquisition, or those in unsuitable locations. The waqf management, therefore, is consistently supported by firm religious foundations.

As part of MUIS's initiatives, Warees is implementing a 3-year Waqf Revitalisation Scheme (WRS). The plan intends to enhance asset value, rejuvenate the characteristics of waqf properties and create more waqf assets. Some examples of innovative instruments used by MUIS include:

- 2002: Sukuk Musharakah (SGD35 million) at 51 Bencoolen Street,
- 2005: Sukuk Musharakah (SGD25 million) at 11 Beach Road,
- 2012: Hibah financing (SGD5 million) for The Red House, District 15,¹⁸
- 2018: Mini Property fund (SGD1.5 million) at 600 Geylang Road,
- 2019: Hybrid of equity and cash waqf contributions (SGD24million) at Mosque Street, CBD Chinatown.

¹⁸ The Red House was rejuvenated from a dilapidated property to a mixed heritage development with 42 residential units in three different classes with five retail shop-houses and one historic bakery.

Warees has applied a three-pronged strategy in promoting waqf enhancement:

- 1- Allowing community institutions to benefit from the hibah returns for programs and services,
- 2- Mobilising surplus funds from institutions to fund waqf developments,
- 3- Providing opportunities to participate in revenue-generating waqf development projects.

The success of MUIS's approach has provided an example for professional asset management of all waqf property. With ISO 9001 accreditation, MUIS is one of the pioneers in setting the standard for efficient, reliable waqf asset management.

Using Technology for Waqf Efficiency

The use of technology to manage waqf assets has become less gimmicky as the need for trust deed management, monitoring, supervision and overall governance have become crucial to waqf success. Digital platforms are very much fit for purpose as the diverse needs of users are considered. They have their origins in a 1991 concept paper by Haber and Stornetta called "How to Time-Stamp a Digital Document". The most famous practical application of the idea was Bitcoin, proposed by a pseudonymous author, Satoshi Nakamoto, in 2008 as a peer-to-peer electronic cash system based on the now-famous blockchain.

What is Blockchain?

Blockchain is an open, decentralised ledger that serves as a record of transactions between parties in a manner that is immutable (at present) across a peer-to-peer network. The separation of Bitcoin from its platform–blockchain–has spawned disruption in almost all sectors of the economy, beginning with the finance industry. In fact, by the end of 2018 more than 15% of all banks were applying blockchain in some form. The most significant advantage provided by blockchain is the element of trust. Since the record cannot be changed, it can confirm ownership, provide transparency in transactions and safeguard the sanctity of contracts – a fundamental requirement in Shariah – without the need for a central regulator or certifying authority.

However, blockchain technology is on the road to maturity and requires significant application before it can become mainstream. The integrity of the data the technology protects is positively correlated to the trust of its users. For waqf users, specific needs should be met before selecting the appropriate technology. Al Razouki (2018)¹⁹ explains that the integration of blockchain with the basic components of waqf enables the most crucial element of public perception: Trust. He further explains that the building blocks of waqf may have both similarities and conflicts with blockchain. In the case of conflict, further effort would be required for more seamless integration. In summary, these components include:

¹⁹ Available at: <https://medium.com/@Mussaad/crypto-waqf-building-a-sustainable-islamic-blockchain-6adb2fab9f1f> (accessed 12 February 2019).

1- The Founder or *Waqif*

The Shariah requirements for the *waqif* include *ahliyyah* (legal capacity), which includes being a sane, mature adult who is not bankrupt.

Since one of the purposes of blockchain tech is to keep the parties anonymous in a decentralized system, it would be unknown whether or not the founder has legal capacity from a Shariah perspective.

2- Endowment or Waqf Deed

This is a declaration by the founder that identifies the purpose of the waqf and designates its beneficiaries. It is permitted by the majority of the Islamic juristic schools for the waqf deed to be amended and/or revoked before final endowment (usually at death). Waqf deeds may be loaded onto smart contracts that would carry the necessary code for the digital deeds. An automatic ledger entry would be created that would be easy to audit if funds are moved in and out. This will also protect the rules of the specified waqf as the smart contract may be digitally protected, provided a perpetual reference point. Any amendments would also be possible in an updated contract, with all historical changes documented and transparent for all users.

3- The Waqf Asset

This refers to the estate or asset that has been ring-fenced for endowment. The asset would need to be permissible from a Shariah perspective and free from any encumbrance as well. Thus, it cannot be public property or pledged to someone else. We have already established that it can be movable or immovable, so the conversion of the value of the asset as tokens, for example, would only be a representation of the underlying waqf asset. The challenge, however, is ensuring the 'perpetuity' principle is upheld as waqf assets can generally not be owned or traded.

4- Beneficiaries

The recipients of the waqf are significantly broad without the restrictions that apply to zakat. Hence, waqf proceeds may be used for public purposes or limited solely to designated beneficiaries (for example, the community the asset exists in), and may be for both Muslims and non-Muslims. Of course, the basic Shariah requirements would still apply:

- (a) Beneficiaries must be identifiable.
- (b) Beneficiaries must not be at war with Muslims.
- (c) Beneficiaries may not use the waqf in an impermissible manner.

This may be difficult to manage on a blockchain platform since the users are largely unknown. However, as the technology advances, different variations of the platform are becoming available, with unique uses that may soon be compatible with the Shariah requirements.

5- Administration

As the portfolio of waqf assets increases, the need for administration, supervision, monitoring and auditing become more pertinent. Similar to the case of inheritance, where an executor is appointed for the deceased's estate, an administrator is required as the complexity and value of the underlying waqf assets increase.

Blockchain can be used effectively here to minimize abuse or misappropriation of funds by administrators as the assets can be managed through a smart contract verification process, like mining verification. This is an independent, anonymous process of verification by peers in the network, ensuring that there is little room for fraud or any other laundering attempts by those in charge. Since governance is seen as one of the key factors in the failure of waqf to realize its full potential, we may contend that it is a secure smart contract application that will reduce the issues around compliance. Furthermore, any exorbitant charges that administrators may pay themselves can be restricted through adequate protocols.

6- Termination or Dissolution of the Waqf

The legitimacy of the waqf is based on its perpetuity. However, there are acceptable instances in the Shariah that would allow for termination; for example, if the waqf asset is no longer able to provide any benefit to the intended beneficiaries. Another example of dissolution would be when it is included as a stipulation in the waqf deed. For example, in the case of family waqf, it may be stipulated that the waqf would be discontinued after the last family member dies as there would be no more qualifying beneficiaries. This may be easily integrated with a rules-based smart contract structure to fit within the protocol of the application.

SUMMARY

The recent revival of waqf is based on its historically successful contribution to socio-economic development. The success of this revival will be dependent upon the advances made in enhancing waqf instruments whilst maintaining the sanctity of the Islamic legal requirements of the waqf institution.

Current progress in enhancement practice, as exemplified by MUIS, for example, may be replicated as an outcomes-based model for managing waqf assets professionally and effectively. Awareness and understanding of the endless possibilities of waqf assets and their contribution are essential components of the institution's success. Opportunities abound.

A clear strategy for the use of technology to improve waqf management and enhance its efficiency has the potential to reduce the burden placed on governments the world over. However, this requires a societal paradigm shift towards awareness and application of the more sophisticated approaches in waqf management. This may also require organisations, private companies and financial institutions to provide expertise and support for waqf administrations, particularly through the use of cutting-edge technology. Digital platforms based on decentralised databases provide a level of transparency that waqf administration is in desperate need of. Incorporation of these applications would build trust and enhance the credibility of waqf institutions, thereby encouraging more contributions from the public. The use of technology is not in the recording of the waqf asset alone. It is also in the collection of waqf contributions and the disbursement of dividends to the beneficiaries. Therefore, a more comprehensive approach to waqf enhancement that constantly evolves with more efficient and credible modalities will play a significant role in raising the waqf institution to its former glory.

CHAPTER 5

The Way Forward

It is an established fact that waqf is one of the most important components of ISF and a clear manifestation of *maqasid al-Shariah* (the higher objectives of Islamic law). The waqf concept serves well the United Nations' SDGs as well as CSR and SRI objectives. It is a powerful instrument that makes it easier for ISF to address the modern socio-economic issues of society for the benefit of both Muslims and non-Muslims. It helps redistribute wealth and can systematically address the entire life cycle of the society.

Notwithstanding all this, enhancing the role of waqf and sustainably realizing its potential in all needed areas require further elaborations and enhancements as follows:

First, there is a need to enhance the awareness of its macro dimension and core fundamentals. Misconceptions must be overcome regarding waqf subject matter, instruments and time frame as these are all impediments to widening its implementation. Its subject matter needs to be expanded to include intangible assets, cash money and services. Its instruments need to be expanded to include financial instruments that cover banking, *takaful* and the Islamic capital market. Also, flexibility needs to be allowed in its time frame to enable the wide usage of temporary waqf.

Second, there is a need for proper waqf legislation in the form of a specific law on waqf, and sound management policies should be adopted that benefit from the best global practices. Key issues the law should address include jurisdiction, registration, taxation and dispute resolution. It should also be supported by a sound governance framework with special emphasis on the *mutawalli* (trustee administrator). Eligibility for this role should be extended to private corporate entities, and the authorities should be allowed to partner and collaborate with experts from the private sector to commercialise and monetise waqf assets. A good example of such collaboration is the successful partnership between Majlis Agama Islam Wilayah Persekutuan and Lembaga Tabung Haji in developing the RM151 million Menara Bank Islam project in Kuala Lumpur. Another important element of sound governance is to put in place strategies to have the waqf assets managed by highly qualified professional experts implementing the latest modern innovative investment strategies. Furthermore, an imperative

governance requirement is to expose the waqf business and institutions to an external, professional and independent body that conducts audits and supervisory inspection.

Third, there is a need to enhance the existing waqf models and instruments and innovate new ones to maximize the impact of waqf on society. New waqf models such as waqf-based Islamic microfinance, waqf-based *takaful* and banking models and hybrid models are evidence of such innovation. However, further enhancement of the existing models and further innovation of new models is needed, especially in strategic sectors such as health, education and transportation. These are the key sectors for addressing economic and social issues and thereby contributing to the sustainable development of the society. Excellent initiatives involving financial instruments include waqf shares as issued by KAPF, Islamic Relief Waqf in the UK and Perbadanan Waqaf Selangor in Malaysia. Other creative innovations include the cash waqf instrument implemented in deposit cash waqf as provided in some Islamic banks in Malaysia, and *waqf sukuk* to support the public sector, which are gaining momentum. All these are good manifestations of the efforts exerted by these financial institutions; however, the existing instruments need some enhancements in terms of expanding their perspectives. There is a need to go beyond considerations of feasibility and applicability to include consideration of how these instruments contribute to *maqasid al-Shariah* and the SDGs. Equally important is the innovation of new financial instruments that fit in the new modes of financing and embrace the financial technologies. Temporary cash waqf is a good example of this possibility.

Fourth, there is a need to create an enabling environment for technological innovation to attain the highest level of waqf efficiency. Fintech provides huge opportunities to make waqf more inclusive, cost-saving and transparent while still being Shariah compliant. Blockchain technology can play a great role in unlocking the potential of waqf in the digital area as it can seamlessly incorporate the founder (*waqif*), the endowment (waqf deed), the waqf asset, the beneficiaries and the administration within its distributed ledger. However, the use of technological innovation in all aspects of governance, models and instruments is still at an early stage. More efforts are required to ensure the maximum integration of this technological innovation as it establishes trust, the most crucial element of public perception.

Fifth, a proper research and development engine should be established to bring real advancement and innovations to waqf and its essential elements. It is true that considerable efforts have been exerted to promote research and development. In fact, some leading research entities have been established

based on waqf contributions; for example, IRTI of the IsDB, and INCEIF and ISRA of BNM. There have also been excellent contributions by bodies that provide support for Islamic finance by issuing fatwas and setting standards such as the International Fiqh Academy, AAOIFI and the national fatwa councils. All these entities, and others besides, have made intellectual contributions of various types: setting standards and guidelines for waqf, organising conferences and conducting research related to waqf issues. Despite all this, academic research on waqf issues is still below the standards needed to expand its scope and deepen its examination. There is a strong need to establish academic programs and training and to enhance public awareness of the importance of waqf and its huge potential for public good.

In a nutshell, waqf offers a huge opportunity for all of humanity to reduce poverty and address the current pressing socio-economic issues in a more equitable manner and, hence, help people live with dignity. However, the collaboration of all concerned parties and employment of the most advanced and sophisticated strategies and means are the keys to achieving success.

REPORT TEAM

The World Bank Group



Ahmad Hafiz Abdul Aziz is a Financial Sector Specialist with the World Bank Group Global Knowledge and Research Hub in Malaysia. Mr. Abdul Aziz brings with him ten years of relevant experiences in financial sector development, particularly in the area of Islamic capital markets, green and sustainable finance, financial inclusion and SME finance. He has worked as a Principal Assistant Director at the Ministry of International Trade and Industry and as Manager of the Islamic Capital market at the Securities Commission Malaysia. He holds a Master's degree in Islamic Banking and Finance from Bangor University, United Kingdom which he completed under the Chevening scholarship, and a Master of Arts in Islamic Revealed Knowledge and Heritage (Fiqh and Usul Fiqh) (Honors) from the International Islamic University Malaysia.



Wei Zhang is a Senior Financial Sector Specialist in the Finance, Competitiveness and Innovation Global Practice of The World Bank Group based in Malaysia Office. She joined The World Bank Group in 2001 and worked on financial sector knowledge program in World Bank Institute and Financial Sector programs in East Asia and Pacific countries. She has mainly worked financial sector development advisory and lending projects in SME finance, capital markets development, financial inclusion and consumer protection, sustainable finance in China, Mongolia, Vietnam, Laos, Pakistan, Papua New Guinea and now in Malaysia. Prior to joining The World Bank Group, Wei worked in telecommunications industry and agriculture technology transfer programs in China and US. She holds MBA on International Business Strategy and MA on International Trade Policy from George Washington University.

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Assoc. Prof. Dr. Baharom is currently heading the Research Management Centre. His current areas of research are applied macroeconomics, especially those in relations with Shadow Economy, Crime and Natural Disaster. He taught Quantitative Method to the Masters students at INCEIF. He is also aggressively involved in applied research funded by industries and government agencies, having led and co-researched in applied researches with a total fund of almost RM4 million. He also publishes article in peer reviewed and high impact journals apart of chapter in books and books. Have delivered quite number of keynotes, among them in World Halal Conference 2017 and 2018. Dr Baharom has been the editor of IF Hub, a quarterly magazine for the last 3 years.



Asst. Prof. Dr. Ziyaad Mahomed is currently the Associate DEAN of Online Programs and Director of Executive Education at INCEIF. He is Chairman of the Shariah Committee of HSBC Amanah, Malaysia. He also serves on Shariah Boards in South Africa, Central Russia, Maldives and Malaysia amongst others. He has trained and advised financial institutions in more than 15 countries in Europe, Asia, Africa and the Middle East with participants exceeding 9,000 for his training programs. He is the recipient of numerous global awards for his unique ISF – Fintech modelling techniques being tested in the UK, South East Asia and Africa. Dr. Ziyaad holds qualifications from Malaysia (PhD in Islamic Finance; Professional Master's in Islamic Finance CIFP), the UK (BA (Hons) Business Finance), South Africa (MBA; Cert Islamic Law) and Jordan (Adv Dip Arabic).



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Assoc. Prof. Dr. Said Bouheraoua is currently Director of Research Development and Innovation Department at ISRA as well as editor-in-chief of ISRA International Journal of Islamic Finance for Islamic Finance. He is also a lecturer at the Global University of Islamic Finance (INCEIF). He is member of the Board of Directors of Affin Islamic Bank, Shariah member of the Central Bank of Oman, Chairman of Affin Islamic Shariah committee, Chairman of Trust Bank Amana Surinam, Shariah member of MNRB Takaful & Retakaful. He has published several books, book chapters and articles in refereed journals. He has presented papers at international conferences including the International Fiqh Academy of the OIC. He was a Shariah consultant for the conversion of several conventional banks and has conducted several trainings in Islamic finance in Malaysia and abroad.



Dr. Noor Suhaida binti Kasri is currently the Head of ISRA's Islamic Capital Market Unit. Prior to joining ISRA, she was an advocate and solicitors as well as a Syarie lawyer. During her legal practice, she was appointed as one of the members of the Malaysia's Investigating Tribunal Panel, Advocates & Solicitors Disciplinary Board and headed the Shariah Legal Clinic of Kuala Lumpur Bar Legal Aid Centre. She received her PhD in Islamic Banking Finance and Management from the University of Gloucestershire (in collaboration with Markfield Institute of Higher Education), United Kingdom. Her Master in Laws was from King's College of London. Her Bachelor of Laws and Diploma in Shariah Legal Practice were from the International Islamic University of Malaysia. She has written a number of research papers, textbook chapter and articles and presented in conferences globally.

Mohamed Al- Amine Sano is currently a student at the International Islamic University of Malaysia (IIUM), completing his Masters program in Islamic Banking and Finance (iIBF). After completing his double degree program in Law and Shariah, he decided to venture into the field of Islamic Finance, where he was instantly inspired by the values of the subject that are based on justice and equity. Apart from studies, Mohamed Sano has also partaken in organizing and emceeing numerous international conferences and workshops on Finance and youth development, such as the Global Islamic Fintech Summit (GIFS), International Shariah Scholar Forum (ISSF) and Al-Sharq Youth Annual Conference as he strongly believes that public discourse and community integration are key factors to genuine societal impact.



APPENDIX

Roundtable Agenda

MAXIMISING SOCIAL IMPACT THROUGH WAQF SOLUTIONS

13 SEPTEMBER 2018, THURSDAY
TRAINING ROOM 3.1, 3.2 & 3.3
SASANA KIJANG, BANK NEGARA MALAYSIA

WORLD BANK- INCEIF- ISRA
Roundtable
on Waqf

Islamic social finance tools have been instrumental in the alleviation of poverty and socio-economic development for over 1,400 years. Some of these instruments have been adopted and applied even outside the Islamic world. One instrument in particular - Waqf (endowment) – has been utilised even at the establishment of the Oxford University's Merton College in 1264. Throughout Islamic history, waqf was the main provider for many of the social services that today are financed by the state. These include the provisions of education and healthcare, infrastructure development and maintenance as well as social welfare provisions for the poor and destitute. Waqf institutions have also supported a more equitable distribution of income and wealth as wealthy individuals and families released property into the service of the people for 'doing good'.

Although a significant number of waqf institutions exist globally, the success of these institutions rely on efficient governance, regulation, supervision mechanisms and effective management. Since most countries and regions do not have enabling waqf regulations or monitoring processes, the value and output of awqaf assets are mostly on the decline. The potential however, is enormous. For example, Malaysia has almost RM1.2 billion in waqf land value (Yayasan Waqf, 2016), with research suggesting that only 2% of total acreage has actually been developed.

AGENDA

8.00 am – 8.30 am	Event Registration and Information Station / Refreshment
8.30 am – 8.35 am	Doa Recitation by Dr Said Adekunle Mikail, ISRA
8.35 am – 9.30 am	Welcoming Remarks: Dr. Firas Raad, Country Manager for Malaysia, East Asia and Pacific, the World Bank Group
	Keynote Address: Prof. Dato' Dr. Azmi Omar, President & Chief Executive Officer, INCEIF
9.30 am – 10.30 am	Session 1: Overview of the Global Waqf Landscape Moderator: Assoc. Prof. Dr. Said Bouheraoua, Director of Research, ISRA Speaker: 1. Dr. Mohammed Obaidullah, IRTI, IsDB 2. Mr. Aamir A. Rehman, United Nations Development Programme (UNDP) 3. Assoc. Prof. Dr. Magda Ismail Abdel Mohsin, INCEIF
10.30 am – 11.00 am	Coffee Break
11.00 am – 12.30 pm	Session 2: Development Potential of Waqf Institutions Moderator: Asst. Prof. Dr. Adam Ng Boon Ka, INCEIF Speaker: 1. Dr. Abdul Mohsen Al-Kharafi, Former Secretary-General of Awqaf General Secretariat 2. Mr. Syaqqi Mujahid Robbani, Rumah Zakat Indonesia 3. Mr. Husein Benyounis, Awqaf New Zealand
12.30 pm – 2.00 pm	Lunch Break
2.00 pm – 3.00 pm	Session 3: Enhancing Waqf Instruments Moderator: Asst. Prof. Dr. Ziyaad Mahomed, INCEIF Speaker: 1. Prof. Dr. Ashraf Md Hashim, ISRA 2. Mr. Zaini Osman, Islamic Religious Council of Singapore 3. Mr. Hamid Rashid, Founder of FINTERRA
3.00 pm – 3.15 pm	Tea Break
3.15 pm – 4.30 pm	Session 4: Panel Discussion: Towards an Enabling Framework for Waqf Institutions Moderator: Prof. Dato' Dr. Azmi Omar, INCEIF Panellist: 1. Dr. Nurdin Ngadimon, Securities Commission Malaysia 2. Dr. Yono Haryono, Bank Indonesia 3. Mr. Aderi Adnan, Labuan IBFC
	Closing Remarks: Assoc. Prof. Dr. Said Bouheraoua, Director of Research, ISRA
4.30 pm	End of Programme

Organised by



Back Row | Left : Ruzita Ahmad, Wei Zhang, Jose De Luna Martinez, Prof. Dr. Mansor H Ibrahim, Assoc. Prof. Dr. Said Bouheraoua, Assoc. Prof. Dr. Baharom Abdul Hamid, Assist. Prof. Dr. Ziyaad Mahomed, Aamir A rahman, Assist. Prof. Dr. Adam Ng Boon Ka.

Front Row | Left : Ahmad Hafiz Abdul Aziz, Aderi Adnan, Zainan Osman, Syaqui Mujahid Rabbani, Hussein Benyounis, Abayomi A Alawode, Prof. Dato' Dr. Mohd Azmi Omar, Dr. Firas Raad, Dr. Abdul Mohsen Al-Kharafi, Dr. Mohamed Obaidullah, Dr. Yono Haryono, Dr. Noor Suhaida Kasri, Assoc. Prof. Dr. Magda Ismail.

SESSION 1

Overview of the Global Waqf Landscape



Assoc. Prof. Dr. Said Bouheraoua
 Director, Research and Innovation, ISRA
 (Moderator)

Assoc. Prof. Dr. Magda Ismail Abdel Mohsin
 INCEIF

Mr. Aamir A Rahman
 Senior Advisor,
 UNDP

Dr. Mohammed Obaidullah
 Lead Research Economist,
 IRTI IsDB



“Waqf was one of the backbones of Islamic civilization. Its role was like a network, which penetrated all economic and social sectors whenever it found a need to promote that sector without any cost to the government. However, towards the end of Ottoman empire this role was destroyed for various social and policies reasons. Even though these institutions have been revived in the past decades, but there are still some challenges.”

- Dr. Magda Ismail Abdel Mohsin

SESSION 2

Development Potential of Waqf Institutions



Dr. Abdul Mohsen Al-Kharafi
*Former Secretary General,
Awqaf Kuwait*

Mr. Syauqi Mujahid Rabbani
*Independent Director,
Rumah Zakat Indonesia*

Mr. Husein Benyounis
*Secretary General,
Awqaf New Zealand*

**Assist. Prof. Dr. Adam
Ng Boon Ka,**
*INCEIF
(Moderator)*

"Once you master the structure of waqf, then the model automatically will start developing. All you need is to be innovative. To be honest, the biggest lack in awqaf is the leadership."

- Mr. Husein Benyounis



SESSION 3

Enhancing Waqf Instruments



Mr. Hamid Rashid
Founder,
Finterra

Prof. Dr. Ashraf Md Hashim
Chief Executive Officer,
ISRA Consultancy Sdn Bhd

Mr. Zaini Osman
Chief Executive Officer,
Warees Investments

Assist. Prof. Dr. Ziyaad Mahomed
Associate Dean of Online
Program and Director,
Executive Education, INCEIF
(Moderator)

In philanthropy work, we have a trust deficit... so we want to overcome this trust deficit through sukuk. Other channels are possible, yet the disclosure will not be enough; from where the money you are getting from, to whom you are spending the money. Or if you enter into projects, there will be insufficient due diligence on the project. It is also not rated because nobody will be obliged if it is normal raise fund, nobody will ask you to rate the project. Lastly, it is not regulated and no trustee- not accountable.

- Prof Dr. Ashraf Md Hashim



SESSION 4

Towards an Enabling Framework for Waqf Institutions



Dr. Yono Haryono
Analyst, Islamic Economics and
Finance Department,
Bank Indonesia

**Prof. Dato' Dr. Mohd Azmi
Omar**
President and
Chief Executive Officer, INCEIF
(Moderator)

Mr. Aderi Adnan
Director
Business Development,
Labuan IBFC

Dr. Nurdin Ngadimon
Deputy Director, Shariah
Development and Capital
Market, SC Malaysia

"What is the main difference between the Waqf trustee and foundation? The trustee manages and become the mutawalli of that asset and the Waqif cannot intervene in it. There are some cases come to the point where Waqif want to become part of the management in the project because they feel that they can do more due to their knowledge on the asset management."

- Mr. Aderi Adnan









GLOSSARY

Terms	Descriptions
<i>Hibah</i>	Gift; transfer of a certain property without any consideration during the lifetime of the donor.
<i>Hikr</i>	Long term leasing of waqf properties.
<i>Ijarah</i>	Leasing; sale of usufruct of an asset.
<i>Istibdal</i>	Substitution; e.g. exchanging an item of tangible property for its cost value in zakat, exchanging prices in a sale, to provide a substitute for a leased item when it is damaged, and to exchange endowed property in an endowment.
<i>Istisna'</i>	An exchange contract for manufactured goods, allowing cash payment in advance and future delivery, or future payment and future delivery. Payment can also be made in instalments upon mutual agreement between parties.
<i>Mudarabah</i>	An investment partnership with profit-sharing implications. One or more partners as investors provide capital to a <i>mudarib</i> (the partner who provides entrepreneurship) to undertake a business activity. Profit is shared between partners on a pre-agreed ratio; any loss is borne solely by the investors.
<i>Murabahah</i>	Markup sale; a contract of sale in which the seller declares his cost and the profit.
<i>Musharakah</i>	A partnership contract with profit and loss sharing. In a typical <i>musharakah</i> contract, two or more parties provide capital to venture into a business, share profits according to a pre agreed ratio, and share losses based on the equity participation.
<i>Musharakah Mutanaqisah</i>	A hybrid contract consisting of an initial contract of partnership and a sale contract; a type of partnership in which one of the partners undertakes to gradually buy the share of the other until the buyer completely owns the property that had been jointly owned.
<i>Mutawalli</i>	The custodian of an endowment; undertakes responsibility for management of its affairs, safeguarding it, making it flourish, and carrying out the stipulations of the person who created it. He is not allowed to deal with the subject matter of the waqf except to ensure that its benefits accrue to the intended purpose. Among the duties of the waqf custodian are collecting its yield, distributing it to its rightful recipients, and evaluating properly the applications for its proceeds.
<i>Nazir</i>	Synonym to <i>Mutawalli</i> , the custodian of an endowment.

Terms	Descriptions
Qard Hasan	Benevolent loan; an interest-free loan extended on a goodwill basis, primarily for welfare purposes, i.e., the borrower pays back only the amount borrowed.
Sadaqah	Charity.
Sukuk	Certificates of equal value representing undivided shares in ownership of tangible assets, usufruct and services, assets of particular projects or special investment activity.
Sukuk Al-Intifa'	Certificates of equal value representing undivided shares in the limited rights to the real estate being utilized associated with a limited period (tenure).
Sukuk Musharakah	Certificates of equal value evidencing the certificate holder's undivided ownership in the <i>musharakah</i> venture; certificates of equal value issued with the aim of using the mobilized funds for establishing a new project, developing an existing project or financing a business activity on the basis of any partnership contract so that the certificate holders become the owners of the project or assets of the activity per their respective shares, with the <i>musharakah</i> certificates being managed on the basis of participation or <i>mudarabah</i> or an investment agency.
Takaful	Mutual guaranteeing through mutual support and shared responsibility whereby a group of people agree to jointly guarantee one another against a defined loss. <i>Takaful</i> is an alternative to contemporary insurance.
Waqf	An endowment of charitable trust whereby a certain property is held and preserved for the exclusive benefit of a certain charitable objective, and any use or disposition of it outside that specific objective is prohibited.
Waqif	One who initiates a waqf.
Zakat	Religious tax; an obligatory contribution which every wealthy Muslim is required to distribute directly to the poor or to pay to the Islamic state, or another agent, to distribute on their behalf.

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