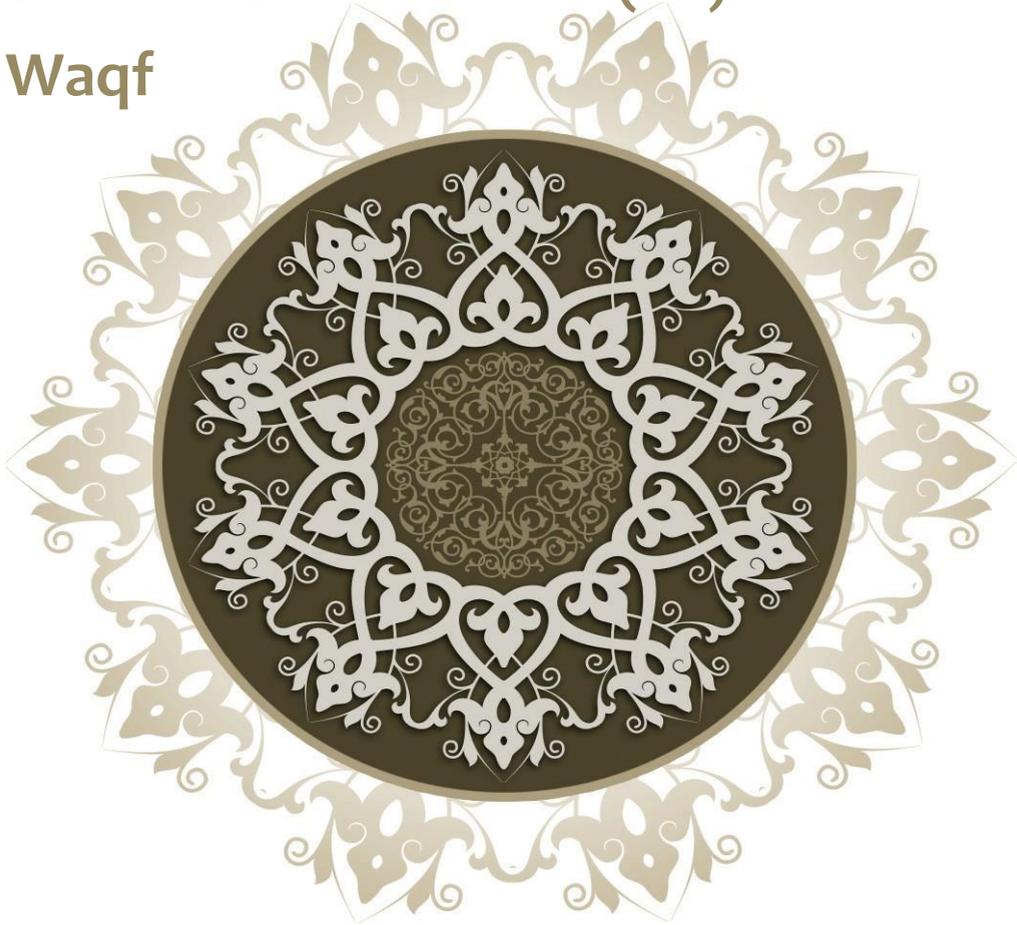


The AAOIFI Shari'ah Standard No. (60): Waqf



Shari'ah Standard No. (60)

Waqf
(The Revised Standard)

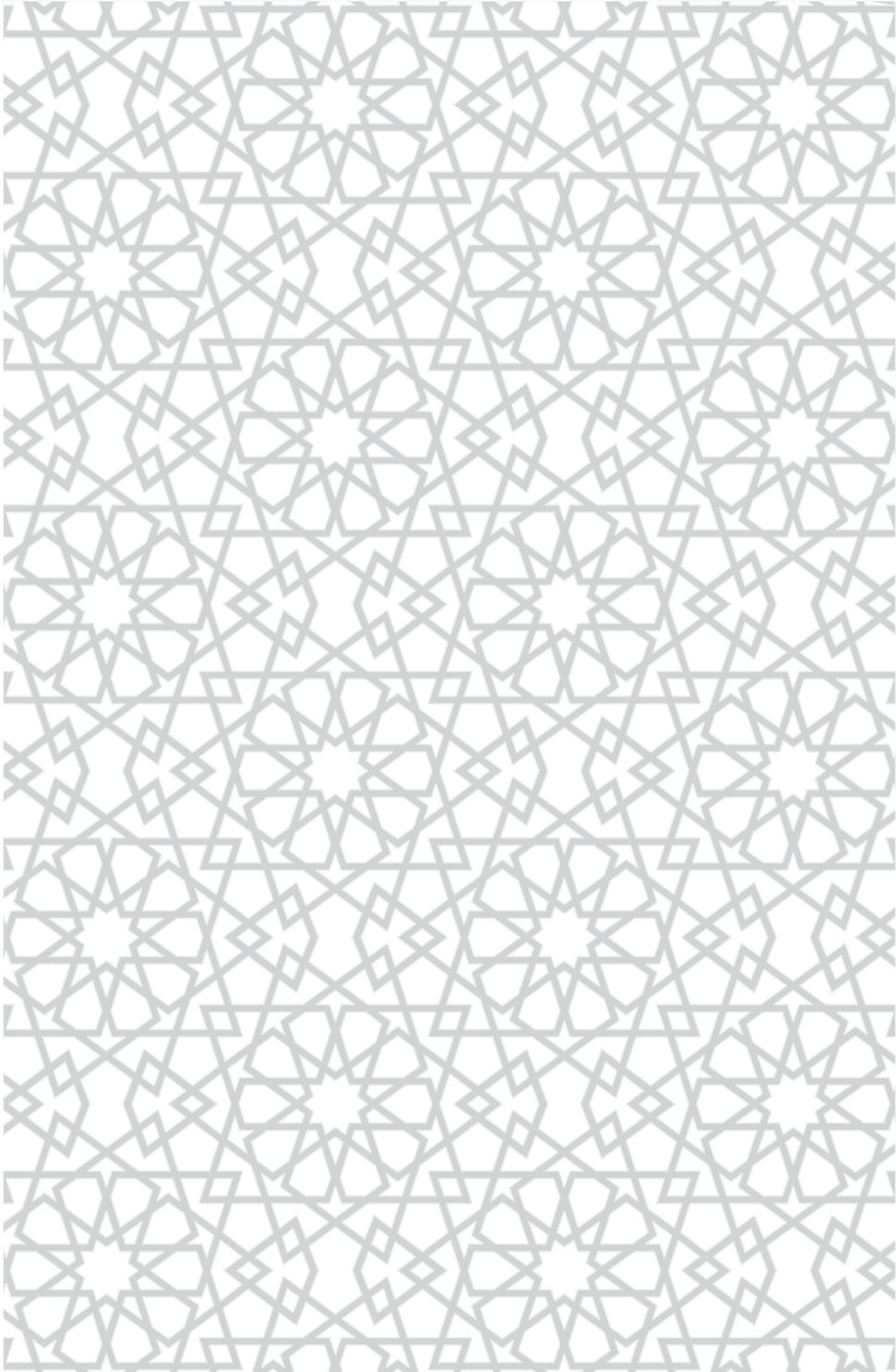
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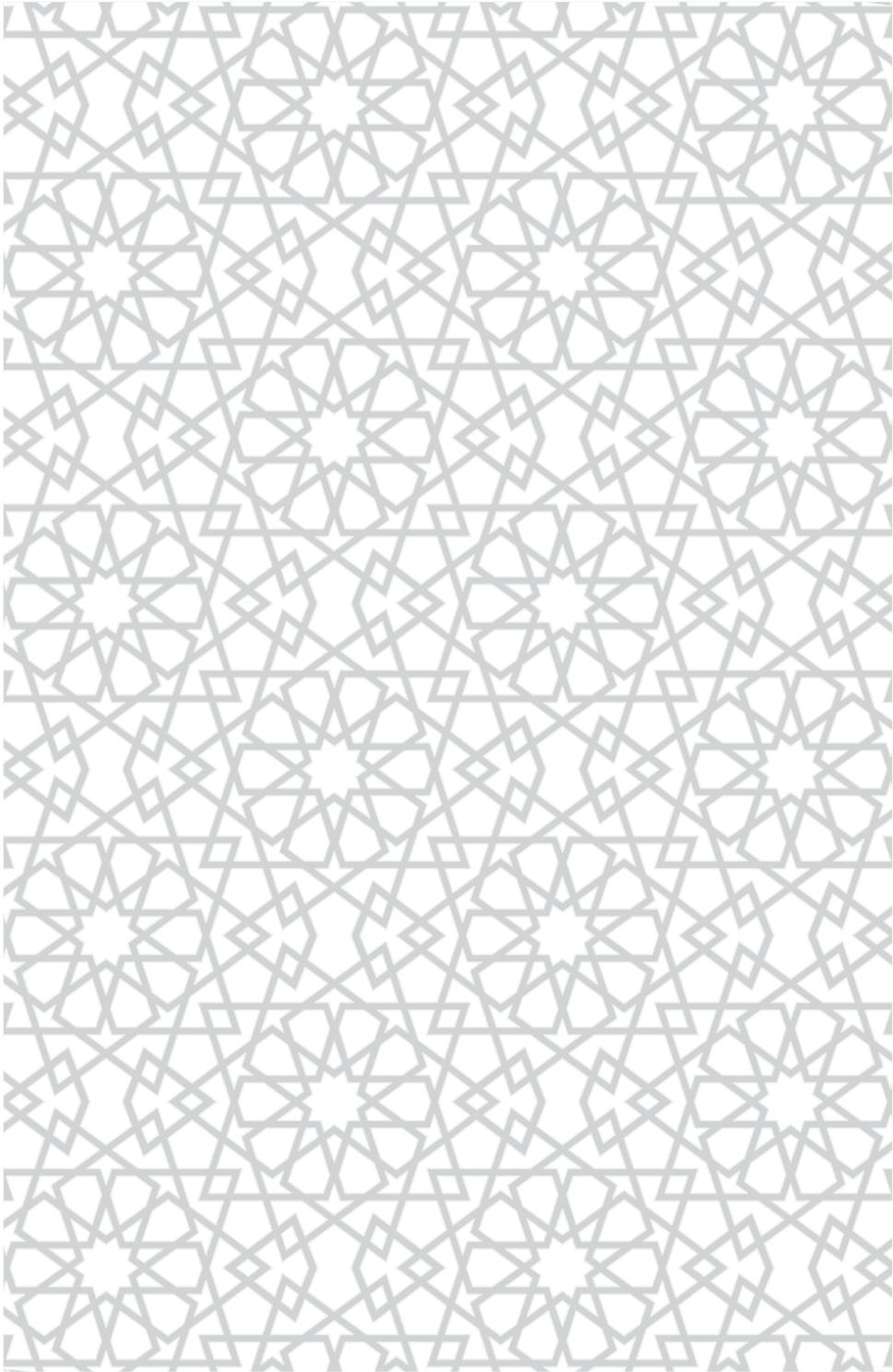
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IN THE NAME OF ALLAH, THE MERCIFUL, THE VERY MERCIFUL

All praise be to Allah, the Lord of all the worlds. Peace and blessings upon our Prophet and our master Muhammad, all his family and his Companions.

Preface

This standard aims to present the rulings of Waqf that form the basis for practical applications of Waqf and the role of institutions¹ in the overseership of Waqf, its management and investment.

And, Only Allah guides to Success,,,



¹ The word (Institution/Institutions) was used as a short form for Islamic financial institutions, and among them are Islamic banks.

Text of the Standard

1. Scope of the Standard

This standard deals with the definition of Waqf, its types, its rulings, its constituting elements, conditions of each constituting element, expenses of Waqf, means of deriving benefit from Waqf, ways of developing it, rulings related to Waqf overseership and its management, and what can be adopted by the Institution in developing the sources of Waqf and means of its investment.

This standard will deal neither with detailed rulings of dynasty Waqf nor those related to *irşad* (state endowment) or financial trust, despite their semblance to Waqf in certain aspects.

2. Definition, ruling, constituting elements and conditions of Waqf

2/1. Definition of Waqf: appropriation [allocation for a particular purpose] of an asset and donating its benefit².

2/2. Types of Waqf

There are several types of Waqf based on various considerations.

2/2/1. based on the Waqf beneficiary, Waqf is divided into:

2/2/1/1. **Charitable Waqf:** its revenue and benefit will be for general charitable causes, like poor persons, research centres and universities.

2/2/1/2 **Private or Dynasty Waqf:** its revenue and benefit will be for the progeny or relatives of the Waqif or other **specific** persons, and this includes Self Waqf [Waqf on oneself], and in the event of the non-existence of the designated Waqf beneficiaries, then it shall turn into Charitable Waqf.

2/2/1/3 **Joint Waqf:** wherein the beneficiaries of the Charitable Waqf and the Private Waqf jointly share the revenue and benefit of the Waqf.

² **Translation Note:** Such that the asset is not sold, gifted, donated or encumbered to facilitate its usufruct for the named beneficiary/ies.

2/2/2 Based on the Waqf asset, Waqf can be divided into:

2/2/2/1 Specific Waqf Assets: are those Waqf where the Waqif's intention aimed to appropriate specifically an asset as it is, e.g., Waqf of real estate, and this includes Waqf of usufructs and Waqf of moral rights.

2/2/2/2. Investment Waqfs: these are those Waqf where the Waqif's intention aimed to develop by turnover and deployment based on commercial considerations, and not the appropriation of its tangible assets, rather the purpose is the sustainability of the Waqf through its assets or via their substitutes, e.g., cash Waqf and Waqf companies.

2/3. Ruling on Waqf: in principle, Waqf is a recommended act (*mandūb*), and it is binding upon the Waqif from the instance of the creation of Waqf, and he cannot resile from it.

2/4 Constituting elements (*arkān*) and conditions of Waqf: constituting elements of Waqf: (the form of creation, the Waqif, Waqf asset and Waqf beneficiaries), and each constituting element has its [specific] conditions and rulings, as follows:

2/4/1. Form of Creation (*ṣiġha*) of Waqf

2/4/1/1. An offer from the Waqif creates Waqf through any means which indicate the same expressed verbally, in writing, or through any other means indicating the same. It does not require acceptance of the Waqf Beneficiary, whether he was specific or not.

2/4/1/2. The form of Waqf creation must be conclusive [*jāzima*] as Waqf cannot be concluded with an undertaking to create Waqf.

2/4/1/3. The initial presumption is that [creation] of Waqf must come into effect immediately [*nājjiz*]. It is also permitted for the Waqf to be:

contingent upon a condition, e.g., the Institution creates a Waqf over some of its assets subject to the approval of the supervisory authority, or

deferred to a future date, e.g., [the Waqif] says: *my shares in ABC company are [subject of] Waqf with effect from the beginning of the coming year.*

2/4/1/4. If the Waqif makes Waqf contingent upon his death, then it is deemed to be a bequest, and therefore it will take effect only upon Waqif's death; but it shall not exceed one-

third of his estate. In this case [being a bequest], it is permitted for him to resile from the Waqf [bequest].

2/4/1/5. The initial presumption is that Waqf will be perpetual. However, if stipulated by the Waqif, it may be limited to a period or restricted by a certain condition. Hence, upon maturity of the term of Waqf or occurrence of the condition, the Waqf asset shall return to the [original] owner or his heirs.

2/4/1/6. An unrestricted Waqf, wherein the Waqif does not specify the beneficiary of the Waqf, is valid. In this case, it shall be made available for charitable causes as deemed fit by the overseer or the court.

2/4/1/7. It is prohibited to create Waqf for a Shari'ah non-compliant purpose. If such a Waqf is created, its purpose must be changed to a Shari'ah compliant one.

2/4/1/8. It is invalid for the debtor to create a Waqf if it should be detrimental to [his] creditors.

2/4/2. Legal Personality of Waqf

Waqf is an autonomous juridical person with an independent financial liability that allows Waqf to obligate or take obligation (to be liable). Hence, Waqf is separate and independent from the overseer and the Waqf beneficiaries.

2/4/3. Waqif

2/4/3/1. The Waqif must have the legal capacity to donate his possessions with reference to Item No. (2.4.5.).

2/4/3/2 If the Waqif is *de jure* a juridical person, then it is required that Waqf is created by a resolution from the owners or who has the authority to take such an action, provided it does not contravene the laws and regulations.

2/4/3/3. Waqf by a person interdicted for prodigal grounds is not concluded. However, a Waqf by a person interdicted for being indebted is contingent upon the authorization of the creditors. The same will be the case if the person's debts exceed the [value] of his assets, even if the person was not subjected to a ruling of bankruptcy or interdiction.

2/4/3/4. Waqf during terminal illness is deemed to be a bequest.

2/4/3/5 Waqf by a non-Muslim is valid subject to observing rulings and conditions of Waqf.

2/4/4. Waqf Beneficiary:

- 2/4/4/1. A Waqf beneficiary must be a Shari'ah compliant entity (*mubāh*).
- 2/4/4/2. It is valid to stipulate that the Waqf beneficiary is the Waqif, e.g., to say: “*I made this Waqf for myself and then for charitable causes*”.
- 2/4/4/3. The Waqf [remains] valid if the Waqf beneficiary is discontinued. Upon discontinuation of Waqf beneficiary, it will be used for similar charitable causes.
- 2/4/4/4. It is not required that a Waqf beneficiary exists at the time of [creation of] Waqf.
- 2/4/4/5. It is permitted for the Waqif to single out some of his children as Waqf beneficiaries or to increase the shares if there is a valid reason, e.g., poor persons, divorcees, or people with special needs.

2/4/5: Waqf Asset

- 2/4/5/1 The following is required in the Waqf asset:
- a. It should be a Shari'a-wise appraisable asset (*māl mutaḡawwim*), and it should be known or to be known.
 - b. The Waqif should own the Waqf asset in full ownership, or it should be appurtenant to an asset owned by the Waqif, e.g., to create Waqf of yet-to-be-declared dividends on shares held by him.
- 2/4/5/2. If the Waqf was created with an option to rescind that is held by a third party, then [creation of such Waqf] will be contingent upon the authorization from the one who holds the option. If such authorization is granted, the Waqf will take effect from its creation; otherwise, Waqf will be deemed null and void from the start.
- 2/4/5/3. It is valid to create a Waqf which a third party may claim under the pre-emption rights. If the Waqf asset was granted to [the third party] according to pre-emption (*shuf'a*) rights, then the Waqif must deploy the received consideration in a similar type of Waqf.
- 2/4/5/4 If the pledgor makes a Waqf over the pledge, then Waqf is valid, and its enforceability is dependent on one of the following cases:
- a. The waiver by the pledgee of his rights in the pledge.

- b. settlement of the debt.
- c. part of the pledge remains after recovering the debt out of the pledge; Waqf will be enforced over what remains.

Whenever Waqf is enforced in any of the above cases, its enforceability shall be from the time of its creation.

- 2/4/6 It is permitted to create Waqf over real estate, including movable items, which are appurtenant ancillaries meant to be there permanently.
- 2/4/7. It is permitted to create Waqf of movable assets, such as vehicles, machinery, equipment, production tools, websites, and digital applications.
- 2/4/8. It is permitted to create Waqf over Shari'ah compliant moral rights, such as books' copyrights or patents, to donate their revenues or usufruct [for Waqf beneficiaries].
- 2/4/9. A person who took possession of assets via prohibited means is required from him, as per Shari'ah, to forfeit such assets by disbursing them to charitable causes. It is permitted for him to create a Waqf of a such asset for general charitable causes, and it is not permitted for him to benefit from this Waqf in any manner.
- 2/4/10. A person who possesses assets of prohibited yield (e.g., bonds) must terminate his/such possession and disburse the proceeds in charitable causes. If he creates Waqf over these assets for general charitable causes, Waqf is valid if those assets are substituted with assets with permissible yield.
- 2/4/11. It is permitted to create Waqf over a common share of an asset, whether divisible or indivisible. If the common share of the asset is leased, the Waqf is entitled to receive its share of the rent. The Waqf portion may be leased through temporal or spatial usufruct sharing, and the beneficiaries will be entitled to the revenues related to the Waqf portion.
- 2/4/12 It is permitted to create Waqf of usufructs by the owner of the usufructs. Such a Waqf will be utilized for usage, exploitation, or leasing. If, for example, [the Waqif], being a lessee, owns the usufructs, then it is required that:
- the Waqif is not prevented by the lessor from subleasing, and
 - the term of Waqf should not be longer than the lease period.

2/4/13. Cash Waqf

- 2/4/13/1. It is permitted to create Waqf over cash even if it is an outstanding debt, e.g., the current account balances. Benefiting from it can be either by extending a Shari'ah compliant loan or investing the amount in a Shari'ah compliant manner. This includes establishing Waqf funds which shall have the purpose of raising funds, investing them, and extending loans. Any excess cash over the Waqf amount will be the yield which shall be disbursed to the Waqf beneficiaries.
- 2/4/13/2. It is permitted to create Waqf over investment accounts on a perpetual or timed basis, and rulings of cash Waqf shall apply to them.
- 2/4/13/3. If cash Waqf is invested in buying assets, then these assets will be deemed to be something other than the Waqf asset instead of the cash. It will be permitted to sell these assets for a more beneficial investment for the Waqf. The Waqf asset shall remain the cash amount.
- 2/4/13/4. The nominated money at the time of Waqf creation shall constitute the Waqf asset. There is no influence of change in the purchasing power on the value of the cash Waqf assets. It is permitted for the Waqif to stipulate that part of Waqf revenues will be added to the cash Waqf asset.
- 2/4/13/5. Shari'ah compliant modes of hedging should be followed to protect the principal amount of the cash Waqf and to hedge against the risk of foreign currency fluctuations and change of its value, as given in the Shari'ah Standard (45): Protection of the Capital and Investment.

2/4/14. Waqf of Companies and Shares

- 2/4/14/1. It is permitted to create a Waqf over: companies, a portion of companies, or shares of the shareholding companies, all being Shari'ah compliant. In that case, the Waqf asset shall be those specific assets and no disposition of such assets is permitted except following the substitution conditions mentioned in Item N^o (10/1/5). However, such companies' asset turnover is allowed under the regulations and commercial norms, as those companies are categorized as investment Waqfs. See Item N^o (2/2/2/2).
- 2/4/14/2 Increase in the [market] value of Waqf shares constitutes a capital gain on the Waqf asset and not revenue, whereas bonus shares that are sourced from earnings [of the company] represent revenue [of Waqf] unless the Waqif stipulated to add them to Waqf asset.

2/4/14/3. If the Waqf company, or a company where many shares were Waqf assets, is liquidated, then rulings of substitution will be applied as per Waqif's stipulation and as required by the interest of the Waqf and Waqf beneficiaries.

2/4/14/4. Upon Waqf of shares, the company's Memorandum of Association and the legal framework upon which the company was established shall be deemed as conditions of the Waqif unless [these conditions] violate the principles and rulings of Shari'ah.

2/4/15. Waqf of Investment Funds and Sukuks

2/4/15/1. It is permitted to create Waqf over investment Sukuks and Shari'ah compliant units of investment funds, whether Waqf was perpetual or temporary,:

a. If Waqf of units of investment funds and Sukuks were on a perpetuity basis, then the periodic distributions shall be disbursed in the avenues of Waqf disposal. Upon cancellation [of the units of investment funds or Sukuks], their [proceeds of cancellation] shall be reinvested: in other Sukuks or units of other investment funds as applicable or any investment asset that generates revenues for Waqf as stipulated by the Waqif and required by the interest of the Waqf and Waqf beneficiaries.

b. If the Waqf of Sukuk and units of investment funds is temporary, then periodic distributions shall be disbursed in the avenues of Waqf disposal in compliance with the following:

- since Sukuk and investment funds are different in their types, revenues, periodic distributions and redemption, the basis for determining the [base Waqf] asset and profit shall be:

the type of Sukuk and investment funds, and

the terms and conditions of the offering document or prospectus,

to the extent they do not conflict with the Waqif stipulation.

- In the case of Waqf of Sukuk or units of investment funds, the initial presumption is that the Waqf asset will be those particular Sukuks and units unless the Waqif has stipulated that the Waqf is for the value [of Waqf asset].

- If Waqf is over the value [of Waqf asset], the rulings of cash Waqf shall apply. However, if Waqf is over those Sukuk and investment units in particular, then at the end of the

Waqf period or upon cancellation of [Sukuk or investment units], the Shari'ah position varies based on the following:

- 1). If the period of Waqf is longer than the period of Sukuks or investment funds, then what is stated in Item No. (2/4/15/1/A) shall apply upon cancellation.
- 2). If the period of Waqf is shorter than the term of Sukuk or investment funds, the Waqif shall recover the [same] number of [Sukuk and investment funds] at the end of the Waqf period.
- 3). If the Waqf period is the same as the term of Sukuk or investment funds, then whatever amount paid at the time of cancellation shall be for the Waqif, unless the amount is paid as a return [of Sukuk and investment units], in which case it shall be treated as Waqf revenues.

2/5. Waqf Deed

2/5/1. To preserve and protect the Waqf from loss and infringement, the Waqf should be documented through officially acceptable means. Under all circumstances, the current procedures of legal authentication should be adopted to document the Waqf.

2/5/2. The Waqf Deed shall include the following:

preamble,

the purpose of creation,

name of the Waqif, along with what establishes his identity, legal competence and ownership,

specifying the subject of Waqf and describing it in such a precise manner that removes any ambiguity,

avenues of Waqf disposal,

Waqf conditions,

determining the overseer, his duties and his remuneration,

concluding statement,

witnesses,

signature of the Waqif, and
date when the Waqf comes into effect.

2/6. Conditions in Waqf:

2/6/1. The Waqif may stipulate, with regard to his Waqf, any condition that is not contrary to the rulings of Shari'ah and that does not prejudice the Waqf or adversely impacts its asset. These stipulated conditions must be complied with. All such stipulated conditions of each Waqif must be read or interpreted in light of the prevailing customs in his time and place.

2/6/2. The Waqif may stipulate that:

he or his heirs will benefit from Waqf during his lifetime or for a defined period,
to spend [from Waqf revenues] on oneself or his heirs from Waqf, or
to settle his debts from there.

2/6/3. The Waqif may stipulate that the revenue of charitable Waqf will be disbursed [first] to the poor from his progeny, and then [the remaining] shall be disbursed for charitable causes.

2/6/4. A condition shall be deemed void if it:

contains what is prohibited in Shari'ah,
prejudices the Waqf,
adversely affects its asset, or
cannot be implemented.

In this case, the Waqf remains valid, while the condition shall be considered void. An example of such a condition is to stipulate the non-dismissal of the overseers under any circumstances.

Similarly, a condition shall be void if it obstructs the interest of Waqf or is prejudiced in benefiting from it. An example of such a condition is to stipulate that the disbursement always begins with [the Waqf] beneficiaries, even if the Waqf requires maintenance and repair.

2/6/5. If the Waqif stipulates that the Waqf beneficiary shall benefit from the Waqf in a specific way, this condition must be complied with.

It is permitted for the Waqf beneficiary to benefit [from the Waqf] personally or through a third party, even if it is through leasing it to this third party, unless the Waqif has stipulated that the benefit will be availed only personally by the Waqf beneficiary.

2/6/6. The Waqif may stipulate in the Waqf the [right to] amend the terms and conditions of the Waqf provided it does not prejudice the essence of Waqf.

3. Waqf Overseership (Nazārah)

3/1. The Overseer (Nāẓir): is a person who takes up the duty of Waqf's supervision and management, developing its resources, protecting its assets, disbursing its revenues in the avenues of Waqf disposal as per the stipulation of Waqif, and he is responsible for the management of the Waqf. Such a person may be an individual, a group of people, a committee, a ministry, or the like. The overseer may discharge the duty by himself or by appointing someone else. The overseer may also be referred to as *mutawalī*. However, this does not preclude addressing him with other titles as per prevalent norms and customs, such as *al-amīn* (trustee) and the like.

3/2. Appointing the Overseer:

3/2/1. Waqf overseership is a right established for the interest of Waqf.

3/2/2. The initial presumption is that the appointment of the overseer is the right of the Waqif in compliance with the prevailing laws and regulations of the [relevant] country. If the Waqif has not appointed an overseer, the relevant authorities should appoint one.

3/3. Restrictions to Overseership

3/3/1. Waqf overseership is [firstly] subject to the [relevant] Shari'ah rulings, and then the conditions stipulated by the Waqif provided they are not in conflict with Shari'ah rulings nor with the interest [of Waqf] as determined by the overseer, with the prior approval of the Waqif or the relevant authorities.

3/4. Independence of Waqfs:

3/4/1. Waqfs must be independent of the public treasury funds in terms of their administration, finance and accounting. Revenues of Waqfs must be disbursed to their specified avenues of disposal under the recognized financial and accounting principles, which do not contradict Shari'ah rulings. In all cases, the state's role in taking care of Waqfs and protecting them should be given due regard.

3/5. Eligibility criteria of the overseer: The eligibility criteria of the overseer, whether he is an individual or a member of a board of overseership, are moral probity (*'adālah*), sanity (*'aql*), discretion (*rushd*), and competence (*kifāyah*).

3/6. Duties of the Overseer: the following are among the duties of the overseer:

3/6/1. Implementation of Waqif's stipulated conditions.

3/6/2. Management, maintenance, development and investment of the Waqf.

3/6/3. Adopting the prevailing practices to protect Waqf assets, such as:

securing insurance for the Waqf asset if its nature requires so, provided the insurance is Shari'ah compliant and under the provisions mentioned in Para No. (4) [of the Standard], and

establishing a special purpose vehicle to protect Waqf [against risks which may arise] from the investment of its funds, incurring a debt against it or extending a debt on its behalf.

3/6/4. Representing Waqf, defending its rights, paying legal fees concerning the claims against Waqf and expenses of documentation of Waqf deeds.

3/6/5. To collect the Waqf revenues and disburse the same to avenues of Waqf disposal, and to settle the liabilities of Waqf and financial entitlements of relevant parties.

3/6/6. To comply with the conditions of substitution as stated in Item No. (10/1/5) in respect of exchange, substitution or replacement of Waqf.

3/6/7. To prepare the accounts of Waqf, separate from other accounts, under the prevailing accounting principles and bases.

3/7. Powers of the Overseer: the overseer has the following powers:

- 3/7/1. To lay down the framework for the management of Waqf and look after its affairs in a manner that would protect the interest of Waqf.
- 3/7/2. To lay down policies, procedures and manuals that secure the interest of the Waqf and to amend the same in line with the interest of the Waqf.
- 3/7/3. To consider the interest and assess the needs of avenues of Waqf disposal [such as the Waqf beneficiaries] without contravening the conditions of the Waqif.
- 3/7/4. To delegate some of his powers to someone if needed.
- 3/7/5. The overseer has a fiduciary capacity [while holding Waqf assets]; therefore, he shall not be held liable for other than misconduct, negligence, or breach of Waqif's terms and conditions.

Examples of negligence are non-compliance with the principles, bases and parameters of good governance, accounting, and management in line with the prevailing practices.

3/8. Prohibited Acts of the Overseer: the overseer is barred from the following acts:

- 3/8/1. Non-compliance with Shari'ah rulings and conditions stipulated by the Waqif.
- 3/8/2. Any act of misconduct or negligence with regard to Waqf.
- 3/8/3. Favouritism (*muḥābah*) or any act raising doubt (*shubha*) of favouritism, such as leasing the Waqf assets to himself, to his son, who is under his guardianship, or someone whose testimony is not acceptable in his favour (e.g., one of the spouses, ancestors, decedents who are not under his guardianship), in violation of good governance principles and practises.
- 3/8/4. Lending the Waqf [asset for no consideration] to a party other than the Waqf beneficiary, in which case the overseer shall be liable for the fair rent.
- 3/8/5. Pledging the Waqf asset or availing a debt against it without compliance with provisions of Para (5) and Para (6).

3/9. Remuneration of the Overseer:

- 3/9/1. The overseer is entitled to remuneration for [discharging] his duties unless he waives [right to claim] the same. For the avoidance of any dispute, it is preferable to stipulate the

remuneration of the overseer in the Waqf deed, and it shall be disbursed from the revenues of the Waqf.

- 3/9/2. If the Waqif specifies the remuneration of the overseer, it shall be disbursed accordingly. However, if the Waqif has not specified the remuneration, it shall be specified by the relevant authorities, if any. Otherwise, the overseer shall be entitled to receive his remuneration at the prevailing market rate.
- 3/9/3. The remuneration of the overseer may be a fixed lump sum or a percentage of the [Waqf] revenue.
- 3/9/4. The remuneration of the overseer may be reconsidered by the relevant authorities when the need arises.
- 3/9/5. In case the total revenue [of the Waqf] is less than the remuneration of the overseer, priority shall be given to the maintenance expenses and similar necessary expenditures to ensure the continuance of Waqf. The outstanding remuneration amount shall remain a liability against the Waqf.

3/10. Dismissal of the Overseer:

- 3/10/1. The overseer can dismiss himself, even if the Waqif has appointed him, and he should inform the Waqif about the same or the relevant authorities within a reasonable period.
- 3/10/2. The Waqif may dismiss the overseer, if:
- [the Waqif] has stipulated in the Waqf deed that he may dismiss [the overseer],
- the dismissal is in the interest of the Waqf, or
- the overseer has committed any misconduct or negligence.
- 3/10/3. If the overseer has committed an act of misconduct, negligence, or breach of any conditions stipulated in the Waqf deed, the judge or the relevant authority may dismiss the overseer, whether the overseer was appointed by the Waqif, another judge or by the relevant authority.

4. Maintenance of Waqf

- 4/1. Maintenance or repair of the Waqf [asset] is given priority over other expenditures [of Waqf]

disposal], considering the interest of the Waqf in prioritizing the maintenance tasks and their execution. Maintenance and reconstruction of damaged Waqf assets are not subject to [express] stipulation from the Waqif.

- 4/2. It is permitted to allocate an annual amount out of Waqf revenues for maintenance and repair subject to being in line with the technical and accounting bases and standards, even if the Waqif does not stipulate [such an allocation]. Investing the allocated amount should be in modes which can be liquidated easily. The investment revenues are added to the allocated amount, and the surplus shall be returned to the Waqf beneficiaries.
- 4/3. If the amounts [available] for maintenance or repair are insufficient, the overseer may allow the lessee of the Waqf asset to carry out maintenance and repair under commonly accepted technical norms. In this case, the lessee will have the priority to remain as a lessee of the Waqf [asset] till he recovers the debt of Waqf that is owed to him.

5. Indebting the Waqf

There are two situations where the Waqf can incur a debt:

5/1: **First Situation:** indebting [the Waqf] in the case of tangible Waqf assets:

In this situation, it is permitted to incur debt [against the Waqf] through Shari'ah compliant borrowing, purchase with deferred payment, or securing Shari'ah compliant financing, provided that the profit of the financing is at a fair rate, and [the debt] is incurred [to cover necessary costs] to preserve and sustain the Waqf asset in the absence of sufficient revenues to cover those costs to ensure the continuance of the Waqf benefits and to avoid the risk of disruption of the Waqf asset.

This includes, for example:

the necessary maintenance and refurbishment of Waqf [asset],
fulfilling the financial obligations of Waqf (e.g., fees and utility bills),
payment of dues owed to those in charge of Waqf and its employees.

However, it is not permitted to incur debt against the Waqf for other than essential purposes, [even] if it may serve an interest or result in an additional benefit for the Waqf unless it is stipulated by the Waqif or with the permission of the relevant authorities. [In all cases of incurring debt], the ability of Waqf revenues to bear the burden of financing and

its settlement must be taken into consideration.

5/2. **Second Situation:** Indebting in the case of investment Waqfs:

It is permitted to incur debt in this situation for developing Waqfs under [the prevailing] commercial practises, provided the interest of the Waqf and adequacy of their revenues to settle these obligations are taken into consideration.

6. Pledge of Waqf [Asset]

6/1. It is not permitted to pledge tangible Waqf assets even when availing a debt against the Waqf.

6/2. It is permitted to pledge the investment Waqfs whenever it is permitted to incur a debt against them as per the criteria mentioned in Item (5/2), and this includes raising a request to issue a bank guarantee or letter of credit backed by funds of investment Waqfs.

7. Lending Waqf's funds and Guaranteeing a Third-party through Waqf

It is not permitted to lend funds of Waqf, and Waqf cannot be the guarantor of third party's debts unless this act:

is stipulated by the Waqif,

is among the purposes of Waqf, or

serves the interest of Waqf with the permission of the relevant authority,

and this shall be documented with sufficient guarantees.

8. Investment of Waqf [Revenue]

8/1. If the Waqif stipulates investing part of Waqf revenue or the investment is made during the waiting period for the beneficiaries, it is permitted to invest revenue of Waqf where it does not affect its distribution to Waqf beneficiaries.

8/2. Upon investing revenue of Waqf or investment Waqfs, it is required to take all the means that will ensure growth and protection of the Waqf and

make use of the modern and Shari'ah compliant ways for investment following its requirements,

subject to observing the Shari'ah rulings of Waqf and conditions stipulated by the Waqifs.

- 8/3. Assistance from experts specializing in investment (e.g., Islamic financial institutions) should be sought out.
- 8/4. Ijarah constitutes one of the modes of investment for the Waqfs. Hence, the Ijarah of Waqf asset is valid. The initial presumption is that the term of the Ijarah of Waqf asset should not be long as per the customary consideration unless there is an evident interest in carrying out such an act. It is preferable in the long-term Ijarah that the rent is variable linked with a disciplined and a known benchmark, and the rent should be at least the fair rate. Refer to Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bitamleek.
- 8/5. It is not permitted to lease tangible Waqf assets or usufructs for less than the fair rent unless there is a preferred interest in doing so. If the Waqf assets were leased for less than the fair rent, with no preferred interest and for a flagrantly disadvantageous rent, then the overseer will be liable to pay the difference, and he should demand termination of the contract unless the lessee accepted the increase.
- 8/6. Waqf lands can be developed using Shari'ah compliant modes of investment, and some of them are:
 - 8/6/1. To apply the mode of Istisna on the Waqf land, that could be through Built-Operate-Transfer (BOT). Refer to Item (3/2/1) of Shari'ah Standard No. (11): Istisna and Parallel Istisna.
 - 8/6/2. To apply the mode of Diminishing Mursharaka ending with the transfer of ownership to the Waqf through crowdfunding from the Waqf and on the side of financing through participation in constructing the buildings. The land of Waqf will not be the subject of Musharaka, but the buildings' rental revenues will be shared until the Waqf takes ownership of all the buildings. Refer to Item (5/8) of Shari'ah Standard No. (12): Partnership (Musharaka) and Modern Companies.
 - 8/6/3. To apply Ijarah Musuwfa Bi Dima (Forward Ijarah) ending with the transfer of ownership to Waqf through the financier's leasing of specified buildings which will be constructed on the Waqf lands, and the lease will end via transfer of ownership of the buildings to the Waqf. Refer to Item (3/5): Ijarah and Ijarah Muntahia Bitamleek.
 - 8/6/4. Applying [the structure of] Sukuk Ijarah on the Waqf land. Refer to Shari'ah Standard

No. (17): Investment Sukuk.

8/7. While managing the Waqf, ensuring adherence to the best management practices and governance standards.

9. Avenues of Waqf Disposal (*maṣārif*)

9/1. The permissible avenues of Waqf disposal are not confined to a particular field and are variant based on time, location, and prevailing circumstances.

9/2. Waqf revenue should be specifically disbursed as laid down by the Waqif.

9/3. It is not permitted to change the avenue of Waqf disposal unless there is a necessity to do and that is done after approval from the relevant authorities.

9/4. What remains out of the Waqf revenue, after meeting the necessary needs of Waqf and its avenues of disposal (as specified by the Waqif), shall be either invested for the interest of Waqf as it is stated in Item (8), or disbursed in the charitable causes, if available, which should be similar to causes stipulated by the Waqif. Otherwise, such a surplus will be disbursed to general charitable causes.

9/5. What shall be owned by the Waqf would be under any of the following cases:

9/5/1. The **First Situation** is through substitution or selling some of the Waqf assets. In this case, the substituting asset shall have the rulings applicable to the substituted assets.

9/5/2. The **Second Situation**: is a result of Waqf revenue. In this case, rulings of Waqf revenue shall apply to it.

9/5/3. The **Third Situation**: it is a donation to the Waqf. Hence, if the donor has intended it to constitute a Waqf, then rulings of Waqf shall apply, as per the detail set out in Item (2/2/2). If the donor intended other than Waqf, e.g., gift or charity, then the donated asset will be owned by the Waqf and will not be recognized as a Waqf asset.

9/6. After [obtaining] permission from the relevant authority and prevalence of a preferred interest, the overseer may allocate part of Waqf revenue to be redeployed in the Waqf asset itself, unless and until the Waqif has stipulated otherwise. If the Waqf beneficiaries were specific parties, then their consent is required, provided such an act materializes an interest for the Waqf and elation of the Waqf beneficiaries.

9/7. A portion of Waqf revenues should be allocated for the future needs of Waqf, and the

remaining surplus will be subjected to what is mentioned in Item (9/4).

- 9/8. There is no objection to creating reserves out of the Waqf revenues that will be in the interest of the Waqf. If the cause of reserve creation ceases, then the reserve shall be disbursed in the avenues of Waqf disposal.
- 9/9. It is permitted to intermingle the incomes of various Waqfs if their disposal avenue is the same and the purpose is to distribute the revenues to the same avenue. Each Waqf remains independent from the other in terms of financial status, remuneration of the overseer, and so on. The same applies to permitting the commingling of incomes where Waqfs have unknown or discontinued disposal avenues.

9/10. Competition at the Waqf Disposal (*izdiḥām fī al-maṣarāf*)

- 9/10/1. In the case of competition of avenues of Waqf disposal, that amount shall be disbursed out of the revenue, which shall be for the preservation of the Waqf asset and then disbursing what is related to Waqf's obligations towards its administrative employees and relevant parties dealing with it. Anything other than that will be complied with as per Waqif's stipulation in the sequence of disposal, and each disposal shall have its portion as per the share.
- 9/10/2. If Waqf is a usufruct which is difficult to be enjoyed by [all] the Waqf beneficiaries at the same time, or the Waqf is for restricted persons who are at par in their entitlement in a way that not all of them can enjoy the usufruct, then the enjoyment of the usufruct Waqf asset can be derived via usufruct sharing (*muhaya'a*). If the usufruct sharing is not feasible, then it will be permitted for the Waqf beneficiaries to have a settlement (*ṣulḥ*) in a way that some of them enjoy the usufruct, and the remaining beneficiaries are compensated by the usufructuary party.
- 9/10/3. If the Waqf was for restricted persons and specific persons and there is a shortfall in the [Waqf] revenue, the shortfall applies to all the beneficiaries in proportion to their shares.
- 9/10/4. If payment to Waqf administrative employees is among the avenues of Waqf disposal (e.g., the overseer or the custodian) and a shortfall in the revenues arises, the following shall be considered:
- 9/10/4/1. If a portion of one of them is less than or not less than the fair remuneration, but he consented to it, or someone is found to carry the same job, then the respective remuneration will not be increased.

9/10/4/2. If a portion of one of them is less than the fair remuneration and no one is found to carry the job, then he shall be given what makes it up to the fair remuneration. If an increment is not possible, the overseer may consider the interest of the Waqf by downsizing the administrative employees up to a sufficient number.

10. Supervening Matters in Waqf

10/1. Substitution of Waqf

10/1/1. Substitution (*istibdāl*) of Waqf assets: transfer of Waqf assets from one place to another.

10/1/2. It is permitted to substitute Waqf assets in the following cases and by observing the conditions of substitution as set out in Item (10/1/5):

10/1/2/1. If it is permitted as per stipulation from the Waqif.

10/1/2/2. If utilities of the Waqf assets are suspended, or it is impossible to enjoy the usufruct, then it is permitted to substitute the Waqf asset with a better asset of the same kind.

10/1/2/3. If the unification of obsolete Waqfs (*awqāf mutaṭila*) will result in their revival, they shall be merged into one Waqf as per the share of each Waqf.

10/1/2/4. If the substitution will result in an evident Shari'ah benefit for the Waqf, which cannot be materialized without substitution, then it is permitted to substitute the Waqf asset with a better asset of the same kind.

10/1/2/5. If [the subject of] Waqf is among the investment Waqfs where it's a commercial custom to substitute the assets for investment purposes.

10/1/3. It is required to substitute Waqf assets if the subject [of Waqf] turned prohibited, e.g., someone created Waqf of permissible shares, which turned later on into prohibited shares. Refer to Item (3/4/8) of Shari'ah Standard No. (21): Commercial Papers (Shares and Bonds).

10/1/4. If the overseer or a partner in the Waqf of common share wanted a division of the Waqf that is indivisible, then the party which refrained will be compelled to sell, and the price of Waqf share will be deployed in a similar Waqf. Similarly, if the Waqf overseer or a partner in a common share Waqf demands the division, the party which refrains will be compelled to partition for divisible assets.

10/1/5. Conditions of Waqf Substitution

In all the above cases of substitution, all the following conditions are required to be fulfilled:

- 10/1/5/1. The substitution shall achieve what shall be in the interest of Waqf.
- 10/1/5/2. [Chances of] Suspicion and favouritism in the substitution are dismissed.
- 10/1/5/3. The substituting asset shall not be less in value or lower in revenue generation from the substituted asset based on the evaluation [provided by] fair experts.
- 10/1/5/4. To initiate the purchase of the substituting asset immediately except when the need requires to find out a suitable substituting asset.
- 10/1/5/5. Substitution of the tangible Waqf assets should be according to the approval from the relevant authority, if any, or based on a valid Shari'ah pronouncement.

10/2. Discontinuation of the Waqf beneficiary body: if the Waqf beneficiary body, whether one or more, is discontinued, then [the avenues of] Waqf [disposal] will be the body which comes next to [the discontinued beneficiary] if the Waqif has arranged the sequence of the beneficiary bodies; otherwise Waqf disposal will be disbursed in bodies of similar [nature]. If there were no similar bodies, then it would be disbursed in general charitable causes. See Item (10/1/2/3) [of the Standard].

11. End of Waqf

Temporary Waqf will end by the expiry of its term. Restricted Waqf will end by the occurrence of the restriction. Waqf will end with the total loss of the Waqf asset, whether Waqf is temporary, restricted, or perpetual.

12. The Date of Standard Issuance

This Standard is issued on 30th Jamādā al-Ākhirah 1440 H. corresponding to 7th March 2019.



Endorsement of the Standard

Shari'ah Board has endorsed Waqf Standard in its 57th Meeting held in the Kingdom of Bahrain during the 30th Jamādā al-Ākhirah – 2nd Rajab 1440 H. corresponding 7-9 March 2019.



Supervisory Instructions for Implementation of the Standard

1. This Standard was issued on 30th Jamādā al-Ākhirah corresponding to 7th March 2019; whatever was stated in the Standard deems to amend whatever contradicts with it as per the previously issued Shari'ah Standards.
2. The supervisory authorities that enforce Shari'ah Standards may grant the Institutions that are subject to their supervision a grace period not exceeding (1) one calendar year to implement this Standard for the existing transactions upon issuance of the Standard.
3. Whatever was implemented based on the issued Shari'ah Standards stands valid based on the previously endorsed version of the [prior Standards] till the end of its tenure based on the [respective] contract.



Annexures

Annexure (A): History of Issuing the Standard

Based on a proposal from Future Investment (for endowments and wills) to develop a new standard on Waqf to be issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIF). Hence, the Shari'ah Board resolved in its Meeting No. (47), held in Madinah between 10th Jamādā al-Ākhirah 1438 H (corresponding 9th March 2017) and 13th Jamādā al-Ākhirah 1438 H (corresponding 12th March 2017), to endorse the project and dedicated an advisory subcommittee that was given the job to prepare the draft of the standard which was decided to be prepared by the Future Investment.

Hence, the working committee of the project held ten extensive meetings in Riyadh and discussed a draft of the project and made amendments as found suitable.

The subcommittee of the project had four meetings in Riyadh, discussed a draft of the project, made amendments as found suitable, and submitted the draft to the advisory committee.

The project's advisory committee held two meetings in Riyadh to discuss a draft of the project and made amendments as found suitable and submitted to the Honorable members of the AAOIFI Shari'ah Board.

The Shari'ah Board discussed in its Meeting No. (50), held in the Kingdom of Bahrain from 27th Şafar 1439 H (corresponding 16th November 2017) to 29th Şafar 1439 H (corresponding 18th November 2017) at the headquarters of AAOIFI Secretariate in Bahrain, the draft of the project and made amendments as found suitable, and it resolved to present it in the hearing sessions.

Based on the directives of the Shari'ah Board to present the draft during the hearing session, the General Secretariate held five hearing sessions in the following locations: Riyadh on 23th Rabī' al-Awwal 1439H (corresponding 11th December 2017), Algeria on 26th Rabī' al-

Awwal 1439H (corresponding 14th December 2017), Sudan on 26th Rabīʿ al-Awwal 1439H (corresponding 14th December 2017), Morocco on 27th Rabīʿ al-Awwal 1439 H (corresponding 15th December 2017), and Kuwait on 2nd Rabīʿ al-Ākhir 1439 H (corresponding 20th December 2017). These sessions were attended by several scholars, jurists and experts representing central banks, Islamic financial institutions, accounting, auditing and legal firms and academicians from universities, besides people of interest in the field. The standard draft was discussed in detail, and all the observations and suggestions were noted.

The Shariʿah Board discussed in its Meeting No. (52), held in Madinah between 20th Jamādā al-Ākhirah 1439 H (corresponding 8th March 2018) and 22nd Jamādā al-Ākhirah 1439 H (corresponding 10th March 2018), the observations and suggestions made during the five hearing sessions, and it made the amendments as found suitable.

The Shariʿah Board discussed in its Meeting No. (53), held in Madinah between 10th Shaʿbān 1439 H (corresponding 26th April 2018) and 12th Shaʿbān 1439 H (corresponding 28th April 2018), the draft of the standard and it made amendments as found suitable.

The Shariʿah Board discussed in its Meeting No. (54), held in Oman between 26th Dhūl al-Ḥajj 1439 H (corresponding 6th September 2018) and 28th Dhūl al-Ḥajj 1439 H (corresponding 8th September 2018), the draft of the standard and it made amendments as found suitable.

The Shariʿah Board discussed in its Meeting No. (55), held in Madinah between 22nd Ṣafar 1440 H (corresponding to 1st November 2018) and 24th Ṣafar 1440 H (corresponding to 3rd November 2018), the draft of the standard and it made amendments as found suitable.

The Shariʿah Board discussed in its Meeting No. (56), held in the Kingdom of Bahrain between 20th Rabīʿ al-Ākhir 1440 H (corresponding 27th December 2018) and 22nd Rabīʿ al-Ākhir 1440 H (corresponding 29th December 2018), the draft of the project and it made amendments as found suitable.

The Shari'ah Board discussed in its Meeting No. (56), held in the Kingdom of Bahrain between 30th Jamādā al-Ākhira 1440 H (corresponding 7th March 2019) and 2nd Rajab 1440 H (corresponding 9th March 2019), the Shari'ah Basis of the standard and endorsed the standard in its present form.

The Committing for Drafting Shari'ah Standards reviewed in its meeting, held in Bosnia and Hersey on 21st Dhūl al-Ḥajj 1440 H (corresponding 22nd August 2019), the standard. After deliberation, discussion and affecting amendments related to drafting, it is decided to endorse the standard and issue it officially.



Annexure (B): Basis of Shari'ah Rulings

2. Definition, ruling, constituting elements and conditions of Waqf

2/3: The basis of the permissibility of Waqf of an asset as a form of a recommended act (*nudub*):

- what is commanded in Quran regarding committing charity and spending for righteousness causes,
- what is mentioned in Ḥadīth: (***When a man dies, his acts come to an end, but three, recurring charity, ...***)³, and this is considered to be Waqf.⁴
- Ḥadīth of ‘Umar ^(RA) when he was directed by the Prophet ^(PBUH) to create Waqf over his plot of land in Khaybar.⁵
- the practice of Prophet’s Companions⁶, like ‘Uthmān^(R.A.)⁷, Abū Ṭalḥa^(R.A.).⁸
- The scholarly consensus on Waqf’s permissibility.⁹

The basis of Waqf’s binding nature and non-permissibility to resile from it:

- The statement of the Prophet ^(PBUH): ***“If you wish, you can keep it as a Waqf to be used for charitable purposes”***. Hence, ‘Umar ^(RA) gave the land in charity on the condition that the land would neither be sold nor given as a gift nor passed as an inheritance.¹⁰ This indicated preventing the Waqif from disposing of the Waqf asset. It was indicative of its binding nature.
- Prohibition in taking back the charity, as the Prophet ^(PBUH), proscribed ‘Umar ^(RA) by saying: ***“... nor take back your alms which you have given, even if the seller were willing to sell it for one Dirham, for he who takes back his alms is like the one who swallows his vomit”***.¹¹

3 Ṣaḥīḥ Muslim (1631).

4 Asnā al-Maṭālib (2/457), Tuḥfat al-Muḥtāj (6/235), Najm al-Wahhāj (5/453).

5 Ṣaḥīḥ al-Bukhārī (2737).

6 Dhakhīrah (6/323).

7 Ṣaḥīḥ al-Bukhārī (2778).

8 Ṣaḥīḥ al-Bukhārī (2769), Ṣaḥīḥ Muslim (998).

9 Dhakhīrah (6/323).

10 Ṣaḥīḥ al-Bukhārī (2737), Ṣaḥīḥ Muslim (1632).

11 Ṣaḥīḥ al-Bukhārī (1490), Ṣaḥīḥ Muslim (1620).

2/4/1/1. The basis of Waqf's conclusion by whatever is indicative of it:

- In all the contracts, what needs to be taken into account are the intended objectives (*maqāṣid*) and meanings, not words and forms, and reference to custom (*dalālat al-ʿurf*) is to be taken into consideration.

The basis for not requiring acceptance from a non-specific Waqf beneficiary

- Acceptance cannot be envisaged from a [non-specific party]. And if the Waqf beneficiary is specific, then its acceptance can be envisaged even impliedly if the Waqf beneficiary does not respond.
- The ruling of Waqf's continuous and voidness of the right of the party returning is based on Ḥanafī school because the one who returned Waqf has no power to void Waqf, but he has the power to deprive himself of it.

2/4/1/3. The basis for permitting suspension of Waqf (*ta'liq*) or making it effective from a future date:

- The initial presumption is that [stipulating] conditions *per se* are valid and permissible.
- The analogy upon permitting suspended manumission and the future effect of the bequest, and the Shari'ah is overall eager for manumission, charity, and donation.
- The underlying cause of preventing suspension of the contracts or making them effective from a future date is *gharar* (excessive uncertainty), which is non-effective in donation contracts (e.g., Waqf). Refer to Shari'ah Standard No. (31): Contracts of Gharar in Financial Transactions.

2/4/1/5. The basis of permitting a Waqf limited by a time:

- Some of the Shari'ah texts referring to the Waqf are general in nature. Hence, these texts apply to perpetual as well as temporary Waqf.
- Waqf is a form of donation, and its [scope] is broadened and [carrying it is] encouraged.
- Allah's pleasure can be sought by creating Waqf for a body that [may be] discontinued since two benefits can be achieved out of this: firstly, it remains Waqf throughout the term [of Waqf], and, secondly, it benefits the Waqif because there might be a probability that he needs Waqf assets in the future. There is no denying that it results in encouragement to institute Waqf, and it fulfils the needs of upcoming charitable institutions. This is the view of the Mālikī school and reported narration of Abū Yūsuf among Ḥanafīs. Also, the Resolution of International Islamic Fiqh Academy No. 181 (7/19) was issued on these lines.

2/4/1/6. The basis for not stipulating to mention avenues of Waqf disposal:

- Waqf is a form of alienation (*izālat milk*) to seek Allah's pleasure; by the analogous reasoning, it will be valid as the case of absolute charity, absolute vows (*nadhar*) and sacrifices, and bequest.

2/4/2: The basis of establishing a juridical personality for Waqf and having a financial status independent from the person and liability of the overseer:

- Waqf is suitable to establish the rights for or against the overseer. Hence, if the overseer incurred a debt against the Waqf, so the debt will not be owed by the overseer, and if the beneficiary of Waqf delays in settling what is due to him, then he shall be Waqf's debtor and not of the overseer because the overseer cannot discharge the debtor from the debt.

3/4/3/3. The basis of non-conclusion of the Waqf by a person interdicted on the prodigal grounds or the suspension of Waqf, to be made by a person interdicted for a debt, until creditors' permission was secured:

- Prodigal (*safah*) is of supervening factors of the capacity,
- To repel the harm from the creditors.

2/4/3/5: The basis of the validity of Waqf made by non-Muslim:

- The analogy upon all the transactions, contracts and donations,
- Waqf is not merely an act to seek Allah's pleasure, and it is reported that Ḥakīm b. Ḥizām^{R.A.} told the Prophet^{PBUH}: "*Messenger of Allah, do you think if there is any reward (of the Lord with me on the Day of Resurrection) for the deeds of religious purification that I performed in the state of ignorance, such as charity, freeing an enslaved person, cementing of blood-relations? Upon this, he (the Prophet^{PBUH} said to him: **You have accepted Islam with all the previous virtues you had practised**".¹² Hence, the Prophet^{PBUH} called his charity a virtue and endorsed him when he called them charity. This indicates the validity of a donation made by a disbeliever, and the Waqf is one such donation.*

2/4/4/2. The basis of permitting self-Waqf:

- The analogy upon the charity given to self.
- What is reported in Ḥadīth that "a man said: Messenger of Allah, I have a dinar. He said: **Spend it on yourself.**"¹³, and a Ḥadīth stated by the Prophet (PBUH): "**Start with**

¹² Ṣaḥīḥ al-Bukhārī (1369), Ṣaḥīḥ Muslim (5646).

¹³ Sunan Abū Dāūd (1691), Sunan al-Nisā'ī (2535), Masnad Aḥmad (7419).

yourself and spend it on yourself".¹⁴

- The reason is that if it was permitted to stipulate part of the Waqf for himself, it would be permitted to make the entire Waqf exclusive during his lifetime, similar to the bequest.

2/4/4/3. The basis of the validity for the Waqf beneficiary to be a body that will be discontinued:

- In Waqf, perpetuity is not a condition.
- The result of a discontinued Waqf will be the same as a non-discontinuing Waqf.¹⁵

2/4/4/4: The basis of permitting the creation of Waqf for the benefit of those who are non-existing at the time of creating the Waqf:

- Narratives reported from the Companions of the Prophet^(PBUH) wherein Waqf was for the benefit of a progeny which has not yet been born.
- Waqf is a form of an ongoing charity (*ṣadaqa jāriyah*) which implies including those who will be in the future.

2/4/4/5. The basis of permitting to exclusively allocate some of the children by increasing their share of Waqf for a valid purpose:

- It was reported that al-Zubayr^(RA) made his residential properties held for the charity that could be used by his daughters, who were divorced, provided they did cause harm to the property or their stay would cause harm to them. If [the daughter] marries someone, she will not be entitled to anything.¹⁶

2/4/5/1 (a): the basis of permitting the Waqf asset to be something that leads to knowledge:

- Ignorance can be absolved in gift contracts, and Waqf is one of the gift contracts.

2/4/5/2. For the enforceability of the Waqf, the basis of stipulating that third-party right is not tied up with the Waqf:

- The analogy upon the sale contract and all the dispositions of transfer of the ownership, because encumbrance with third party right will prevent enforceability of disposition of such thing, e.g., a debt tied up with the estate, a pledge tied up with the subject of the sale.

¹⁴ Ṣaḥīḥ Muslim (997).

¹⁵ Lisān al-Ḥukkām, p. 295.

¹⁶ Sunan al-Bayhaqī (11930), Muṣannaf Ibn Abī Shayba (20933).

- If Waqf is tied up with a third-party right, it will cause harm for the one who has the right and [result] to annual his right.¹⁷

2/4/5/4 (a): The basis of enforceability of Waqf of the pledged asset upon the waiver from the pledgee of his right in the pledge:

- The pledgee has the right to prevent the pledgor from disposing of the pledged asset, and the pledgee's waiver forfeits such a right¹⁸.

2/4/7. The basis of the validity of movable Waqf (even if it is independent):

- The saying of the Prophet (PBUH): “*As far Khālīd, he kept his armour and weapons for Allah's Cause*”.¹⁹
- The Waqf asset can be sold, and its usufruct passed on under the *commodate* loan.
- The Waqf asset can be enjoyed by retaining the asset
- With such a form of Waqf, appropriation of the asset occurs, and the enjoyment of the usufruct is enabled.²⁰
- This is the opinion of the majority of the jurists, and the Resolution of International Islamic Fiqh Academy No. 181 (7/19) is in line with it.

2/4/8: The basis of the validity of Waqf over moral rights:

- These are worthy assets recognized by Shari'ah, and they can be taken into ownership, and their ownership can be transferred. Hence, Waqf of such assets is permitted.
- The Resolution of International Islamic Fiqh Academy No. 181 (7/19) was issued in this regard.
- Refer to Shari'ah Standard No. (42): Financial Rights and How They Are Exercised and Transferred.

2/4/9. The basis of permitting Waqf of those assets which were possessed through prohibited means:

- This forms a discharge of liability by renouncing it through creating a Waqf over it for general causes of charity.

¹⁷ Durar al-Ḥukkām (2/134-135), Al-Bayān fī Madhhab al-Shāfi'ī (6/82), Tuḥfat al-Ḥabīb (3/70).

¹⁸ Al-Sharḥ al-Kabīr 'alā al-Muqni' (12/411) and (12/424).

¹⁹ Ṣaḥīḥ al-Bukhārī (1468), Ṣaḥīḥ Muslim (983).

²⁰ Al-Mughnī (6/36), Al-Mustadrak 'alā Majmū' al-Fatāwā (4/89).

2/4/11. The basis of the validity of Waqf over a common share:

- Ḥadīth of the Prophet ^{PBUH}: “***O Banī Najjār! Suggest a price for your orchard***” They replied, “*By Allah! We will demand its price from none but Allah.*”²¹. Hence, Banū Najjār instituted Waqf over [an orchard] that they owned as a common share.
- ‘Umar ^{R.A.} has created Waqf over the land of Thamgh, palms of Al-Akwa‘ and the enslaved person who is there, hundred shares [of ‘Umar ^{R.A.}] in (the land of) Khaybar, the enslaved person who was there in addition to the hundred shares in the valley which were given by the Prophet ^(PBUH) to him.²²
- The Resolution of International Islamic Fiqh Academy No. 181 (7/19) was issued in the same line.

2/4/12: The basis of the validity of Waqf over usufructs:

- Usufructs are assets; they are subsumed under the generality of the evidence of Waqf.
- The Resolution of International Islamic Fiqh Academy No. 181 (7/19) was in line with that.

2/4/13/1: The basis of the validity of cash Waqf:

- the Shari’ah objective of Waqf is achieved in such a kind of Waqf, and money cannot be specific by identification; rather, its substitute will be in its place.
- One group of the earlier jurists of Islam adopted the view of the validity of cash Waqf, and this is the view of Mālikīs and was said by the later Ḥanafīs and later Ḥanbalīs.
- The Resolution of the International Islamic Academy of Fiqh No. 140 (6/15) was issued in this regard.
- As per *Sharḥ al-Kharashī ‘alā Mukhtaṣar Khalīl*, the view of the Mālikī school is to permit Waqf over a thing which cannot be known, particularly food and gold and silver coins. The utility of such things replaces tangible assets’ continuance.²³.

2/4/13/4. The basis that the change in the purchasing power will not affect the value of cash Waqf assets:

- The analogy upon such assets not getting affected by cash loans.

2/4/13/5. The basis of the permissibility of the hedging for protecting the capital of cash Waqf

21 Ṣaḥīḥ al-Bukhārī (428), Ṣaḥīḥ Muslim (524).

22 Sunan Abū Dāūd (2879).

23 *Sharḥ al-Kharashī ‘alā Mukhtaṣar Khalīl* (7/80).

and hedging from the risk of foreign currency fluctuation:

- It takes Waqf's objective of permanence Waqf's Institution into consideration,
- One of the Shari'ah objectives is to the preservation of wealth (*ḥifẓ al-māl*).
- Since the oversee holds the Waqf in possession of trust (*yadd amāna*), it requires that the disposition of Waqf should achieve the interest of the Waqf following the customs.

2/4/14/1. The basis of permitting Waqf of companies or shares thereof or stocks of joint-stock companies:

- Permissibility of Waqf common share.

2/4/15/1. The basis of permitting Waqf of investment Sukuk and units of investment funds:

- Permitting any Waqf of a common share, cash and limited term Waqf.
- It's a form of donation which is broadened and encouraged to be carried out.
- The resolution of International Islamic Fiqh Academy No. 181 (7/19) was in line with that.

2/5/1. The basis of the permissibility of authentication of Waqf:

- Mother of Sa'd bin 'Ubāda^{R.A.} died in his absence. He said, "*O Allah's Messenger (PBUH)! My mother died in my absence; will it benefit her if I give ṣadaqa on her behalf?*" The Prophet (PBUH) said, "**Yes**," Sa'd said, "*I make you a witness that I gave my orchard called Al Makhraf in charity on her behalf.*"²⁴.
- What was narrated in the Waqf created by 'Umar^{R.A.} that was written by Mu'ayyib and was witnessed by Abdullah b. al-Arqam^(R.A.).²⁵
- It comes under the generality of evidence for the permissibility of authentication of the debts and all the transactions.

2/6/1. The basis of permitting stipulation in Waqf and the requirement of acting under the Shari'ah compliant conditions stipulated by the Waqif:

- The generality of Ḥadīth says: (***and the Muslims will be held to their conditions, except a condition that prohibited a permitted act, or permitted a prohibited act***)²⁶.

24 Ṣaḥīḥ al-Bukhārī (2756).

25 Sunan Abū Dāūd (2789).

26 Sunan al-Tirmidhī (1352).

2/6/2. The basis of permitting stipulation of allowing the Waqif or his heirs to make use of Waqf for Waqif's lifetime or to be used for a known period:

- Permissibility of self-Waqf
- The Prophet (PBUH) endorsed the Waqif to consume the produce of Waqf²⁷, and it is not permitted to consume it without stipulation; it was an indication of the validity of such a condition²⁸. If it is valid for the Waqif to stipulate [disposal of] the revenue to other people for a known period, so his stipulation [of revenue disposal] for himself or his heirs [will be] foremost [valid].

2/6/4. The basis of the voidness of a condition containing a prohibited matter (*ḥarām*) or a condition that prejudices Waqf or impacts its asset:

- What was stated in Ḥadīth: (***and the Muslims will be held to their conditions, except the condition that prohibited a permitted act, or permitted a prohibited act***).²⁹
- The initial presumption is that stipulating the conditions is permissible unless it is against the intention of Shari'ah or the intention of the contract, and no obedience of human beings is allowed by disobeying Allah.³⁰

3. Waqf Overseership

3/2/1. The basis for appointing an overseer for Waqf:

- What was mentioned in Ḥadīth: "***there would be no harm if its guardian of the Waqf***".³¹
- The interest of Waqf requires someone who will manage Waqf by investing in it, collecting its resources, and disbursing them among the beneficiaries.

3/3/1. The basis of requiring the overseer to abide by the conditions stipulated by the Waqif:

- Waqf is a donation, and the donation can be subject to restriction by stipulation.

3/5. The basis of requiring moral probity (*ʿadālah*), sanity (*ʿaql*), discretion (*rushd*), and capacity in the overseer:

- Overseership is a form of guardianship over a third party. Hence, these qualities were

²⁷ Muṣannaf Ibn Abū Shayba (20939).

²⁸ Al-Hidāya fī Sharḥ Bidāyat al-Mubtadī (3/19).

²⁹ Sunan al-Tirmidhī (1352).

³⁰ Majmūʿ al-Fatāwā (31/49).

³¹ Ṣaḥīḥ al-Bukhārī (2737).

considered, as with the custodian and the protector.³².

3/7/4: The basis that the overseer holds the Waqf in possession of trust:

- The analogy upon the administrative employees of charity (*ṣadaqa*), the custodian, the agent, and the overseer who are supposed to carry what is required from them following the duties of overseership and to refrain from what is not permitted as prohibitions of overseership³³.

3/8/3: The basis of preventing the overseer from leasing the Waqf asset to himself or his child:

- As human nature, there is a fear of committing favouritism for himself or his child and not choosing what will be more favourable for the Waqf³⁴.

3/8/4. The basis for preventing to lend of Waqf assets to a third party other than the Waqf beneficiary:

- It amounts to the loss of what is required to be invested.

3/9/1. The basis of the overseer's entitlement to remuneration:

- The saying of the Prophet ^{PBUH}: "***My heir will not distribute dīnār or dirham, but whatever I leave, excluding the provision for my wives and my servants, should be charity.***"³⁵.
- What was stated in 'Umar ^{R.A.}'s Waqf deed: "*its administrator could eat in a reasonable and just manner, and he also could feed his friends without intending to be wealthy by its means.*"³⁶.

3/9/4. The basis of relooking into the remuneration of the overseer by the relevant authorities, if the need arises:

- The overseer's duty is subjected to evaluation, and it differs from time to time.

32 See: Asnā al-Maṭālib (2/471), Mughnī al-Muḥtāj (3/553), Al-ʿAzīz Sharḥ al-Wajīz (6/290), Al-Tajrīd li-Nafʿ al-ʿAbīd (3/214).

33 Al-Qawāʿid by Ibn Rajab, p. 64.

34 Al-Baḥr al-Rāʾiq, (5/254).

35 Ṣaḥīḥ al-Bukhārī (2776), Ṣaḥīḥ Muslim (1760).

36 Ṣaḥīḥ al-Bukhārī (2737), Ṣaḥīḥ Muslim (1632).

4. Maintenance of Waqf:

4/1. The basis of giving preference to maintenance, and it's like, over avenues of Waqf disposal:

- The intention of Waqf is the permanence and continuity of its revenue, and it cannot be permanent and continue to function without [carrying] maintenance of its assets.

4/2. The basis of permitting allocating an annual amount out of Waqf revenues for maintenance and repair:

- This constitutes part of the recognized interests of Waqf and means to protect it³⁷, and [the prevailing] custom is applied in its likes.

5. Indebting Waqf

5/1. In the case of tangible Waqf assets, the basis of permitting to incur debts as a liability upon the Waqf for maintenance, construction of the Waqf assets or paying the financial obligation or salaries of Waqf employees:

- These constitute the interests of Waqf, and their suspension will result in the suspension of the Waqf.³⁸

5/2. The basis of permitting to incur debts as a liability upon the Waqf to grow investment Waqf:

- Customs, the intention of the Waqif and nature of function [of such Waqfs].

6. Pledging Waqf

6/1. The basis of preventing pledge of Waqf assets:

- Pledge contrary to the provision of Waqf in terms of appropriation. For pledge is securing a debt by a tangible asset in which the sale of the tangible asset is permitted to discharge the debt, wherein in Waqf, the sale of the [Waqf] asset is not permitted³⁹.

6/2. The basis for permitting the issuance of bank guarantees against Waqf funds in those cases when a pledge of Waqf assets is allowed:

- It is the same as pledging these funds.

37 Asnā al-Maṭālib (2/475), Ḥāshiyta Qalyūbi wa 'Umayrah (3/109), Mughnī al-Muḥtāj (3/551).

38 Al-'Uqūd al-Dariyyah fī Tanqīḥ al-Fatāwā al-Ḥāmidīyah (1/187-188).

39 Fatḥ al-Qadīr by Ibn al-Humām (6/220), Al-Dhakhīrah (6/324) (6/325), Al-Ḥāwī al-Kabīr (3/332), (7-511-513), Baḥār al-Madhhab (7/208-210), Al-Wasīṭ fī al-Madhhab (3/462), Al-Majmū' Sharḥ al-Muhadhdhab (9/245), Kifāyat al-Akhyār (1/254).

7. Lending Waqf Funds and Guaranteeing a Third-party by Waqf Funds

The basis of preventing lending of Waqf funds:

- The analogy of preventing to lend funds of minors,
- This may result in a loss of Waqf funds⁴⁰ unless lending were more secure for the funds, then lending would be permitted⁴¹, as the case of lending orphans funds would result in their preservation, and it was the practice of Prophet (PBUH)'s Companions (R.A.), as Abdullah bin 'Umar (RA) used to have funds for orphans, so he used to lend them for protecting them from loss⁴². Similar practice was reported by al-Zahrī⁴³.

8. Investment of Waqf

8/1: the basis of permitting investment of Waqf proceeds in those cases where distribution to the beneficiaries is not affected:

- It is carried out in the interest of the Waqf and results in preserving and growing the funds.
- The Resolution of International Islamic Fiqh Academy No. 140 (15/6) was issued on the same line.

8/2. The basis of the requirement to adopt means for developing and preserving the Waqf:

- The role of the overseer is to preserve and build the Waqf and strive to develop it⁴⁴. This could be achieved by adopting modern, safe means to develop and preserve the Waqf.

8/5. In exception when there is a preferred interest, the basis of preventing Ijarah of tangible Waqf assets [for a rent] less than the fair rent:

- Repelling favouritism (*dar' al-muḥāba*), preserving Waqf, and preventing wasting its revenues.
- The maxim says: *inna taṣarruf al-nāzīr alā al-waqf manuwt bi al-maṣlaḥa*, the overseer's disposition of Waqf is contingent upon the interest thereto.⁴⁵

40 Asnā al-Maṭālib (2/472), Al-Ghurar al-Bahiyyah (3/376).

41 Asnā al-Maṭālib (2/214).

42 Sunan al-Bayhaqī.

43 Muṣannaf 'Abd al-Razzāq.

44 Al-Tajrīd li-Naf' al-'Abīd (3/214), Al-Inṣāf (7/67), Muntahā al-Iradāt (3/363).

45 Al-Akhbār al-'Ilmiyyah min al-Ikhtiyārāt al-Fiqhiyyah p. 256, Majmū' al-Fatāwa (31/67), al-Furū' (7/360).

9. Avenues of Waqf Expenditure

9/1. The basis of diversification of avenues of Waqf disposal:

- The analogy upon the avenues of disbursement in the charity.

9/2. The basis of requiring disbursing Waqf revenues in things specified by the Waqif:

- Specifying a particular body by the Waqif implies that the Waqif overlooked any other body⁴⁶.
- This stipulation by the Waqif is like all his conditions which should be complied with.
- The analogy upon Wakala and the bequest and what Allah has said about the bequest: ***"Then, whoever changes it after he has heard it, its sin will only be on those who change it."***⁴⁷.

9/4: The basis of disposing of the surplus of investment revenue or disbursing it in charitable causes is similar to the condition laid down by the Waqif:

- Taking into consideration the interest of Waqf and achieving the purpose of Waqf.
- By the analogy upon the absolute and discontinued Waqf.
- Not disbursing the Waqf will expose it to loss.⁴⁸
- The practice of 'Umar^(RA) in distributing Kiswa of Ka'ba among the pilgrims.
- The practice of 'Alī^(RA) in distributing surplus Zakah among pre-emancipation enslaved people (*mukātab*).⁴⁹

9/6. The basis of allocating part of Waqf revenues to be part of the Waqf asset:

- An interest of Waqf that is recognized and considered.
- Taking into consideration the objectives of Waqifs.

The basis of requiring permission of Waqf beneficiaries if they were specific and exclusive:

- The beneficiaries are entitled to the Waqf revenue. Hence the revenues cannot be disposed of without the permission of the beneficiaries.

⁴⁶ Kashshāf al-Qinā' (4/267).

⁴⁷ Quran, 2:181.

⁴⁸ Al-Majmū' Sharḥ al-Muhadhdhab (15/361), Asnā al-Maṭālib (2/475), Tuḥfat al-Muḥtāj (6/284),

Nihāyat al-Muḥtāj (5/396), Mughnī al-Muḥtāj (3/551), Futūḥāt al-Wahhāb (3/591).

⁴⁹ Majmū' al-Fatāwā (31/18).

9/7. The basis for encouraging to allocate of part of excess Waqf revenue:

- Taking into consideration the interest of Waqf.

9/8. The basis of permitting the creation of reserves out of Waqf revenues as per the interest of Waqf:

- Assist in adapting means to preserve, build, maintain, repair, and settle the debt of the Waqf.
- The objective of the Waqf and the Waqif is the sustainability of the revenue.

9/9. The basis of commingling sources of Waqf if their avenue of expenditure was the same:

- All of them are for the cause of Allah, but considering the allocation is obligatory if not considering it will result in wasting the Waqf specified for a particular purpose, based on the maxim: *dafʿ al-mafsada muqaddam ala jalab al-maslahā* (repulsion of harm has precedence over acquisition of interest).

9/10/1. The basis of giving preference to what shall be in the interest of preserving the Waqf asset in the case of competing avenues of Waqf disposal:

- It shall preserve the Waqf asset⁵⁰
- By analogy, the estate in giving preference to the rights of the deceased (e.g., debts of the deceased, funerary expenses) over [the inheritance portions of] the heirs.

9/10/3. The basis of the shortfall impacting the exclusive and specific Waqf beneficiaries upon the shortage of revenues:

- By analogy upon [the distribution of portions] of inheritance [lesser] than the obligatory portions [entitled] for the heirs in case [applying] the *ʿawal* (reduction) [to adjust all the portions to be allocated].
- By analogy upon the creditors of a bankrupt.

10. Supervening Matters in Waqf

10/1/3. The basis of requiring substitution of the Waqf asset if the underlying subject of Waqf turned into a prohibited one:

- One of the conditions of Waqf asset is that it should be permissible (*mubah*) [Shari'ah compliant],
- The statement of the Prophet ^{PBUH}: “*Allah is Good, and He, therefore, accepts only*

⁵⁰ Al-Baḥār al-Rāʾiq (5/230-232), Asnā al-Maṭālib (2/475), Tuḥfat al-Muḥtāj (6/284).

that which is good."⁵¹,

- By analogy, the person who repents from [earning] prohibited earnings.
- By analogy, the horse is subjected to Waqf and decorated with prohibited items, and its ornaments are sold, and proceeds are spent on the horse.⁵².

10/1/5/2. The basis of requiring to negate suspicion or favouritism in the substitution:

- The overseer ought to take care of his dispositions to combine overseership with what shall result in the benefit and elation of the Waqf and not combine overseership with suspicion.⁵³
- One of the conditions of substitution is that it should be in the interest of Waqf, whereas favouritism causes harm against the Waqf, and the maxim is: The maxim says: *inna taṣarruf al-nāẓir alā al-waqf manuwt̄ bi al-maṣlahā*, (overseer's disposition of Waqf is contingent upon the interest thereto).⁵⁴

10/1/5/5. The basis for requiring permission from relevant authorities for substitute tangible Waqf assets:

- It will be for the protection of Waqf and more support in meeting the interest of Waqf.
- To establish the public guardianship of the state on the Waqfs.



⁵¹ Ṣaḥīḥ Muslim (1015).

⁵² Al-Mustadrak ‘alā Majmū‘ al-Fatāwā (4/91).

⁵³ Baḥr al-Rā’iq (5/254).

⁵⁴ Al-Wasīṭ fī al-Madḥhab (4/256), Al-Bayān fī Madḥhab al-Shāfi‘ī (8/75), Al-Majmū‘ Sharḥ al-Madḥhab (15/344), Tuḥfat al-Muḥtāj wa Ḥawāshihā (9/133), Nihāyat al-Muḥtāj wa Ḥawāshihā (7/447), Futūḥāt al-Waḥḥāb (5/142), Al-Mughnī (6/8), Al-Mubdi‘ (5/166).

Annexure (C): Definitions

Revenue of Waqf:

It's the mesne profit generated from the Waqf asset, e.g., revenue, rent of real estate, and income.

Waqf Deed:

A deed or a document wherein the Waqif writes his contract of Waqf, and its conditions, specify the Waqf asset, Waqf beneficiaries and the overseer. It has various names and forms based on different times and places of use; it would be in the form of a deed by the court known as Waqf Deed (*ṣakk al-waqfiyah*), simple paper, electronic file etc. Some Islamic jurists even referred to it as *Kitāb al-Waqf* (the book of Waqf)

Waqf Funds:

It has various meanings in the usage of the institutions and bodies related to Waqfs, and one of them is Waqf of investment funds as per the known technical-cum-financial meaning in the field of investment, which is the closest when Waqf Funds are referred to.

Bonus Shares:

These are shares issued out of the company's reserves and result in increasing the company's capital. These shares are distributed among the shareholders against the percentage of shares they are holding.

Investment Funds:

It is a form of joint investment that aims to provide a chance for investment through collective participation in the business's profits and is run against specified fees or sharing of profits.

Spatial Usufructuary Division

Division of usufructs of jointly held tangible assets will be availed on a sequential and ... basis, e.g., one of the partners to enjoy the benefits for a year and the other for the coming year.

Temporal Usufructuary Division

Temporal division of usufructs of jointly held tangible assets, e.g., an agreement to allow one of the partners to enjoy the benefits of harvesting half the plot and the remaining half to be used by the other partner, or an agreement that one of the partners will stay at the upper floor of the residential property and the other will stay in the lower one.

Special Purchase

It's a company with special nature, has specified liability, is established for a specific purpose and comes to an end by the end of this purpose. Usually, it is used for legal and accounting purposes.

Financial Trust:

An amount paid by a person known as (the originator of the trust) to another party known as (the trustee of the trust) to hold and invest the amount for a third party known as (the beneficiary of the trust). It could be temporary or perpetual.

Irşād:

It's a form of allocation by the ruler from the holdings of the Islamic exchequer (*bayt al-māl*) for the public interest, and it is not consisted of Waqf as per some Islamic jurists.

