

FINANCING THE DEVELOPMENT of AWQAF PROPERTY

Monzer Kahf

FINANCING THE DEVELOPMENT of AWQAF PROPERTY

Introduction

Islamic *Awqaf* properties make up a considerable proportion of the societal wealth in several Muslim countries. The idea of *Waqf* itself is also a principle that entails generous applications in the direction of developing the non-profit, non-governmental sector and increasing the quantity of welfare services that aim at improving the socio-economic welfare of a society. This provides a strong justification for a detailed theoretical study of the potentiality of the application of *Awqaf* and the development of their properties in Muslim countries and communities. It, in fact, encourages studying the potentiality of the idea even in all non-Muslim economies.

In other words, the development of *Awqaf* properties is an issue that is worth studying both from the point of view of the existing *Awqaf* and from the point of view of encouraging the establishment of new *Awqaf*. This paper is an attempt to discover new techniques for financing the development of *Awqaf* properties, especially, the investment *Awqaf* by resorting to the private sector's sources in a manner that is compatible with the Islamic *Shari'ah*. For this purpose, the paper is divided into four chapters.

In chapter one, we will study the salient feature that characterize the Islamic investment *Awqaf* and the importance of their development. Hence, chapter I will define the *Waqf* from a *Fiqhi* angle as well as from an economic angle. It will present the developmental content of the idea of *Waqf* whether it is of the philanthropic type or family type as well as whether it is a direct *Waqf* or an investment one. We will also study the significance of *Waqf* development with regard to social and economic growth. Thus, we will discuss the

cumulative nature of Islamic *Waqf* and its effect on other social welfare activities as it represents a major backbone of the third sector, the sector that is non governmental, non private and non profit. In this chapter, we will also discuss the necessary conditions and prerequisites for the development of investment *Awqaf* properties and for the encouragement of establishing new *Awqaf*.

Chapter two will be devoted to studying the traditional modes of financing *Awqaf* properties, especially, those mentioned by *Fuqaha* and other social scientists in the Islamic cultural heritage. Hence, five modes of financing will be studied: (1) increasing the principal of the *Waqf* by adding newly established *Awqaf*; (2) exchange the *Waqf* property by another with higher usufruct; (3) borrowing on the *Waqf* with repayment from the *Waqf* net revenues; (4) *Al Hukr* (long lease with a large advance payment); and (5) lease with dual payment. And we will analyze the condition of success and failure of each of these modes from a theoretical point of view as well as from the applicability point of view.

In chapter three, we will discuss new ideas and innovations in certain modes of financing, amenable for utilization in financing the development of *Awqaf* properties in the contemporary Muslim societies, on institutional basis, i.e., financing that can be made available from Islamic banks and other institutional financing sources. These modes include *Murabahah* to the purchase orderer, *Istisna'* with another parallel *Istisna'*, leasing and *Mudharabah* by the *Nazer* with funds financed from a financial institution. These are forms of financing in which the manager of *Waqf* (*Nazer*) retains all managerial authority over the whole *Waqf* project after development and the financing institution remains dormant with regard to management. We will also study two more modes of financing in which the management is transferred to the financier/ developer. These two modes are: output sharing and *Al Hukr*. And we will also

discuss a seventh mode in which the management can be in the hands of either of *Waqf Nazer* or the financier/developer.

Chapter four will discuss modes of financing of *Awqaf* properties by resorting to public soliciting of funds. We will propose five financial instruments, suitable for *Waqf* financing; and study their main features and mode of operation. These five instruments are output shares, partnership shares, lease bonds, *Hukr* shares and *Muqaradah* bonds.

Finally, we will put our conclusions and summary in a few paragraphs at the end of the paper.

Chapter One

THE SALIENT FEATURES OF ISLAMIC AWQAF AND THEIR SOCIETAL ROLE

In this chapter, we will discuss the definition of *Waqf* from the point of view of *Fiqh* and economics, and we will indicate that its economic definition points to its developmental investment content. We will also see that this cumulative nature remains with *Waqf* regardless of the objective for which it is assigned. We will also discuss a few necessary prerequisites for the revivification of the *Waqf* role in socio-economic development.

I. Definition of *Waqf* and Its Developmental Content

From *Shari'ah* point of view, *Waqf* may be defined as holding a *Maal* (an asset) and preventing its consumption for the purpose of repeatedly extracting its usufruct for the benefit of an objective representing righteousness/philanthropy. Hence, *Waqf* is a continuously usufruct-giving asset as long as its principal is preserved. Preservation of principal may result from its own nature as in land or from arrangements and conditions prescribed by the *Waqf* founder.

This definition covers perpetual *Waqf* and the *Waqf* that remains as long as its asset lasts, i.e., for the beneficial life of the assets. This is something that is agreed upon among four Schools of *Fiqh*. The definition also covers the kind of *Waqf* that is made temporary by the will and conditions of its founder which is discussed and approved in the Maliki School only.

Also, the above mentioned definition covers several new forms of *Waqf* that were not discussed in the classical literature, such as the

Waqf of financial rights and *Waqf* of usufruct, since both financial rights, such as publication right of a manuscript, and usufruct, such as usufruct of a rented asset, are covered by the definition of the word *Maal* (asset) according to the majority of *Fuqaha* and as expressly mentioned in the contemporary collective *Fataawa*, especially, those of the OIC *Fiqh* Academy.¹ Furthermore, this definition emphasizes the idea of abstention from consumption in order to keep the asset available for repeated extraction of usufruct, and did not make a reference to ownership, so that we avoid the well known difference of opinion among *Fuqaha* with regard to who owns a *Waqf* property. It should be noted that the idea of repeated extraction of usufruct does not impose restriction on beneficiaries, so that this definition covers the family *Waqf* and the possibility of utilizing the *Waqf* by the *Waqf* founder.

The above definition of *Waqf* also allows inclusion of all kinds of *Maal* (asset) under *Waqf*, so that land and construction can be made *Waqf* for religious purposes, such as a mosque for prayers; for philanthropic purposes, such as a hospital, an orphanage or a school. Land and construction may also be made *Waqf* for agricultural utilization or for any other productive utilization in industry and urban areas provided that the net revenues are exclusively devoted for nourishing philanthropy/righteousness causes, such as spending on light and heat of a mosque, on feeding the poor and needy or on the current expenses of a hospital, a school or an orphanage.

It goes without saying that philanthropic services are numerous and there are always new ones as societies grow and develop. Shortly after the death of the Prophet (pbuh) during the period of 'Umar, the Companions invented a kind of philanthropy that is directed toward

¹ The Review of the OIC Islamic *Fiqh* Academy, Vol.5, 1409H, and al Khaled, Vol.1, chapter on Definition of *Awqaf*.

family members and offsprings, and they started establishing *Awqaf*, that included land, buildings and palm trees, for the objective of distributing their net revenues to the family and offsprings of the founder. This *Waqf* has the same characteristic as other philanthropic *Waqf* in a sense that the assets themselves are preserved from being disposed of, and the usufructs are distributed in a repeated manner. This comes, in a way as, one of the applications of a concept that is well rooted in *Shari'ah*: that providing for sustenance and welfare of one's ownself, family members, neighbors and friends, is an expression of righteousness and an act of philanthropy that deserves reward from Allah. This concept is expressed by many sayings of the Prophet (pbuh) as it is well known in the references on *Hadith*.

The Economic Definition of *Waqf*

If one attempts to reformulate the definition of *Waqf* for expressing its economic content, the *Waqf* could be said as: diverting funds (and other resources) from consumption and investing them in productive assets that provide either usufruct or revenues for future consumption by individuals or groups of individuals.

Waqf is then an operation that combines the act of saving with the act of investment together. It consists of taking certain resources off consumption and simultaneously putting them in the form of productive assets that increase the accumulation of capital in the economy for the purpose of increasing future output of services and incomes. Services provided by *Waqf* may take the form of a patient bed space in a hospital building, a prayer space in a mosque or a student space in a school building. By the same token, the *Waqf* may produce output to be sold to the public in order to generate net income for the beneficiaries of the *Waqf*.

The establishment of an Islamic *Waqf* is very close to the establishment of a business corporation whose life span is unlimited. It is an action that involves investment for the future and accumulation of productive wealth that benefits future generations.² Hence, the Islamic *Waqf* is a developmental process by virtue of its definition as it involves the accumulation of productive wealth through present investment that favors future generations since the *Waqf* gives its beneficiaries future fruits free of any charge. The *Waqf* implies a sacrifice of a present consumption opportunity for the benevolent purpose for providing income and services for the future generations.

From the point of view of the nature of the *Waqf* output or fruits, *Waqf* assets may be classified in two categories: Assets that produce consumable services to be utilized by the beneficiaries, such as schools, hospitals and orphanages. The purpose of this kind of *Waqf* may be a general philanthropy, such as educational schools or a private philanthropy, such as a guest house for the descendants of the founder. In both cases, this kind of *Waqf* provides a service to the beneficiaries and we will call it a direct *Waqf*.

The second category of *Waqf* assets is that which is intended for investment. It produces marketable goods and services to be sold in order to generate a net income which will be distributed to the beneficiaries. Here again the beneficiary may be a general charity, such as a mosque or a scientific research center, or a private philanthropy consisting of the descendants of the founder. This kind of *Waqf* shall be called investment *Waqf*.

² Let us remember that this understanding of *Waqf* makes common stocks, units in mutual and investment funds and investment deposits in Islamic banks, some of the most relevant contemporary forms of assets that can be made into *Waqf* as they best represent its economic content. These assets are the contemporary counterpart of the kinds of assets made into *Waqf* by the Companions, such as Ruma well by

It should be noted that the Islamic definition of *Waqf* makes its assets cumulative, in application to the principle of **perpetuity in Waqf**. It means that a *Waqf* asset may not be sold or disposed of in any form, i.e., a *Waqf* asset remains in the *Waqf* domain perpetually and any new *Waqf* will be added to that domain, implying that *Awqaf* assets are only liable to increase. They are not permitted to decline since it is illegal to consume the assets of *Waqf* or to leave them idle by any action of neglect or transgression. Hence, the *Waqf* is not only an investment, but it is a cumulative and ever increasing investment. This is supported by the historical development in the Muslim lands that ended up making a considerable proportion of cultivable lands and metropolitan real estates in the domain of *Waqf* to the extent that *Awqaf* properties were estimated at over one third of the agricultural land in several countries including Turkey, Morocco, Egypt and Syria. This is in addition to the Urban *Awqaf* that represent a sizable portion of total Urban real estates.

Finally, one may mention that the economic and demographic developments in most Muslim countries and communities during the Twentieth Century led to a tremendous increase in the value of *Awqaf* assets because of several reasons whose study falls outside the limit of this paper. This increase created a tremendous opportunity for the development of these assets in a way, non-precedented in our economic history.

II. The Importance of *Waqf* for Socioeconomic Development

The very idea of *Waqf* itself consists of creating and developing a third sector distinct from the profit-motivated private sector and the authority-based public sector, and charging this third sector with the

Othman, the orchard of Khaibar by 'Umar and the other *Awqaf* of the Companions that consisted of arable land, trees and usable buildings.

responsibility of performing a group of tasks whose nature make them better achieved if they are made outside the profit motives and the practice of authority. This kind of tasks falls in the arena of righteousness, goodness, kindness, mercy and benevolence. The idea of *Waqf* indicates that the Islamic system recognizes the importance of the non-profit sector in social and economic development and provides the necessary legal and institutional protection for this sector to function away from the self-interest motives and the power of the government. It also provides this sector with resources that make it a major player in the social and economic life of Muslims and charges it with functions that are desired to be put outside the traditional private and public sectors of the economy.

Historically, the Islamic society assigned education, health, social welfare and environmental welfare to this third sector. Furthermore, the third sector provided defense services and public utilities in many instances.

Consequently, we have seen the Muslim society depending essentially on *Awqaf* for the provision of education at all levels, cultural services, such as libraries and lecturing, etc., scientific research in all material and religious sciences and health care including the provision of physicians' services, hospital services and medicines. For instance, it is reported that the Island of Sicily, under the Islamic rule had 300 elementary schools. All of them are built by *Awqaf*, and all of them are provided with *Waqf* revenues for payment of teachers and school supplies.³ The number of high schools and universities in each of the major Islamic cities, such as Al Quds, Damascus, Baghdad, Cairo and Nisapur was in the tens and hundreds. There were universities specialized in different areas of

³ Abdul Malik Ahmed Sayed, "Role of *Awqaf* in Islamic History", in Hassan Abdullah Al Amin ed., *Idarat Wa Tathmir Mumtalakat Al Awqaf*, IRTI, Jeddah, 1989, page 231.

sciences, such as medicine, chemistry and Islamic studies. These included universities like Al Qurawiyin in Fez, Al Azhar in Cairo, Al Nizamiyah in Al Mustansiriya in Baghdad.⁴ The *Awqaf* estates used to provide these universities with building in addition to teaching materials, scientific books, salaries for teachers and stipends for students. Some universities even have students dormitories for both single and married students.⁵

Scientific libraries were also built by *Awqaf* and supplied with tens and hundreds of thousands of volumes. Payment for libraries' employees, supervisors and script writers were provided from the huge revenues of orchards and rentable buildings made *Awqaf* for the benefit of these libraries.⁶ The importance of libraries and books reached a level that forced many *Fuqaha* who usually do not consider *Waqf* applicable to mobile assets to make an exception with regard to copies of the Qur'an and scientific books, so there is no disagreement among *Fuqaha* on the permissibility of making these two kinds of mobile assets into *Waqf*.⁷ In order to facilitate lending books to scholars and researchers, they ruled that it is not permissible to ask book borrowers to provide a collateral even if the *Waqf* founder made such a provision in the *Waqf* document. It is thus ruled that such a condition by the founder is invalid.⁸ The Islamic history also witnessed specialized *Awqaf* for scientific research in medicine, pharmacology and other sciences.⁹

⁴ Ibid, pp. 238-240.

⁵ Ibid.

⁶ It is said that fanatics burnt more than one million volumes upon the fall of Granada in 1492, and the crusaders destroyed about three million books in the libraries of Tripoli, Lebanon, when they occupied the city in the Sixth Century of Hijra, ibid, p. 279.

⁷ Zarqa, p. 48.

⁸ Zarqa, p. 122.

⁹ Abdul Malik, pp.288-290.

The provision of *Awqaf* for education is probably responsible for the usually common independence mentality we notice in scholars that kept them away from Rulers. The thing which turned Muslim scholars into popular leaders and outspoken representatives of the society in any confrontation with the authority. It also contributed to reducing the socioeconomic differences by offering education to those who can take it on merit basis rather than on ability to pay for educational services. Hence, the economically poor classes had always equal educational opportunities that allow them to climb faster on the socioeconomic ladder.¹⁰

Health services were also provided by *Awqaf* throughout the Muslim lands. Hospitals and their equipment, salaries to physicians and their subordinates, schools of medicines and pharmacy and stipends to students were all provided on regular basis by the *Awqaf*. Special *Awqaf* were established for specialized medical schools for research in chemistry and for payment for food and medicine for hospital patients.¹¹ There was even some *Awqaf* for patients entertainment including people, especially hired for hinting to patients that their illness is mild and curable in a short time.¹²

Obviously, the *Awqaf* also provided mosque for worshippers in addition to monasteries for those who devote themselves to worship, graveyards and funeral facilities.

The area of socio welfare, environment protection and animal care was an area in which the *Awqaf* had tremendous contributions. The first *Waqf* on which the *Fuqaha* established most of their rulings is the *Waqf* of 'Umar in Khaibar and it was a *Waqf* for social

¹⁰ Abdul Malik, pp.249-258.

¹¹ Abdul Malik, pp.280-287.

¹² Yusuf Al Qaradawi, *Qitab Al Wa Al Hayat*, Muassasat Al Risalah, Beirut, Lebanon.

assistance to the poor and needy and wayfarers. Supporting the poor has always been a priority among the *Awqaf* objective to the extent that it has become known in *Shari'ah* that if a founder did not mention an objective for her/his *Waqf*, supporting the poor and needy must be considered the de facto objective. In the support of poor and needy, the history of *Awqaf* went into specific areas. We find, for instance, several *Awqaf* for orphans, for widows, for helping poor men and woman with the cost and requirements of marriage, special *Awqaf* for home furnishing for the poor and needy, for nursing mothers, for battered wives and for people traveling on the roads.¹³

Additionally, the *Awqaf* provided for helping in liberating slaves, in caring for young children and in providing drinking water for villages. It also provided for animal and bird care, for repairing river banks and for establishment of frontiers fortification.¹⁴

III. Necessary Prerequisites for the Revivification of Islamic *Awqaf*

In appreciation of the important role, the institution of *Awqaf* could play in social and economic development, some Muslim countries gave special attention to the development of the *Awqaf* properties and the revivification of their functions and ability to provide those important services they used to carry out in the past. Hence, the 1990 act of *Awqaf* in Algeria stipulated that all the *Awqaf* properties that were diverted to other usages must be returned to *Awqaf* and devoted to promoting the charitable objectives assigned for them by the founder. The existing assets of *Awqaf* in most Muslim countries represent a huge amount of social wealth that can be developed to produce a lot of social services, especially, with the

¹³ Ibid and Abdul Malik.

¹⁴ Monzer Kahf, in the Encyclopedia of Modern Islamic World, Oxford Press, 1995, New York, Vol.4.

increase in their capital value as a result of the economic and demographic changes.

However, there are several prerequisites that must be fulfilled if the Islamic *Awqaf* are going to assume an important role in the development of our economies. The most important prerequisites can be put forward in the following points:

- 1) There is a need for a new legal framework that provides clear definition of *Awqaf* and that organizes this institution, defines its functions and objectives whether general philanthropic or private philanthropic and regulates its social and economic role. The law should define the responsibilities and authorities of *Awqaf* managers and their relationships with the government on the one hand and private and public beneficiaries of *Awqaf* on the other hand. We also need a legal framework that provides sufficient legal protection for the *Awqaf* properties.
- 2) There is also a need for a law that provides for the repossession of all *Awqaf* properties that were diverted to other public and/or private persons and to review the old records of *Awqaf* in order to re-establish the right of *Awqaf* on many lost real estates.
- 3) There is also a need for a complete revision of the management of *Awqaf*, especially, the investment kind of *Waqf*, in order to fulfill two objectives: (1) to increase the efficiency and productivity of the *Awqaf* properties and (2) to minimize fraudulent practices and corruption by the *Awqaf* managers (*Nazers*). There is also a need to provide a new style of management that suits the *Awqaf*

institution, keeping in mind that their properties are not owned by those who manage them, and to provide sufficient checks and balances on the *Awqaf* managers without allowing the *Awqaf* management to fall in the lap of the government.

- 4) We need a clear definition of the role of *Awqaf* in social and economic development and a recognition of the relevance and importance of family *Awqaf* and their role in economic growth; and we need to reinstate provisions that protect and organize the family *Awqaf* in particular and promote the idea of establishing new *Awqaf* in general.
- 5) There is also a need for providing technical, managerial and financing support to the *Awqaf* management to help it increase the productivity of *Awqaf* properties, and we need to redefine the roles of the ministries of *Awqaf* by making them agents of support and catalysts of help in the development of *Awqaf* rather than governmental managers of *Awqaf* properties.
- 6) There is also a need to revise our classical *Fiqh* on *Awqaf* in order to accommodate many new forms of potential *Waqf* that do not have any precedents in the classical *Fiqh*, especially, in the area of *Waqf* of usufruct and *Waqf* of non-physical properties (abstract properties) and we need also an expansion of the concept of temporary *Waqf*.
- 7) There is also a need for a master plan in each Muslim country to re-deploy the *Awqaf* properties in such a way that maximizes their benefits and services.

Chapter two

TRADITIONAL MODES OF FINANCING AWQAF PROPERTIES

Sailing through the classical works on *Fiqh* of *Awqaf*, one may easily notice that what was occupying the minds of *Fuqaha* is the issue of exploitation of *Awqaf* properties, i.e., putting them to proper use as they were left and/or prescribed by the founder. It is commonly expected that a founder would leave a *Awqaf* property in a productive state, capable of producing a flow of services or net revenues for which it was established. The idea of increasing the *Awqaf* principal and enlarging its productive capacity was a remote idea, especially, that it does not usually fall within the framework put forward by the *Waqf* founder.

Consequently, we find discussions of financing needs of *Waqf* in case of its decay, demolition or idleness and we find a discussion of substituting it for a new property in case its location ceases to be suitable for producing the intended services. This is emphasized by the *Fiqhi* discussion of the ‘end’ of a *Waqf* without thinking of any effort to renew or replace it, especially, in case of *Waqf* of mobile things, such as horses, livestock and books.

In other words, the idea of putting aside certain proportion of the *Waqf* revenues for reconstructing a mobile *Waqf* or for expanding the capital of a fixed asset *Waqf* was not discussed in the classical *Fiqh*.¹⁵

¹⁵ For instance, one finds, in the *Fiqhi* discussions on *Waqf*, cases of ending the *Waqf* of carpets, books, horses and slaves by the mere end of the usable life of the *Waqf* property without any discussion of a procedure for replacement.

The classical books of *Fiqh* discuss five modes of financing the reconstruction of a *Waqf* property : borrowing, *Hukr* (long lease with a large advance lump sum), *Al Ijaratain* (lease with dual payment), adding a new *Waqf* and substitution (exchange). Among these five modes, one only adding a new *Waqf*, creates an increment in the *Waqf* capital and its productive capacity. The other four modes are essentially meant for operational financing or for bringing an idled *Waqf* property back into productive use. We will, therefore, start with the mode of adding a new *Waqf* to an old one and move on to discuss the other four modes:

1) Financing *Waqf* by Creating a New *Waqf* to be Added to the Old One

The earliest example of creating a new *Waqf* to supplement an old one may be the drinking-water *Waqf* made by 'Uthman during the time of Prophet (pbuh). Motivated by the Prophet's call for buying the well of Ruma and making it a *Waqf* for drinking, 'Uthman was able to buy one half of that well as the former owner did not accept to sell it all together. In a short while, the former owner accepted an offer from 'Uthman to buy the other half, which he did and added to the previous *Waqf* of one half of the well. This kind of *Waqf* is very much practiced, especially, in expanding mosques. It is known, for instance, that the mosque of the Prophet (pbuh) in Madinah was enlarged during the time of 'Umar, 'Uthman and later in the Umayad and Abbassit periods. Each enlargement represents adding a new *Waqf* to the old one. Other examples of adding new *Waqf* is seen in providing and older *Waqf* with new facilities, such as water, electricity and heating systems.

The Islamic history witnessed this kind of addition of new *Waqf* to older ones in mosques, schools, hospitals, orphanages, monasteries, universities, grave yards, etc. Furthermore, we find

examples in the *Fiqh* books of adding a *Waqf* of construction and trees made by the renter of a *Waqf* land in which case they consider the validity of this *Waqf* because it is stabilized by being erected or planted on land that was already a *Waqf* property.¹⁶ The *Waqf* of new books and new copies of the Qur'an as added to older ones in libraries and mosques as a common practice all over the Muslim land. We find in the *Fiqhi* books a discussion of possible differences in beneficiaries between the old *Waqf* and the new one, which is added to it, and the *Fuqaha* say that the revenues should be distributed in accordance with the proportion of the revenues of each *Waqf*.¹⁷

2) Borrowing for Financing Operational Needs of *Waqf*

It is common to find a discussion on the borrowing by the *Nazer* of a *Waqf* in order to pay for its operational cost and the cost of bringing an idle *Waqf* back in function. The usual condition for such borrowing is a prior permission by the supervising Judge. We find, for instance, talk about borrowing for buying seeds and fertilizers and for hiring necessary labor. We also find mentioning of loans made for reconstruction of a *Waqf* property that was decayed or burnt down.

A hasty reader may interpret the borrowing with prior permission for reconstruction of a *Waqf* property as borrowing for development in a sense of increasing the capital of the *Waqf*, since the word reconstruction ('imarah) came general or unqualified, but if one closely follows the *Fiqhi* texts on borrowing and links them with the texts on the distribution of the net revenues of the *Waqf*, especially, when there are excess revenues that exceed the spending needs of the objectives of the *Waqf*, one would recognize that what is meant by reconstruction of a *Waqf* is a rebuilding *Waqf* that was made idle

¹⁶ Zarqa, page 48.

¹⁷ Ibid.

because of a catastrophe or because of a natural decay, rather than reconstruction in a sense of growth and creating incremental capital for the *Waqt*.

3) Substituting a *Waqt*

The mode of substitution simply means an exchange of a *Waqt* property for another that provides at least similar services/income without any change in the provisions laid by the founder. Hence, in principle, substitution does not imply any increment in the *Waqt* property under normal market conditions. Consequently, substitution is not a mode of financing. Yet, because of the unique characteristics of *Waqt*, especially, that a *Waqt* cannot be sold, its substitution may sometimes end up increasing the flow of services it provides. The classical example of this is a school building in a sparsely populated area that can be exchanged with a school building in a densely populated area if the new owner of the former *Waqt* property happens to have an alternate usage for it.

Furthermore, partial substitution has been emphasized as a means of financing, especially, in case of urban lands whereby the price of part of the property may be sufficient to construct a building on the remaining land and therefore increase its revenues.

Economically speaking, substitution whether complete or partial, does not increase the capital value of the *Waqt* property although it may increase its revenues because of the possibility of idleness of the property before substitution. Furthermore, substitution is made possible only because of discovering new uses of the *Waqt* property that were not available before, especially, in the case of metropolitan land that can be used for high rises construction as compared to older short buildings. An interesting example of substitution caused by the presence of new uses of the *Waqt* property

is a *Waqf* hand-written manuscripts that have acquired an architectural value and that can be substituted for printed copies that may have equal or better benefit for potential readers. Hence, creating a surplus that can be used for adding more books for reading, i.e., increasing the services to the *Waqf* beneficiaries by substituting a manuscript for printed books.

The mode of substitution essentially allows for providing liquidity that is needed for the operational activities of a *Waqf*. It also increases the services of the *Waqf* in certain cases, especially, when a new use of the *Waqf* property exists because of technical and/or demographic changes.

4) The Mode of *Hukr* (long lease with large advance lump sum)

This mode is invented by *Fuqaha* in order to go around the prohibition of selling a *Waqf*. Instead of selling the *Waqf* property the *Nazer* can sell a right for a long lease at a nominal periodical rent. This right is sold for a large lump sum paid in advance. The purchaser of the right of long lease can then develop the property using own resources and at own risks as long as she/he pays the periodical rent to the *Nazer*. The term *Hukr* means monopoly or exclusivity. This exclusivity right may be for a long period that usually goes beyond the normal natural life span of human beings or it may be permanent. It is one of the examples of the financial rights that can be marketed, i.e., sold, inherited, given as a gift, bequest in a last will, etc.

From the point of view of the *Waqf* Management (*Nazer*), it virtually obtains the value of the *Waqf* property that is given in *Hukr* in the form of a lump sum, which must be used for the *Waqf* objectives, such as reconstructing a decayed mosque by selling an exclusivity right on an agricultural land that was a *Waqf* for spending

on the mosque. Since the sale of the exclusivity right is not considered a sale of the *Waqf* itself, the management is not required to put the price obtained in a similar property as in the case of substitution. This approach of mobilizing liquid funds needed for the *Waqf* preserves the right of the *Waqf* beneficiary for getting a periodical rent which usually made very nominal for the period of exclusivity.

The *Hukr* mode of financing may be abused if the price of exclusivity is used for operational expenses of the beneficiary cause, as the *Hukr* substantially reduces future revenues of the *Waqf*. However, if the lump sum price of exclusivity is used for buying a new productive asset as a *Waqf*, the flow of revenues remains as it used to be or it may improve. In other words, the mode itself is neutral while the application may sometimes give negative effects from the point of view of beneficiaries/objectives. This mode is known in certain countries under the form of **leasehold** in which a property is given for 99 years or so against payment of a lump sum price, and subsequent sales of the property will be effected for the remaining period. This is compared with **freehold** in which there is no time limit on the ownership of the property, and its sale is done free of any such limit.

If the *Hukr* mode is utilized under normal market conditions and if the price of the exclusivity is utilized in a way that preserves the spirit of perpetuity in *Waqf*, this mode should be considered neutral and applicable for securing liquidity that is necessary for the construction of a *Waqf* property. Hence, the criteria of acceptability of this mode do not depend on the amount of periodical rent, how small it may be, but on the fairness of the practice and the final utilization of the lump sum generated by selling of the exclusivity right.¹⁸

5) The Mode of *Ijaratain* (Lease with Dual Payment)

¹⁸ See, Anas Zarqa, page 194.

This is exercised by creating a long lease in which the rent consists of two parts, one big lump sum advanced for the reconstruction of the *Waqt* property and the second part is a small periodical payment paid, say, annually for the period of the lease. This mode is very similar to the *Hukr* except that in Ijaratain the advanced price must be used for the reconstruction of the leased property itself. It is obvious that in this contract the two parties observed that the *Waqt* property is rented after reconstruction in accordance with the specification determined in the contract.

Some writers consider this mode of financing even worse than the mode of *Hukr* because it contains more sacrifices on the part of *Waqt* property than in *Hukr*,¹⁹ especially, since this mode requires that the immediate cash payment should be used for the reconstruction while in the mode of *Hukr* it may be used for any other purpose outside the rented *Waqt* property, while the periodical rental payment is usually small in both cases.

This kind of argument may be valid if we assume that the periodical rental is equal in both modes. Obviously, under any fair market conditions the periodical payment cannot be equal in both modes because of the cost of the added condition of using the cash amount for the reconstruction of the property. Therefore, there should be no reason to consider either of them worse or better from the point of view of fairness as long as they are practical under fair market conditions.

Lastly, a special case of this mode is called *Al Mursad* in which the advanced lump sum is not legally considered part of the rent but an advance payment by the lessee to be credited toward the agreed upon periodical rent applicable after reconstruction.

¹⁹ Anas Zarqa, op.sit., page 195.

Chapter Three

NEW INSTITUTIONAL MODES OF FINANCING THE DEVELOPMENT OF AWQAF

It is natural that new modes of financing investments in *Awqaf* must be derived from the same *Fiqh* on *Waqt* and on financing. This is made easier by the tremendous growth of *Fiqh* on financial transactions that came about over the last two decades along with the rise of Islamic banking, keeping in mind that a *Waqt* property must not be disposed of except in the form of exchange as discussed before. Hence, contemporary modes of financing must be based on the same three well known principles of Islamic financing : the principle of sharing, the principle of sale and the principle of leasing.

In this chapter, we will discuss the modes of financing that are suitable for institutional provision of resources, and we will sort them on the basis of which party is given the right to whole project. There are four modes of financing that allow the *Waqt Nazer* to keep an exclusive right over the management. These are *Murabahah*, *Istisna'*, *Ijarah* and *Mudharabah*. To these four modes, we will add the mode of ownership sharing (*Sharikat Al Milk*) which allows the two contractors to share management or to assign it to either party; and we will also have two more modes that give the management of the project to the financier, namely, the mode of output sharing and the mode of *Hukr* or long lease.

1) *Murabahah* Mode of Financing

The *Murabahah* financing has become well known in the literature. Its application on *Awqaf* requires the *Waqt Nazer* to take the functions of an entrepreneur who manages the investment process and buys necessary equipment and materials through a *Murabahah*

contract to the purchase orderer, while the provision of financing comes from an Islamic bank. The management of *Waqf* becomes a debtor to the banking institution for the cost of the material purchased plus the financing markup which represents the price of the second sale contract in the *Murabahah* to the purchase orderer. This debt will be paid from the returns of the expanded *Awqaf* property.

2) *Istisna'* Mode

The mode of *Istisna'* allows the management of *Waqf* to order the required expansion in the *Waqf* property (e.g. construction) from the financing institution by means of a *Istisna'* contract. The bank then enters into another contract with a contractor to provide the same to the order of the bank that will be delivered on the bank's behalf to the *Awqaf* management. According to the OIC Islamic *Fiqh* Academy Resolution, *Istisna'* is a *Shari'ah* compatible contract in which payment may be deferred by mutual agreement.

Istisna' mode of financing also creates a debt on the *Waqf* management that should be settled from the returns of the expanded *Waqf* property and the financier will not have a right to interfere in the management of the same.

3) *Ijarah* Mode

This mode of financing is a special application of *Ijarah* in which the *Waqf Nazer* keeps full control over the management of the project. Its modus operandi goes as follows:

The *Nazer* issues a permit, that is valid for a given number of years only, to the institutional financier allowing it to erect a building on the *Waqf* land. Then the *Nazer* leases the building for the same

period during which it is owned by the financier, and uses it for the benefit of the *Waqf* objective, being a hospital or a school or an investment property such as rental offices or apartments. The *Nazer* runs the management and pays the periodical rent to the financier. The amount of rent is determined so that it compensates the financier for the principal and desired return. At the end of the permit period, the financier would have obtained its principal and desired profit and since the permit lapses, the financier would have no accessibility to the *Waqf* property.

This kind of *Ijarah* is obviously a special case of *Ijarah* that ends with the lessee owning the construction by virtue of being the owner of the land on which it is built. The permit may also be permanent or as long as the project lasts, e.g., for the economic life of the project, the *Nazer* uses part of the income of the project if it is an investment *Waqf* for payment of the rent to the financier.

4) *Mudharabah* by the *Nazer* with the Financier

The mode of *Mudharabah* can be used by the *Nazer* of the *Waqf* assuming the role of entrepreneur (*Mudhareb*) and receiving liquid funds from the financing institution to construct a building on the *Waqf* property or to drill an oil well if it were an oil producing *Waqf* land. The management will exclusively be in the hands of the *Nazer* and the rate of profit sharing will be set in a way that compensates the *Waqf* for the effort of its management as well as the use of its land.

5) Ownership Sharing Mode

Ownership mode of financing may be utilized when two parties happen to independently and individually own two things related to each other such as if each one of them owns one half of a lot of agricultural land without having a formal partnership agreement. The

ownership sharing is not a partnership mode since in partnership both parties commonly own the property of the partnership in accordance with their shares in its principal, while in ownership sharing we are faced with two distinct properties each one is owned completely and individually by an independent party, and their relationship is determined in *Fiqh* by what is called *Sharikat Al Milk* in contrast to *Sharikat Al Aqd* that applies to partnership.

The operational format of ownership sharing is as follows:

The *Nazer* permits the financing institution to construct a building on the *Waqf* land (or to dig an oil well and install extraction equipment). Each party owns independently and separately its own property and they agree on dividing the output between themselves.

The *Fiqh* of *Sharikat Al Milk* implies that each party is responsible for managing its own property. Hence, in this mode of financing the *Nazer* and the financing institution may agree on sharing the management or assigning it to either party. Obviously, in determining the ratio of distributing the output, the managing party may be assigned extra percentage points as a compensation for its effort.

In this mode of financing, the management compensation may be set of a given amount of Dollars or as a proportion of the output, and the owners may also agree on dividing gross or net income between themselves in proportion to their ownership. Furthermore, since the financing institution usually desires to get out of its ownership at a certain future point of time, the parties may agree on selling the financier's property to the *Waqf* and utilizing part of the *Waqf* share of the output as payments for its price.

6) Output Sharing Mode

Output sharing mode is a contract that allows one party to provide fixed asset, such as land to the other and divide the gross return (output) between the two parties on the basis of an agreed upon ratio. This mode of financing is based on *Muzara'* in which the landlord provides the land (and may be machinery) to the farmer. In output sharing, land and management cannot be provided by the same party.

In output sharing mode of finance, the *Waqf* provides the land and other fixed assets if they are owned by the *Waqf*, and the financing institution provides operational expenses and management. The financing institution may also provide part or all of the machinery as long as the land is provided by the non-managing party in accordance with the conditions of *Muzara'a*. This mode is thus suitable for financing institutions that desire to take charge of the projects management, while the *Waqf Nazer* takes a position of a dormant partner.²⁰ This makes it one of the two modes in which the management will exclusively be in the hands of the financing institution.

7) Long Lease and *Hukr* Modes

The final mode of institutional financing is one in which the management is also kept in the hands of the financing institution that leases the *Waqf* property for a long period of time. The financier takes charge of construction and management and pays periodical rent to the *Waqf Nazer*.

²⁰ Monzer Kahf, *Mofhum Al Tamwil Fi Al Islam* and Rafic Al Misri, *Al Mudharabah Bi Al Usul Al Thabitah*.

In the *Hukr* sub-mode, a provision would be added in the contract according to which the financing institution gives a cash lump sum payment in addition to periodical rents. However, under fair market conditions, the total present value of the return to the *Waqf* in *Hukr* and in long lease should be approximately same.

DONOTCOPY

Chapter Four

NEW MODES OF FINANCING AWQAF DEVELOPMENT BY RESORTING TO PUBLIC ISSUING

It is apparent that when the management of *Awqaf* resorts to public issuing it must have already taken the choice of keeping the management of the project in the hands of the *Nazer* since it is the *Waqf* itself that takes charge of issuing shares and bonds to the public. Preservation of management in the hand of the *Waaf Nazer* can be done by selecting the financing mode whose nature is to give the *Nazer* of the *Waqf* such a right or by soliciting an agency agreement, within the framework of issuing prospectus itself, that assigns the *Nazer* as the Manager of the project.

It may be necessary at this stage to emphasize that according to *Shari'ah* the basis for negotiation of any securities is their representation of physical assets and financial rights only.²¹ In other words, negotiability of securities relies on the securities' representation of physical assets and financial rights. If a security represents debts and/or money, it cannot be sold except for a price that is equal to its nominal face value. Moreover, a security that represents only money needs further conditions for the validity of its sale from *Shari'ah* point of view. Hence, in addition to pricing at the

²¹ Interestingly in *Shari'ah* physical assets and financial rights are also the basis for earning a return out of a property that is an owner of physical assets and/or financial rights (such as a publication right) is entitled to all returns resulting from them. The immediate implication of this principle is that owning a debt and/or cash money does not entitle a person to any return because both of them, by nature, do not grow.

This principle must be distinct from the *Fiqhi* rule that reads *Al Ghumn Bi Al Ghurm* “return is by risk”. This rule does not mean that the reason of the return is the risk. It only means that return is always associated with risk, and the risk here is one of the characteristic of owning a physical asset, because owning a physical asset is risky as it is exposed to natural and market caused risks.

face value, the actual exchange of such a security and its counterpart must be done immediately at the time of contract.

We have seen in the last chapter that *Murabahah* and *Istisna'* both are based on indebtedness. Hence, a security that represents a debt resulting from *Murabahah* and/or *Istisna'* cannot be sold except at its face value. This rules out these two modes of financing from being suitable for public offering since no secondary market can be set for their negotiation. In other words, if we want to solicit financing resources from the public by offering them negotiable securities, we must avoid all these forms of financing that end up creating debts on the fund user. This leaves us with the modes based on the principle of sharing and modes based on the principle of leasing.

It should be noted that in leasing the physical assets leased remain in the ownership of the lessor, while the lease contract as a sale of usufruct creates a debt in the amount of agreed upon rent in exchange for another debt that is making the usufruct available to the lessee. This debt of rent is the financing return to the owner of a leased asset. This is a special kind of debt related to future usufruct, and in *Fiqh* it is permissible that a debt related to future usufructs may be transferred at the time of transferring the ownership of the leased asset.²² In other words, the *Ijarah* contract is transferable along with the transfer of ownership of the leased asset. This makes lease contract a suitable vehicle for a mode of financing that is amenable to securitization, especially, that a lease contract is characterized by having a prefixed return.

In this chapter, we will suggest five new types of securities that can be issued to the public for financing the development of *Awqaf*

²² For the *Fiqhi* argument of this point, one may refer to Monzer Kahf, *Sanadat Al Ijarah*.

properties while offering the owners a market determined return. These five securities are : output shares, partnership stocks, *Ijarah* bonds, *Hukr* shares and *Muqaradah* bonds. These securities can be issued by the *Waqt* manager who receives the face value of the security along with a contract appointing the *Waqt Nazer* as an agent to execute, exploit and manage the desired project on behalf of its owners (stocks, bonds and shares holders). The relationship between owner of these securities and the *Waqt* management begin as an agency relationship but once the project is built, it turns into a *Mudharabah*, *Musharakah* or *Ijarah* relationship as we will discuss in the respective characteristics of each of these securities.

1) Output Shares

Output shares are negotiable securities that represent equal shares in the principal of a productive project established on a *Waqt* land by using the cash proceeds obtained from the sale of these shares.

Output shares entitle their owners to a share of the gross output of the project. For instance, if the project is a hospital building established on a *Waqt* land and rented to, say, the Ministry of Health or a group of physicians, a share entitles its owner to certain percentage of the gross contracted rental while the *Waqt*, as represented by its *Nazer*, takes responsibility of all managerial activities including maintenance and insurance. Hence, the share of the *Waqt* of the total gross return consists, in fact, of three parts: (1) a return for the land provided to the project by the *Waqt*, (2) a compensation for the management, and (3) a compensation for the current expenses and maintenance of the project.

The *Shari'ah* foundation of these output shares is derived from *Mudharabah* with productive fixed asset which is based on *Muzara'a*

in which the managing party takes responsibility of current expenses and maintenance, while the other party provides the productive fixed asset.

Waqf management may desire to own the building at a certain future point of time. This can be fulfilled by buying the output shares from the market. The prospectus may also stipulate certain form of gradual amortization of the shares at the market price at the time of amortization or at the accounting book price that can be determined according to commonly known accounting rules without falling into the pitfall of binding mutual promises which is objected to by OIC Fiqh Academy.

A special case of output shares may also be formulated so that their owners turn them into a *Waqf* after exploiting them for a certain period of time during which they collect a return that is rewarding enough to cover both the principal and a desired profit. If turning a share into a *Waqf* with an exception of its benefits for the desired period, is effected in the prospectus, i.e., at the time of its issuance, an output share would then represent a usufruct owned by the shareholder over the excepted period. As such, these securities would be based on usufruct and remain negotiable.

The procedures of issuing output shares may be explained in the following points:

- 1) A permit from the *Waqf Nazer* of shareholders to construct specific construction on the *Waqf* land.
- 2) An appeal from the *Waqf Nazer* as an entrepreneur/*Mudharib* to the public to buy output shares at a given price and conditions as follows:

- a) The existence of a permit from the *Waqf* to the share holders to erect the specific construction with all necessary conditions, specifications, etc.
 - b) An agency contract given to the *Waqf* management to utilize resources thus mobilized from the sale of output shares to establish the said project.
 - c) Appointing the *Waqf* as a *Mudhareb* to hold the fixed asset of the project after completion for management and investment.
 - d) An agreement on the ratio of distribution of gross output of the project after completion of construction and beginning of return giving period, between the owners of the construction, as *Rab al Maal*, and the *Waqf* as *Mudhareb*, according to an agreed upon ratio. This distribution does not specify any income to the land since the return on the *Waqf* land should be implicitly included in the share of the *Mudhareb*.
- 3) The *Nazer* takes charge of the construction by virtue of the power of attorney on behalf of the owners of output shares.
- 4) After completion of construction, the *Nazer* receives it and starts investing and managing it as a *Mudhareb*.
- 5) The *Nazer* actually distributes gross returns according to the agreement.

Output shares are characterized of being simple to calculate from the accounting point of view because there is no need for evaluating the fixed asset and worrying about their amortization each time returns are distributed. Shares entitle their holders to a percentage of gross income in contrast to net income that requires calculation of capital consumption, maintenance, operational

expenses, etc. Hence, this mode of resource mobilization removes the possibility of creating a conflict with regard to the evaluation of the fixed asset given to the *Mudhareb*. It is thus easier to implement as one only distributes the gross return and doesn't worry about cost calculation. This arrangement is also simple from the point of view of maintenance and insurance. The insurance that relates to the construction itself and its ability to produce the expected usufruct belongs to the owners (shareholders). The *Mudhareb* would be responsible to pay this cost item on their behalf and deduct it from their share of gross return. Insurance premiums are usually predetermined so that output shares would enjoy the characteristics of neat and subtle returns.

At the same time, the return to the output shareholders depends on the market values of the project that is determined by the income the *Mudhareb* would be able to generate out it. In other words, output shares would expose their holders to the market risk to which any other producer for the market is exposed. This kind of risk can be minimized by selecting easily marketable projects, especially, when user of the final product already exists and can be contracted as in the case of building a hospital for rent or constructing a dam on a *Waqf* land and selling its product to the local government.

2) Partnership Stocks

These are of the same as common stocks. The *Waqf Nazer* may issue common stocks representing the value of construction intended to be made on a *Waqf* land, keeping the management of the building in the hands of the *Waqf*. A management fee may be charged in the form of a given amount or in proportion to returns or distributed dividends. Implicit in the management fee would be a compensation for the use of the *Waqf* land. The mechanism of using these partnership shares is similar to the output shares, i.e., it includes a

power of attorney given by the shareholders to the *Nazer* to establish the building and a permit from the *Waqf* to the shareholders to erect a building on the *Waqf* land.

In partnership shares, net returns are distributable as dividends to shareholders (compared with output shares that distribute a proportion of gross income). This implies that all running expenses, maintenance, provision for capital consumption, etc., would be deducted from gross income before distribution.

Partnership shares may be permanent without any amortization or any transfer of ownership of the building to the *Waqf*. They may also end at a certain point of time in the future by transferring the building to the *Waqf* either through purchase of partnership shares in the market, gradual amortization at book value or by transferring the building into a *Waqf* as we have seen in output shares, i.e., after distributing dividends that make up for the total of the principal advanced and desired return together.

3) Lease (*Ijarah*) Bonds

Ijarah bonds are securities representing equal shares in a leased property. In the case of *Awqaf*, the *Nazer* issues *Ijarah* bonds and sells them to the public at a price equal to the cost of construction divided by the number of bonds issued.

The relationship between bondholders and the *Waqf* includes a permission from the *Waqf* to the bondholders to build the desired construction on the *Waqf* land and an agency agreement from the bondholders to the *Waqf* to execute the construction and to rent the building to the *Waqf* itself. In other words, *Ijarah* bonds include a lease agreement between the bond holders and the *Waqf* that becomes effective once the building stands usable. This lease agreement would

determine amount of rent, intervals of payment and period of the lease.

The total rent of the whole leasing period may be distributed on any number of periodical payments in such a way that dividends of *Ijarah* bonds may become due from, say, the first quarter after issuing a bond even though the construction may be still under way or may have not started at all, since in leasing, rent may be paid in advance. This is in contrast with output shares, partnership shares and *Mugaradah* bonds as the later three are based on the project's return that cannot be known before the end of the accounting period.

Ijarah bonds become negotiable after transforming the majority of their value received by the *Nazer* into physical assets and financial rights. This means that negotiability of *Ijarah* bonds is not effected immediately after their sale and they may need an announcement from the *Waqf* management to determine the beginning of their exchange in a secondary market.

Ijarah bonds are more similar to treasury bonds than perhaps any other kind of *Shari'ah*-compatible security, since they have predetermined dividends. Hence, their prices in the market would basically be determined by the difference between their income and their opportunity cost, which is determined by the prevailing rate of return in the economy.

Lastly, *Ijarah* bonds may be issued on permanent basis if their arrangement includes proper provisions for capital consumption and maintenance of the property they represent in addition to a lease renewability clause. They may also be issued for a fixed period of time determined by the productive life of the asset they represent or by an agreement included in the bonds prospectus itself for transferring the

property into a *Waqf* or for ownership transfer of the building to the *Waqf*.

4) *Hukr Shares*

In their characteristic, *Hukr* shares stand between lease bonds and partnership shares. The similarity between *Hukr* shares and these two kinds of securities is that all of them represent equal shares in the ownership of buildings and/or fixtures constructed on the *Waqf* land. Like partnership shares, the return of *Hukr* shares is not predetermined as it depends on the net return of the project. On the other hand, as in lease bonds, owners of *Hukr* shares are connected with the *Waqf* by a long lease whose subject is the *Waqf* land rather than the building as in *Ijarah* bonds. The exploitation of the building, which is owned by the *Hukr* shareholders, is executed by the *Waqf* on the basis of agency.

Hukr shares, thus, represent ownership in a building established on a land rented from the *Waqf*. The land rent is part of the cost of the *Hukr* project. The *Hukr* shareholders appoint the *Waqf* as their agent in fulfilling the construction, exploiting the building and managing it for whatever use it is assigned to. The net income of this investment is distributed to the *Hukr* shareholders by the project manager, i.e., the *Nazer*.

Hukr shareholders may be permanent if the *Hukr* agreement between the *Waqf* and the shareholders gives them a permanent right of leasing the land. It may also be for a fixed period at the end of which the construction is turned to the *Waqf* with or without compensation depending on the contract conditions and the arrangement of return distribution and capital repayment.

5) Muqaradah Bonds

Muqaradah bonds are based on the idea of *Muqaradah* contract similar to the investment deposit contract in Islamic banks, but with the addition of securitization by representing these deposits in securities of equal face value. In *Muqaradah* bonds, the *Waqt* as *Mudhareb*, accepts cash deposits against issuance of *Muqaradah* bonds given to *Rab al Maal*.

The *Waqt* management utilizes the proceeds for establishing the investment project agreed upon with the bond holders on the *Waqt* land and it distributes the net return periodically between the *Mudhareb* and *Rab Al Maal* until the end of the *Mudharabah* agreement. At that point, the *Waqt* management would be required to return the principal cash to the bond holders and retrieve the bonds they had. *Muqaradah* bonds may also come to an end by either transferring the property into a *Waqt* or buying it from the market by the *Waqt* management.

Assuming that the calculation of net profit at the end of each financial period is accurate and correct in such a way that it reflects all current and capital gains, the book value (the real value) of a *Muqaradah* bond, just after calculating and distributing the periodical profit, must equal its face value. The same thing is practiced in the calculation of investment deposits in Islamic banks whereby it is known that the Islamic banks keep the face value of the deposits after distributing their periodical profit.

The principle of accepting presumed liquidation as a fair representation of actual liquidation, which is usually mentioned in the classical *Fiqh* of *Mudharabah*, have become widespread and well-established among the *Shari'ah* Boards of all Islamic banks, provided that presumed liquidation is effected in accordance with accepted

accounting and auditing rules and regulations. The same principle can also be applied to *Muqaradah* bonds, i.e., provided that the evaluation of the project, its assets and liabilities and its income and expenditures is done in accordance with accepted and fair accounting rules. Thus, presumed liquidation must also represent actual liquidation with regard to *Mudharabah* bonds as it does with regard to investment deposits in Islamic banks. Implicitly in that is the rule that profit and loss must reflect any change in the evaluation of the principal, i.e., not only current results but also capital gains and losses.

From the above, one may conclude that the face value of *Muqaradah* bonds should be equal to its true value just after calculation and distribution of profit and loss at the end of each period. The immediate implications is that a *Muqaradah* bond may alternatively be purchased from the market at a market price or amortized at its face value as long as they both are equal. This is similar to investment deposits in Islamic banks that are normally returned at their face value at the end of the investment project or period for which they are deposited.

The preceding argument becomes easy to implement if the developmental project in which the proceeds of the sale of *Muqaradah* bonds are invested has a variety of assets that include physical assets and cash money. In that case, as usually done in Islamic banks, it is possible at the time of presumed liquidation that some investors may withdraw and part of the cash money available be assigned to them to refund the principal of their deposits/*Muqaradah* bonds.

On the other hand, one must remember that there is a multiplicity of factors that affect the price of *Muqaradah* bonds in the financial market. Some of these factors are real and relate to the financial and economic status of the project and its economic

environment. These factors must always be under consideration in presumed liquidation in all *Mudharabah* contracts whether implemented in the form of investment deposits or in the form of *Muqaradah* bonds. There are also factors related to expectation, estimation and personal evaluation. In these factors, people usually differ. Expectations usually converge to the real factors at the time of the periodical declaration of the real results of the project. In other words, the market value of the bond should always tend toward converging to its face value at the time of calculating and distributing profits as long as the estimation of the financial position of the project (presumed liquidation) reflect fairly all the real factors affecting the project and its economic environment and trends.

Summary and Conclusion

In this paper, I have studied some of the few most important and viable modes of financing that are suitable as contractual vehicles for providing the financial needs of the development of *Waqf* properties in accordance with *Shari'ah*. We have studied modes that can be utilized for institutional financing as well as modes suitable for soliciting financial resources from the public through the issuance of negotiable securities. It must be noted that all these modes of financing rely on the profit motive of the financier, i.e., they are modes of fund investment from the point of view of savers or fund providers.

Since creation of *Awqaf* is based on philanthropic behavior, the voluntary nature of *Awqaf* allows us to invoke contributor's motives in financing *Awqaf*. Why not thinking of their financing on the basis of the same motives? In this regard, there are two patterns of charitable financing that can be mentioned to finance the development of *Awqaf* properties : (1) creation of a cash *Waqf* Fund, and (2) establishment of a bank for temporary *Waqf* deposits.

Cash *Waqf* Fund

The idea of a cash *Waqf* Fund is simple. It is based on adding a new *Waqf* to an old one. The new *Waqf* takes the form of cash that can be utilized for financing the development of *Waqf* properties. The Fund is open for soliciting cash *Waqf*. Contributors to the Fund give their cash money for the purpose of financing the development of *Awqaf* physical properties, especially, real estates. The management of the Fund utilizes the cash *Waqf* for financing the development of *Awqaf*, free of charge, except for the cost of administering the loans. Hence, the cash *Waqf* is utilized for providing revolving loans for the development of *Awqaf* properties; loans that are payable to the Fund, to be utilized again for financing other *Awqaf* properties. The

resources of the Fund come from cash *Waqf* contributions solicited from individuals and institutions including the government, while its administrative expenditures are covered from the administrative service charges which are permissible in *Shari'ah* as long as they represent the actual cost of administering a loan.

This Fund may also receive special cash *Waqf* contributions that are assigned for the development of specific *Waqf* properties either as additions to the *Waqf* intended to be developed, in this case, the cash would be transformed into a material addition to the *Waqf* as building, equipment, furniture, etc., or as special cash *Waqf* for development of certain kinds of *Waqf* property, such as cash *Waqf* for financing the development of educational or health institutions, etc.

The idea of creating a cash *Waqf* has been practiced in the past and it is well established in the late Hanafi and Maliki literatures. As mentioned in these two schools of *Fiqh*, cash *Waqf* may be either for lending the money itself and retrieving it from the borrowers to be lent again to some other users, or it may be utilized on *Mudharabah* basis and its profit would then be utilized for a philanthropic objective such as helping the poor and needy while preserving the principal of the *Mudharabah* intact.

Temporary *Waqf* Deposits

The idea of creating a temporary *Waqf* deposits Bank is a bit more complicated. It requires the creation of temporary *Waqf* of cash money. There might be people who are willing to help the development of *Awqaf* properties with their available financing resources for certain period of time and they like to retrieve their principal at the end of that time. It is exactly similar to loans as defined in *Shari'ah* that is an act of charity in which the lender sacrifices the benefit of using her cash during the period of the loan.

The bank of temporary *Waqf* deposits would solicit such kind of loans from individuals and institutions for the specific purpose of creating timed deposits to be exclusively utilized for financing the development of *Awqaf*.

To these deposits one must add, the deposits of all *Awqaf* institutions in the country, i.e., this bank would also act as a **bank of Awqaf** whereby the banking transactions of all the *Nazers* should be handled through this *Waqf* bank. If this bank is established and supervised by the government, some other agencies may also be asked/forced to bank through the *Awqaf* bank. This may include the Ministry of *Awqaf* and its branches and the Zakah institution and its branches.

This *Waqf* bank may also be permitted to hold current accounts for individuals and institutions so that it can utilize current deposits as leverage for the creation of means of payment (credit) to be exclusively utilized for the development of *Awqaf* properties. In other words, it may be allowed to exercise its share in the credit creation like other commercial banks.

Timed deposits held in this bank may be classified into two categories. Temporary *Waqf* deposits in which depositors give their cash as temporary *Waqf* for certain period of time for the exclusive utilization in financing the development of *Waqf* properties, free of cost except for the service charge as mentioned above. The second category of timed deposits consists of investment deposits aimed at providing return to owners but their investment would be exclusive for financing the development of *Awqaf* properties by utilizing one of the modes of profitable financing mentioned in Chapter Three of this paper.

It must be noted that the first category of deposits, the temporary *Waqf* deposits, represents an act of charity in which the donor contributes the benefit of her cash money for certain period of time for the purpose of helping the development of *Awqaf* properties on loan basis and the banking process helps mobilizing such funds from small deposits and channeling them to the *Waqf* users.

Additionally, the utilization of part of the cumulative current deposits and the ability to create credit help expanding the potential resources of the *Awqaf* bank in providing financing for the development of *Awqaf* properties. In other words, this bank should be able to benefit from the seniority right and channeling it toward *Awqaf* development financing. Furthermore, such an *Awqaf* bank may be a domestic correspondent/agent of international financial institutions that may be willing to help financing the development of *Awqaf* properties.

All guidance comes always from God, the Lord of the worlds.

REFERENCES

- 1) Al Amin, Hassan Abdullah, ed., *Idarat Wa Tathmir Mumtalakat Al Awqaf*, [Management and Investment of Awqaf Properties], IRTI, Jeddah, 1989.
- 2) Al Ayashi, Al Sadeq Fiddad, *Fiqh Al Waqf*, paper presented at the seminar on Zakah and Awqaf, Brazaville, Congo, Rajab 1417H.
- 3) Al Hajji al Kurdi, Ahmad, "Ahkam al Awqaf fi al Fiqh al Islami; [Awqaf Rulings in Islamic Fiqh] paper presented at the Seminar on Shari'ah Studies for Economists, organized by IRTI in Kuwait, 18-29/11/1416H.
- 4) Islamic Fiqh Academy of the OIC, *Majallat Al Majmaa*, Vol.4, Jeddah, 1988.
- 5) Kahf, Monzer, "Waqf", in Encyclopedia of the Modern Islamic World, Oxford University Press, 1995, Vol.4.
- 6) Kahf, Monzer, *Al Nussus Al Iqtisadiyah Fi Al Qur'an Wa Al Sunnah* [Economic Texts in Qur'an and Sunnah], Markaz Al Nashr Al Ilmi, King Abdul Aziz University, Jeddah, 1995.
- 7) Kahf, Monzer, *Sanadat Al Ijarah* [Ijarah Bonds], IRTI, Jeddah, 1995.
- 8) Kahf, Monzer, *Waqf and Its Application in North America*, ISNA Plainfield, Indiana, USA, in print, 1998.
- 9) Mahdi, Mahmoud Ahmed, ed., *Daur Al Awqaf Al Islamiyah Fi Al Mujtama' Al Mu'asir*, [The Role of Islamic Awqaf in Modern Society], proceedings of papers and discussions of the Awqaf Seminar, Khartoum 1415, organized by IRTI, IRTI Jeddah, 1418.

- 10) Al Misri, Rafic, *Al Mudharabah Bi Al Usul Al Thabitah* [Mudharabah in fixed assets], Review of Research in Islamic Economic, Vol.5, No.1, 1405H.
- 11) Al Qaradawi, Yusuf, *Al Iman Wa Al Hayat* [Faith and Life], Mu'sassat Al Risalah, Beirut.
- 12) Al Qubeisi, Muhammad, *Mashruyat Al Waqf Al Ahli Wa Mada Al Maslahah Fi* [Legitimacy of Family Waqf and its Usefulness], in proceedings of the seminar on Awqaf Institution in Arab Islamic World, Institute for Arabic Research and Studies, Baghdad, 1983.
- 13) Ibn Qudamah, Al Mughni, Vol.5.
- 14) Al Rahuni, Hashiyat Al Rahuni 'Ala Sharh Al Zurqani, Dar Al Fiqr, Beirut, 1978.
- 15) Ibn Rushd, Bidayat Al Mujtahid, Dar Al Ma'rifah, Beirut, 1988.
- 16) Al Wansharisi, *Al Mi'yar Al Mu'reb*, Dar Al Gharb Al Islami, Beirut, 1981.
- 17) Yagan, Zuhdi, *Al Waqf Fi Al Shari'ah Wa Al Qanun*, Dar Al Nahdah Al Arabiyah, Beirut, 1388H.
- 18) Abu Zahra, Muhammed, *Muhadarat Fi Al Waqf*, [Lectures on Waqf], Dar Al Fikr Al Arabi, Cairo, 1971.
- 19) Al Zarka, Mustafa, *Ahkam Al Awqaf*, [Awqaf Rulings], Syrian University Press, Damascus, 1947.