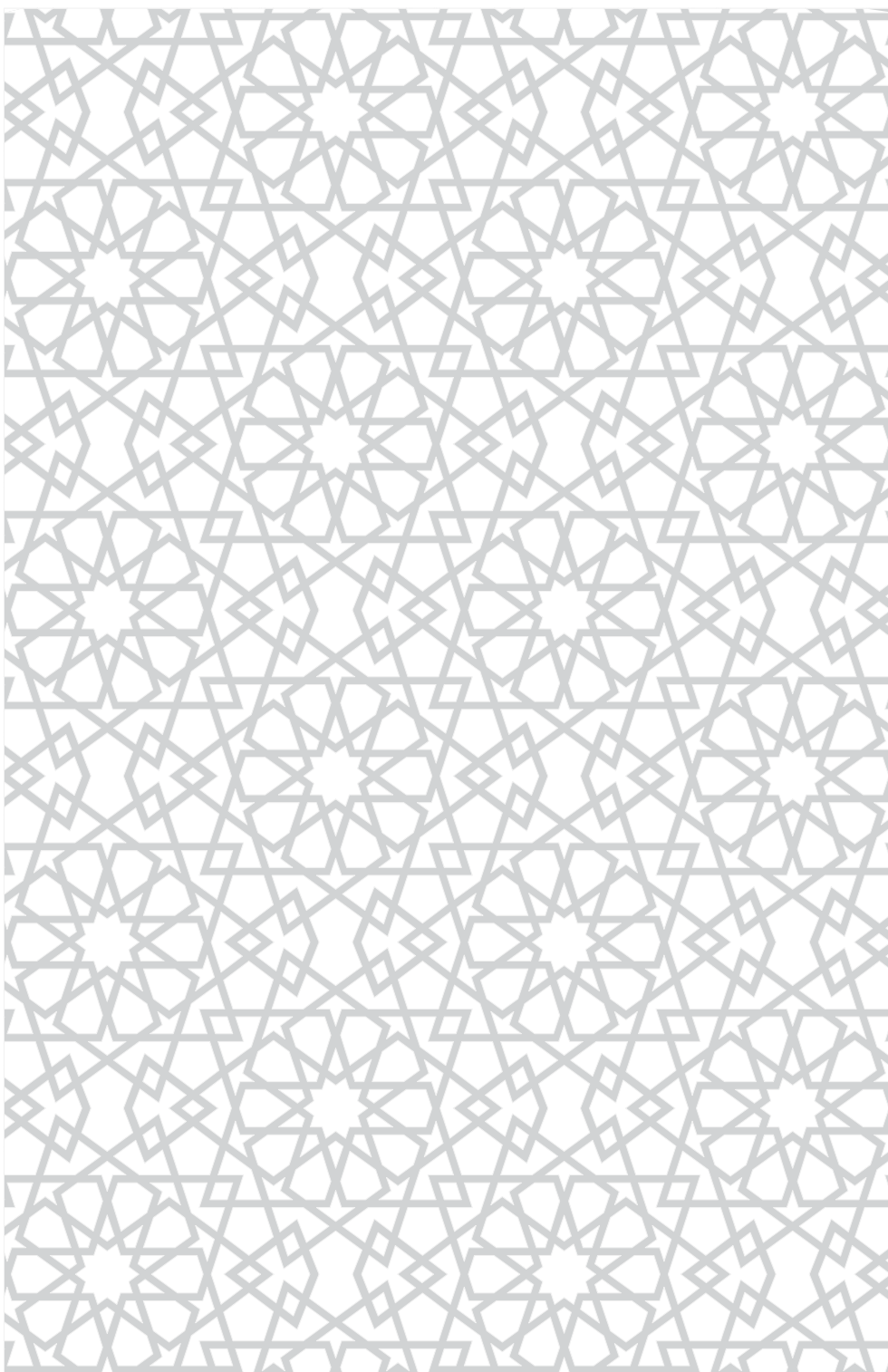


Shari’ah Standard No. (33)

Waqf



Contents

Subject	Page
Preface	813
Statement of the Standard.....	814
1. Scope of the Standard	814
2. Definition, Shari'ah Rulings, Rationale of Permissibility and Types of Waqf.....	814
3. Basic Elements of Waqf	815
4. Condition in Waqf.....	819
5. Supervision and Management of Waqf	820
6. Controls on Leasing of Waqf Assets.....	823
7. Application of Modes of Investment for Development of Waqf Income and Assets.....	824
8. Maintenance, Renovation and Replacement of Waqf Assets.....	825
9. <i>Istibdal</i> (Exchange) of Waqf Assets.....	826
10. Date of Issuance of the Standard.....	827
Adoption of the Standard.....	828
Appendices	
Appendix (a): Brief History of the Preparation of the Standard	829
Appendix (b): The Shari'ah Basis for the Standard.....	831
Appendix (c): Definitions.....	836



IN THE NAME OF ALLAH, THE ALL-MERCIFUL, THE MOST MERCIFUL

All praise be to Allah, the Lord of all the worlds, and blessings and peace be upon our master, Muhammad, and his household and all his companions

Preface

This standard aims at indicating the basic Shari'ah rulings on Waqf, which constitute the basis for practical application in this area. The standard also indicates the role of Islamic financial Institutions (Institution/Institutions)⁽¹⁾ in supervision, management and investment of Waqf properties.

(1) The word (Institution/Institutions) is used here to refer, in short, to Islamic financial institutions including Islamic Banks.

Statement of the Standard

1. Scope of the Standard

This standard presents the definition of Waqf and discusses its types, Shari'ah rulings, basic elements, and the conditions that pertain to each of these elements. It also covers the conditions required in the Waqf and the Waqif (donor), and illustrates the appropriate methods for Waqf utilization, investment, supervision and management. Furthermore, the standard covers the crucial role that Islamic financial Institutions could play in the development of Waqf, and the appropriate methods of Waqf investment.

This standard, however, does not cover other philanthropic Institutions such as Irsad (allocation of public property for public utilities) and financial trusts which resemble Waqf in some aspects.

2. Definition, Shari'ah Rulings, Rationale of Permissibility and Types of Waqf

2/1 Definition of Waqf

In Arabic language the word Waqf or Habs means preventing something from movement. In Shari'ah terminology, Waqf refers to making a property invulnerable to any disposition that leads to transfer of ownership, and donating the usufruct of that property to beneficiaries.

2/2 Shari'ah status of Waqf

Waqf is permissible in Shari'ah, as has been emphasized by the Sunnah (Prophetic traditions) and Ijma' (consensus of Fuqaha). Waqf is also a binding commitment, and, therefore, declaring a property as Waqf would spontaneously deprive its donating owner the right of ownership.

2/3 Permissible types of Waqf

There are several types Waqf of which most important is the charitable Waqf (*al-Waqf al-Khayri*), the family Waqf (*al-Waqf al-Ahli*), the joint Waqf (*al-Waqf al-Mushtarak*) and self-dedicated Waqf (*al-Waqf 'Ala al-Nafs*).

2/3/1 Waqf is said to be charitable when its income/usufruct is dedicated for a charitable purpose.

2/3/2 A family Waqf is the Waqf in which the income/usufruct is reserved for specifically described persons, usually family members and relatives. The income/usufruct of such Waqf goes to a charitable purpose when none of these persons is existent.

2/3/3 Joint Waqf refers to the case in which the property is donated to family as well as charitable purposes, and the income/usufruct here is shared accordingly.

2/3/4 In case of self-dedicated Waqf the donor retains the income/usufruct of the donated property for himself as long as he is alive, and indicates the charitable purpose which shall be entitled to the income/usufruct of the Waqf after his death.

3. Basic Elements of Waqf

The basic elements of Waqf include: The form of donation, the Waqif (the donor) and the donated property.

3/1 The form of the Waqf

3/1/1 The form of the Waqf comprises "offer" only, as it does not necessitate "acceptance". When a legally competent beneficiary rejects a Waqf that has been earmarked for him, his rejection has to be concurred to, yet the Waqf shall still remain valid. In this case the Waqf- or the share of the rejecting beneficiary if beneficiaries are many - should go to charitable purposes.

3/1/2 Formation of Waqf can take place verbally, in writing, or in any form of disposition which is normally considered as indicating it.

3/1/3 Waqf can be declared as effective starting from a future date, as when the donor declares his property to become Waqf starting from next year.

3/1/4 In principle Waqf should be eternal. Nevertheless temporary Waqf is also permissible when the donor desires to get back his property after a specific period.

3/2 The Waqif (donor)

3/2/1 The Waqif can be a natural or a legal person. If the Waqif is a legal person, the Waqf decision should be made by the general assembly and not the board of directors.

3/2/2 The Waqif must be legally eligible for disposing of his property.

3/2/3 The Waqf decision of a person whose legal competence is restricted because of irrationality is invalid, except when he declares his property as Waqf for himself as long as he is alive. The validity of the Waqf decision of a person whose legal competence is restricted because of indebtedness depends on confirmation by his creditors. When the creditors refrain from confirming the Waqf of the indebted person, the Waqf becomes invalid.

3/3 The beneficiary

3/3/1 The Waqf should not be made for an impermissible purpose, although it may not be for a charitable purpose since the very beginning of its inception.

3/3/2 It is permissible to make Waqf for the benefit of non-Muslims, provided that the cause to be served does not involve a sin. It is also permissible to make Waqf for the benefit of the rich.

3/3/3 The Waqf beneficiary need not be present at the time of declaring the Waqf.

3/3/4 When the beneficiary/beneficiaries of the Waqf is/are no longer existent, the benefits of the Waqf should go to charity purposes.

3/4 The Waqf property

3/4/1 The Waqf property should fulfill the following conditions:

- a) It shall be a Shari'ah-accepted property
- b) It shall be known
- c) The Waqif shall be the sole owner of the property in which nobody else should have a right of disposition at the time of establishing the Waqf. If the Waqif himself has the option of disposing of the property, the Waqf shall become valid, and the option is spontaneously cancelled.

3/4/2 The Waqf has a legal personality and financial liability which make it capable of giving and accepting commitment. The legal personality of the Waqf is quite separate from the personality of its manager.

3/4/3 Types of Waqf properties

3/4/3/1 Waqf is permissible in real estate along with permanent furniture and fittings.

3/4/3/1 Waqf is permissible in movable assets, whether such movable assets are part of a real estate or independent.

3/4/3/2 Waqf is permissible in money. The income generated from utilization of the money is to be spent, while retaining the principal amount. Utilization may include, for instance, Shari'ah-based lending as well as permissible and safe investments like Mudarabah where the profit share owned by the Waqf goes to beneficiaries.

3/4/3/4 Waqf is permissible in Shari'ah-accepted shares and Sukuk. In this case, the income earned by these shares or Sukuk is to be spent on the Waqf beneficiaries. In case of liquidation the Shari'ah rulings on *Istibdal* (exchange of Waqf property) should be applied.

3/4/4 Waqf in common property

3/4/4/1 Waqf can be a common property, whether such property is divisible or not. The whole common property in this

case (not shares or Sukuk), can be leased and the Waqf gets its respective share of the rent.

Alternatively, the share of the Waqf in the common property can be leased, so that the usufruct can be utilized through time-based and place-based *Muhaya'h* (succession), while the rental income goes to the beneficiaries of the Waqf.

3/4/4/2 When the Waqf superintendent or the Waqf partner asks for the division of an indivisible Waqf, the refraining party should be forced to accept selling. The income obtained from selling the Waqf in this manner should be used for purchasing a Waqf property of the same kind.

If such request for division is made in case of a divisible Waqf, the refraining party should be forced to accept division.

3/4/5 Waqf as a floor in a building, and easement rights (*Irtifaq* or *Ta'alli*)

Waqf can be a floor in a building. It can also enjoy easement rights (*Haqq al-Irtifaq*) in a building that has not yet been constructed. In this case the Waqf can enjoy the right of *Ta'alli* (transcendence) when the upper floor is declared as Waqf while the owner of the lower floor is unable to perform construction. The lower floor in such case can be built at the cost of the Waqf (on permission of the concerned authorities) and the cost reimbursed to the Waqf from the income generated through its leasing.

3/4/6 Waqf as a usufructs

Waqf can be a usufruct of an asset which the Waqif acquires through rent. The Waqif can lease the asset once again, and the proceeds go to the Waqf beneficiaries. The Waqf, in this case, is to be made temporary according to the period of the original

rent. Waqf can take place in this manner when the owner of the property does not deprive the lessee the right of subleasing.

4. Condition in Waqf

4/1 Conditions pertaining to the Waqf contract

4/1/1 The Waqif has the right to make his Waqf subject to all conditions which do not contradict with Shari'ah, and his conditions shall be as enforceable as Shari'ah conditions. The conditions of every Waqif must be understood with due consideration to the prevailing norms in his environment. Such conditions may include, for example, designating a certain superintendent for the Waqf and specifying his remuneration package. The designated superintendent could be an individual, a group of people, or an institution.

4/1/2 Regarding the form of the Waqf, the Waqif can make a condition that his debts should be settled from the Waqf income; after his death, or he may stipulate a condition that the income of his Waqf should go to him first as long as he is alive, then to his family, and finally to charitable purposes. Another condition of the Waqif could be that the Waqf income has to be spent first on any member of his family who becomes poor, and then on charity purposes.

4/1/3 A condition stipulated by the Waqif is invalid when it comprises an impermissible element, or when it violates the Shari'ah rulings on Waqf or cause harm to the Waqf property. In such cases the condition should be rejected and the Waqf shall remain valid. Examples of invalid conditions include: absolute forbiddance of *Istibdal* (exchange) of the Waqf, or forbiddance of the dismissal of the Waqf superintendent for any reason.

A condition stipulated by the Waqif also becomes invalid when it tends to hinder the interests of the Waqf, or jeopardize the process of benefiting from it. The example of this is a condition which requires starting - at all times - with distribution of the

Waqf income among the beneficiaries, even if the Waqf is in need of maintenance or renovation.

4/1/4 When the Waqif stipulates a condition that the Waqf should be benefited from through residence, the Waqf can be benefited from either in that manner, or through leasing, and vice versa.

5. Supervision and Management of Waqf

5/1 Controls on supervision and management of Waqf

Supervision and management of Waqf should observe the Shari'ah rulings on Waqf, then the conditions of the Waqif which do not contradict with Shari'ah or hinder the interests of the Waqf as perceived by the judiciary.

5/2 Tasks of the Waqf superintendent

The Waqf Superintendent should perform the following tasks, among others:

5/2/1 Management, maintenance and development of the Waqf.

5/2/2 Leasing of the assets or usufructs of the Waqf (through operating-lease contracts), and leasing of the Waqf lands.

5/2/3 Development of the Waqf properties either directly in Shari'ah-sanctioned methods of investment, or through Islamic financial institutions.

5/2/4 Increasing the Waqf money by investing it through Mudarabah and other similar forms.

5/2/5 Changing the operational form of the Waqf assets with the aim of maximizing the benefit that results to the Waqf and its beneficiaries. This may include, for instance, converting a residential building into a commercial building, or constructing buildings for rent on an agricultural land, provided that this would satisfy the demand of the people, generate more income for the Waqf and is done with the permission of the concerned authorities.

5/2/6 Defending the rights of the Waqf, ensuring its sustainability, payment of fees to agents in case of law suits filed against the Waqf, and payment of expenses for documentation of the assets and the rights of the Waqf.

5/2/7 Settlement of the debts of the Waqf.

5/2/8 Payment of the entitlements of beneficiaries

5/2/9 Replacement of the Waqf either by selling it for a cash amount and purchasing a new asset, or exchanging it with a new asset, subject to the conditions of *Istibdal* (exchange). [see item 9]

5/2/10 Safeguarding the Waqf properties against occupation or seizure by others.

5/2/11 Using solidarity insurance to safeguard the Waqf assets, whenever possible.

5/2/12 Preparation of the Waqf accounts, and submission of statements and reports on them to the concerned authorities.

5/3 What shall not be done by the Waqf Superintendent

The Waqf superintendent shall not do the following:

5/3/1 Neglecting the conditions of the Waqif.

5/3/2 Leasing the Waqf to himself or to one of his dependant sons - even if such leasing is at more than the normal rent – except through the judiciary. He should not also lease the Waqf to one of his direct relatives (Usul and Frua') or to his spouse, for less than the normal rent of similar property. In this case, minor injustice (Ghabn) is not forgivable, although it is forgivable in leasing to nonrelatives.

5/3/3 Using the Waqf income for increasing the Waqf properties, except when this is done in fulfillment of a condition stipulated by the Waqif.

5/3/4 Mortgaging the Waqf assets for a debt to be obtained for the Waqf or the beneficiaries.

5/3/5 Lending the Waqf assets, and if he does so, the borrower has to pay the normal rent for similar assets.

5/3/6 Borrowing for the Waqf, except in fulfillment of a condition stipulated by the Waqif, or on permission of the legal authorities, and in case of necessity. In borrowing for the Waqf the following should be observed:

5/3/6/1 Establishing a debt obligation on the Waqf is permissible through permissible means of borrowing, or deferred payment purchase, or any other permissible mode of financing. Establishing the debt through any of these modes has to be for the sake of maintaining and developing the Waqf, as per a condition stipulated by the Waqif, or on permission of the legal authorities, and due to necessity. In establishing the debt, due consideration shall also be given to the ability of the Waqf to bear such debt and sufficiency of its income for repayment. These restricted forms of establishing debt obligations on the Waqf do not include the case when the Waqf superintendent pays a certain amount of money from his own sources for an interest which concerns the Waqf, and the Waqf has sufficient income to be resorted to for settlement of such debt.

5/3/6/2 Cases which justify borrowing for the Waqf, when borrowing is not sanctioned by a condition stipulated by the Waqif:

- a) Need for maintenance or necessary development of the Waqf and absence of sufficient Waqf income for that.
- b) Payment of financial commitments – if any – when the Waqf does not have sufficient funds.
- c) Inability to pay the wages of the employees working in the Waqf or those who serve its purposes, and fear from endangering the benefits of the Waqf.

5/3/6/3 Borrowing should not be for the sake of spending on the beneficiaries of the Waqf.

5/4 Spending the excess income of the Waqf of a mosque

In principle the income of the Waqf of a specific mosque is to be spent on its own interests. If there is still an excess amount of income which has not been spent, it is permissible to transfer such amount to another mosque that does not have enough income to cover its expenses, or the cost of its maintenance and renovation.

5/5 Judicial supervision on Waqf management

5/5/1 By virtue of public guardianship, the judiciary has the authority of overseeing the supervision and management of the Waqf, preservation of its assets, and development of its sources. The judiciary has also the right of investigating the overall status of the Waqf, looking into any complaints raised against the Waqf superintendent or any other party, and subjecting the Waqf superintendent to disciplinary action.

6. Controls on Leasing of Waqf Assets

6/1 In principle, a long period of leasing should not be the normal practice for Waqf assets, except for obvious interest, and provided that a variable rent, linked to an accurate and well known index, is going to be sought. [see Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek, item 5/2/3]

6/2 The normal rent of similar property as a condition

Waqf assets or usufructs should not be leased at less than the rent of similar property. When leasing at a lower rent is inevitable it should be considered in view of the actual necessity, and hence, excessive injustice (*Ghabn Fahish*) can be accepted. If there happen to be a new tenant who can pay the rent of similar property, the Waqf superintendent has the right to terminate the previous contract, unless the old tenant accepts the rent increment. If the normal rent for the Waqf in question has risen because of developing the Waqf

land and constructing a new building on it at the cost of the Waqf, the tenant is obliged to accept rent increment. If land development and construction of the building is done at the cost of the tenant, he is not bound to accept the rent increment.

6/3 Some permissible forms of Waqf leasing

6/3/1 Signing a lease contract with the aim of keeping the Waqf land in the hands of the tenant as long as he pays the normal rent for similar property as it changes according to circumstances. This type of contract is known as (*Hikr*) and is subject to the following conditions:

6/3/1/1 The Waqf has no income to be used for its development.

6/3/1/2 There is no person who is willing to have fixed-term rent and make advance payment so as to be spent on developing the Waqf.

6/3/1/3 *Istibdal* (exchange) of the Waqf is not possible

6/3/2 *Haqq al-Qarar* (right to stay) which a tenant deserves when he pays at the time of signing the lease contract a lump sum amount, known as (*Kardar*) for development of the Waqf, and a rent which is below the rent of similar property. This form of Waqf leasing is permissible when dictated by necessity, and if there is no tenant who is willing to pay the normal rent for similar property along with a lump sum amount for development of the Waqf. In some countries, this contractual form is known as (*al-Khulu*).

7. Application of Modes of Investment for Development of Waqf Income and Assets

7/1 It is permissible to invest Waqf income, in the following cases:

- 1- As per a condition stipulated by the Waqif.
- 2- During the waiting period (prior to identification of beneficiaries).
- 3- Excess income, after payment to beneficiaries.

Investment in these cases should be through permissible methods such as Mudarabah, Musharakah, Murabahah, Ijarah, and Salam, and in low risk investments.

7/2 For development of the Waqf land, the following is permissible:

7/2/1 Application of the Istisna'a through B.O.T. contracts. [see Shari'ah Standard No. (11) on Istisna'a and Parallel Istisna'a, item 3/2/1]

7/2/2 Application of diminishing Musharakah, where the Waqf and the financing partner construct the building through joint financing (excluding the Waqf land), and the Waqf gradually owns the building. [see Shari'ah Standard No. (12) on Sharikah (Musharakh) and Modern Corporations, item 5/8]

7/2/3 Application of Ijarah Muntahia Bittamleek for a specifically described property to be delivered in the future. In this case, the Waqf land is leased to the financier who constructs a building on it and delivers it to the Waqf to execute the lease contract. At the end of the contracting period, the Waqf becomes the owner of the building. [see Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek, item 3/5]

7/3 All appropriate means should be adopted for development of Awqaf, with due consideration to Shari'ah rulings on Waqf and the conditions stipulated by the Waqifs, as well as present day requirements.

7/4 Help in this regard should be sought from Islamic financial institutions, specialized in Waqf investments.

8. Maintenance, Renovation and Replacement of Waqf Assets

8/1 Maintenance and renovation of Waqf assets, and allocation of reserves for that purpose

8/1/1 Spending on maintenance, reparation and renovation of the Waqf assets should precede distribution of the Waqf income among beneficiaries. In this connection, due consideration shall be given to the technical schedules of periodical maintenance.

Maintenance and reparation of Waqf assets also do not require a prior condition to be stipulated by the Waqif.

8/1/2 Maintenance and renovation requirements (maintenance reserve) shall be retained from the Waqf income every year even if the Waqif has not stipulated such a condition. The reserve, thus deducted, can be invested in a safe and easy to liquidate form of investment, and the returns be added to the principal amount. The beneficiaries shall have no right on the maintenance reserve, unless part of it turns out to be in excess of actual needs.

8/1/3 In the absence of sufficient amounts for maintenance and renovation of a leased Waqf asset, the Waqf superintendent has the right to allow the tenant to make such maintenance and renovation, against having the priority to continue as a tenant of the Waqf asset until getting full repayment of his debt.

8/1/4 Solidarity insurance shall be used for maintenance or renovation of the Waqf assets.

8/2 Making allocations for replacement of Waqf assets

It is permissible to deduct from the Waqf income (after distribution to beneficiaries) periodical amounts commensurate to the economic lifetime of the depreciating Waqf assets, so as to use the accumulated amount for replacement of these assets (depreciation allowance).

9. *Istibdal* (Exchange) of Waqf Assets

9/1 *Istibdal* refers to the process of selling the Waqf asset and purchasing a new one instead, so as to maximize the interest of the Waqf.

9/2 *Istibdal* can take place according to a condition stipulated by the Waqif, or when the Waqf becomes ruined (even if prevented by the Waqif). *Istibdal*, in such cases, takes place by selling the Waqf property and purchasing a new one instead, so as to maintain the Waqf as it was before.

Istibdal is also permissible when there is no way of benefiting from the Waqf (e.g., the Waqf has become in a deserted area), or because of fear from seizure of the Waqf by others, or when benefiting from the Waqf becomes extremely difficult.

9/3 *Istibdal* should be subject to the following conditions:

9/3/1 The Waqf must have reached the stage of generating no income, while there is no money for its development.

9/3/2 There should be no excessive injustice in the sale price.

9/3/3 *Istibdal* should meet the satisfaction and interest of the Waqf.

9/3/4 *Istibdal* should be permitted by the judiciary.

9/3/5 If the Waqf is a real estate it should also be exchanged for a real estate. When there is no risk of misuse, a real estate Waqf can be sold for cash, and the money kept with the judiciary until a new real estate is purchased.

10. Date of Issuance of the Standard

This Standard was issued on 28 Jumada II, 1429 A.H., corresponding to 2 July 2008 A.D.

Adoption of the Standard

The Shari'ah Board adopted the Standard on Waqf in its meeting No. (21) held on 24-28 Jumada II, 1429 A.H., corresponding to 28 June – 2 July 2008 A.D., in Dar Al-Taqwa Hotel, Al-Madinah Al-Munawwarah, Kingdom of Saudi Arabia.

Appendix (A)

Brief History of the Preparation of the Standard

On 5 Rabi' I, 1427 A.H., corresponding to 4 April 2006 A.D., the Secretariat General decided to assign to a Shari'ah consultant the preparation of a study on Waqf.

On 8-9 Rabi' I, 1427 A.H., corresponding to 6-7 April 2006 A.D., a joint meeting of the Shari'ah Standards Committees (1) and (2) was held in Makkah Al-Mukarramah, and discussed the study. The meeting requested the consultant to introduce necessary amendments in the light of the discussions and observations of the joint committee members.

On 19 Shawwal 1427 A.H., corresponding to 10 November 2006 A.D., the Shari'ah Standards Committee (2) held a meeting in Manama (Kingdom of Bahrain) in which it discussed the draft of the standard and requested the consultant to introduce necessary amendments in the light of the discussions and observations of the meeting.

In its meeting No. (17) held in Makkah Al-Mukarramah on 26 Shawwal – 1 Dhul-Qadah 1427 A.H., corresponding to 18-23 November 2006 A.D., the Shari'ah Board discussed the changes in the Standard which had been made by the joint meeting of Shari'ah Standards Committees (1) and (2), and introduced changes that it deemed necessary.

The Secretarial General of AAOIFI held a public hearing in the Kingdom of Bahrain on 18 Safar 1428 A.H., corresponding to 8 March 2007 A.D. More than 30 participants attended the session as representatives of central banks, Institutions, and accounting firms. The session was also attended by Shari'ah scholars, university teachers and other interested parties. Several observations were made in the session, and duly responded to by the members of the Shari'ah Standards Committees (1) and (2).

Shari'ah Standard No. (33): Waqf

In its meeting No. (19) held in Makkah Al-Mukarramah on 26 Sha'ban – 1 Ramadan 1428 A.H., corresponding to 8-12 September 2007 A.D., the Shari'ah Board discussed the amendments that had been suggested in the public hearing, introduced changes that it deemed necessary and adopted the Standard.

Appendix (B)

The Shari'ah Basis for the Standard

- The basis for considering Waqf (in principle) as a permissible and commendable practice (Mandub) is the Quranic Verses which instruct people to do good and spend on charitable causes, and also the Hadith (Prophetic tradition) which indicates: *"When a person dies his rightful deeds will stop except in three respects: An ongoing charity "Sadaqah Jariyah..."*. Waqf is considered to be the ongoing charity referred to in the Hadith, because the beneficiary does not own the Waqf asset, and accordingly, cannot dispose of it.

Moreover, there is the Hadith about the piece of land in Khybar which Umar donated as Waqf, when the Prophet (peace be upon him) advised him to do so.

Again, permissibility of Waqf is supported by the practice of the Sahabah (Prophet's Companions) like Uthman and Abu Talhah, in addition to Ijma' (consensus of Fuqaha). Waqf for charitable purposes can also be justified through Qiyas (analogical deduction) in comparison to Waqf for mosques.

Enforceability of the Waqf when it is indicated by a donor in his will, stems from the fact that according to Shari'ah a will should be executed, and its alteration or cancelation is strictly prohibited.

- Family Waqf (*Waqf ahli* or *Dhurri*) is permissible on the basis of the Hadith about Umar's Waqf, and because family Waqf is, in fact, a charitable Waqf since it will finally become so.
- Acceptance of the Waqf is not a condition for its validity when the beneficiary is not specified, because acceptance cannot be expected in this case. In case of a specific beneficiary, acceptance can be obtained from him even if implicitly when he keeps silent. The ruling that when the beneficiary rejects the Waqf his rights in the Waqf shall be dropped, whereas the Waqf should still remain valid, is based on the viewpoint of

the Hanafi School of fiqh. The justification here is that the beneficiary can drop his own rights in the Waqf, but he cannot nullify the Waqf itself.

- Waqf inception can be subject to any form of disposition which traditionally indicates it, because traditions are usually recognizable, when they do not contradict with Shari'ah rulings.
- Permissibility of temporary Waqf is based on the viewpoints of the Maliki and the Imami Schools of Fiqh, in addition to what has been reported about the viewpoint of Abu Yusuf of the Hanafi School. Such viewpoint is based on the fact that a temporary Waqf can also fulfill its charitable objectives and result in two benefits: one of them is the benefit generated from Waqf throughout its specified period, and the other is the benefit to the Waqif since he may need his property in the future. Moreover, permissibility of temporary Waqf could encourage Waqf practicing, and, hence, contribute to fulfillment of the present need for charitable institutions.
- Permissibility of declaring Waqf as effective starting from a future date can be viewed in terms of analogy between Waqf and *Wasiyyah* (will).
- The ruling that the Waqif should have full legal competence is based on the fact that Waqf in its very essence is a donation (*Tabarru'*), and therefore, the Waqif should have full legal competence.
- Prohibition of Waqf by a person who is legally restricted for irrationality, aims at safeguarding his creditors, his own self, and his dependants. There is no harm, however, when the irrational person declares the Waqf for himself. As regards the Waqf by a person who is suffering a fatal illness, it should be subject to the rulings applicable to the will of such person.
- Permissibility of retreating from Waqf, unless it is a mosque, is the Hadith that has been narrated by Abdullah Ibn Umar and Umar's Hadith, as well as Qiyas (analogical deduction) to 'Ariyah (a lent thing).
- The basis of the ruling that Waqf should not be for an impermissible purpose while it can be for non-charitable purposes, is that Waqf is a donation (*Tabarru'*), and therefore, the only Shari'ah condition to be observed in it is permissibility of the purpose for which the donation is made. This viewpoint belongs to the Maliki School, whereas the Hanafi School is of the opinion that the Waqf purpose should be charitable.

- The ruling that Waqf can be made for a person who is nonexistent at the time of establishing the Waqf, is based on the Hadiths narrated about Waqf for progeny, and on the fact that Waqf is an ongoing charity and therefore it should include those who will exist in the future.
- Waqf is said to have a legal personality and financial liability which are quite independent from those of its superintendent, because Waqf can give and take commitments. When, for instance, the Waqf superintendent borrows money for the Waqf, the debt obligation does not fall on him but rather on the Waqf itself. Similarly, when the beneficiary fails to fulfill his obligation towards the Waqf, he becomes indebted to the Waqf, rather than to the Waqf superintendent. Therefore, in this case, the Waqf superintendent has no right to relieve the debtor from the debt.
- The ruling that Waqf donation should not exceed one third of the donor's wealth, is based on the analogy between Waqf and *Wasiyyah* (will), where part of the wealth should be left to the inheritors of the deceased (the obligatory entitlement as per Shari'ah). This has been explicitly referred to in the Egyptian Law of Awqaf.
- Permissibility of making Waqf in the form of moveable property, regardless of its nature and even if such property is not survivable, is based on the ruling practice during the era of the Prophet (peace and blessings be upon him) and the orthodox caliphs with respect to making Waqfs for mosques. The majority of Fiqh scholars also support this viewpoint; whereas the Hanafi scholars hold that Waqf of moveable property is permissible only when it is the normal practice.
- Money can be donated as a Waqf because this is the original form of Waqf, as emphasized by Muhammad Ibn Abdullah Al-Ansari the companion of Imam Zafar and supported by Ibn Taymiyyah. Shares and Sukuk come under this type of Waqf.
- A usufruct can be donated as Waqf, because it is wealth, and hence it should be subject to the general rules of Waqf. The fact that a usufruct is temporary does not affect this ruling since Waqf can also be temporary as has been indicated earlier.
- The ruling that permissible conditions of the Waqf shall be observed (including the ten conditions), is based on the Hadith which states:

"Muslims are bound to the conditions they make". In the last part of it, this Hadith implies that the donor's condition which has to be observed should not be in contradiction with the Shari'ah "...except a condition that permits what has been prohibited or prohibits what has been permitted (by Shari'ah)."

- The basis for appointing a superintendent for the Waqf is the Hadith which indicates that: *"There is no misdemeanor (Junah) on the one who is in charge of it"*, and because interest necessitates the presence of someone who takes care of the investments of the Waqf assets, collection of the Waqf's income and distributing it among beneficiaries.
- The Waqf superintendent has to observe the conditions of the Waqf because Waqf is a donation (*Tabarru'*), and therefore, it can be subject to conditions according to Shari'ah. As regards observation of the rules of Shari'ah, the reason is obvious.
- The basis for depriving the Waqf superintendent the right of leasing the Waqf to himself or his son (without resorting to legal authorities) is the fear from favoritism which is part of human nature, and therefore prohibition of such leasing arrangement would minimize the chance for neglecting the interest of the Waqf.
- The ruling that a Waqf property shall not be lent is based on the fact that lending the property will reduce the chances for its investment.
- Borrowing for the Waqf is restricted to the case of acute need, and not allowed for spending on the beneficiaries, because borrowing is meant to safeguard the Waqf against the harm of being useless, whereas refraining from payment to beneficiaries when there is no Waqf income does not involve such harm.
- Permissibility of combining Waqf resources is based on the fact that it could lead to the benefit of the Waqf, and that all Waqf properties are devoted for the Sake of Allah, Glory be to Him. However, appropriate allocation to the different beneficiaries of the combined Waqf assets should be duly observed so as not to cause harm to such beneficiaries. The General Council of Fatwa of Kuwait issued a Fatwa (Shari'ah opinion) permitting transference of the excess income of a mosque to other mosques.
- The condition pertaining to the need for judiciary supervision on the Waqf is based on the desire to ensure the achievement of the interests of the

stakeholders, and perform the role of *Hisbah* (a Shari'ah regulatory body). The first person who arranged judiciary supervision on the Waqf was Tawbah Ibn Namir, the judge of Egypt in the early Islamic era.

- The ruling that Waqf assets should not be leased for less than the normal rent of similar assets (while minor injustice could be accepted) is based on the desire to avoid favoritism and waste of Waqf income. This viewpoint enjoys unanimous agreement of Muslim Fiqh scholars. The viewpoint regarding termination of the contract when the normal rent of similar property increases and the Waqf tenant refuses rent increment belongs to the Hanafi School, contrary to the Maliki and Shafi'i Schools who hold that the contract should not be terminated if the lease contract is for a specific period.
- Permissibility of the forms of Waqf leasing which have been indicated in Fiqh references is based on the desire to preserve the interests of the Waqf as well as the interests of all its tenants, without causing injustice to any party or neglecting the interest of the Waqf property.
- Permissibility of application of modern financing techniques which have been developed by Institutions rests on the fact that such forms are in conformity with the usual forms of land leasing and cultivation. Such modern forms could even generate more income than the traditional ones, and achieve the goals of preservation and security of the Waqf assets.
- Permissibility of making a reserve fund for maintenance and renovation of the Waqf is based on the desire to preserve the Waqf assets and their ability to generate income, as has been emphasized by a number of Fiqh scholars.
- *Istibdal* (exchange of the Waqf asset) is permissible because it achieves the interest of the Waqf, through its development and maximization of its income.

Appendix (C)

Definitions

Waqf

Making a property invulnerable to any disposition, and donating its income for charitable causes. The term Waqf is also used to describe the property donated in this manner.

Waqf Ahli (Family Waqf)

The income of the donated assets or usufructs goes in this case to the Waqif himself, his children, a certain number of people, or a specific entity, for a specific period.

Waqf Khayri (Charitable Waqf)

The income of the donated assets or usufructs goes to charitable purposes without specifying a certain entity or a specific group of people as beneficiaries. The Waqf could be eternal or temporary.

Waqf Assets

The property used for generating income, while it cannot be disposed of.

Hikr or Tahkir

A lease contract according to which the Waqf land is kept in the hands of the tenant to build on it or cultivate it as long as he pays the normal rent for such property. *Hikr* or *Tahkir* can also take place through utilization of the Waqf land by leasing it for a specific purpose without specifying the period, and thus, the tenant obtains the right to stay, subject to a valid contract. A third form of *Hikr* or *Tahkir* can take place implicitly when the land is leased for a specific period, and then the tenant build on it or cultivate it after obtaining the permission for that. In this latter case, when the lease period expires, and the tenant wishes to stay and pay the rent equivalent to that of similar property, he can be allowed to do so, in order not to cause harm to

him. *Hikr* or *Tahkir* is an alternative to *Istibdal* (exchange of the Waqf land), when the latter is not possible. These two methods constitute a financial right which cannot be inherited.

Irsad or Takhsis (Allocation)

Irsad refers to the case when the government authorities allocate a publicly owned piece of land for public utilities such as schools, hospitals and charitable activities. This is not considered as Waqf because, in this case, the land is allocated by someone who does not own it.

Haq Al-Qrar (Right to Stay)

Preference right to build on or cultivate the Waqf land. A certain type of this contractual arrangement is sometimes known as *Kadak*, and is applicable to leasing of shops and factories.



