Financing the Development of *Awqaf* Property

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This article identifies the various ways in which Islamic endowments helped provide essential services for public welfare during the heyday of Islamic civilization. Four goals are essentially accomplished. One, the importance of endowments in an Islamic society is identified. Two, the various forms of funding that have been used in the past for establishing Islamic endowments are explored. Three, the ways in which Islamic endowments can be expanded and new funds raised are examined. Finally, the author proposes ways by which public sources can be used to create new sources of funding for *awqaf* properties. He hopes that these new means can play a major role in developing contemporary Muslim societies.

Islamic *awqaf* properties make up a considerable proportion of the societal wealth in several Muslim countries. The concept of *waqf* entails generous applications in the direction of developing the nonprofit, nongovernmental sector and increasing the quantity of welfare services that aim at improving the socioeconomic condition 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. In fact, it even encourages studying the potentiality of the idea 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 of *awqaf* by resorting

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to the private sector's sources in a manner that is compatible with the Shari'ah.

The article is divided into four parts. In part one, we study the salient features that characterize the Islamic investment *awqaf* and the importance of their development. Hence, part one defines the *waqf* from both a fiqhi and an economic angle. It presents 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 the Islamic *waqf* and its effect on other social welfare activities since it represents a major pillar of the third sector, the nongovernmental, nonprivate, and nonprofit sector. In this part, we also discuss the necessary conditions and prerequisites for the development of investment *awqaf* properties and for the encouragement of establishing new *awqaf.*

Part two is devoted to studying the traditional modes of financing *awqaf* properties, especially those mentioned by *fuqaha* and social scientists in the Islamic cultural heritage. Five modes of financing are studied: increasing the principal of a *waqf* by adding newly established *awqaf*; exchanging one *waqf* property with another with higher usufruct; borrowing on a *waqf* with repayment from the *waqf*'s net revenues; using the *hukr* (long lease with a large advance payment); and leasing with dual payment. In addition, we analyze the condition of success and failure of each of these modes from both a theoretical and practical point of view.

In part three, we discuss new ideas and innovations in certain modes of financing amenable to financing the development of *awqaf* properties in contemporary Muslim societies on an institutional basis, i.e., financing made available through 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. They are forms of financing in which the manager of a *waqf* (*nazer*) retains all managerial authority over the whole *waqf* project after development, and the financing institution remains dormant with regard to management. Also we study two more modes of financing in which the management is transferred to the financier/developer. These two modes are output sharing and *hukr*. We also discuss a seventh mode in which the management can be in the hands of either the *waqf nazer* or the financier/developer.

Part four discusses modes of financing *awqaf* properties through public solicitation. We 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.

Salient Features of Islamic *Awqaf* and Their Societal Role

Our discussion begins with the definition of *waqf* from the point of view of fiqh and economics, with the indication that its economic definition points to its developmental investment content. We will see that this cumulative nature remains with a *waqf* regardless of the objective for which it is assigned. Also we will discuss a few prerequisites for the revivification of the *waqf* role in socioeconomic development.

Definition of *Waqf* and Its Developmental Content

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

This definition covers the 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 the four schools of fiqh. The definition also covers the kind of *waqf* that is made temporary by the will and the conditions of its founder, which is discussed and approved in the Maliki school only.

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 the *waqf* of usufruct, since both financial rights, such as the publication right of a manuscript, and usufruct, such as the usufruct of a rented asset, are covered by the definition of the word *māl* according to the majority of *fuqaha* and as expressly mentioned in the contemporary collective *fatawa*, especially, those of the Organization of Islamic Conference 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 does not make a reference to ownership, thereby avoiding the well-known difference of opinion among *fuqaha* with regard to who owns a *waqf* property. Note that the idea of repeated extraction of usufruct does not impose restriction on beneficiaries. Hence, this definition covers the family *waqf* and the possibility of utilizing the *waqf* by its founder.

The above definition of *waqf* also allows inclusion of all kinds of *māl*, so that land and construction can be made *waqf* for religious purposes, such as a mosque for prayers, and 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 philanthropic/righteous 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 that new ones are always appearing as societies grow and develop. Shortly after the death of the Prophet, during the caliphate of 'Umar, the companions invented a philanthropy directed toward family members and offspring. They started establishing *awqaf* that included land, buildings, and palm trees for the objective of distributing their net revenues to the family and offspring of the founder. This *waqf* has the same characteristic as other philanthropic *awqaf,* in the sense that the assets themselves are preserved from being disposed of, and the usufructs are distributed in a repeated manner. It applies a concept that is well rooted in the Shari'ah: providing for sustenance and welfare for oneself, one's 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 and is well known in the Hadith literature.

The Economic Definition of *Waqf*

The definition of *waqf* can be redefined in the following manner: a means of 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.

A *waqf* is then an operation that combines the act of saving with the act of investment. It consists of preventing certain resources from being consumed and simultaneously putting them into forms 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 a *waqf* may take the form of patient bed space in a hospital building, prayer space in a mosque, or student space in a school building. Also, a *waqf* may produce output to be sold to the public in order to generate net income for the beneficiaries of the *waqf*.

Establishing a *waqf* is similar to establishing a business corporation whose life span is unlimited. It is an action that involves investment for the future — accumulating productive wealth for the benefit of future generations.[2] Hence, a *waqf* is a developmental process by virtue of its definition. It involves the accumulation of productive wealth through present investment that favors future generations since the *waqf* gives its beneficiaries future fruits free of charge. A *waqf* implies that there is a sacrifice of a present consumption opportunity for the benevolent purpose of providing income and services for future generations.

From the point of view of the nature of the *waqf* output or fruits, *waqf* assets may be classified into two categories. The first are 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 descendents of the founder. In both cases, this kind of *waqf* provides a service to the beneficiaries which we will call 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 that will be distributed to the beneficiaries. Here again, the beneficiary may be a general charity, such as a mosque, a scientific research center, or a private philanthropy consisting of the descendents of the founder. We will call this kind of *waqf* an investment *waqf*.

Note 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 *awqaf* or to leave them idle by any act of neglect or transgression. Hence, the *waqf* is not only an investment — 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 the agricultural land and metropolitan real estate 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 estate.

Finally, one may mention that the economic and demographic developments in most Muslim countries and communities during the 20th century led to a tremendous increase in the value of *awqaf* assets. The reasons for this, however, fall outside the scope of this paper. This increase created a tremendous opportunity for the development of these assets in an unprecedented way in our economic history.

The Importance of *Waqf* for Socioeconomic Development

The very idea of *waqf* consists of creating and developing a third sector distinct from the profit-motivated private sector and the authority-based public sector where the group of tasks with which it is charged are better achieved. Its tasks fall within the arena of righteousness, goodness, kindness, mercy, and benevolence. The idea of *waqf* indicates that the Islamic system recognizes the importance of the nonprofit sector in social and economic development and provides the necessary legal and institutional protection for this sector to function away from the self-interest of the private sector 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.

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

Consequently, the Muslim society depended essentially on *awqaf* to provide all levels of education; cultural services, such as libraries and lecture facilities; scientific research in all material and religious sciences; and health care (physician and hospital services and medicine dispension). It is reported that under Islamic rule the island of Sicily had 300 elementary schools — all built by *awqaf* and all payment of teachers and school supplies provided for by *waqf* revenues.[3] There were hundreds of high schools and tens of universities in each of the major Islamic cities, such as al-Quds, Damascus, Baghdad, Cairo, and Nisapur. There were universities specializing in different scientific disciplines, such as medicine, chemistry, and Islamic studies. They included the Qurawiyin in Fez, al-Azhar in Cairo, and the Nizamiyah in the Mustansiriya in Baghdad.[4] The *awqaf* estates provided these universities with buildings in addition to teaching materials, scientific books, salaries for teachers, and stipends for students. Some universities even have student dormitories for both single and married students.[5]

Awqaf also built scientific libraries and supplied them with hundreds of thousands of volumes. Payment for library employees, supervisors, and scribes were provided from the huge revenues collected from orchards and rentable buildings made to *awqaf* for the benefit of these libraries.[6] Libraries and books were so important that many of the *fuqaha*, those who usually did not consider *waqf* applicable to mobile assets, to make an exception with regard to copies of the Qur'an and scientific books so that all *fuqaha* would agree 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 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] Islamic history has witnessed specialized *awqaf* for scientific research in medicine, pharmacology, and other sciences.[9]

The *awqaf* that provided for education were probably responsible for the independence of mind that was common among scholars, keeping them free of the rulers. These *awqaf* turned Muslim scholars into popular leaders and outspoken representatives of the society in any confrontation with the authority. The *awqaf* system also contributed to reducing the socioeconomic differences by offering education on the basis of ability rather than on the ability to pay. Hence, the poor had educational opportunities that allowed them to climb 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 medicine and pharmacy, and stipends to students were all regularly provided 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 patient entertainment including people especially hired for hinting to patients that their illness is mild and easily curable.[12]

Obviously, the *awqaf* also provided mosques for worshippers, monasteries for those who devoted themselves to contemplation, graveyards, and funeral facilities.

In social welfare, environmental protection, and animal care the *awqaf* made tremendous contributions. The first *waqf* upon which the *fuqaha* established most of their rulings is the *waqf* of 'Umar in Khaybar. It was a *waqf* offering assistance to the poor and needy and wayfarers. Supporting the poor has always been an objective of *awqaf,* so much so that it became known in the Shari'ah that if a founder did not mention an objective for her/his *waqf,* supporting the poor and needy was assumed. Historically, *awqaf* support of the poor and needy went into specific areas. For instance, several *awqaf* helped orphans and widows; others gave poor men and women the money required for marriage. There were special *awqaf* for home furnishing, for nursing mothers, for battered wives, and for people traveling on the roads.[13]

Additionally, there were *awqaf* that helped to liberate slaves, care for young children, and provide drinking water for villages. Some provided for animal and bird care, river bank repair, or frontier fortification.[14]

Necessary Prerequisites for the Revival of the *Awqaf*

In appreciation of the important role that the institution of *awqaf* could play in social and economic development, some Muslim countries have given 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. Hence, in 1990 Algeria stipulated that all *awqaf* properties that were previously diverted to other usages must be returned to the *awqaf* and used to promote the charitable objectives originally assigned to them by their founders. In most Muslim countries, the existing assets of *awqaf* represent a huge amount of social wealth that can be developed to produce a lot of social services, especially with the increase in their capital value as a result of economic and demographic changes.

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

- A new legal framework that defines the functions and objectives of the *awqaf,* 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 *awqaf* properties.

- A law which provides for the repossession of all *awqaf* properties that were diverted to other public and/or private persons and which reviews old records of *awqaf* in order to re-establish their rights on many lost real estates.

- A complete revision of *awqaf* management, especially of the investment *waqf,* in order to fulfill two objectives: increasing the efficiency and productivity of *awqaf* properties and minimizing fraudulent practices and corruption by the *awqaf* managers (*nazer*s). A new style of management is needed that suits the *awqaf* institution, keeping in mind that their properties are not owned by those who manage them, as well as sufficient checks and balances on the *awqaf* managers without allowing the *awqaf* management to fall into the lap of the government.

- 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. We need to reinstate provisions that protect and organize the family *awqaf* in particular and promote the idea of establishing new *awqaf* in general.

- Provide technical, managerial, and financial support to *awqaf* management to help it increase the productivity of *awqaf* properties. 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 government managers of *awqaf* properties.

- Revise our classical fiqh on *awqaf* in order to accommodate many new forms of potential *waqf* that have no precedents in classical fiqh, especially in the area of *waqf* of usufruct and *waqf* of nonphysical properties (abstract properties). We need also an expansion of the concept of temporary *waqf*.

- Provide a master plan in each Muslim country to redeploy the *awqaf* properties in such a way that maximizes their benefits and services.

Traditional Modes of Financing *Awqaf* Properties

Looking through the classical fiqh works on *awqaf*, one notices that the *fuqaha* were occupied with the issue of exploitation of *awqaf* properties, i.e., putting them to proper use as they were left and/or prescribed by the founder. Commonly, a founder would leave a *waqf* property in a productive state, capable of producing a flow of services or net revenues for which it was established. The possibility of increasing the *waqf* principal and enlarging its productive capacity was remote, especially if its activity no longer fell within the framework put forward by its founder.

Consequently, we find discussions of financing needs of a *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 fiqh discussion of the "end" of a *waqf* without thinking of any effort to renew or replace it, especially in the case of a *waqf* of perishable things, such as horses, livestock, and books.

In other words, the idea of putting aside a 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 classical fiqh.[15]

The classical books of fiqh discuss five modes of financing the reconstruction of a *waqf* property: borrowing, *hukr*, *ijaratayn* (lease with dual payment), adding a new *waqf*, and substitution (exchange). Among these five modes, only one, 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 idle *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.

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

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 the Prophet. 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 the well (the owner did not agree to sell the whole well). In a short while, the former sole owner accepted an offer from 'Uthman to buy the other half, which he did and added it 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 in Madinah was enlarged during the time of 'Umar and 'Uthman and later in the Umayad and Abbassid periods. Each enlargement represents adding a new *waqf* to the old one. another example of adding a new *waqf* is seen in providing an older *waqf* with new facilities, such as water, electricity, and heating systems.

Islamic history has witnessed this kind of addition of new *awqaf* to older ones in mosques, schools, hospitals, orphanages, monasteries, universities and graveyards. Furthermore, we find examples in fiqh books of adding a *waqf* of construction and trees made by the renter of *waqf* land. This type of *waqf* is considered valid because it is stabilized by being erected or planted on land that is already a *waqf*.[16] The *waqf* of adding new books and new copies of the Qur'an to older ones in libraries and mosques is a common practice all over the Muslim land. In fiqh books, we find discussions of possible differences in beneficiaries between the old *waqf* and the new one that is added to it; the *fuqaha* say that the revenues should be distributed in accordance with the proportion of revenues of each *waqf*.[17]

Borrowing for Financing Operational Needs of a *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 making it functional. The usual condition for such borrowing is 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 mention 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 the sense of increasing the capital of the *waqf*, since the word "reconstruction" (*'imarah*) came general or unqualified, but if one closely follows the fiqh 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 because of a catastrophe or because of natural decay, rather than reconstruction in a sense of growth and creating incremental capital for the *waqf*.

Substituting a *Waqf*

The mode of substitution simply means an exchange of a *waqf* 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 *waqf* property under normal market conditions. Consequently, substitution is not a mode of financing. Yet, because of the unique characteristics of *waqf*, especially considering that a *waqf* cannot be sold, its substitution may sometimes end up increasing the flow of services it provides. The classic 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 *waqf* property happens to have an alternate use for it.

Furthermore, partial substitution has been emphasized as a means of financing, especially in the 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 *waqf* property, although it may increase its revenues because of the possibility of it having been idle before substitution. Furthermore, substitution is made possible only by discovering new uses for the *waqf* property that were not available before, for example, in the case of metropolitan land, which can be used for high-rise construction substituting for older short buildings. An interesting example of substitution caused by the presence of new uses of the *waqf* property are *waqf* handwritten 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 or demographic changes.

The Mode of *Hukr*

The mode *hukr* 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 periodic rent. This right is sold for a large lump sum paid in advance. The purchaser of the right of a long lease can then develop the property using his/her own resources and at his/her own risk as long as he/she pays the periodic rent to the *nazer*. The term *hukr* means "monopoly" or "exclusivity." This exclusivity right may be for a long period that 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, or bequested in a last will.

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. For example, by selling an exclusivity right on a piece of agricultural land that was a *waqf* for spending on a mosque, the *waqf* obtains funds for the reconstruction of 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 periodic rent which is 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 even 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 it is sold without 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 or how small it may be, but on the fairness of the practice and the final utilization of the lump sum generated by selling the exclusivity right.[18]

The Mode of *Ijaratayn*

Ijaratayn is exercised by creating a long lease in which the rent consists of two parts: the first part is one big lump sum advanced for the reconstruction of the *waqf* property, and the second part is a small periodic payment paid, say, annually for the period of the lease. This mode is very similar to the *hukr* except that in *ijaratayn* the advanced price must be used for the reconstruction of the leased property itself. Obviously, in this contract the two parties observe that the *waqf* 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 *waqf* property,[19] especially since this mode requires that the immediate cash payment should be used for reconstruction while in the mode of *hukr* it may be used for any other purpose outside the rented *waqf* property, while the periodic rental payment is usually small in both cases.

This kind of argument may be valid if we assume that the periodic rent is equal in both modes. Obviously, under fair market conditions the periodic 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, there is a special case of this mode called *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 periodic rent applicable after reconstruction.

New Institutional Modes of Financing the Development of *Awqaf*

Of course, new modes of financing investments in *awqaf* must be derived from the same fiqh on *waqf* and 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 *waqf* 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.

We will now 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 the whole project. There are four modes of financing that allow the *waqf nazer* to keep an exclusive right over management: *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.

Murabahah

Murabahah financing has become well known in the literature. Its application on *awqaf* requires the *waqf 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 a *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.

Istisna'

The mode of *istisna'* allows the management of a *waqf* to order the required expansion in the *waqf* property (e.g., construction) from the financing institution by means of an *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.

The *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.

Ijarah

The *ijarah* 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, which 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, be it a hospital, a school, or an investment property such as rental offices or apartments. The *nazer* runs the management and pays the periodic 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 for 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.

Mudharabah by the *Nazer* with the Financier

The mode of *mudharabah* can be used by the *nazer* of the *waqf*, who assumes the role of entrepreneur (*mudharib*) and receives 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.

Ownership Sharing

The 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. Ownership sharing is not a partnership since in a partnership both parties commonly own the property of the partnership in accordance with their shares in its principal. In ownership sharing we are faced with two distinct properties, each one of which is owned completely and individually by an independent party. In fiqh, their relationship is determined by what is called *sharikat al-milk* in contrast to *sharikat al-aqd*, which 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 at 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.

Output Sharing

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

In the 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 nonmanaging 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 the position of a silent partner.[20] This makes it one of the two modes in which the management will exclusively be in the hands of the financing institution.

Long Lease and *Hukr*

The final mode of institutional financing is one in which 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 periodic rent to the *waqf nazer*.

In the *hukr* submode, a provision is added in the contract, according to which the financing institution gives a cash lump sum payment in addition to periodic rent payments. 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.

New Modes of Financing *Awqaf* Development by Resorting to Public Issuing

When the management of a *waqf* 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. Keeping management in the hands of the *waqf 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 an issuing prospectus itself, that assigns the *nazer* as the manager of the project.

At this stage it is necessary to emphasize that, according to the 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 debt and/or money, it cannot be sold except for a price that is equal to its nominal face value. Moreover, from the Shari'ah point of view, a security that represents only money needs further conditions for the validity of its sale. Hence, in addition to pricing at 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 both *murabahah* and *istisna'* 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 forms of financing that end up creating debts on the fund user. This leaves us with the modes based on the principles of sharing and 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 the 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 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 since a lease contract is characterized by having a prefixed return.

We will now suggest five new types of securities that can be issued to the public for financing the development of *awqaf* 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 *waqf* manager, who then receives the face value of the security along with a contract appointing the *waqf nazer* as an agent to execute, exploit, and manage the desired project on behalf of its owners (stocks, bonds, and shareholders). The relationship between the owner of these securities and the *waqf* management begins 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.

Output Shares

Output shares are negotiable securities that represent equal shares in the principal of a productive project established on *waqf* 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 *waqf* land and rented to, say, the Ministry of Health or a group of physicians, a share entitles its owner to a certain percentage of the gross contracted rental while the *waqf*, as represented by its *nazer*, takes responsibility for all managerial activities including maintenance and insurance. Hence, the share of the *waqf* of the total gross return consists, in fact, of three parts: (1) a return for the land provided to the project by the *waqf*, (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 a productive fixed asset which is based on *muzara'a* in which the managing party takes responsibility for 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 in time. This can be fulfilled by buying the output shares from the market. The prospectus may also stipulate a 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 the 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 shareholders 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 *mudharib* 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-māl*, and the *waqf* as *mudharib*, 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 *mudharib*.

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 *mudharib*.
5. The *nazer* actually distributes gross returns according to the agreement.

From the accounting point of view, output shares are characterized as being simple to calculate because there is no need for evaluating the fixed asset and worrying about its 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, and operational expenses. 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 *mudharib*. Thus, it is easier to implement since 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 *mudharib* is responsible for paying this cost on their behalf and deducting it from their share of gross return. Insurance premiums are usually predetermined so that output shares will 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 *mudharib* will be able to generate out it. In other words, output shares will 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 the 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 *waqf* land and selling its product to the local government.

Partnership Stocks

Partnership stocks are the same as common stocks. The *waqf nazer* may issue common stocks, representing the value of construction intended to be made on *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, and so on, will 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 or 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 makeup for the total of the principal advanced and desired return together.

Lease (*Ijarah*) Bonds

Ijarah bonds are securities representing equal shares in a leased property. In the case of a *waqf*, 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 bondholders and the *waqf* that becomes effective once the building stands usable. This lease agreement determines the amount of rent, intervals of payment, and period of the lease.

The total rent of the whole leasing period may be distributed in any number of periodic 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 still be 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 *muqaradah* bonds since the latter three are based on the project's return, which 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 are basically 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 a 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, 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*.

Hukr Shares

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; 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 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.

Muqaradah Bonds

Muqaradah bonds are based on the idea of a *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 *waqf* as *mudharib* accepts cash deposits against issuance of *muqaradah* bonds given to *rab al-māl*.

The *waqf* management utilizes the proceeds for establishing the investment project agreed upon with the bondholders on the *waqf* land, and it distributes the net return periodically between the *mudharib* and *rab al-māl* until the end of the *mudharabah* agreement. At that point, the *waqf* management is required to return the principal cash to the bondholders and retrieve the bonds they have. *Muqaradah* bonds may also come to an end either by transferring the property into a *waqf* or by the *waqf* management buying it from the market.

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*, has 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 are 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. Implicit in this 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 are that a *muqaradah* bond may alternatively be purchased from the market at market price or amortized at 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 were deposited.

The preceding argument becomes easy to implement if the development 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 periodic 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) reflects fairly all the real factors affecting the project and its economic environment and trends.

Summary and Conclusion

In this article, we have studied some of the few more 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 the 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 contributors' motives in financing *awqaf*. Why not think of their financing on the basis of the same motives? Two patterns of charitable financing can be mentioned to finance the development of *awqaf* properties: creation of a cash *waqf* fund and 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 the 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).

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 a *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 a 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 a certain period of time and they would like to retrieve their principal at the end of that time. As defined in the Shari'ah, they are similar to loans that are acts of charity in which the lenders sacrifice the benefit of using their cash during the period of the loan.

The bank of temporary *waqf* deposits would solicit such 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. The first category consists of temporary *waqf* deposits in which depositors give their cash as temporary *waqf* for a 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 the section titled "New Institutional Modes of Financing the Development of *Awqaf*" of this article.

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 his/her cash for a certain period of time for the purpose of helping the development of *awqaf* properties on a 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 to expand 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 channel it toward *awqaf* development financing. Furthermore, such an *awqaf* bank may be a domestic corre-spondent/agent of international financial institutions that may be willing to help finance the development of *awqaf* properties.

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

Notes

1. The Review of the OIC Islamic *Fiqh* Academy, Vol. 5, 1409 AH, and al-Khaled, Vol. 1, chapter on definition of *awqaf*.

2. 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* because 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 the Ruma well by 'Uthman, the orchard of Khaybar by 'Umar and the other *awqaf* of the companions that consisted of arable land, trees, and usable buildings.

3. Abdul Malik Ahmed Sayed, "Role of *Awqaf* in Islamic History," in Hassan Abdullah Al-Amin, ed., *Idarat wa tathmir mumtalakat al-awqaf* (Jeddah: IRTI, 1989), p. 231.

4. Ibid., 238–240.

5. Ibid.

6. It is said that fanatics burned 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., 279.

7. Mustafa al-Zarka, *Ahkam al-awqaf* [Awqaf Rulings] (Damascus: Syrian University Press, 1947), 48.

8. Zarka, 122.

9. Sayed, 288–290.

10. Ibid., 249–258.

11. Ibid., 280–287.

12. Yusuf al-Qaradawi, *Qitab Al Wa Al Hayat* (Beirut: Muassassat Al Risalah).

13. Ibid.; see also Sayed.

14. Monzer Kahf, "Waqf" in the *Encyclopedia of Modern Islamic World*, Vol. 4 (New York: Oxford University Press, 1995).

15. For instance, one finds in the *fiqh* 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.

16. Zarka, 48.

17. Ibid.

18. See, Mustafa Zarka, 194.

19. Mustafa Zarqa, 195.

20. Monzer Kahf, *Mofhum al-tamwil fi al-Islam;* and Rafic al-Misri, *Al-mudharabah bi al-'usul al-thabitah* [*Mudharabah* in fixed assets], *Review of Research in Islamic Economics* 5, no. 1 (1405 A.H.).

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 differentiated from the fiqh rule *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 characteristics of owning a physical asset; owning a physical asset is risky because it is exposed to natural and market risks.

22. For the fiqh argument of this point, see Monzer Kahf, *Sanadat al-ijarah* [*Ijarah* bonds] (Jeddah: IRTI, 1418 A.H.).