

## TRUST &amp; ESTATE PLANNING (TEP)

# Islamic Trust (Endowment) or WAQF

By Mohammed Aweidah

## What is a Waqf?

The word Waqf is derived from an Arabic root which means 'to hold back', 'to stand still' and 'to tie'. Waqf is also known as an "Endowment".

The word Waqf is used in Islam usually in reference to the holding of certain property and preserving it for the sole benefit of certain philanthropic institutions thereby prohibiting any use or disposition of the endowment outside that specific objective. Waqf widely relates to land and buildings. However, there are Waqf of books, agricultural machinery, cattle, shares and stocks.

The term Waqf primarily denotes a 'charitable foundation'. As such, it signifies a person as religiously and socially devoting all or a portion of his properties and assets to the community for unrestricted use that will benefit the public. This term is commonly used and practiced in Islamic Law with the purpose of protecting, conserving and preserving a property so that its fruits and revenue will continue to be of value to society for generations to come.

This system was strongly practiced and implemented during Ottoman period by traditional families in old cities such as Mecca, Medina, Jerusalem, Damascus, Cairo, Tunis, and Istanbul. Among the core functions of the Islamic Waqf or endowment system was to provide funding for some public expenses and services in a time before it became the norm for governmental agencies to provide them. Waqf (endowment) is the only known permanent and perpetual instrument in Islam and



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in the Muslim tradition. This system has successfully preserved/ protected the revenue and income generating properties of its assets. Further, it has endured for centuries while functioning as a base (through continued support of inherently "public" expenses) for the facilitation of economic growth, consistency, stability, expansion and diversification.

## Types of Waqf

Waqf are organized in either of three ways:

1. Religious Waqf – the beneficiary would be religious in nature (such as mosques).
2. Philanthropic Waqf which aims to support the poor segment of the society and activities which are of interest to people at large such as libraries, scientific research, education, health services, care of animals, the environment, parks and roads, etc.
3. Posterity or Family Waqf – the most

commonly used form of Waqf, whereby the fruits and revenues of the Waqf are first given to benefactor's children/descendants and only the surplus, if any, would be given to the poor. In a manner very similar to the contemporary trust system, the founder decides how many generations will benefit from the revenue and which charitable institution would ultimately take over the benefits. The Waqf by-laws resemble a trust deed.

## Ownership of Waqf

The ownership of Waqf property lies outside the person who created the Waqf. It belongs to the beneficiaries although their ownership is not complete as they are not permitted to dispose of the property or use it in a way different from what was decreed by the founder of Waqf. In this regard, Waqf differs from a trust, since the trustee of a trust is usually able to sell its property. This implies that perpetuity is stronger in Waqf than in trust.

## Characteristics of Waqf

Waqf has the following two characteristics:

**1) Perpetuity:** Once a property is dedicated as Waqf, it remains Waqf forever. Elimination of Waqf status of a property is almost impossible in most of the jurisdictions, with a few exceptions. In those cases, the property would need to be exchanged for another property of equivalent value with the approval

of the local court. Upon completion of such an exchange, the new property immediately becomes Waqf for the same purpose and beneficiaries of the former one.

Waqf founders and courts have historically taken great care in documenting and preserving Waqf deeds. Courts in many cities kept detailed records of Awqaf (plural of Waqf) proper ties as early as the 15th and 16th centuries. Many of these records are still maintained and historians explore them in Istanbul, Cairo, Fez, Damascus, Jerusalem, Isfahan, etc.

## 2) Durability of stipulations of Waqf founder:

Since Waqf is a voluntary act of kindness, conditions specified by the founder must be fulfilled to the letter as long as they do not contradict or violate any of the Sharia rulings. This implies that revenues of Waqf should exclusively be used for the objective stipulated by its founder and this may not be changed by management or courts as long as the objective is compatible with Sharia law on one hand and is still feasible on the other



hand. If a Waqf purpose becomes infeasible, the revenue of this Waqf should be spent on closest purpose available and if not it goes to the poor and needy. Perpetuity covers all founders' stipulations whether they relate to purpose, distribution of revenues, management, supervisory authority, etc.

## Legal conditions of Waqf

Waqf creation requires certain conditions:

1. The property must be a real estate or a thing which has some meaning of perpetuity.
2. The property should be given on a permanent basis.
3. The Waqf founder should be legally fit and able to take such an action.
4. The purpose of the Waqf must, in the

ultimate analysis, be an act of charity from both points of view of Sharia and of the founder. Hence Waqf for the benefit of non-charitable purposes is not permissible.

5. Finally, beneficiaries, person(s) or purpose(s), must be alive and legitimate.

## Management of Waqf

In principle, the Waqf founder determines the type of management of his/her Waqf. The Waqf manager is usually called mutawalli (guardian) and his/

her responsibility is to administer the Waqf property to the best interest of the Waqf objectives. The first duty of mutawalli is to preserve the property then to maximize the revenues of the beneficiaries. The Waqf document usually mentions how the mutawalli is compensated for this effort and if the document does not mention a compensation for the mutawalli, he/she either volunteers or seeks assignment of compensation from the court.

The judicial system, i.e. courts, is the authority of reference with regard to all matters and disputes related to Waqf.

Waqf (endowment) presents an excellent model in dealing with and resolving the major social and economic problems of poverty and income inequality. This is echoed from the religious teaching of the Prophet's saying, 'One who sleeps while his or her neighbor is hungry is not one of us'.

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