

Section one: Cash Waqf

The participants concluded by confirming Resolution No. 140 (6/15) of the Islamic Fiqh Academy of the Organization of the Islamic Conference, issued at its fifteenth session, which states:

Cash waqf:

1. Cash waqf is permissible because the purpose of the waqf, which is to retain the asset and give out its benefit for a charitable cause, can be realized by it. That is because money does not become particularized by specification; any money can substitute for any other money.
2. Cash waqf can be used for loan or investment, either directly or by the participation of a number of the donors in one fund, or through the issuance of cash waqf shares to encourage waqf [donation] and to achieve collective cooperation in it.
3. If the cash waqf is invested in something, such as buying real estate or having something manufactured, those assets are not considered waqf in place of the cash; rather, it is permissible to sell them for continued investment. It is the original amount of cash that is the waqf.

The Sharī'ah standard issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) states:

Cash waqf is allowed, but it should be used in a manner that does not consume it such as a permissible loan or safe investment such as *muḍārabah* (silent partnership). The waqf's share of the profit shall be distributed to the beneficiaries.

The participants opine that the areas of use of the cash waqf are numerous:

1. Cash waqf can be invested in various Sharī'ah-compliant investments.
2. Sharī'ah dictates should be complied with to protect the capital of the cash waqf (in accordance with Sharī'ah Standard No. 45 issued by AAOIFI regarding Capital Protection and Standard No. 3 of the Dubai Financial Market on Hedging against Investment and Financing Risks.
3. It is permissible to create waqf funds from the cash waqf for charitable and developmental loans while remaining vigilant about recovery of the capital by taking adequate guarantees and the like.

4. The Forum recommends the creation of accounting and supervisory standards for the follow-up and tracking of cash waqf, its investments and loans.
5. Sharī'ah-compliant hedging measures should be adopted against the risks of exchange rate fluctuation; for example, the Master Agreement of the International Islamic Financial Market (IIFM).
6. The Forum discussed the issue of guaranteeing the capital of the cash waqf by the entrepreneur in *muḍārabah* or the managing partner or the investment agent and recommended the completion of research on this subject. Among the topics that deserve to be explored are:
 - a) Distribution of profits from the total profits before deducting expenses in *mushārah* and *muḍārabah* contracts.
 - b) A stipulated or voluntary guarantee by the entrepreneur in *muḍārabah* or the managing partner or the investment agent for waqf institutions as well as for institutions that care for orphans, widows and minors, social insurance funds and the like.
 - c) The undertaking by the entrepreneur of a *muḍārabah* or the managing partner or the investment agent to pay as a waqf the amount of the loss for which he is not asked about. He would by doing so become one of the donors of waqf in accord with the stipulations [of the other donors] or by the conditions he stipulates. Is it permissible to make such a pledge in a charitable waqf only or in both charitable waqf and family waqf?

Section Two: The Manager's Remuneration and the Administrative Expenses

First: The Manager's Remuneration

1. The manager (*nāẓir*) refers to any person who manages the waqf, develops its resources, preserves its assets and spends its proceeds on the beneficiaries in accordance with the stipulations of the waqf donor. The *nāẓir* bears the responsibility of waqf management whether the entity who does so is an individual, a group, an organization, a ministry or the like.

2. Parameters of the manager's remuneration: the basic principle is that the manager's remuneration is to be as stipulated by the waqf donor. It can be a specific amount or a proportion of the proceeds, but the following should be taken into account:
 - a) If the waqf manager is appointed by the donor and his remuneration is determined by the donor, his stipulation should be implemented even if the remuneration is higher than the standard remuneration. If the total proceeds are less than the stipulated manager's salary, maintenance costs and other necessary expenses should be given priority over the manager's salary. The remainder of the proceeds should be paid to the manager while the remainder of the salary becomes a debt on the waqf.
 - b) If the remuneration is less than the standard remuneration, the matter can be referred to the judge by the manager, provided there is a surplus in the waqf proceeds.
 - c) If the waqf manager is appointed by the judge, the remuneration should not be higher than the standard remuneration.
 - d) If the waqf donor did not fix any remuneration for the manager, the manager should be paid the standard wage in accord with the nature of the work, his qualifications and experience, and the economic circumstances of that time and place, unless the manager offers his work as a volunteer.
 - e) If the donor appoints himself or a relative as the manager of the waqf and stipulates a remuneration higher than the standard remuneration, he only has a right to the standard remuneration if there is surplus in the waqf proceeds after payment of the maintenance expenses. This is because it entails partiality, invites accusation, and may invalidate the waqf.
 - f) If the waqf is run by a government agency such as a council or a ministry, the state or the supervising authority should bear the administrative costs, including the wages of the workers. This is applicable to the charitable waqf only. This has been successfully practiced in some Islamic countries.
 - g) If the cash waqf fund is created with a specific amount of money; e.g., a million, but the administrative and other expenses for the establishment of the fund are a hundred thousand, it is permissible to stipulate in the waqf deed and its prospectus

that the distribution of the waqf proceeds to the beneficiaries will begin only after recovery of the administrative expenses incurred in establishing the fund.

Second: the administrative expenses of the waqf are the expenses necessary for the preservation of the waqf, maintenance of the waqf assets and protection of the waqf's rights. The most important include:

1. Maintenance and repair expenses;
2. The manager's remuneration;
3. The normal administrative expenses;
4. Current waqf debt.

The administrative expenses should be subject to Shari'ah, accounting and administrative supervision in accordance with the country's customs. In all cases, the administrative expenses should not exceed 12% of the total return of the waqf, taking guidance from the case of those employed to collect zakat.

Section Three: Waqf Substitution

Fiqh scholars opine that in principle it is impermissible to sell the waqf or give it away or replace it with another asset. However, some special cases are exempted as follows:

1. Waqf substitution in the cases of necessity or for public interest;
2. When the waqf stops yielding benefits or it is difficult to make use of the benefits;
3. When the waqf changes to something forbidden to permanently possess; for example, the waqf consists of shares that were permissible but their status changes to Shari'ah non-compliant.

When substituting a waqf, the following must be observed:

- a) The waqf substitute should not be less in value and profit than the original waqf based on the evaluation of experts.
- b) Any partiality or cause for accusation or suspicion should be avoided.

- c) The waqf substitute should be purchased right away except what is dictated by circumstances.
- d) The substituted waqf should not be released except after the actual delivery of the waqf substitute.
- e) The waqf substitution should be done upon the decision of a Sharī'ah judge or the fatwa of a recognized Sharī'ah committee.

One of the topics worth researching on the issue of waqf substitution is the combination of nonfunctional *awqāf* (endowments) into a single waqf.

At the end of the seminar, the participants strongly recommended the establishment of higher Sharī'ah councils in Islamic countries to supervise waqf affairs from Sharī'ah, accounting and governance aspects.

May the peace and blessings of Allah be upon our Prophet Muhammad, his household, and companions.