CORE PRINCIPLES FOR EFFECTIVE WAQF OPERATION AND SUPERVISION

A Joint Initiative of BI, BWI & IRTI-IsDB

International Working Group on
Waqf Core Principles

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GLOSSARY

Waqf	:	Hold, confinement or prohibition. Waqf is holding a certai property and preserving it for the confined benefit of certain philanthropy and prohibiting any use or disposition of it outside its specific objectives. This definition accord perpetuity of waqf, i.e it applies to non-perishable properties whose benefits and usufructs can be extracted without consuming the property itself. Waqf also can be defined as a form of "*sadaqah jariyyah*" (continuous charity), is created by giving away an asset that produces benefits/revenues for targeted objective on a permanent basis.
Nazir	:	Waqf institution/administrator (called *nāẓir* or *mutawallī* or *ḳayyim).* Nazir must have capacity to act and contract. In addition, trustworthiness and administration skills are required.
Mutawalli/ Mutawalliyah	:	Manager, director
Mauquf'alaih	:	The beneficiaries of the waqf can be persons and public utilities. The Founder can specify which persons are eligible for benefit (such the founder's family, entire community, only the poor, travelers). Public utilities such as mosques, schools, bridges, graveyards and drinking fountains can be the beneficiaries of a waqf.
Waqif/ Waqifah	:	The person who is making the grant (or *al-muhabbis*).
Shari'ah	:	Divine guidance as given by the Holy Qur'an and the Sunnah of the Prophet Muhammad (PBUH) and embodies all aspects of the Islamic Faith, including beliefs and practice.
Fuqaha	:	Jurist(s)
Sunnah	:	Tradition of the prophet Muhammad
sukuk	:	Asset-based or asset-backed financial certificate(s)
qard al-hasan	:	interest-free loan
Hadiths	:	Sayings of the Prophet Muhammad

Shadaqah Jariyah	:	Perpetual charity
Sahabah (Prophet's Companions)	:	Companion(s)
Ijma' (consensus of Fuqaha)	:	Consensus
Qiyas (analogical deduction)	:	Analogical reasoning
Mudarabah	:	A partnership whereby one party (the capital owner) provides capital to an entrepreneur to undertake a business activity. Profits are shared between them as agreed, but any financial loss is borne only by the capital owner, as his loss is his unrewarded efforts put into the business activity.
Zakah	:	obligatory contribution(s) or due payable to the poor by all Muslims having wealth above the *nisab* (threshold or exemption limit).
infaq	:	Expenditure, spending
sadaqah	:	Charity(ies)

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INTRODUCTION

I. Introduction

Background

1. In the Arabic language, the word waqf or habs means preventing something from movement. In Shari'ah terminology, waqf refers to making a property invulnerable to disposition that leads to a transfer of ownership, and donating the usufruct, or the fruit of the asset, to beneficiaries. 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; therefore, the declaring of a property as waqf would simultaneously *deprive its donating owner of the right of ownership*.[1]

2. There are several types of waqf, the most important being charitable waqf (al-waqf al-khayri), family waqf (al-waqf al-ahli), joint waqf (al-waqf al-mushtarak), and self-dedicated waqf (al-waqf'ala al-nafs). The basic elements of waqf include: the form of the donation, the waqif (the donor), the beneficiary, and the donated property. Waqf is permissible in the form of real estate along with permanent furniture and fittings, movable assets, money, shariah compliant shares and sukuk. Regulators and Supervisors will observe all of the regulations, including Shari'ah-related regulation, to ensure the compliance of all related parties.

3. The core principles of waqf, as part of Islamic finance, embrace the principle of altruism, which promotes or maximizes the benefits to others, inclusively for all humans and living beings. The principles emphasize the importance of maintaining or keeping public confidence high since the system is fully dependent upon the public's propensity to donate.

4. A well-organized waqf system supported by information technology and compatible with other programs can be expected to serve as an additional vehicle of fund mobilization to support and significantly contribute to government economic development programs, particularly to programs for poverty reduction and comprehensive human development.

5. The institution of waqf has evolved over time and across different regions. Most regions have legal systems that reflect a traditional concern for preservation as captured in the three principles of perpetuity (assets/purpose), inalienability, and irreversibility. Contemporary scholars take a lenient view and permit temporary awqaf as well as reversibility under certain conditions. This waqf core principles duly acknowledges that there are different school of thoughts related to the law and the implementation of awqaf. The Waqf Core Principles (WCP) have thus been

[1] *AAOIFI Shari'ah Standard no.(33) Waqf 2/2 p.814/2015.*

structured around certain basic building blocks focusing on “benevolence” and “mutual benefit” while also seeking to harmonize alternative viewpoints.

Technical Considerations

6. The Waqf Core Principles (WCP) provide a clear positioning of the awqaf sector within the economic structure, especially in terms of providing direct socio-economic benefits (utilization of the corpus of awqaf in the form of fixed or non-fixed assets) and the contribution of low-cost financing from the returns on investment of the corpus of awqaf.

7. The Waqf Core Principles (WCP) provide clear and standardized systematics on the supporting elements of the worldwide-applicable waqf system. This waqf core principles is also positioned so as to ensure compatibility with, and the mutual recognition of, other financial sector prudential standards, as well as the latest regulatory standards that promote governance aspects.

8. The Waqf Core Principles (WCP) place the operational standards and supervision of the waqf sector at the same prudential level as that of other financial sectors. Operational standards are prepared to consider the risk-adjusted measures based on managed asset classes and the optimization of benefits for the community.

9. The Waqf Core Principles (WCP) dissect the elements of supervision related to the operationalization of the waqf system into a systematic arrangement structure as follows:

    a. Legal foundation;
    b. Waqf supervision;
    c. Good waqf governance;
    d. Risk management;
    e. Shari’ah governance.

10. This is the main reference document for the generation of various technical notes that cover specific technical aspects of waqf arrangement.

11. This is the main reference document for measuring the performance of waqf management while accommodating the technical and operational issues that different jurisdictions may involve.

12. This waqf core principles allows scope for the commingling of endowment funds with other philanthropy-driven funds while underlining the following:

    a. divine motivation; and

    b. the restriction of a portfolio only to halal businesses;

c. the underlying physical asset.

13. The core principles underscore the importance of financial technology applications in waqf management.

Objectives

14. The Waqf Core Principles (WCP) are formulated to address the specific objectives as follows:

    (i) To provide a brief description of the position and roles of the waqf management and supervisory system in the economic development program.

    (ii) To provide a methodology for setting the core principles in the waqf management and supervisory system.

Methodology

15. This Waqf Core Principles (WCP) applies a comparative study between currently well-established financial regulations such as banking regulation, insurance regulation, and the basic properties of waqf management.

16. The analysis conducted in this document assesses the relevance of the contemporary regulatory elements to a possible waqf management and supervisory regulation. The core principles classify the regulatory items that are in contradiction of the concept of waqf and relevant to the proposed waqf management and supervisory regulation. Based on the historical management of waqf, the core principles may also offer new elements of regulation for the waqf management and supervisory system.

Regulatory Aspects of Waqf

i. General Activities of Waqf Management

17. The *waqif* or founder donates his money/assets as *waqf* funds/assets to beneficiaries or *mauquf'alaih* (a person who is entitled to obtain benefit from a *waqf* fund) through a *Nazir/Mutawalli/*Trustee (a person/institution in charge of managing a *waqf* fund and distributing the returns of *waqf* investment).

18. The *waqif/*founder determines the objectives of distributing the *waqf* asset profits or other benefits. Only returns/profits/gains from the invested *waqf* fund/assets will be delivered to *mauquf'alaih*. The principles are continuously invested in potential investment opportunities.

19. As the *waqf* fund investment manager, the *Nazir*, on behalf of the *Waqf* institution, may allocate some *waqf* funds to finance direct investment, financial portfolios, the

capital market, or SME businesses on the basis of a profit-sharing system. The *waqif* can enforce certain nazir qualifications for his/her *waqf*.

20. The Nazir may invest a corpus of waqf into public infrastructure by considering a measure of risk adjusted to obtain a low cost of public infrastructure for society. In the end, people should not be burdened with a high-cost economy.

21. In carrying out their fiduciary duties, the Nazir is faced with potential conflicts of interest between the waqif, beneficieries (mauquf'alaih), and other external parties. Therefore, the Nazir must prioritize the interests of the mauquf'alaih.

22. When a waqf fund has been collected through cash waqf (waqf fund-raising program), it should immediately be distributed in the appropriate manner. The *Nazir* invests the collected funds in various investment portfolios. The *Nazir* may:

    (i) invest the funds in *shari'ah* (non-interest) financial institutions and/or shari'ah financial products in both domestic and overseas banks.

    (ii) finance selected businesses, such as small and medium-sized enterprises (SMEs).

    (iii) finance public infrastructures.

    (iv) establish new prospective businesses, giving due consideration to the emerging opportunities offered by e-commerce and the application of financial technologies (fintech).

23. Temporary and permanent waqf assets can be accommodated in the regulatory waqf framework, as well as temporary and permanent cash waqf. Temporary cash waqf sukuk management is also regulated based on the current practices in each country.

24. In the event of any discrepancy with the waqf programs, the local law shall take precedence in the resolution of cases.

25. Innovation in the development of waqf assets through the Islamic capital market can be used to raise the needed capital. Waqf sukuk and waqf shares management are regulated by a specific regulation. The combination of waqf, charity, qard al-hasan (benevolent loan), and sukuk provide an ideal model for the promotion of the waqf sector.

26. Waqf assets may be expanded in various forms in order to enhance their potential value, including the merger of waqf assets.

Shari'ah-related Considerations

27. The basis for considering Waqf (in principle) as a permissible and recommendable practice (Mandub) is the Quranic Verses, which instruct people to do good and spend on charitable causes, and also the Hadiths (quoted sayings of the Prophet – peace be upon him), which indicate: "When a person dies his rightful deeds will stop except in three respects: An ongoing charity "Shadaqah 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 (AAOIFI Shari'ah Standard no.(33) Waqf p.831/2015).
28. 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. Permissible 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 (AAOIFI Shari'ah Standard no.(33) Waqf p.831/2015).
29. The permissibility of temporary Waqf, is based on the viewpoints of the Maliki and the Imami School of Fiqh, in addition to what has been reported about the viewpoint of Abu Yusuf of the Hanafi School. 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 (AAOIFI Shari'ah Standard no. (33) Waqf p.832/2015).
30. 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 fall under this type of Waqf. Permissibility with regard to the application of modern financing techniques that have been developed by institutions rests on whether such forms could generate even more income than the traditional ones and achieve the goals of the preservation and security of the Waqf assets.
31. According to AAOIFI Shari'ah Standard no.(33) Waqf 5/2 p.832/2015, Shari'ah Standard on Waqf, the Waqf Superintendent should perform the following tasks: (1) Management, maintenance, and development of the Waqf, (2) Leasing of the assets or usufructs of the Waqf and leasing of the Waqf lands, (3) Development of the Waqf properties either directly through Shari'ah-sanctioned methods of investment, or through financial institutions, (4) Increasing the Waqf money by investing it in Mudarabah and other similar forms, (5) Changing the operational form of the Waqf assets with the aim of maximizing the benefit generated for the Waqf and its beneficiaries, (6) Defending the right of the Waqf, (7) Settlement of the debts of the Waqf, (8) Payment of the entitlements of beneficiaries, (9) Replacement of the Waqf, (10) Safeguarding the Waqf properties against occupation or seizure by others, (11) Using solidarity insurance to safeguard the Waqf assets, and (12)

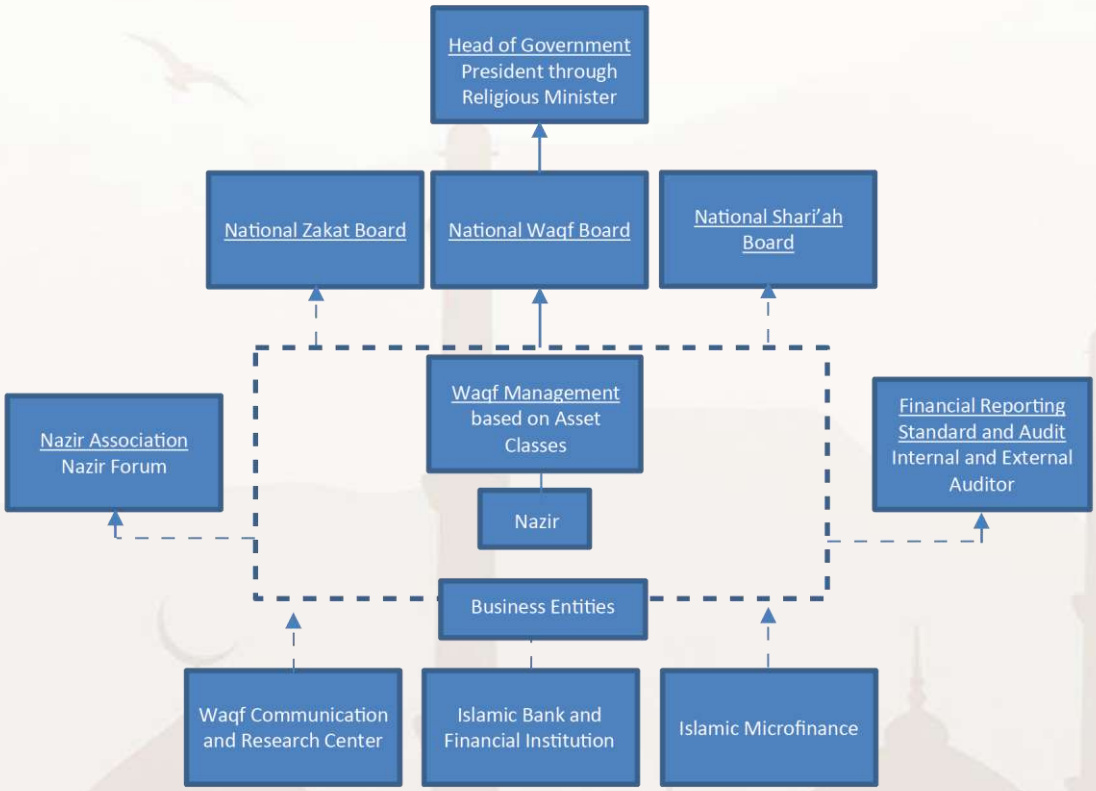
Preparation of the Waqf accounts and the submission of statements and reports on them to the concerned authorities.

32. According to AAOIFI Shari'ah Standard in 2018 about a new Shari'ah Standard on Waqf, the Waqif is allowed to be a non-Muslim by following the laws and conditions applicable to waqf. If Waqf is done by a sick (severe) Waqif then it can be done with a testament whereby the magnitude of one-third is outside of inheritance. Waqf is not associated with the rights of others, such as if waqf goods are pawns, or for the repayment of the debts of the goods during the term of waqf, then such matters are not applicable waqf except by permission of the Murtahin (the person who receives a mortgage) or Dain (the debtor). It is permissible to give a house as waqf and to include the fixed assets therein. Waqf is permitted on movable goods, such as vehicles, machinery, equipment, production equipment, internet sites, and digital applications. It is permissible to give a firm, company shares/stocks, and waqf sukuk for waqf.
33. If a waqif has determined the amount of a Nazir's fee, then the cost of his services is adjusted to what has been determined by the Nazir. If this is not done by the waqif then the determination is based on each jurisdiction.

ii. General Regulatory Framework of Waqf Management

34. While this section of the core principles provides a general regulatory framework for waqf management, waqf laws may differ widely across countries and jurisdictions. In the event of a recourse to the law, local laws shall take precedence in the resolution of any issues.
35. The most important task of the regulator is to supervise the waqf management, which includes ensuring Shariah compliance, financial transparency, and economic efficiency. Therefore, there is a need to build a strong supporting system, such as strengthening the function of the Sharia Supervisory Board, a standardization of the waqf accounting and financial reporting system, assessment of Waqf management performance, a monitoring system for operational efficiency, economic and social impacts for beneficiaries (mauquf alaih), and collaboration with financial institutions and Islamic microfinance.
36. A supervisory body has a structure that allows for effective supervision to be conducted of the headquarters and its operational branches. The supervisory process emphasizes the anticipatory process to minimize fraudulent practices. There are two models for managing waqf, centralized and decentralized. Some countries such as Kuwait, Qatar, and various other MENA countries have applied the centralized model while others have applied the decentralized model, or a combination of both models at the same time, such as in the case of Indonesia. Below is the proposed Institutional and Regulatory Framework for Waqf Management and Supervision.

Exhibit 1.
Institutional and Regulatory Framework for Waqf Management and Supervision



iii. Institutional Foundation

37. Another important element in the waqf system is the apex body, often termed the Waqf Board, which acts as a regulator and supervisor. Each country has its own rules pertaining to the power, composition, and functions of the Waqf Board. For example, according to article #40 point (1) Indonesian National Act no. 41/2004 on *Waqf*, the duties and responsibilities of a Waqf Board are as follows: (i) To improve the *Nazir's* capability for managing and developing *waqf* treasury. (ii) To manage and develop both national and international *waqf* treasuries and abandoned *waqf* treasuries. (iii) To provide approvals and permissions for waqf asset status; to officiate, dismiss, and replace a Nazir. (iv) To provide consideration, approval, and/or license for the correct alteration and status of *waqf* treasury. (v) To provide advice and consideration for the government in the formulation of *waqf* policies. In the same article, point (2) states that in carrying out its duties, the Waqf Board collaborates with communities, mass organizations, experts, international institutions, and both local and national government bodies. Details on the power, composition, and functions of Waqf Boards in other jurisdictions can be found in the References, provided as in Appendix.

38. Each country also has its own set of waqf rules related to waqf regulation and supervision in accordance with the applicable laws of that country. These rules are usually aligned with the stated policies of each country. Where existing waqf laws are unstated on certain aspects of waqf regulation and supervision (e.g., temporary waqf, cash waqf), these may be accommodated in the waqf rules.

39. Strategies to accomplish the vision and mission of the *Waqf* Board include:

    (i) To increase the competency and national and international networks of the *Waqf* Board.

    (ii) To compose regulation and *waqf* management policies.

    (iii) To enhance public awareness and willingness to contribute *waqf*.

    (iv) To boost the professionalism and honesty of *Nazirs* in managing and developing waqf assets.

    (v) To coordinate and develop *Nazirs*.

    (vi) To improve *waqf* asset administration.

    (vii) To monitor and protect *waqf* assets.

    (viii) To collect, manage, and develop both national and international *waqf* assets.

40. The main duties of the Waqf Board are to manage *waqf* assets through the Nazir both nationally and internationally. Additionally, the Waqf Board must collaborate with communities, mass organizations, experts, and international institutions. The

Waqf Board consists of divisions that are responsible for accomplishing the vision, mission, and strategy of the *Waqf* Board. They include the Division of *Nazir* Development, Division of *Waqf* Management and Empowerment, Division of Institutional Development, Division of Public Relations, and the Division of Research and Development.

41. The *Nazir* should also pay attention to the following issues:

    (i) **Maslahah** (achieve benefit/avoid harm). The *Nazir* must prioritize aspects of maslahah as a form of responsibility to provide optimal benefits to mauquf'alaih.

    (ii) **Transparency**. The *Nazir* has to manage cash/asset *waqf* transparently and under good governance regularly produce financial and performance reports that are accessible by the waqif.

    (iii) **Productivity**. The *Nazir* has to be able to manage the fund productively, so that the mauquf'alaih can benefit from the cash/asset *waqf* on a continuous basis.

    (iv) **Trustable**. The integrity of a *Nazir* is crucial. They must eschew any business opportunity and process that may give rise to moral hazard. All proposed business activities should be assessed on the basis of Islamic law.

    (v) **Sustainability**. The *Nazir* must be able to maintain the sustainability of the value of wakaf assets.

42. The advantages of utilizing *waqf* funds in Islamic microfinance include the following:

    (i) Waqf funds will enhance the financial performance and liquidity rate of Microfinance Institutions (MFIs).

    (ii) Waqf funds will create a positive image for an Islamic MFI.

    (iii) Waqf funds can be a perennial endowment fund in an Islamic MFI.

    (iv) Waqf funds will serve as a bridge between the rich and the needy.

    (v) Waqf funds will be useful for the poor who do not have sufficient collateral. This cheaper source of capital can reduce the cost of funds for MFI clients. It will thus increase the proportion of savings accounts from needy clients.

    (vi) Waqf funds can help the needy start micro businesses.

43. The core principles also identify some important conditions as prerequisites for the utilization of *waqf* funds for microfinance. More human resources are needed for this special division. A new special division and product would involve additional operational costs, notary administrators, and survey costs to identify the *waqf* beneficiaries. This has the potential to create a new problem for Islamic MFIs as *waqf* may create unequal opportunities for the obtaining of cheaper or zero

financial charges on financing between clients in the same MFI. For some clients, this discrimination will be perceived as an unfair policy and will make them reluctant to pay the cost of their loan (markup margin).

44. The ways in which additional funds can be gathered include:

    (i) The encouragement of *Zakah*, *infaq*, and *sadaqah* as *qard hassan* for helping micro-entrepreneurs.

    (ii) Soft loans from government or a private source can be *qard hassan* funds.

    (iii) Linkage programs between Islamic MFIs and other institutions such as *waqf* institutions, commercial Islamic banks, and other Islamic financial institutions.

45. The regulations for waqf management institutions comprehensively cover all operational aspects of the waqf institutions with the following objectives:

    (i) Optimizing the collection based on supporting governing rules;

    (ii) Maximizing the effectiveness of waqf management operations and to promote its governance;

    (iii) Maximizing waqf roles in supporting equitable economic development and poverty alleviation;

    (iv) To open up the possibility of cross-sector financial activities such as the capital market, banking sector, takaful, and zakat management.

46. With the above-listed desired objectives, the area of regulatory framework may cover:

    (i) Waqf operations, i.e., collection, distribution, and asset management;

    (ii) Waqf supporting functions, i.e., IT systems, human resources development;

    (iii) Risk management control;

    (iv) Supervisory framework;

    (v) Cross-sector regulatory framework.

iv. Waqf Manager (Nazir) Qualifications

47. Selection criteria for the waqf manager should be established in order to increase the trust of the waqif and the credibility of the institution. Such a set of requirements should consider the understanding of *Shari'ah* principles and the principles of professionalism.

48. Further notification of the strategic implementation of nazir management and roadmaps is accommodated in the technical notes.

49. The regulatory framework in a Muslim jurisdiction may define some of the characteristics required in a person for them to be a waqf manager (nazir). These are as follows:

    (i) Being a *Muslim*

    (ii) Being sane and pass the age of puberty

    (iii) Being completely trustworthy

    (iv) Having a complete knowledge and understanding of the waqf rulings and regulations, as an essential requisite for senior management

    (v) The relevant authorities may develop and perform a fit and proper test in order to confirm the quality of the senior management of the waqf institution.

    (vi) Being efficient and having the capability to manage waqf assets.

v. Supporting Infrastructure

Reporting System

50. Like other financial institutions, waqf management institutions require supporting infrastructure to ensure the effectiveness of their waqf operations. The supporting infrastructure consists of both internal and external reporting systems so that the operation can meet the required level of good governance practices. Externally, the waqf sector should also be supported by infrastructure that promotes an effective supervisory process by the waqf regulator and supervisor.

Internal Reporting System

51. The reporting system should enable the top management of a waqf management institution to monitor and comprehend the entire activities of waqf institutions, including their waqf collection, asset management, disbursement programs, minimization of costs and expenses, and human resource development. The reporting system should also be able to support the preparation of a waqf reporting system to the supervisory authority.

External Reporting System

52. The reporting system should comply with the accounting standard for waqf as stipulated by each country's accounting standard authority. Further, it should enable the safe flow of financial information to the supervisory authority. The information may take the form of financial stocks, flows, ratios, and indicators that indicate the effectiveness of the waqf management operations. The waqf supervisory authority determines the reporting forms to be prepared by the waqf management institutions for use in their regular reporting.

53. Besides the *ex post* financial position, the report should also contain financial projections that reflect the operational sustainability of the waqf management with a tolerable financial risk corridor (*ex ante*).

Waqf Regulations, the Basel Core Principles, and the IFSB Core Principles for Islamic Finance Regulation (Banking Segment) (CPIFR) in Comparison

54. The development of waqf regulations may benefit from the developments currently taking place in other financial sector industries. The corporate sector offers the most successful model to date, and waqf may adapt some of the private-sector concepts of corporate governance in line with the application of its own commercial principles and benchmarks. The Core Principles on Governance for Waqf Management aim to adapt the existing internationally recognized framework of The Core Principles for Effective Banking Supervision, issued by the Basel Committee on Banking Supervision (herein after referred to as the Basel Core Principles (BCPs).

55. The Basel Core Principles (BCPs) are the minimum standards for sound prudential regulation and supervision for banking systems. The BCPs have already been adopted by banks in more than 150 countries; therefore, the BCPs may represent the best model to emulate for bank supervisory practices.

56. By adapting the BCPs, the Waqf Core Principles represent an international standard of high-level principles to achieve and assess Waqf supervisory practices. This section adapts the 29 BCPs that were last revised in September 2012 (Basel Committee on Banking Supervision, 2012).

57. For the Islamic financial services industry in particular, the IFSB's Core Principles for Islamic Finance Regulation (Banking Segment) (CPIFR) complement the BCP framework. The IFSB Standard affords a very important platform to Shari'ah governance and Shari'ah compliance, which do not exist in conventional regulation.

Supervisory Powers, Responsibilities and Function

58. **Exhibit 2** contains a comparison between the core principles for effective banking supervision and the proposed principles for optimal waqf management institutions. There are 29 principles that are generally categorized into two main groups: the powers, responsibilities, and functions of waqf management, which are explained in the first group (Principles 1 to 12), and prudential regulations and requirements for waqf institutions that are explained in the second group (Principles 13 to 29).

59. Some of the principles in the Basel Core Principles (BCP) are of relevance to Waqf supervision. The proposed principles for waqf supervision are the 29 core principles. WCP-1 combines BCP-1 to BCP-3 and defines the objectives, independence, powers, independence, accountability, and collaboration of the *waqf* supervisory body. WCP-2 covers the asset classes of *waqf* assets and funds. WCP-3, WCP-4, and WCP-5 correspond to BCP-4, BCP-5, and BCP-6 on the permissible activities, licensing criteria, and transfer of waqf management. BCP-7 concerning major acquisitions is not relevant to the waqf concept. WCP-6 is a modification of BCP-7 regarding the takeover of waqf institutions and assets. WCP-7, WCP-8, WCP-9, WCP-10, and WCP-11 represent BCP-8, BCP-9, BCP-10, BCP-11, and BCP-12, respectively, on the waqf supervisory approach, waqf supervisory techniques and tools, waqf supervisory reporting, the corrective and sanctioning powers of waqf supervisors, and consolidated supervision. WCP-12 represents BCP-13 on home–host relationships.

Exhibit 2(a)
Supervisory Powers, Responsibilities, and Functions

Basel Core Principles	Waqf Core Principles
BCP 1: Responsibilities, objectives and powers	WCP 1: Responsibilities, objectives, powers, independence, accountability, and collaboration
BCP 2: Independence, accountability, resourcing and legal protection for supervisors	
BCP 3: Cooperation and collaboration	
	WCP 2: Asset classes
BCP 4: Permissible activities	WCP 3: Permissible activities
BCP 5: Licensing criteria	WCP 4: Licensing criteria
BCP 6: Transfer of significant ownership	WCP 5: Transfer of waqf management
BCP 7: Major acquisitions	WCP 6: Takeover of waqf institution & assets
BCP 8: Supervisory approach	WCP 7: Waqf supervisory approach
BCP 9: Supervisory techniques and tools	WCP 8: Waqf supervisory techniques and tools
BCP 10: Supervisory reporting	WCP 9: Waqf supervisory reporting

BCP 11: Corrective and sanctioning powers of supervisors	WCP 10: Corrective and sanctioning powers of waqf supervisors supervisors
BCP 12: Consolidated supervision	WCP 11: Consolidated supervision
BCP 13: Home–host relationships	WCP 12: Home–host relationships

Exhibit 2(b)
Prudential Regulations and Requirements

Basel Core Principles	Waqf Core Principles
BCP 14: Corporate governance	WCP 13: Good *Nazir* governance
BCP 15: Risk management process	WCP 14: Risk management WCP 15: Collection management WCP 16: Counterparty risk
BCP 16: Capital adequacy	
BCP 17: Credit Risk	
BCP 18: Problem assets, provisions and reserves	WCP 17: Disbursement management WCP 18: Problem *waqf* assets, provisions and reserves
BCP 19: Concentration risk and large exposure limits	
BCP 20: Transactions with related parties	WCP 19: Transactions with related parties WCP 20: Country and transfer risks
BCP 21: Country and transfer risks	
BCP 22: Market risk	WCP 21: Market risk WCP 22: Reputation and Waqf Asset Loss Risk
BCP 23: Interest rate risk in the banking book	WCP 23: Revenue/profit-loss sharing risk
BCP 24: Liquidity risk	WCP 24: Disbursement risk
BCP 25: Operational risk	WCP 25: Operational Risk and Shari'ah-Compliant
BCP 26: Internal control and audit	WCP 26: Shari'ah compliance and internal audit
BCP 27: Financial reporting and external audit	WCP 27: Financial reporting and external audit

BCP 28: Disclosure and transparency	WCP 28: Disclosure and transparency
BCP 29: Abuse of financial services	WCP 29: Abuse of waqf services

60. WCP-13 represents BCP-14 on good nazir governance of waqf institutions. WCP-14, WCP-15, and WCP-16 combine BCP-15, BCP-16, and BCP-17 on risk management process, capital adequacy, and credit risk into three principles, i.e., risk management, waqf collection management, and counterparty risk. WCP-17 and WCP-18 combine BCP-18 and BCP-19 on problem assets, provision, and reserves and concentration and large exposure limit into waqf disbursement management and problem *waqf* assets, provisions, and reserves. WCP-19 and WCP 20 represent BCP-20 and BCP-21, respectively, on transactions with related parties and country and transfer risks.

61. WCP-21 and WCP-22 represent BCP-22 on market risk and reputation and waqif loss risk. BCP-23 on interest risk in the banking book is not relevant but the revenue/PLS risk can be relevant for waqf portfolio investment (WCP-23). WCP-24, disbursement risk, represents BCP-24 on liquidity risk. WCP-25 represents BCP-25 on operational risk. WCP-26 applies BCP-26 on internal control and audit to Shari'ah compliance and internal audit. WCP-27, WCP-28, and WCP-29 represent BCP-27, BCP-28, and BCP-29 on financial reporting and external audit, disclosure and transparency, and abuse of waqf asset usage and financial services respectively.

Preconditions for Optimal Waqf Supervision

62. An optimal waqf management system cannot be performed without genuine cooperation between the waqf management and supervisors and all relevant authorities. There must be adequate systems in place to develop, implement, monitor, and enforce supervisory tools and policies on the optimal system of waqf management and supervision. The waqf management and supervisors should put in place strong external controls and risk management to respond to a number of elements or preconditions that have a direct impact on the optimal system of waqf management and supervision in practice. There are three preconditions for an optimal waqf management system, as follows:

    a) **A well-established framework for waqf management policy formulation**
    All parties that are involved in and responsible for the overall implementation of the waqf management system should be identified within a clear framework for waqf policy formulation. This waqf policy

framework is set out according to waqf act, laws, regulations, or other arrangements. The framework reflects the need to manage the mechanism for an optimal waqf management system.

b) A well-developed public infrastructure

There are four elements of public infrastructure to support an optimal system of waqf management and supervision, namely:

(i) comprehensive and appropriate national waqf management and accounting standards and rules;
(ii) a system of independent external audits and accountants;
(iii) availability of Nazirs who are competent and professional with transparent technical and Islamic ethical standards;
(iv) availability of regional, economic, and social statistics.

c) A clear framework for collection, investment, managerial, and disbursement activities.

Collection, investment, managerial, and disbursement activities as the main aspects of waqf management need to be supervised by the relevant authorities. A clear framework for the collecting, investing, managing, and disbursing activities helps to optimize the function of waqf as a tool of poverty alleviation.

ASSESSMENT OF COMPLIANCE

II. Assessment of Compliance

63. The primary objective of an assessment should be the identification of the nature and extent of any weaknesses in a waqf institution's supervisory system and compliance with the individual Core Principles. While the process of implementing the Core Principles begins with an assessment of compliance, such an assessment is a means to an end, not an objective in itself. Instead, the assessment will allow the supervisory authority (and, in some instances, the government) to initiate a strategy to improve the waqf institution's supervisory system, as necessary.

64. To assess compliance with the principles, a set of essential and additional assessment criteria for each principle are contained within the principles themselves. By default, for the purposes of grading, the essential criteria are the only elements on which to gauge full compliance with a Core Principle. The additional criteria are suggested best practices that countries that have advanced their waqf institutions should aim for. Going forward, countries will have the following three assessment options:

    (i) Unless the country explicitly chooses another option, compliance with the Core Principles will be assessed and graded with reference to the essential criteria;

    (ii) A country may voluntarily choose to be assessed against the additional criteria, in order to identify areas in which it could further enhance its regulation and supervision and benefit from the assessor's feedback on how this could be achieved. However, a country's compliance with the Core Principles will still be graded only with reference to the essential criteria; or

    (iii) To accommodate countries that seek to attain the best supervisory practices, they may voluntarily choose to be assessed and graded against the additional criteria, in addition to the essential criteria.

65. For assessments of the Core Principles by external parties, the following four-grade scale will be used: compliant, largely compliant, materially non-compliant, and noncompliant. A "not applicable" grading may be used under certain circumstances.

66. Brief description of the grades and their applicability:

    (i) **Compliant** – A country will be considered compliant with a Principle when all essential criteria applicable to the country are met without any significant deficiencies. There may be instances, of course, where a country can demonstrate that the Principle has been achieved by other means. Conversely, due to the specific conditions in individual countries, the essential criteria may not always be sufficient to achieve the objective of the Principle, and therefore other measures may also be needed in order for the

aspect of the supervision of waqf institutions addressed by the Principle to be considered effective.

(ii) **Largely compliant** – A country will be considered largely compliant with a Principle whenever only minor shortcomings are observed that do not raise any concerns about the authority's ability and clear intent to achieve full compliance with the Principle within a prescribed period of time. The assessment "largely compliant" can be used when the system does not meet all of the essential criteria, but the overall effectiveness is sufficiently good and no material risks are left unaddressed.

(iii) **Materially non-compliant** – A country will be considered materially non-compliant with a Principle whenever there are severe shortcomings, where, despite the existence of the Principle, several essential criteria are either not complied with or supervision is manifestly ineffective.

(iv) **Non-compliant** – A country will be considered materially non-compliant with a Principle whenever there are severe shortcomings, where, despite the existence of the Principle, none of the essential criteria are complied with or supervision is manifestly ineffective.

67. In addition, a Principle will be considered not applicable when, in the view of the assessor, the Principle does not apply given the structural, legal, and institutional features of a country. In some instances, countries have argued that in the case of certain embryonic or immaterial waqf institution activities, which were not being supervised, an assessment of "not applicable" should have been awarded in place of "non-compliant." This is an issue for judgment by the assessor, although activities that are relatively insignificant at the time of assessment may later assume greater importance and authorities thus need to be aware of, and prepared for, any such developments. The supervisory system should permit such activities to be monitored, even if no regulation or supervision is considered immediately necessary. "Not applicable" would be an appropriate assessment if the supervisors are aware of the phenomenon and would be capable of taking action, but there is realistically no chance that the activities will grow sufficiently in volume to pose a risk.

68. Grading is not an exact science and the Core Principles can be met in different ways. The assessment criteria should thus not be seen as a checklist approach to compliance but rather as a qualitative exercise. Compliance with some criteria may be more critical for the effectiveness of supervision, depending on the situation and circumstances in a given jurisdiction. Hence, the number of criteria complied with is not always an indication of the overall compliance rating for any given Principle. Emphasis should be placed on the commentary that should accompany each Principle's grading, rather than on the grading itself. The primary goal of the exercise is not to apply a "grade" but rather to focus authorities on areas that need attention in order to set the stage for improvements and develop

an action plan that prioritizes the improvements needed to achieve full compliance with the Core Principles.

69. The assessment should also include the assessor's opinion on how weaknesses in the preconditions for effective waqf institution supervision hinder effective supervision and how effectively supervisory measures are able to mitigate these weaknesses. This opinion should be qualitative rather than providing any kind of graded assessment. Recommendations with regard to the preconditions should not be part of the action plan associated with the Core Principles assessment, but should be included, for instance, in other general recommendations for strengthening the environment of financial sector supervision.

Practical considerations in conducting an assessment

70. While the Committee does not have a specific role in setting out detailed guidelines on the preparation and presentation of assessment reports, it nonetheless believes there are a number of considerations that assessors should take into account when conducting an assessment and preparing the assessment report.

71. First, when conducting an assessment, the assessor must have free access to a range of information and interested parties. The required information may include not only published information, such as the relevant laws, regulations, and policies, but also more sensitive information, such as any self-assessments, in addition to operational guidelines for supervisors. This information should be provided as long as it does not violate legal requirements for supervisors to hold such information confidential. Experience from assessments has shown that secrecy issues can often be solved through ad hoc arrangements between the assessor and the assessed authority. The assessor will need to meet with a range of individuals and organizations, including the waqf supervisory authorities, any relevant government ministries, waqf-related associations, auditors, and other financial sector participants. Special note should be made of instances when any required information is not provided, as well as of the impact this might have on the accuracy of the assessment.

72. Second, the assessment of compliance with each Core Principle requires the evaluation of a chain of related requirements, which, depending on the Principle, may encompass laws, prudential regulations, supervisory guidelines, on-site examinations and offsite analysis, supervisory reporting and public disclosures, and evidence of enforcement or non-enforcement. Further, the assessment must ensure that the requirements are put into practice. This also requires assessing whether the supervisory authority has the necessary operational autonomy, skills, resources, and commitment to implement the Core Principles.

73. Third, assessments should not focus solely on deficiencies but should also highlight specific achievements. This approach will provide a better picture of the effectiveness of waqf institution supervision.

74. Fourth, the development of cross-border cash waqf and returns on investment acquired from the transfer of waqf asset funds leads to increased complications when conducting Core Principles assessments. Improved cooperation and information sharing between home and host country supervisors are of central importance and form part of the assessment considerations in this Waqf Core Principles. The assessor must therefore determine that such cooperation and information sharing actually takes place to the extent needed.

PROPOSED REGULATORY STANDARD OF WAQF MANAGEMENT

III. Proposed Regulatory Standard of Waqf Management

75. Waqf institutions have degenerated in many Muslim societies by trying various policies. In order to mitigate the menace of poverty, there is a need to develop standards and guidelines for best practice in waqf management systems. The Waqf Core Principles are a starting point for the development of best practice frameworks and standards for waqf-based governance. The Waqf Core Principles are mainly aimed at improving the quality of waqf systems by identifying such weaknesses in the existing of supervision and regulation.

Proposed Principles for Optimal Waqf Management and Supervisory System

76. In order to remain a flexible and globally applicable standard, the Waqf Core Principles are formulated using the proportionality concept from a broad range of waqf institutions. The main objective of the Waqf Core Principles is the reinforcement of sound supervisory waqf management and a waqf economic-productive instrument among Muslim countries.

77. The Waqf Core Principles are the minimum standards to be applied by all waqf management. As an aid to recording compliance with a Principle, this section proposes assessment criteria for each of the 29 Principles under a set of "essential criteria" and "additional criteria" for each Principle. The essential criteria comprise elements that should be present in order for an assessment of full compliance with a Waqf Principle to be granted. The additional criteria are elements that may be relevant to those countries with an advanced waqf management system. To achieve optimal waqf management practices, a country may voluntarily choose to be assessed against the additional criteria in addition to the essential criteria (Basel Committee on Banking Supervision, 2012).

78. The Waqf Core Principles comprise five dimensions, presented in **Exhibit 3** below, that are to be observed by waqf supervisory authorities and waqf institutions.

Exhibit 3
Five Major Areas of Waqf Core Principles

No.	Dimensions	WCP
1	Legal Foundations	WCP 1 – WCP 6
2	Waqf Supervision	WCP 7 – WCP 12
3	Good Nazir Governance	WCP 13
4	Risk Management	WCP 14 – WCP 24
5	Shari'ah Governance	WCP 26 – WCP 29

79. The proposed waqf principles are further elaborated in this section. The following tables (Exhibit 3(a) – Exhibit 3(e)) propose the essential and additional criteria for each proposed Principle.

Exhibit 3 (a)
Waqf Core Principles 1–6

1. Legal Foundations
WCP – 1 Responsibilities, Objectives, Powers, Independence, Accountability, and Collaboration Laws, regulations, or other legal frameworks for waqf management and supervision are clearly defined to provide each responsible authority with the necessary legal powers and independent rule. **Essential Criteria:** 1. The main objective of waqf management and supervision is to promote a minimum standard for the sound regulation and supervision of the waqf management and supervisory system. 2. An optimal waqf management and supervisory system should have a solid legal foundation in terms of the waqf act. 3. The existing waqf act is adequate and comprehensively translated into operational regulation. 4. The elements of independence and power to regulate have to be clearly mentioned in the articles of the waqf act. Waqf assets and waqf funds should be managed independently in accordance with shari'ah rules. 5. The waqf act and its operating rules and regulations have to be recognized by other relevant acts and regulations. 6. The waqf act should clearly define regulatory and supervisory structures that cover shari'ah rules. 7. The waqf management and supervisor have the power to: a) Obtain full access to the Boards, management, staff, and records of waqf institutions; b) Review the overall activities of a waqf institution, including the collection of investment, management and disbursement of waqf funds including the collection, investment, management and disbursement of waqf funds; c) Impose any appropriate corrections and/or sanctions and revoke the waqf assets manager's license (Nazir's license) when a waqf institution is not

complying with the rules.

8. In Muslim minority countries, waqf institutions should comply with the prevailing local regulation, such as the Charity Act or other relevant rules and regulations.

Additional Criteria:

1. The waqf management and supervisory system has a logical and operational relationship with central and local government activities.
2. The waqf management and supervisor has sufficient local and cross-border cooperation with other regulatory bodies.
3. The waqf management and supervisory body must be an independent institution in which no one can intervene and influence the Nazir in managing the waqf assets, except in cases of fraud and criminal activities. The government or investigators are then allowed to scrutinize every element in this institution.
4. In Muslim minority countries, waqf institutions should cooperate with the relevant government and charity organizations responsible for humanitarian, social, and economic purposes.

WCP – 2 Waqf Asset Classes

Regulations or other arrangements clearly define the asset classes of waqf institutions in accordance with the principles of shari'ah. Asset classification may be based on the following criteria:

a) Commercial – Social
b) Permanent – Temporary
c) Economic – Benefit
d) Immovable asset (registered and unregistered rights to land, a building, or part of a building on the land, etc.)
e) Movable asset (cash, gold, commercial paper, vehicles, lease rights, etc.).

Essential Criteria:

1. The categories of waqf assets and funds must be clearly determined as part of the Waqf Acts.
2. The general criteria for waqf asset classes should be outlined as part of the Waqf Acts.
3. The general criteria for waqf asset and fund investment should be outlined as part of the Waqf Acts.
4. The general criteria for waqf asset and fund management should be outlined as part of the Waqf Acts.

5. The general criteria for waqf disbursement (the waqf revenue from waqf investments) should be outlined as part of the Waqf Acts.

Additional Criteria:

1. Intellectual capital, property rights, copyright, intangible assets, etc. can be considered waqf assets due to the massive innovation in the last decades.
2. All possibilities of waqf asset classes are explained in the technical notes.

WCP – 3 Permissible Activities

Laws, regulations, or other arrangements clearly define the permissible activities of waqf institutions in accordance with the principles of shari'ah and the management capacity of waqf institutions, including the field of waqf collection, investment, management, disbursement, and other religious charitable funds.

Essential Criteria:

1. The sources of waqf assets and funds must be clearly determined in the waqf act.
2. The general criteria for waqf collection should be mentioned in the waqf act.
3. The general criteria for waqf asset/fund management should be mentioned in the waqf act.
4. The general criteria for waqf disbursement should be mentioned in the waqf act.
5. The waqf manager/Nazir makes available a current list of licensed waqf institutions that are easily accessible by the public.
6. Waqf institutions can also manage infaq, shadaqah, and other religious charitable funds that are defined in the waqf act.
7. The capacity of the Nazir is based on criteria determined by each jurisdiction.

Additional Criteria:

1. The method of collection has formal permission from the waqf supervisor.
2. The methodology used to allocate waqf funds, particularly for the allocation of productive waqf funds, has to be approved by the waqf supervisor.
3. Waqf institutions may collect Corporate Social Responsibility (CSR) funds under the classification of infaq.
4. In Muslim minority countries, the determination of the sources of waqf assets/funds and the principles of waqf collection, investment, management, and disbursement should be in line with the Waqif's want and supervised by a legal Islamic organization and/or *fatwa* council.

5. The general criteria for waqf asset conversion should be outlined in the waqf act.
6. Permanent and temporary waqf can be considered by the waqf supervisor based on the convention in the relevant country.

WCP – 4 Licensing Criteria

The licensing authority has the regulatory power to set criteria for the licensing of waqf institutions and Nazirs (Waqf managers) and to reject any applications that do not meet the criteria.

Essential Criteria:

1. Licensing power is a part of the regulatory power that is clearly outlined in the waqf act.
2. The licensing process includes the provision of licenses to operate waqf institutions.
3. The waqf act identifies the authority responsible for granting and withdrawing a waqf institution's license and manpower.
4. The criteria for licensing waqf institutions are set by the licensing authority.
5. The types of penalties vary depending on the damages.

Additional Criteria:

1. The waqf manager selection criteria have to pass an appropriate fit and proper test, particularly for waqf fund management, with the exception of waqf asset management dedicated by a Waqif through a designated Nazir.
2. There are certain minimum requirements for serving as a Nazir (waqf asset/fund manager). The minimum requirement criteria must be clearly stated in the Waqf Act.
3. There is freedom to appoint a Nazir.
4. There is the opportunity for replacing a Nazir as requested by the regulator

WCP – 5 Transfer of Waqf Management

The waqf supervisor has the authority to review, reject, and impose prudential conditions on any proposal to transfer waqf assets, held directly or indirectly, from an existing waqf institution to another waqf institution (waqf manager).

Essential Criteria:

1. For the sake of public interest, the waqf supervisor can transfer waqf assets from one waqf management to another/others.
2. There are requirements to obtain waqf supervisory approval or provide immediate notification of any proposed changes that would result in a change of waqf management.
3. The waqf supervisor has the authority to reject any proposal to change the waqf management if such changes are deemed to disadvantage the beneficiaries.
4. The supervisor obtains information from waqf institutions, through on- or off-site examinations.
5. Laws, regulations, or the waqf supervisor require waqf institutions to provide notification of any material information that may negatively affect the suitability of waqf utility.

Additional Criteria: -

WCP – 6 Takeover of Waqf Institution & Assets

The supervisor has the power to approve or reject (or recommend to the responsible authority the approval or rejection of), and impose prudential conditions on, any takeover or investments, against the prescribed criteria, including the establishment of cross-border operations, and to determine that affiliations or structures do not expose the waqf institution to undue risks or hinder effective supervision. Other than waqf assets, these are under the management of non-waqf assets in each jurisdiction.

Essential Criteria:

1. Laws or regulations clearly define:
   a) the types and amounts (absolute and/or in relation to a waqf's capital) of takeover and investments that require prior supervisory approval; and
   b) cases for which notification after the takeover or investment is sufficient. Such cases are primarily activities closely related to waqf and where the investment is small relative to the waqf's capital.
2. Laws or regulations provide the criteria by which to assess individual proposals.
3. Consistent with the licensing requirements, among the objective criteria that the supervisor uses is that any new takeover and investments do not expose the bank to undue risks or hinder effective supervision. The supervisor also determines, where appropriate, that any such new takeover and investments will not hinder the effective implementation of corrective measures in the future. The supervisor can prohibit the Nazir from undertaking merger or major acquisitions or investments (including the establishment of cross-border waqf operations) in countries with laws or regulations that prohibit the information

flows deemed necessary for adequate consolidated supervision. The supervisor takes into consideration the effectiveness of supervision in the host country and its ability to exercise supervision on a consolidated basis.

Additional Criteria:
The supervisor reviews any takeover or investments by other entities in the waqf group to determine that these do not expose the waqf assets or funds to any undue risks or hinder effective supervision. The supervisor also determines, where appropriate, that any such new takeover and investments will not hinder the effective implementation of corrective measures in the future

Exhibit 3 (b)
Waqf Core Principles 7–12

2. Waqf Supervision

WCP – 7 Waqf Supervisory Approach

The waqf assets and fund supervisor have a scheme of supervision on an integrated basis that covers all aspects of waqf collection, investment, management, and disbursement.

Essential Criteria:

1. The waqf supervisor uses a methodology for determining and assessing the risk associated with shari'ah issues, the internal control environment, and the optimization of the waqf management system.
2. The waqf supervisor assesses waqf institutions' compliance with shari'ah regulations and other legal requirements.
3. The waqf supervisor has a clear framework or process for ensuring that waqf asset and fund management activities are performed fully in line with shari'ah regulations and legal requirements.
4. The supervisory and regulatory framework allows strategic collaboration with other supervisors to ensure that the collaboration activities are kept sound.

Additional Criteria: -

WCP – 8 Waqf Supervisory Techniques and Tools

The waqf supervisor uses an appropriate range of techniques and tools to implement the supervisory approach and deploys waqf supervisory resources on a proportionate basis, taking into account the risk profile, subject to adequate validation and verification.

Essential Criteria:

1. The waqf supervisor can employ either on- or off-site waqf asset management
2. The waqf supervisor uses a clear information system and strategic tools framework to regularly assess the processing, monitoring, and analysis of waqf assets and the fund management system, as follows:
   a) Analysis of financial statements and accounts;
   b) Shari'ah compliance analysis;
   c) Collection model analysis;
   d) Investments model analysis;
   e) Assets and fund management analysis;
   f) Disbursement model analysis;
   g) Analysis of good waqf governance.
3. The waqf supervisor evaluates the performance of waqf institutions' internal audit function in identifying strategic areas.
4. The waqf supervisor may employ independent third parties, such as financial auditors.
5. The waqf supervisor attempts to undertake appropriate monitoring to verify that waqf institutions have addressed supervisory concerns.
6. A condition imposed by the waqf supervisor may result in immediate action, such as a takeover or freezing/revoking of the waqf institution's mandate (license).

Additional Criteria:

The waqf supervisor has a framework for periodic independent review, for example by an internal audit function or third-party assessor, of the adequacy and effectiveness of the range of its available supervisory tools and their use, and to make changes as appropriate

WCP – 9 Waqf Supervisory Reporting

The waqf supervisor collects, reviews, and analyzes prudential reports of waqf institutions' performance on both an individual and consolidated basis and independently verifies these reports, through either on-site examinations or the use of external experts.

Essential Criteria:

1. The waqf supervisor has the power to require waqf institutions to submit supervisory information on a timely and accurate basis, such as their financial condition.

2. The waqf supervisor provides clear instructions for periodic reports that clearly outline the waqf accounting guidelines.
3. The waqf supervisor utilizes policies and procedures that determine the validity and integrity of supervision information.
4. The waqf supervisor shares data and information with the central bank and other relevant authorities to allow them to measure the impact of the sector against the rational economic development program and allow the central bank and other relevant authorities, as the macro prudential authority, to potentially advise the waqf authority in terms of the optimum portfolio direction.

Additional Criteria:

1. The waqf supervisor uses an integrated IT system to support the reporting system.
2. The waqf supervisor uses accounting standards and rules that are widely accepted internationally.
3. The waqf supervisor obtains data on the financial performance of waqf assets and funds from the Nazir for the purpose of optimizing the management of waqf assets and funds.
4. The waqf supervisor obtains details of the waqf recipients or mauquf'alaih database from all waqf institutions to optimize the effectiveness of disbursement.

WCP – 10 Corrective and Sanctioning Powers of Waqf Supervisor

The waqf supervisor acts at an early stage to address any unsafe and unsound practices or activities. The waqf supervisor has an adequate range of supervisory tools to effect timely corrective actions, in addition to the ability to revoke the license of waqf institutions or recommend such a revocation.

Essential Criteria:

1. The waqf supervisor should define an appropriate range of supervisory tools to be used in the event of a waqf institution's non-compliance with shari'ah laws, regulations, and supervisory actions.
2. The waqf supervisor has at their disposal a broad range of measures for the expeditious taking of timely corrective actions or imposition of sanction(s).
3. The waqf supervisor imposes sanctions not only on waqf institutions but when, and if necessary, also upon the management and/or Board, or any individuals therein.

Additional Criteria:

1. The waqf act guards against the waqf supervisor unduly delaying any appropriate corrective actions.
2. The waqf supervisor may use the rating assessment to enhance the corrective actions imposed on waqf institutions.

WCP – 11 Consolidated Supervision

An essential element of waqf supervision is that the waqf supervisor supervises and monitors the waqf institutions on a consolidated basis.

Essential Criteria:

1. The waqf supervisor understands the overall structure of the waqf institutions and is familiar with all of the material activities conducted by entities in the wider group, both domestic and cross-border. The waqf supervisor understands and assesses how group-wide risks are managed and takes action in the event that any riss arising from the waqf institutions and other related entities in the wider group, particularly in relation to contagion and reputation risks, may jeopardize the safety and soundness of the waqf institution and waqf system.
2. The waqf supervisor imposes prudential standards and collects and analyzes financial and other information on a consolidated basis for the waqf institutions, covering areas such as capital adequacy, liquidity, large exposures, exposures to related parties, investment limits, and group structure.
3. The waqf supervisor limits the range of activities the consolidated group may conduct and the locations in which activities can be conducted if it determines there to be excessive risk, lack of competence, or any unidentified risks.
4. Notwithstanding the consolidated supervision, supervisors must also not lose sight of the legal status of the individual waqf businesses in the group. The responsible supervisor supervises each waqf business on a stand-alone basis and understands its relationship with other members of the group.

Additional Criteria:

For countries that allow corporate ownership of waqf businesses, the waqf supervisor has the power to establish and enforce fit and proper standards for the owners and senior management of parent companies.

WCP – 12 Home–Host Relationships

The home and host waqf supervisors of cross-border waqf institutions share information and cooperate for effective supervision of the group and the group entities. Waqf supervisors require the local waqf operations of foreign waqf institutions to be conducted to the same standards as those required of domestic waqf institutions.

Essential Criteria:

1. The home waqf supervisor establishes waqf-specific supervisory colleges for the waqf institution group featuring material cross-border operations, with the purpose of enhancing effective oversight, taking into account the risk profile and systemic importance of the waqf institution group and the corresponding needs of its supervisors. In its broadest sense, the host waqf supervisor has a jurisdiction that contains a relevant subsidiary or significant branch and who, therefore, has a shared interest in the effective supervisory oversight of the waqf institution group.
2. The home and host waqf supervisors share appropriate information on a timely basis in line with their respective roles and responsibilities, both bilaterally and through the colleges. This includes information on both the material risks and risk management practices of the waqf institution group and on the waqf supervisors' assessments of the safety and soundness of the relevant entity under their jurisdiction. Informal or formal arrangements (such as memoranda of understanding) are in place to enable the exchange of confidential information.
3. The home and host waqf supervisors coordinate and plan supervisory activities or undertake collaborative work if common areas of interest are identified, in order to improve the effectiveness and efficiency of the supervision of cross-border waqf institution groups.
4. The home waqf supervisor develops an agreed communication strategy with the relevant host waqf supervisor(s). The scope and nature of the strategy reflects the risk profile and systemic importance of the cross-border operations of the nazir or waqf institution group. The home and host waqf supervisors also agree on the communication to waqf institutions of the views and outcomes of joint activities and college meetings, where appropriate, to ensure the consistency of messages on group-wide issues.
5. Where appropriate, due to the waqf institution's risk profile and systemic importance, the home supervisor, working with its national resolution authorities for waqf, develops a framework for cross-border cooperation and

coordination among the relevant home and host authorities.

6. Where appropriate, due to the waqf institution's risk profile and systemic importance, the home waqf supervisor, working with its national resolution authorities for waqf and relevant host waqf authorities, develops a group resolution plan. The relevant waqf authorities share any information necessary for the development and maintenance of a credible resolution plan. The waqf supervisors also promptly alert and consult the relevant waqf authorities and supervisors (both home and host) when taking any recovery and resolution measures.
7. The national laws or regulations applicable to the host waqf supervisor require the cross-border operations of foreign waqf institutions to be subject to prudential, inspection, and regulatory reporting requirements similar to those for domestic waqf institutions.
8. The home waqf supervisor is given on-site access to the local offices and subsidiaries of a waqf institution group in order to facilitate their assessment of the group's safety and soundness and compliance with due diligence requirements. The home waqf supervisor informs the host waqf supervisors of the intended visits to the local offices and subsidiaries of the waqf institution group.
9. The host waqf supervisor supervises booking offices in a manner consistent with internationally agreed standards. The waqf supervisor does not permit shell waqf institutions or the continued operation of shell waqf institutions.
10. A waqf supervisor that takes consequential action on the basis of information received from another waqf supervisor consults with that supervisor, to the extent possible, prior to the taking of such action.

Additional Criteria: -

Exhibit 3(c)
Waqf Core Principle 13

3. Good Nazir Governance
WCP – 13 Good Nazir Governance
The waqf supervisor determines that waqf institutions have robust and good Nazir governance policies and processes that cover shari'ah compliance, strategic tools, the

control environment, waqf management knowledge, and the responsibilities of the Boards of waqf institutions.

Essential Criteria:

1. Shari'ah law, regulations, and the waqf supervisor determine that the concept and definition of the Nazir can still be applied in the current waqf institutions. The Nazir deserves to receive a share of the profit derived from the waqf asset or fund management as a certain percentage of the total profit of waqf asset and fund investments. If the share of the profit from waqf investments is insufficient to support the management fee, then the amount can be paid from non-waqf wealth such as shadaqah, infaq, or a tax on a nationally agreed percentage.
2. The waqf supervisor provides guidance to waqf institutions on the expectations for sound Nazir governance.
3. The waqf supervisor regularly assesses a waqf institution's nazir governance policies and practices commensurate with shari'ah regulations and systemic importance.
4. The waqf supervisor establishes the nazir governance structures and requirements that are appropriate for nominating and appointing manpower that is honest, trustworthy, upright, and virtuous.
5. The waqf supervisor determines that the Board of the waqf institution:
    a) Approves and actively oversees implementation of the waqf supervisory direction and strategy;
    b) Establishes and communicates Islamic culture and values through a code of conduct;
    c) Establishes fit and proper standards in selecting nazir officers who are of good character, integrity, and who have good basic knowledge in the required areas (waqf asset/fund collection; waqf investment, management, and disbursement; and financial management);
    d) Establishes policies to address conflicts of interest and a strong control environment; and
    e) Ensures the effectiveness of waqf governance over the entire management of the waqf institution.
6. The waqf supervisor has the power to recommend changes in the composition of the waqf institution Board if it is legally proved that any individuals are not fulfilling their duties.

7. Waqf management should develop competence in at least three basic elements that support an independently effective governance structure, namely risk management, audit, and business.

Additional Criteria:

1. The waqf supervisor maintains a plan for succession to improve the quality of waqf officers through certification.
2. Laws, regulations, or the supervisor require the waqf institution to notify the waqf supervisor as soon as they become aware of any material and bona fide information that may negatively affect the fitness and propriety of a waqf Board member or a member of the senior waqf management.

Exhibit 3(d)
Waqf Core Principles 14–24

4. Risk Management
WCP – 14 Risk Management
The waqf supervisor determines that the Nazir or waqf institutions have a comprehensive risk management process to identify, measure, evaluate, monitor, report, and control or mitigate all material risks on a timely basis and to assess the adequacy of their capital and liquidity in relation to their risk profile and market and macroeconomic conditions. This extends to the development and review of robust and credible recovery plans that take into account the specific circumstances of the waqf institution. The risk management process is commensurate with the risk profile and systemic importance of the waqf institutions.
Essential Criteria:
1. The waqf supervisor determines that waqf institutions have appropriate risk management policies and strategies that are approved by the Waqf Boards/authority, and the Boards establish a suitable risk appetite to define the level of risk that the waqf institutions are willing to assume or tolerate. The supervisor also requires the Board/authority to ensure that: a) A sound risk management culture is established throughout the waqf institution; b) Policies and processes are developed for risk-taking that are consistent

with the risk management strategy and risk appetite;

c) Uncertainties attached to risk measurement are recognized;

d) Appropriate limits are established that are consistent with the waqf risk appetite, risk profile, and capital strength, and that these are understood by, and regularly communicated to, the relevant staff; and

e) Senior management take the steps necessary to monitor and control all material risks.

2. The waqf supervisor requires the waqf institution to have comprehensive risk management policies and processes to identify, measure, evaluate, monitor, report, and control or mitigate all material risks. The supervisor determines that these processes are adequate:

   a) to provide a comprehensive "waqf-wide" view of risk across all material types of risk;

   b) for the risk profile and systemic importance of the waqf; and

   c) to assess risks arising from the macroeconomic environment affecting the markets in which the waqf operates and to incorporate such assessments into the waqf's risk management process.

3. The waqf supervisor determines the existence of the following risk management strategies, policies, processes, and limits:

   a) The waqf supervisor determines that exceptions to established policies, processes, and limits receive the prompt attention of, and authorization by, the appropriate level of management and the waqf Board/authority where necessary.

   b) The supervisor determines that the waqf Board and senior waqf management obtain sufficient information on, and understand, the nature and level of risk being taken by the waqf and how this risk relates to adequate levels of capital and liquidity.

   c) The waqf supervisor also determines that the Board and senior management regularly review and understand the implications and limitations (including the risk measurement uncertainties) of the risk management information that they receive.

4. The waqf supervisor determines that the waqf management have an appropriate internal process for assessing their overall capital and liquidity adequacy in relation to their risk appetite and risk profile. The supervisor reviews and evaluates the waqf's internal capital and liquidity adequacy assessments and strategies.

5. Where the waqf management use models to measure the components of risk, the waqf supervisor determines that:
   a) the waqf management comply with supervisory standards regarding their use;
   b) the waqf Board/authority and senior waqf management understand the limitations and uncertainties relating to the output of the models and the risk inherent in their use;
   c) the waqf management perform regular and independent validation and testing of the models;
   d) the waqf supervisor assesses whether the model outputs appear reasonable as a reflection of the risks assumed.
6. The waqf supervisor determines that the waqf has information systems that are adequate (both under normal circumstances and in periods of stress) for measuring, assessing, and reporting on the size, composition, and quality of exposures on a waqf-wide basis across all risk types, products, and counterparties. The waqf supervisor also determines that these reports reflect the waqf's risk profile and capital and liquidity needs and are provided on a timely basis to the waqf Board and senior waqf management in a form suitable for their use.
7. The waqf supervisor determines that the waqf has adequate policies and processes to ensure that the waqf Board/authority and senior waqf management understand the risks inherent in new products, material modifications to existing products, and major management initiatives (such as changes in systems, processes, business model, and major acquisitions). The supervisor determines that the waqf Board and senior waqf management are able to monitor and manage these risks on an ongoing basis. The supervisor also determines that the waqf's policies and processes require the undertaking of any major activities of this nature to be approved by the Board or a specific committee of the Board.
8. The waqf supervisor determines that the waqf has risk management functions covering all material risks with sufficient resources, independence, authority, and access to the waqf Board to perform their duties effectively. The supervisor determines that their duties are clearly segregated from risk-taking functions in the waqf and that they report directly to the Board/authority and senior management on risk exposures. The supervisor also determines that the risk management function is subject to regular review by the internal audit function.

Additional Criteria: -

WCP – 15 Collection Management

The waqf supervisor determines that waqf institutions have adequate policies and processes in place for the valuation/assessment of waqf assets/funds.

Essential Criteria:

1. The waqf act should designate the institutions that will collect and manage waqf assets/funds.
2. The waqf supervisor determines that waqf institutions have appropriate policies and processes for regularly evaluating the various types of waqfable assets/funds.
3. The waqf supervisor determines that the waqf institution's Board obtains timely and appropriate information on the classification of waqfable assets.
4. The waqf supervisor should esure that the waqf institution has conducted the collection proactively. In order to achieve the primary objective of poverty alleviation, waqf institutions need to prioritize a larger proportion of waqf funds than other charitable funds.
5. The waqf supervisor determines the period of waqf assets/funds to be collected immediately (except in time of disaster).

Additional Criteria:

The waqf supervisor identifies the waqf liability from "new forms of wealth" not known in the early days of Islam, e.g., a joint-stock company or corporation.

WCP – 16 Counterparty Risk

The waqf supervisor determines that the cash waqf nazir has an adequate counterparty risk management process that takes into account the risk appetite, risk profile, and market and macroeconomic conditions. This includes prudent policies and processes to identify, measure, evaluate, monitor, report, and control or mitigate counterparty risk on a timely basis. The full credit life cycle is covered, including credit underwriting, credit evaluation, and the ongoing waqf management and waqf investment portfolios.

Essential Criteria:

1. Laws, regulations, or the waqf supervisor require waqf institutions to have appropriate counterparty risk management processes that provide a comprehensive view of cash waqf counterparty risk exposures. The waqf

supervisor determines that the processes are consistent with the risk appetite, risk profile, systemic importance, and capital strength of the waqf institutions, take into account market and macroeconomic conditions, and result in prudent standards of credit underwriting, evaluation, administration, and monitoring.

2. The waqf supervisor determines that a waqf Board approves, and regularly reviews, the cash waqf counterparty risk management strategy and significant policies and processes for assuming, identifying, measuring, evaluating, monitoring, reporting, and controlling or mitigating counterparty risk (including counterparty counterparty risk and associated potential future exposure), and that these are consistent with the risk appetite set by the waqf Board. The waqf supervisor also determines that senior management implement the cash waqf counterparty risk strategy approved by the waqf Board and develop the aforementioned policies and processes.
3. The waqf supervisor requires, and regularly determines, that such policies and processes establish an appropriate and properly controlled counterparty risk environment, including:
    a) A well-documented and effectively implemented strategy and sound policies and processes for assuming cash waqf counterparty risk, without undue reliance on external credit assessments;
    b) Well-defined criteria and policies and processes for approving new exposures (including prudent underwriting standards) as well as for renewing and refinancing existing exposures, and identifying the appropriate approval authority for the size and complexity of the exposures;
    c) Effective cash waqf credit administration policies and processes, including the continued analysis of a borrower's ability and willingness to repay under the terms of the financing (including a review of the performance of underlying assets in the case of securitization exposures); monitoring of documentation, legal covenants, contractual requirements, collateral, and other forms of counterparty risk mitigation; and an appropriate asset grading or classification system;
    d) Effective information systems for the accurate and timely identification, aggregation, and reporting of cash waqf counterparty risk exposures to the waqf Board and senior waqf management on an ongoing basis;
    e) Prudent and appropriate cash waqf credit limits, consistent with the waqf institution's risk appetite, risk profile, and capital strength, which are understood by, and regularly communicated to, relevant staff;
    f) Exception tracking and reporting processes that ensure prompt action at

the appropriate level of the waqf institution's senior management or waqf Board, where necessary; and

g) Effective controls (including in respect of the quality, reliability, and relevancy of data and in respect of validation procedures) around the use of models to identify and measure cash waqf counterparty risk and set limits.

4. The waqf supervisor determines that waqf institutions have policies and processes to monitor the total financing of entities to which they extend credit and any risk factors that may result in default, including significant unhedged foreign exchange risk.
5. The waqf supervisor requires that waqf institutions make credit decisions free of conflicts of interest and on an arm's-length basis.
6. The waqf supervisor requires that the credit policy for cash waqf prescribes that major counterparty risk exposures exceeding a certain amount or percentage of the waqf institution's capital are decided by the waqf Board or waqf institution's senior management. The same applies to cash waqf counterparty risk exposures that are especially risky or otherwise not in line with the mainstream activities of the waqf institution.
7. The supervisor has full access to information in the cash waqf credit and investment portfolios and to the nazir involved in assuming, managing, controlling, and reporting on counterparty risk.
8. The waqf supervisor requires waqf institutions to incorporate their cash waqf counterparty risk exposures in their stress testing programs for risk management purposes.

Additional Criteria: -

WCP – 17 Disbursement Management

The waqf supervisor determines that waqf institutions have adequate policies and processes for the management of waqf assets and funds and the system of distribution for the profits of investments.

Essential Criteria:

1. Shari'ah law, regulations, or the supervisor require waqf institutions to formulate policies and processes for identifying and managing waqf funds/assets. Waqf funds are an entity separate from government funds and revenues.

2. Shari'ah rules, regulations, and the waqf supervisor require waqf institutions to formulate policies and processes to spend the profit of waqf assets/funds for the benefit of beneficiaries (mauquf'alaih).
3. The waqf institutions should have proper financial planning, recording, and management to prevent the mismatched allocation of fund distribution.
4. The eligibility criteria applied to waqf recipients should be clearly determined by the waqf supervisor and must be publicly informed.
5. The profits from the investment management of waqf assets and funds should be distributed for both consumptive- and productive-based programs. Consumptive-based programs aim to fulfill the short-term basic needs of mauquf'alaih while productive-based programs aim to empower mauquf'alaih to build long-term socio-economic resilience.
6. The waqf supervisor should have social benefit indicators that must be achieved as part of the program objectives for disbursement of the profits derived from waqf asset and fund investments.

Additional Criteria:

1. The waqf supervisor obtains and reviews disbursement information on a national level from related parties.
2. The waqf supervisor conducts an assessment on the need priority for determining the proportion of consumptive- and productive-based programs. The waqf supervisor may appoint another institution to conduct the assessment.
3. The waqf supervisor should establish a timeline to alleviate poverty and transform mauquf'alaih to become a muzzakii or waqif.

WCP – 18 Problem Waqf Assets, Provisions, and Reserves

The waqf supervisor determines that waqf institutions have adequate policies and processes for the early identification and management of problem assets, and the maintenance of adequate provisions and reserves.

Essential Criteria:

1. Waqf management should conduct a regular review to identify any problem in waqf assets.
2. The waqf supervisor determines the adequacy of a waqf's policies and processes for grading and classifying its assets and establishing appropriate and robust provisioning levels. Reviews supporting the supervisor's opinion may be conducted by external experts, with the waqf supervisor reviewing the work of the external experts so as to determine the adequacy of the waqf's policies and

processes.

3. The waqf supervisor determines that the waqf's asset classification system and provisioning and reserves have been reflected in the report.
4. The waqf supervisor determines that the Nazir has appropriate policies and processes to ensure adequate provisions and that these are timely and reflect realistic repayment and recovery expectations, taking into account market and macroeconomic conditions.
5. The nazir must make sufficient reserves based on the quality of the assets that he manages to ensure continuity of asset usefulness.
6. The waqf supervisor obtains information on a regular basis, and in relevant detail, or has full access to information concerning the classification of assets and provisioning.
7. The waqf supervisor assesses whether the classification of assets and the provisioning is adequate for prudential purposes. If asset classifications are inaccurate or provisions are deemed to be inadequate for prudential purposes (e.g., if the supervisor considers any existing or anticipated deterioration in asset quality to be of concern, or if the provisions do not fully reflect any losses expected to be incurred), the supervisor has the power to require the Nazir to adjust its classifications of individual assets, increase its levels of provisioning, reserves, or capital and, if necessary, impose other remedial measures.
8. Laws, regulations, or the supervisors establish the criteria for assets to be classified based on each preference. The waqf supervisors establishe the asset criteria based on performance, utility, and sustainability. The Board also undertakes measurements of existing assets or anticipates the deterioration in asset quality and losses that will occur.
9. The waqf supervisor requires that valuation, classification, and provisioning, at least for significant exposures, are conducted on an individual-item basis. For this purpose, waqf supervisors require Nazirs to set an appropriate threshold for the purpose of identifying significant exposures and to regularly review the level of the threshold.
10. The waqf supervisor ensures that the Nazirs have portfolio policies with investment diversification.
11. The waqf supervisor regularly assesses any trends and concentrations in risk and has special policies for maintaining the performance of waqf assets. The waqf supervisor considers the adequacy of provisions and reserves for waqf assets/funds and the level of the waqf management system in the light of this assessment.

Additional Criteria: -

WCP – 19 Transactions With Related Parties other than the Beneficiaries

In order to prevent abuses of the use of waqf assets arising from transactions with related parties other than beneficiaries and to address the risk of conflicts of interest, the waqf supervisor requires waqf institutions to conduct transactions on an arm's-length basis; to monitor such transactions; to take appropriate steps to control or mitigate the risks associated with such transactions; and to write off exposures to related parties in accordance with standard policies and processes.

Essential Criteria:

1. Laws or regulations provide, or the waqf supervisor has the power to prescribe, a comprehensive definition of "related parties." This considers the parties identified in the footnote to the Principle. The waqf supervisor may exercise discretion in applying this definition on a case-by-case basis.
2. Laws, regulations, or the supervisor require that transactions with related parties are not undertaken on more favorable terms (e.g., in tenor, margin, fees, amortization schedules, requirement for collateral) than corresponding transactions with non-related counterparties except the beneficiaries stated in the waqf contract.
3. The waqf supervisor requires that transactions with related parties and the write-off of related-party exposures exceeding specified amounts or otherwise posing special risks are subject to prior approval by the waqf's Board. The supervisor requires that Board members with conflicts of interest are excluded from the approval process of granting and managing related party transactions.
4. The waqf supervisor ascertains that the waqf has policies and processes to prevent persons benefiting from the transaction and/or persons related to such a person from being part of the process of granting and managing the transaction.
5. Laws or regulations set, or the supervisor has the power to set, on a general or case-by-case basis, limits for exposures to related parties, to deduct such exposures from capital when assessing capital adequacy, or to require the provision of such exposures. When limits are set on aggregate exposures to related parties, these are at least as strict as those for single counterparties or groups of connected counterparties.
6. The waqf supervisor determines that waqfs have policies and processes to

identify individual exposures to and transactions with related parties, as well as the total amount of exposures, and to monitor and report them through an independent credit review or audit process. The supervisor determines that exceptions to policies, processes, and limits are reported to the appropriate level of the waqf's senior management and, if necessary, to the Board, for timely action. The waqf supervisor also determines that senior management monitor related party transactions on an ongoing basis, and that the Board also provides oversight of these transactions.

7. The waqf supervisor obtains and reviews information on aggregate exposures to related parties.

Additional Criteria: -

WCP – 20 Country and Transfer Risks

The waqf supervisor determines that waqf institutions have adequate policies and processes in place to control country risk in cross-border waqf activities.

Essential Criteria:

1. The waqf supervisor requires the waqf management to determine policies and processes to identify, measure, evaluate, monitor, report, control, and mitigate country risk. These processes provide a comprehensive view of country and transfer risk exposure, taking into account macroeconomic conditions.
2. The donor supervisor assesses a scale priority of recipient country through poverty level, calamity impact, and the proximity of the territory to the donor country.
3. The donor supervisor limits the range of activities by identifying a clear definition and assessment of the mauquf'alaih (waqf beneficiaries).
4. Donor and recipient supervisors share appropriate information on a timely basis in line with the informal or formal arrangements (such as via a memorandum of understanding) to enable the exchange of confidential information. The confidential information is determined by both supervisors according to the prevailing law in their respective country.
5. The waqf supervisor assesses the country and analysis to reduce any potential conflict between the donor and recipient country.
6. All parties should agree on the division of the nazir's management fee based on criteria that are established by both parties. The total proportion of the nazir's management fee is determined by each jurisdiction.

Additional Criteria:

The waqf supervisor, directly or indirectly, cooperates with the relevant foreign waqf supervisors to obtain additional information as needed (e.g., in crisis situations).

WCP – 21 Market Risk

The waqf supervisor ascertains that waqf institutions (Nazirs) have an adequate market risk management process that takes into account their risk appetite, risk profile, market and macroeconomic conditions, and the risk of a significant deterioration in market liquidity. Nazirs must have a standard valuation mechanism for the assets under management that is based on regular changes in their market value. This includes prudent policies and processes to identify measure, evaluate, monitor, report, and control or mitigate market risks on a timely basis.

Essential Criteria:

1. Laws, regulations, or the waqf supervisor require waqf institutions to have appropriate market risk management processes that provide a comprehensive waqf-wide view of market risk exposure. The waqf supervisor determines that these processes are consistent with the risk appetite, risk profile, systemic importance, and capital strength of the waqf institutions; take into account market and macroeconomic conditions and the risk of a significant deterioration in market liquidity; and clearly articulate roles and responsibilities for the identification, measurement, monitoring, and control of market risk.
2. The waqf supervisor determines that the waqf institution's strategies, policies, and processes for the waqf's management of market risk have been approved by the waqf Boards and that the Boards oversee management in a way that ensures that these policies and processes are implemented effectively and fully integrated into the waqf institution's overall risk management process.
3. The waqf supervisor determines that the waqf institution's policies and processes establish an appropriate and properly controlled market risk environment, including:
   a) Effective information systems for the accurate and timely identification, aggregation, monitoring, and reporting of market risk exposure to the waqf Board and senior management;
   b) Appropriate market risk limits that are consistent with the waqf institution's risk appetite, risk profile, capital strength, and the waqf management's ability to manage market risk, which are understood by, and regularly

communicated to, relevant staff;

c) Exception tracking and reporting processes that ensure prompt action at the appropriate level of the waqf institution's designated senior management or waqf Board, where necessary;

4. The waqf supervisor determines that there are systems and controls to ensure that the waqf institution's marked-to-market positions are revalued frequently. The waqf supervisor also determines that all transactions are captured on a timely basis and that the valuation process uses consistent and prudent practices and reliable market data on waqf that are verified by a function independent of the relevant risk-taking business units (or, in the absence of market prices, internal or industry-accepted models). To the extent that waqf institutions rely on modeling for the purposes of asset valuation, the waqf institutions are required to ensure that the model is validated by a function independent of the relevant risk-taking businesses units. The waqf supervisor requires waqf institutions to establish and maintain policies and processes for considering valuation adjustments for positions that cannot otherwise be prudently valued, including concentrated, less liquid, and stale positions.
5. The waqf supervisor determines that waqf institutions hold appropriate levels of capital against unexpected losses and make appropriate valuation adjustments for uncertainties in determining the fair value of assets and liabilities.
6. The waqf supervisor requires waqf institutions to include market risk exposure as part of their stress testing programs for risk management purposes.

Additional Criteria: -

WCP – 22 Reputation and Waqf Asset Loss Risks

The waqf supervisor determines that waqf institutions have an adequate management framework capable of handling any contagion, reputation, and waqf asset loss risks.

Essential Criteria:

1. The waqf supervisor understands that the overall structure of the waqf institutions in the wider environment, in particular contagion and reputation risks, may jeopardize the safety and soundness of the waqf assets/funds management system.
2. The waqf supervisor imposes prudential standards to identify, assess, evaluate, monitor, report, control, and mitigate reputation risk.

3. The waqf supervisor addresses all major aspects of reputation risk in the national waqf system, including periods when contagion and reputation risks could increase.
4. The waqf supervisor requires waqf institutions' strategies, policies, and processes for the management of reputation risk to minimize waqif losses. The waqf supervisor also requires the Board to ensure that these policies and processes are implemented effectively.
5. The waqf supervisor requires that waqf institutions have adequate socialization and education programs for ensuring the public are kept well informed about waqf.

Additional Criteria:

The waqf supervisor determines that there are appropriate incentives for the retention of existing waqif and to attract new waqif, such as tax deductions or excellent waqf services.

WCP – 23 Revenue/Profit-Loss Sharing Risk

The waqf supervisor determines that waqf institutions have an adequate risk management process that takes into account their risk appetite, risk profile, and market and macroeconomic conditions. This includes prudent policies and processes to identify, measure, evaluate, monitor, report, and control or mitigate risk on investment portfolios on a timely basis. The waqf supervisors set prudential limits to restrict waqf institution exposures to single counterparties or groups of connected counterparties.

Essential Criteria:

1. The laws, regulations, or the supervisor require waqfs to have an appropriate revenue/profit-loss sharing risk strategy and risk management framework that provides a comprehensive waqf-wide view of revenue/profit-loss sharing risk. This includes policies and processes to identify, measure, evaluate, monitor, report, and control or mitigate material sources of revenue/profit-loss sharing risk. The waqf supervisor determines that the waqf's strategy, policies, and processes are consistent with the risk appetite, risk profile, and systemic importance of the waqf institution, take into account market and macroeconomic conditions, and are regularly reviewed and appropriately adjusted, where necessary, in line with the waqf's changing risk profile and market developments.
2. The waqf supervisor determines that a waqf's strategy, policies, and processes for the management of revenue/profit-loss sharing risk have been approved and

are regularly reviewed by the waqf's Board. The waqf supervisor also determines that senior management ensures that the strategy, policies, and processes are developed and implemented effectively.

3. The waqf supervisor determines that the waqf policies and processes establish an appropriate and properly controlled revenue/profit-loss sharing rate risk environment, including:
    a) Comprehensive and appropriate revenue/profit-loss sharing risk measurement systems;
    b) Regular review, and independent (internal or external) validation, of any models used by the functions tasked with managing revenue/profit-loss sharing risk (including a review of key model assumptions);
    c) Appropriate limits, approved by the waqf's Board and senior management, that reflect the waqf's risk appetite, risk profile, and capital strength, and that these are understood by, and regularly communicated to, relevant staff;
    d) Effective exception tracking and reporting processes that ensure prompt action at the appropriate level of the waqf's senior management or Board, where necessary; and
    e) Effective information systems for the accurate and timely identification, aggregation, monitoring, and reporting of revenue/profit-loss sharing risk exposure to the waqf's Boards and senior management.
4. The waqf supervisor requires waqfs to include appropriate scenarios in their stress testing programs to measure their vulnerability to loss under adverse revenue/profit-loss sharing movements.

Additional Criteria:

1. The waqf supervisor obtains from the waqf institution the results of their revenue/profit-loss sharing risk measurement systems, expressed in terms of the threat to economic value, including the use of a standardized revenue/profit-loss sharing shock in the waqf managing book.
2. The waqf supervisor assesses whether the internal capital measurement systems of waqfs adequately capture the revenue/profit-loss sharing risk in the waqf managing book.

WCP – 24 Disbursement Risk

Waqf institutions should be able to mitigate disbursement risks such as an unsound financial position and the misallocation of disbursement activities.

Essential Criteria:

1. The waqf supervisor requires waqf institutions to have established disbursement strategies, policies, and processes to identify, assess, monitor, and manage disbursement risks.
2. To mitigate any misallocation of disbursement, the waqf supervisor determines that waqf institutions have a comprehensive assessment for each mauquf'alaih.
3. The financial management is updated in a frequent manner so that the management has accurate figures on the financial position to permit the timely meeting of all financial obligations.
4. The waqf supervisor determines that the Board and management obtain, understand, and review sufficient information on how the level of risk relates to the financial position and disbursement activities.

Additional Criteria:

1. In order to minimize misallocation problems, waqf institutions may employ the had al-kifayah measurement to ensure minimum adequacy for meeting the need of needs of individual rights.

Waqf institutions may further enhance their sound disbursement risk management through collaboration with other financial sectors such as the Islamic banking and zakah sector.

Exhibit 3(e)
Waqf Core Principle 25–29

5. Shari'ah Governance

WCP – 25 Operational and Shariah-Compliance Risk

The waqf supervisor determines that waqf institutions should have proper operational and shariah compliance risk management processes to minimize potential fraudulent practices, anticipate system breakdown, and any other potential disturbance.

Essential Criteria:

1. The management unit should have proper a methodology to identify, measure, mitigate, and monitor the operational risk and shariah compliance risk.
2. Waqf institutions have an appropriate internal process for covering potential fraud, technical failure of the IT system, and any other factors that may disrupt the daily operations of the waqf institutions.
3. Laws, regulations, or the waqf supervisor require that waqf institutions must be

equipped with a good governance structure to ensure that responsibility and accountability are in place.

4. Waqf institutions should have a dedicated unit to take care of operational risk and shariah compliance risk.

Additional Criteria:

In order to minimize misallocation problems, waqf institutions may employ the had al-kifayah measurement as minimum adequacy for the needs of individual rights.

WCP – 26 Shari'ah Compliance and Internal Audit

The Waqf supervisor determines that waqf institutions have appropriate shari'ah compliance and internal audit frameworks to establish and maintain a properly controlled operating environment in the light of shari'ah.

Essential Criteria:

1. Shari'ah laws, regulations, or the waqf supervisor require waqf institutions to have internal control frameworks that are adequate to establish:
   a) organizational structure;
   b) waqf accounting policies and processes; and
   c) the segregation of waqf funds and other charitable funds.
2. The waqf supervisor determines that the internal audit function:
   a) has sufficient and qualified resources that are suitably trained and have relevant experience and sufficient authority to perform their role;
   b) is well informed regarding every change made by the Board;
   c) has full access to any members of staff and data that are relevant to the performance / execution of its duties; and
   d) has a regular audit plan.
3. The waqf supervisor determines that waqf institutions have an adequately staffed, permanent, independent, shari'ah-compliant, and internal audit function charged with:
   a) assessing whether the existing policies, processes, shari'ah compliance, and internal control are effective, appropriate, and remain sufficient for the waqf institution's performance; and
   b) ensuring that policies and processes are complied with.

Additional Criteria: -

WCP – 27 Financial Reporting and External Audit

The waqf supervisor determines that waqf institutions maintain reliable records of financial statements, annual publications, and the external audit function.

Essential Criteria:

1. The waqf supervisor holds the waqf institution's Board and management responsible for:
   a) Ensuring that financial statements are prepared in accordance with nation-wide-accepted accounting practices; and
   b) Ensuring that the financial statement issued annually to the public contains the opinion of an independent external auditor.
2. Laws, regulations, or the waqf supervisor have the power to establish the standard and scope of work for external audits that cover areas such as asset valuations and the percentage level of disbursement effectiveness.
3. The waqf supervisor has the power to reject and rescind an unprofessional external audit.

Additional Criteria:

The waqf supervisor has the power to access the working papers of external auditors.

WCP – 28 Disclosure and Transparency

The Waqf supervisor determines that waqf institutions regularly publish consolidated information that is easily accessible and fairly reflects their financial condition, performance, risk exposures, risk management strategies, and waqf governance policies and processes.

Essential Criteria:

1. Laws, regulations, or the supervisor require periodic public disclosures of information by the waqf institution on a consolidated and, where appropriate, individual basis that adequately reflects the waqf institution's true financial condition and performance and adheres to standards promoting comparability, relevance, reliability, and timeliness of the information disclosed.
2. The waqf supervisor determines that the required disclosures include both qualitative and quantitative information on a bank's financial performance, financial position, risk management strategies and practices, risk exposures,

aggregate exposures to related parties, transactions with related parties, accounting policies, and basic business, management, governance, and remuneration. The scope and content of the information provided and the level of disaggregation and detail is commensurate with the risk profile and systemic importance of the waqf institution.

3. Laws, regulations, or the supervisor require the waqf institution to disclose all material entities in the group structure.
4. The waqf supervisor or another government agency effectively reviews and enforces compliance with disclosure standards.
5. The waqf supervisor or other relevant bodies regularly publish information on the waqf financial system in aggregate to facilitate public understanding of the waqf financial system and the exercise of market discipline.
   Such information includes aggregate data on balance sheet indicators and statistical parameters that reflect the principal aspects of the operations of the waqf institution.

Additional Criteria:

The disclosure requirements imposed promote the disclosure of information that will help in understanding the waqf's risk exposures during a financial reporting period; for example, on average exposures or turnover during the reporting period.

WCP – 29 Abuse of Waqf Services

The waqf supervisor determines that waqf institutions have appropriate policies and processes to impose Islamic ethics and professional standards and to prevent criminal activities.

Essential Criteria:

1. The waqf act establishes the duties, responsibilities, and powers of the waqf supervisor related to the waqf supervision of internal controls and regulations regarding criminal activities such as terrorism, money laundering, and corruption.
2. The waqf supervisor determines that waqf institutions have adequate policies and processes that promote Islamic ethics and professional standards and prevent the waqf institutions from being used, intentionally or unintentionally, for criminal activities.
3. The waqf supervisor reports any such suspicious activities and incidents to the financial intelligence unit or relevant authorities in order to maintain the safety, soundness, or reputation of the waqf institution.
4. The waqf supervisor determines policies and processes that are integrated and

appropriate to identify, assess, monitor, manage, and mitigate risks of money laundering and the financing of terrorism with respect to countries, regions, disbursement products, and waqf services.

5. The waqf supervisor determines that waqf institutions have sufficient controls and systems to identify, prevent, and report potential abuses of waqf services, including money laundering and the financing of terrorism.
6. The waqf supervisor has the power to take appropriate action against a waqf institution that does not comply with its obligation regarding criminal activities.

Additional Criteria:

The waqf supervisor, directly or indirectly, cooperates with the relevant domestic and foreign supervisory authorities.

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APPENDIX

LITERATURE REVIEW

1. ISLAMIC CONCEPT AND REALITY OF ALTRUISM AND PHILANTHROPY

An economy is a complex and dynamic system. The system is built through the dynamic interaction of various factors, and the degree of organization within the system changes over time. Nomani and Rahnema (1994) proposed a design for a dynamic and modern Islamic society based on compassion, social justice, freedom, democracy, and equality. Their design entails "the formulation of certain fundamental theoretical axes that would combine the articles of the faith with contemporary socio-political and economic concepts of vital concern" (Nomani and Rahnema, 1994, p. 31). Historically, the golden age, the period between the Prophet's establishment of an Islamic community in Medina and the death of Ali, was the ideal Islamic era in which "Islam permeated every aspect of human behaviour and interaction" (Nomani & Rahnema, 1994, p. 31). They further state:

> "In this period, the Islamic man's private religious practices constituted a well-integrated part of a homogeneous Islamic system, characterized by its own particular social, political and economic practices. Islam shaped and coordinated every aspect of his life, private and public; material and spiritual, political, economy and cultural. The ideal Islamic life fused each aspect of life with another in an inseparable whole. The fragmentation and bifurcation of Islamic Man, through the disintegration of Islam's holistic system, did not later than the death of the Fourth Rightly Guided Caliph. The phenomenon of confining religion to the private domain of personal laws and separating it from socio-political, economic and cultural activities of the community, thus 'subverting' the ideal Islamic society of the Golden Age of Islam, began in earnest in 661." (Nomani and Rahnema, 1994, p. 32)

A well-integrated Islamic system creates the ideal framework of life. Based on this ideal Islamic society, the concepts of social justice, equality, and altruism are combined in a holistic system. Muslim societies have a long history of *waqf* institutions devoted to philanthropic outcomes. God asks Muslims to be altruistic and help one another financially.[2] Islam recognizes the integrative nature of the secular and the spiritual. Philanthropy is a fact of life not only in Muslim but also in non-Muslim societies. However, altruism is a universal concept, if not the nature of human life.

The Islamic viewpoint is quite different from the capitalist viewpoint in relation to "man is selfish and rational." Khan (1987) argues that it is totally wrong to say that man is selfish by

[2] See *Qur'an* (2:177, 2:195, 16:90).

nature. As a matter of fact, there is substantial evidence from all civilized societies of people being motivated by altruistic motives. Islam encourages people to make sacrifices for others. *Zakah*, *infaq*, *sadaqah*, and *waqf* are all forms of Islamic philanthropy. Caring for others is "a paramount value of Islamic society" (Khan, 1987, p. 18). Furthermore, "God repeatedly invites Muslims to be altruistic and charitable and promises great material recompense to those who part with their wealth in the cause of God" (Nomani and Rahnema, 1994, p. 26). Based on this there is always more room in society to engage in altruism.

The ultimate goal for altruistic Muslims is the "Islamic divine incentive mechanism" (Nomani and Rahnema, 1994, p. 78). Muslims believe that they can obtain worldly material rewards as well as salvation in the hereafter by performing altruistic acts. Muslims also believe that God will recompense their donation to the poor and needy people on one condition, that their donation was devoted with all their heart and soul (*ikhlas*) only to God's acquiescence (*ridho*). They then said that "The absence of immediate personal material rewards distinguishes the divine Islamic incentive system from other incentive mechanisms" (Nomani and Rahnema, 1994, p. 78).

2. Shari'ah and the Historical Aspects of Waqf

Philanthropic foundations are known in the Islamic world as *waqf* (plural = awqaf) or *habs*. Cajee and Barzinji ask, "What triggers the potential of the Muslim *ummah* to give and revive itself in the art of giving and can be planted for rebuilding the institution of *waqf?*" (Cajee and Barzinji, 2008, p. 26). This question emerged during the 1st World Congress of Muslim Philanthropists in Istanbul, Turkey in 2008. Although not answered in detail during the conference, the question remains highly relevant to this study. Unfortunately, the congress report did not provide any further information concerning the factors that trigger the willingness to give and rebuild the *Waqf* institution.

Voluntary organizations such as *waqf* play an essential role, and there are varying levels of *waqf* in practice. Briefly, the *Waqf* was either a family or charitable endowment of property created by a waqif/donor for use by designated beneficiaries and administered by *mutawalli*/*nazir*/trustees who in turn were under the supervision of a local judge. The hazards resulting from untrustworthiness influence the structure of the *waqf* institution.

2.1. Basic Concept of Waqf

Definitions

Waqf means hold, confinement, or prohibition. It also denotes a forbidding of the movement, transport, or exchange of something (Raissouni, 2001, p. 13). *Waqf*, a form of "*sadaqah jariyah*" (continuous charity), is created by donating an asset that generates benefits/revenues for a targeted objective on a permanent basis. A *waqf*, known in English as an "Islamic trust" or a "pious foundation," is "an unincorporated trust established under Islamic law by a living man or woman for the provision of a designated social service in perpetuity" (Kuran, 2001, p. 842). *Waqf* may be defined as

"holding a *Maal* (an asset) and preventing its consumption for the purpose of repeatedly extracting its usufruct for the benefit of an objective representing righteousness and/or philanthropy" (Kahf, 1998, p. 4). According to Ibn Qudama, *Waqf* means "bequeathing the property and dedicating the fruit" (Raissouni, 2001, p. 14).

2.2. *Maqasid Al-Shariah*

Maqasid Al-Shariah can be best understood as the goals and objectives of Islamic law. It allows Islamic financial institutions to more accurately match their products and commercial viability to the demands of Islamic ethics and morality and, hence, to justice (*'adl*) (Rosly, 2008, p. 4). This is because the *maqasid* of *Shariah* serve to perform two essential things, namely *tahsil*, i.e., the securing of benefit (*manfaah*), and *ibqa*, i.e., the repelling of harm or injury (*madarrah*) as directed by the Lawgiver. In this respect, innovation in Islamic finance and all endeavors to test the legality of a new product must readily comply with the purpose (*maqasid*) of the *Shariah*.

Based on the above argument, it is worth examining what constitutes the *maqasid al-Shariah*. One purpose of the *Shariah* is the preservation and protection of the basic necessities (*daruriyat*) of man without which life would probably be filled with anarchy and chaos and thus become meaningless. The basic necessities as defined in Islamic law are religion (*Din*), life (*Nafs*), family (*Nasl*), intellect (*'Aql*), and property (*Mal*). The waqf system should thus comply with the purpose of Shariah. The role of the mutawalli shall be understood based on Maqasid al-Shariah, which is to uphold justice in serving the public.

2.3. History of Waqf

Waqf originated from the Hadiths (3:895), when Umar bin Al Khattab was recommended by the Prophet Muhammad (pbuh) to bequeath his land as an endowment and then give away its fruits as charity. Since then, there has been a monumental level of growth in *waqf* and it is common within the Islamic world. A *waqf* is a charitable endowment, as a gift of land or property, made by a Muslim and intended for religious, educational, or charitable use. The word *waqf* derives from the Arabic root meaning "to prevent or restrain." It signifies confinement or detention.

Cash *Waqf*

Besides mosques, tombs, and schools, various other properties are also well known as forms of *waqf* assets, and nowadays a potential solution to the need for sufficient funds for public needs is a *waqf* fund derived from people's donations. Cizakca gives the following definition of cash *waqf*: "The gifted capital of the *waqf* was transferred to borrowers who after a certain period, usually a year, returned to the *waqf* the principal plus a certain 'extra' amount, which was then spent for all sorts of pious and social purposes" (Cizakca, June 2004, p. 2).

The structure of cash *waqf* was established by Ottoman jurists based on three philosophies: "the approval of movable assets as the basis of a *waqf*, acceptance of cash as a moveable asset, and therefore, approval of cash endowments" (Cizakca, June 2004, p. 3). Although *waqf* assets are mostly immovable, "in some places, this requirement was eventually relaxed to legitimize what came to be known as a cash *waqf*" (Kuran, 2001, p. 842). In particular, Cizacka states that cash *waqf* was "a Trust Fund established with money to support services to mankind in the name of Allah" (Cizakca, June 2004, p. 2).

The implementation of cash *waqf* began in the Ottoman era. The Bursa Court has registered many cases of the establishment of cash *waqf* since 1676. In addition, Cizakca describes the practice of cash *waqf* as follows:
Providing business capital to the entrepreneurs (borrowers), they might have also enhanced entrepreneurship and generated capital distributing and capital accumulating institutions. Although the Bursa Ottoman court case did not support it, the evidence from the Venetian archives informs that the Bosnian cash *waqf* provided entrepreneurial credit to merchants involved in trade between Bosnia and Venice. (Pedani and Fabris, 1994, in Cizakca, June 2004, p. 18)

The Classical Islamic Jurisprudence of Cash *Waqf*

Cash *waqf* was first introduced during the Ottoman era following the general guidelines of the Hanafi school of jurisprudence for the operation of business and social life. Previously, *waqf* from buildings and land were the most popular forms of *waqf* assets because of their perpetuity. Although the concept of perpetuity is a *sine qua non* condition, Hanafi scholars recognize three exceptions (Cizakca, June 2004, p. 2):

First the endowment of movable assets belonging to an endowed real estate, such as oxen or sheep of a farm, was permitted. Second, if there was a pertinent *hadith*, and third, if the endowment of the moveable assets was the customary practice, *ta'amul*, in a particular region.

2.4. Contemporary Practices of Waqf

An important feature of *waqf* is that it must be designated for the concept of *birr* (doing charity out of goodness). "The reason *waqf* is considered an expression of piety is that it is governed by a law considered sacred, not that its activities are inherently religious or that its benefits must be confined to Muslims" (Kuran, 2001, p. 842). *Waqf* may be dedicated to poverty alleviation programs, the aim of which is to bring socio-economic relief to the needy, the poor, low income society and other areas of increasing the quality of life, such as healthcare, education, environment and scientific areas. Many scholars view the ownership of *waqf* assets/property "as if it were owned by God" (Ahmed, August 2007). Originally, *waqf* assets had to be immovable (Kuran, 2001, p. 842). A recent fatwa issued by the International Council of Fiqh Academy (ICFA),

however, clearly states that "using cash (movable assets) as the subject matter in *waqf* is permissible as long as it keeps the principal intact and makes benefits from it."[3]

Islamic Relief UK, a non-governmental organization, began its *Waqf* Future Fund programme in 2001[4] with the following subprograms: water and sanitation *waqf*, orphan *waqf*, education *waqf*, urban *waqf*, healthcare *waqf*, income generation *waqf*, emergency relief *waqf*, and general *waqf*. A further example of a charitable *waqf* donation was given by Yusuf Islam, a popular singer also known as Cat Stevens, who established the *Waqf* Al-Birr Educational Trust, a registered UK Charity, in 1992, aimed specifically at providing *da'wah* as well as educational research and development.

The World Congress of Muslim Philanthropists has recently been held annually, in Istanbul, Turkey (2008); Abu Dhabi, UAE (2009); Doha, Qatar (2010), Dubai, UAE (2011), and Kuala Lumpur, Malaysia (2012). The aim of these meetings is to create a forum where Muslim philanthropists from various backgrounds can work together, interact, and subsequently become leaders of the international community of humanitarians driven by Islamic intrinsic values (1st World Congress of Muslim Philanthropist, 2008).

The gathered fund is invested in various investment portfolios and the profit spent on the specified public necessities. The gained profit will also be used for funding poverty alleviation programs, while the principal of funds will be reinvested in various highly profitable investment opportunities. Only gains that are derived from the invested *waqf* fund will be delivered to *Mauquf'alaih*.

Waqf law is almost uniformly perceived by Muslims, even when they are from different countries with differing social, economic, and political circumstances (Schoenblum, 1999, p. 1192). However, another source of information is "the collection of legal opinions regarding matters of *waqf*, in the fatwa-works"(Makdisi, 1981, p. 37). A *fatwa* issued by the ICFA on Investing In *Waqf*, Its Yield and Its Income (2004)[5] pertains to "investing *waqf* properties" and endowing "cash as *waqf*" issues.

Zarqa says that everything about *Waqf* is subject to *Ijtihad* and that there is no single ruling in it other than it must be benevolent (Kahf, 1999, p. 3). *Waqf* for charitable purposes is called "*waqfkhairi"* while *waqf* with an income derived from the asset that is reserved for family is known as "*waqfahli*" (Marwah and Bolz, 2009). Religious, philanthropic, and family forms of *waqf* are categorized by Monzer Kahf in order to distinguish the beneficiaries of *waqf* (Kahf, Jan 2003). Supporting religious needs and

[3] See Resolution no 140 (15/6) issued by the International Council of Fiqh Academy
[4] see www.islamic-relief.com/uk/*waqf*/questions_*waqf*.htm Accessed March 28th 2010
[5] Resolution no 140(15/6) issued by the International Council of Fiqh Academy, which is an offshoot of the OIC, organized its 15th session in Masqat, Oman, 6-11 March 2004.

poor societies fulfills religious and philanthropic *waqf* objectives respectively. In family *waqf* or posterity, only a surplus of *waqf* assets is dedicated to the *waqif*'s family and descendants who are poor and needy in order to improve the welfare of future generations.

There are two types of *waqf*, perpetual and temporal (Kahf, 1999, p. 2). Not all *waqf* assets are perpetual by nature, with the exception of land. Perpetuity requires three conditions: (1) The property deemed w*aqf* must be suitable for perpetuity either by its nature, legal status, or accounting treatment. (2) It needs an explicit or implicit expression of the will of the *Waqf* founder. (3) The objective of *waqf* must be perpetual. The perpetuity of the endowment is a *sine qua non* condition for any *waqf* (Cizakca, June 2004). The concept of perpetuity in w*aqf* over time means that it is able to generate an accumulation of capital that can be used to build infrastructure and social services for the community. However, Kuran argues that perpetuity is not a necessity and in some cases is not aligned with the mission of a *waqf*. "Although the matter was controversial, in practice it could be temporary, for example, to assist the victims of a particular flood" (Kuran, 2001, p. 864).

Kahf also states that little attention is paid to the importance of temporality in *waqf*. Hence, both temporality and perpetuity in *waqf* should be developed because of the nature of certain *waqf* assets. When questioned on how to measure the durability of *waqf* assets, Ibn Arafa, a Maliki, defined the perpetuity of *waqf* as for "as long as the property lasts" (Kahf, 1999, p. 4; Marwah and Bolz, 2009). *Waqf* assets must therefore satisfy certain conditions such as a clear intention, clear subject, and object so "they are not subject to inheritance but are simply a gift" (Marwah and Bolz, 2009, p. 814).

Struggling with the issues of temporality, public, and private, the effectiveness of *Waqf* remains a controversial topic to discuss in practice. Policymakers, when designing a particular waqf policy, need to take into account corrupt practices resulting from the mismanagement of waqf assets. In some countries such as the USA, family trusts (private) and temporal *waqf* are very common in practice. Strong third sectors can be created by protecting *waqf* assets from both the profit-motivated behavior of individuals and the authority-dominated actions of government (Kahf, 1999, p. 8). Government is often assumed to be a bad manager of *waqf*; as such, *"waqf* management should be run by local people who relate to the beneficiaries*"* (Kahf, 1999, p. 10). Nevertheless, *waqf* is a unique institution compared to "corporations, NPO and judiciary entities where *waqf* under NPOs can be liquidated, sold and disposed" by the proper authority of the management (Kahf, 1999, p. 12).

Exhibit 1 illustrates the legal foundation and operational structure of waqf in 11 countries. The countries in the list already have a strong legal foundation upon which to make the waqf system operational. Some waqf practices are managed centrally by the government while others are managed by local governments.

Exhibit 1
Waqf Law Enactment across Countries

No	Country	Waqf Law Promulgation	Controlling Forum	Collection Arrangements	Disbursement Agreement
1	Indonesia	Act of Republic of Indonesia No. 41 on Waqf, 2004	Ministry of Religious Affairs	The Indonesian Waqf Board was established as a nazir for managing waqf properties at the provincial or city level, and of the state as a whole.	The Waqf Board is in charge of managing and developing national and international waqf funds. Nazir invests the funds in sharia-compliant banking products, selected business, and establishes new prospective businesses and SMEs.
2	Malaysia	Administration of the Religion of Islam (Federal Territories) Act 1993 and similar Acts for individual provinces	The Prime Minister's Department consists of the Department for Zakat, Waqf and Hajj	The Islamic Religious Council of each state is empowered to administer and manage waqf properties.	Waqf is collected for various investment and charitable purposes, such as for religious, social, educational, and healthcare purposes.

No	Country	Waqf Law Promulgation	Controlling Forum	Collection Arrangements	Disbursement Agreement
3	Sudan	Awqaf and Religious Law, 1980. Subsequently Islamic waqf Organisation Law, 1989 and Sharia Courts Law 1902.	Ministry of Awqaf and Religious Affairs	The Ministry of Religious Affairs has the right to manage the waqf system and reserves the right to appoint a nazir.	Waqf is allocated to implement social justice in the community, charity, pilgrim services, infrastructure projects, build mosques, hospitals, schools, and homes for senior citizens, invest in joint-stock companies.
4	Kuwait	Amiri Decree on 29 Jumada II, 1370 AH, corresponding to the fifth of the month of April 1951 AD.	The Ministry of Awqaf	The Kuwait Awqaf Public Foundation, as a governmental body, was founded to administer waqf assets.	Waqf is allocated to health development, student sponsorship projects, social development, and scientific projects.
5	Jordan	The Waqf Law in Article 107 of the Constitution	The Ministry of Awqaf, Islamic Affairs and Holy Places	The Directorate of Awqaf Properties was established to increase the number of waqf properties.	Distribution of Waqf performed in several sectors, including the religious, social, education, and health sectors.

No	Country	Waqf Law Promulgation	Controlling Forum	Collection Arrangements	Disbursement Agreement
6	Pakistan	The Mussalman Waqf Act, 1935 and 1959. Awqaf Ordinance 1962, the Provincial Waqf Property Ordinances, 1979	Ministry of Religious Affairs and Endowment	The Ministry appoints a Waqf Administrator in each province to control, manage, and maintain waqf property.	Waqf is distributed for building and maintaining mosques, madrasahs, schools, orphanages, and charitable institutions.
7	Bangladesh	The Waqf's Ordinance 1962	Ministry of Religious Affairs	An Administrator of waqf is appointed by the government for a term of five years.	Waqf is created for pious, religious, and charitable purposes.
8	Brunei Darussalam	Laws of Brunei, 1/1984, The Islamic Religious Council and Kadis Courts Act, Chapter 77.	Islamic Religious Council	The Religious Council is responsible for handling all waqf under the category of waqf am.	Waqf Properties collected are considered as General Waqf. Some of these properties are allocated for investments conducted by a separate development body.
9	India	The Waqf Act, 1995 followed by the Waqf Reform Act, 2013	The Central Waqf Council	Each state has its own Waqf Board that has responsibility for the management and administering of waqf properties.	Waqf has been allocated for secular and technical schools, colleges, orphanages, madrasahs, and mosques.

No	Country	Waqf Law Promulgation	Controlling Forum	Collection Arrangements	Disbursement Agreement
10	Egypt	Act No. 80 of 1971	Egyptian Awqaf Authority	The Egyptian Awqaf Authority manages several assets such as agricultural land and real estate owned by the authority. Revenue is also generated from returns on investment and dividends from shares.	The Waqf Act stipulates the distribution of waqf revenues for specific areas, namely: 15% for maintenance of assets; 10% reserve for waqf investment; 5% for technical matters; 70% for the beneficiaries and social purposes.
11	Singapore	Administration of Muslim Law Act, 1999	Majlis Ugama Islam Singapura (MUIS)	MUIS directly manages several assets, indirectly through nazir. MUIS appoints a nazir for privately managed waqf, approves any development or re-development or purchases by them.	The disbursement of waqf depends on the intention created by the waqif. The waqif may ask to disburse the money overseas. Building and maintenance of mosques, the building of madrasah, and for the poor and needy.

2.5. The Role of Waqf for Sustainable Economic Development

Historically, *waqf* has played a significant role in the world for both Muslims and non-Muslims. While under *waqf* jurisprudence, a *waqif* had to be a Muslim (except for the *Hanafi* school of jurisprudence), and there was no legal barrier to non-Muslims being the beneficiaries. As a result, soup kitchens, hospitals, shelters, and other social welfare institutions served people of all religions, and non-Muslims commonly served on their staffs (Stillman, 1975, pp. 112–13, in Kuran, 2001, p. 852). As an example, when a Jewish man in the 1640s traveled from Egypt to Istanbul, he and his companions spent most nights at a *waqf*-endowed inn that was open to travelers of every faith (Lewis, 1956, pp.

97–106, cited in Kuran, 2001). Another example is a situation in the Ottoman period written about by Yediyildiz (1990, p. 5) as follows:
"Thanks to the prodigious development of the *waqf* institution, a person could be born in a house belonging to a *waqf*, sleep in a cradle of that *waqf* and fill up on its food, receive instruction through *waqf*-owned books, become a teacher in a *waqf* school, draw a *waqf*-financed salary, and, at his death, be placed in a *waqf*-provided coffin for burial in a *waqf* cemetery. In short, it was possible to meet all one's needs through goods and services immobilized as *waqf"*.

The above paragraph clearly explains how *waqf* was embedded in a Muslim society. Furthermore, in the *Venture of Islam*, Marshall Hodgson (1974, p. 124) observes that the *waqf* system eventually became the primary "vehicle for financing Islam as a society."

Nowadays, cash *waqf* has become increasingly popular, particularly for its flexibility, which enables the *waqf*'s potential benefit to be distributed to the poor in any location. While cash *waqf* dates back to as early as the turn of the first century of *Hijrah*, most established *waqf* are real-estate based (Ahmed, August 2007). The ICFA issued Resolution no. 140 (15/6), 2004 concerned with "endowing cash as *waqf*." This resolution clearly defined that "using cash as the subject matter in *waqf including for qard hassan* is permissible on the condition that the *waqf*-related objective of the *Sharia'h* of keeping the principal intact and making the benefits arising from the *waqf* is found." Cash *waqf* has two forms; the first is used for free lending to beneficiaries (*qard hassan*) and the second is invested with its net return assigned to *waqf* beneficiaries (Ahmed, 2007b, p. 4).

The provision of capital to entrepreneurs through cash *waqf* for the purpose of running their business is not a new practice. Despite the malpractice and mismanagement that was present in the eighteenth century, the benefits of cash *waqf* instruments endured. In general, the principal funds are continuously invested in potential investment opportunities. In their role as *waqf* fund investment manager, the *Mutawalli*/*Nazir*, on behalf of the *Waqf* institution, may allocate a portion of *waqf* funds to direct investment, financial portfolios, and to finance SMEs on the basis of a profit-loss sharing system. The greater the investment returns, the greater the amount of funds that can be allocated to poverty alleviation programs (Masyita, 2001, 2007).

In Indonesia, there was a Fatwa from the Board of Indonesian Muslim Scholars/Majelis Ulama Indonesia (MUI) on Cash *Waqf*. They responded to the need for a cash *waqf* certificate program in Indonesia by issuing the following *fatwa* (dated May 11, 2002):
(1) Cash Waqaf (*Waqf al-Nuqud*) is *waqf* donated by individuals, groups of individuals, or legal entities, in cash, (2) Cash *waqf* includes securities, (3) Money donated as *waqf* is not forbidden (*jawaz*), (4) Cash *waqf* can only be distributed and allocated for anything not against *shariah* (Islamic law), (5) The existence of *waqf* funds should be conserved. *Waqf* funds cannot be transferred to anyone.

The Classical Islamic Jurisprudence of Cash *Waqf*

Cash *waqf* was first introduced during the Ottoman era, which followed the general guidelines of the Hanafi school of jurisprudence for the operation of business and social life. Previously, *waqf* from buildings and land were the most popular forms of *waqf* assets because of their perpetuity. Although the concept of perpetuity is a *sine qua non* condition, Hanafi scholars recognize three exceptions (Cizakca, June 2004: 2):

First the endowment of movable assets belonging to an endowed real estate, such as oxen or sheep of a farm, was permitted. Second, if there was a pertinent *hadith*, and third, if the endowment of the moveable assets was the customary practice, *ta'amul*, in a particular region.

Regarding the irrevocable issues of cash *waqf* in particular and *waqf* in general, the jurists of the Hanafi school state that "a *waqf* was an irrevocable act based upon the hadith pertaining to Omer's endowment" (Cizakca, June 2004, p. 3).

In the Islamic socio-economic framework, *Cash-Waqf* is a source of social funds that can accumulate and redistribute money. There are many differences between the management of *Cash-Waqf* and that of western foundations, charities, or donation funds such as Ford, British Trust, Rockefeller, and Carnegie. *Cash-Waqf* embodies the principle of perpetuity, thus rendering it different from a western endowment or charitable fund. This perpetuity principle means that the principal of *Waqf* should be preserved and the benefits of *Waqf* portfolios should be available for religious, philanthropic, and righteous purposes.

Perpetuity in *Waqf* provides capital accumulation in the third sector, which builds the necessary infrastructure for providing social services on a not-for-profit basis. Hence, perpetuity in *Waqf* accounts for the accumulation of assets in the non-profit sector, which is a first and necessary step for the growth of this sector in contrast to the profit-motivated sector and the government sector that is built on authority and law enforcement (Kahf, 1999).

Cash Waqf Certificate

The *Waqif* is the person who donates money as *waqf* by purchasing a cash *waqf* certificate. The certificate can be bought in the name of a family member, even if he/she is already dead, from the legal institutions that launch the cash *waqf* certificate. The *Waqif* expects the returns of the managed fund to be assigned for certain purposes, e.g., public facility development, rehabilitation of the poor, etc. (Masyita et al., 2005).

The greater the *waqf* investment return, the more the *mawquf 'alaih* benefit from the *waqf* funds. According to *fiqh*, the *nazir*, as the *waqf* fund manager, is obliged to manage the fund productively. Furthermore, Manshur bin Yunus al-Bahuty, cited from Lahsasna

(2010), states in *Syarh Muntaha al-Adaab* (pp. 504–505) that the *nazir* is responsible for maintaining, expanding, and developing *waqf* assets so that they provide income in the form of investment returns, rent fees, agricultural products, etc. Cash *waqf* can be an instrument for business such as cash *waqf* in micro financing, debt financing, and equity financing (Lahsasna, 2010).

With different frameworks, cash *waqf*s were a source of capital for the economy of Bursa, a city in Turkey in the 18th century. In fact, "around 10 out of 12 persons approximately borrowed from a single *waqf*. About 10% of the total population of Bursa resorted to the cash *waqf* of the city as a source of credit" (Cizakca, June 2004, p. 14). Cizakca also proposed the idea of establishing the biggest cash *waqf* in Saudi Arabia (Cizakca, 2002, pp. 284–285). If every pilgrim donated to the cash *waqf* box in front of the mosque every time they prayed, there would be enormous amounts of money collected, ready to be managed and distributed to the *Mauquf'alaih/*beneficiaries by the *mutawalli/nazir*. This type of pilgrim *waqf* fund, then, can be used to reduce the unemployment rate and can be distributed to poverty alleviation programs in Muslim countries. However, the flexibility of cash *waqf* has created some innovative instruments. "The issuance of *sukuk*" (Pirasteh and Abdolmaleki, 2007, p. 7) such as *SukukAl-Intifaa*' (Ahmed, 2004, p. 128), *sukuk* for "the construction of Zam Towers in Makkah" (Iqbal and Khan, 2004, 63), *takaful* operators based on *waqf* (Khan, 2003, taken from Ahmed, 2004, p. 130), a *qard hassan* bank (Ahmed, 2004, p. 130), a *waqf*-based Islamic MFI (Ahmed, 2007, p. 10), are all innovative instruments of cash *waqf*.

The *nazir* may establish new businesses that provide public services, such as convenience stores, hypermarkets, basic food stores, universities, hospitals, etc. This generates more job opportunities and appropriately satisfies some people's basic needs by allocating collected funds as a profit sharing-based loan to selected small businesses. Technical and managerial assistance is required to accompany this investment. If the investment runs well, the *nazir* will not only generate returns but also help accelerate poor people's economic development.

According to Mannan (1998), as cited from Masyita *et al*. (2005), the objectives of cash *waqf* certificates are to collect social savings (cash *waqf* certification can be done in the name of other beloved family members to strengthen family integration among rich families) and transform the collected social savings into social capital, as well as to help develop the social capital market. This would encourage the awareness of rich communities as to their responsibility for social development in their environment and to stimulate integration between social security and social welfare. In addition to the aforementioned objectives of cash *waqf* practice, the profit from the managed *waqf* fund can be allocated to the rehabilitation of poor families, enhancing education and cultural development, and providing health, social, or religious services. A waqif may choose to purchase a cash *waqf* certificate for a number of reasons: one's own welfare (in this life and life after death), the family's welfare (in this life and life after death), and social welfare and social investment (Masyita and Febrian, 2004).

3. GOVERNANCE AND OPERATIONAL ISSUES

3.1. Trust as Social Capital and Transparency

Trust is an important aspect within the voluntary sector. While trust for some people is a luxury, it is the key to successfully achieving the ultimate goal of the voluntary sector. Trust is dynamic by nature. As Henk Akkermans found, when the modeler maps trust in a stocks-and-flows format, it makes sense that trust is an accumulation that grows slowly over time. Interestingly, during the initial stages of a relationship, trust is more easily depleted than grown (Akkermans, 2008).

Higher levels of trust lead to lower costs. Trust is an important indicator of customer satisfaction with Islamic financial institutions and for *waqf* institutions in particular. Understanding the dynamics of trust in Islamic finance in areas such as *waqf* and Islamic microfinance is pivotal in determining the managerial actions that lead to satisfactory *waqf* institutional performance. Creating a framework for understanding the dynamics of trust in an institution and how these influence policy schemes is therefore essential.

Trust as social capital creates efficient, effective work and saves considerable sums of money. If people can trust the other party, there is no need to waste energy and time thinking negatively, no need for extensive contracts, and no need for lots of guarantees, thereby making administrative work simple. Transparency and accountability are therefore prerequisites for the success of trust/endowment fund management.

A lack of transparency may be attributed to the attitude that direct donations are better than a donation to an institution; for example, in Turkey, nearly 87% of donations are direct donations. These bypass philanthropic organizations and this amount therefore excludes aid to the neighborhood in which the donor resides. This model of giving stagnates capacity building (Awad and Carkoglu, 2008, p. 19).

Effective collaboration between parties involves a great deal of openness and transparency. Transparency improves trust. The Annual Report is a tool used to provide transparent information not only to the trustees, members, donors, beneficiaries, but also to the wider public who want to know what benefits they bring to the community.

The real root cause of a lack of trust is a lack of transparency. If people do not trust the other party, they will not share their information openly with them. Therefore, the greater the trust among parties, the greater the level of openness toward each other there may be, and the greater the focus on getting the work done. Therefore, from a system dynamics perspective, trust and transparency are causally linked as part of a reinforcing cycle, which may operate as either a virtuous or a vicious cycle, depending on the direction in which things are moving.

If a non-profit organization, charity, *waqf*, trust fund, or endowment fund does not have transparent dealing with the sources and uses of the fund, then the donors will not really trust them. Consequently, it will be difficult to donate money to those institutions. Building mutual trust and openness takes time. Henk Akkermans says that trust "comes by foot but leaves on horseback." There is another asymmetry to take into account in the development of trust over time, namely differences between the process of building trust versus destroying it (creating distrust) (Dasgupta, 1988; Lewicki and Bunker, 1996; Burt and Knez, 1996). Empirical and theoretical analyses of trust are consistent in pointing out that while building trust is a gradual process, it can be destroyed very quickly by single events or inconsistencies with regard to the trustee's behavior.

Inferior performance provides both sides with an additional reason to distrust each other, which subsequently leads to even less openness, even more inferior performance, and, obviously, an even lower level of trust. Akkermans also outlines how reversing a vicious cycle into a virtuous one is always very difficult in business settings, especially so when "soft" and cultural issues such as trust are involved. It can, however, be done.

In the third-sector management of a trust/charity/endowment/*waqf* fund, openness when sharing information between the trustee and donor or *nazir/mutawalli* and *waqif*/founder is crucial for flexibility. Openness, or transparency, requires high levels of trust among the various parties. Trust and transparency form a reinforcing loop, with either good or bad nonprofit organization performance serving as the link between them. Over time, a greater level of trust is built through joint hard work, jointly mapping out how things work between parties, and through an increased understanding of the other side. A long relationship between parties is important for the building of trust, with each party needing to pass some kind of trust barrier. Mistakes at the start will have consequences for the relationship later on. This also makes clear why people who work well together manage to do so for considerable lengths of time. In the context of the voluntary sector, once donors bequeath to a charity organization, they do not give their money to other organizations. The credibility of a non-profit organization is an important consideration for donors as it is not easily accumulated. Credibility is thus formed from the dual aspects of expertise and trustworthiness (Hovland, Janis, and Kelley, 1953).

3.2. Managing Risk

There is a close connection between trust and risk. If there is no risk, there is no need for trust. According to Johnson-George and Swap (1982, p. 130), as cited in (Mayer, Davis, and Schoorman, 1995), a "willingness to take risks may be one of the few characteristics common to all trust situations." Hence, trust can be seen as a mental mechanism that helps reduce complexity and uncertainty in order to foster the

development or maintenance of relationships even under risky conditions (Luhmann, 1988). Indeed, the absence of risk implies confidence, i.e., certainty in positive outcomes. On the other hand, risk, implying unpredictable future events, requires trust to overcome uncertainty and enable constructive interpersonal relations. In terms of non-profit organizations, the ability to manage risk becomes the pivotal matter under consideration by donors. The more professional the investment manager when managing the risk of endowment fund portfolios, the more benefits that can be garnered for achieving the goals of the organization.

From July to December 2008, the value of U.S. schools' endowments fell by an average of 24.1 percent, according to a report released by the Common Fund Institute, a nonprofit group that polled 629 educational endowments on their results (Herbts-Bayliss, March 5, 2009). Columbia University lost 16.1 percent of its endowment fund, with Harvard and Yale also suffering heavy losses of more than 30 percent. As a result, Harvard froze salaries, offered early retirement, reassessed construction projects, and considered selling off art collections. "These are the worst-ever half year results that educational endowments have seen," Common Fund Executive Director John Griswold said in an interview. "Even the most diversified endowments suffered serious declines." In the previous year, bets on U.S. equities dealt endowments the biggest blow. "It was the stock market," Griswold said, noting that the Standard & Poor's 500 index had lost about 38 percent in 2008 (Herbts-Bayliss, 2009). Larger schools were able to navigate the market slightly better, the report said, noting that schools with endowments of $1 billion or more had lost 21.7 percent. This situation clearly demonstrates that parts of the endowment funds were invested in financial instrument portfolios. The investment managers of those endowment funds must take full responsibility for their actions to the donors. The cases demonstrate the huge impact of trust/endowment fund mismanagement that has resulted in a reduced amount of funds. Risk management is thus crucial for such a non-profit organization.

3.3. Critiques of The Waqf Concept

There are many critiques of the *waqf* concept in general, and of cash *waqf* in particular. Some scholars say that *waqf* fails to meet the founder's ultimate goals and that the structure and law of *waqf* create inefficiencies and ineffectiveness (Kuran, 2001; Schoenblum, 1999). There have been examples of instrumental foundations of *waqf* for personal interest such as to extend social recognition, wooing selected constituencies for a political agenda, spreading an ideology, controlling public opinion, concealing wealth from confiscation and other pecuniary motives such as asset laundering (Kuran, 2001; Makdisi, 1981), and the avoidance of inheritance rules (Cizakca, 2000; Schoenblum, 1999). In light of the above criticisms, this subchapter addresses two major issues; firstly, perpetuity and irrevocable issues and, secondly, moral hazard issues.

3.4. Perpetuity and Irrevocable Issues

The debate surrounding perpetuity began in the 15th century when *waqf* became popular for dealing with the complex issues of vested interests. Kuran (2001, p. 843) argued that the static perpetuity and rigidity of the *waqf* system proved "unsuitable for the relatively dynamic economy of the industrial age." Kuran further argued that a *waqf* becomes stagnant, dysfunctional, and inefficient if "the founder cannot alter his goals, the designated mission was irrevocable, and the *waqf*'s objectives specified have to be pursued exactly" (Goldstone, 2003; Kuran, 2001, pp 862–864). In response, Asad Zaman (2008) argued, "In fact, there is substantial dynamism and flexibility in Islamic law, and creative adaptations to changing situations can be documented in different areas…. Rather, it is clear that Islamic society as a whole became ossified and did not adapt to changing situations in many different dimensions" (Zaman, 2008, p. 71). He also asserted that the increasingly dysfunctional properties of the *waqf* were an effect of the general decline of Muslims rather than a cause: "A central operational principle of *waqf* law is that a *waqf* for a limited period of time is invalid." Schoenblum (1999, p. 1192) added, "The consequences of this mandatory rule in favour of perpetuities were catastrophic from an economic standpoint."

Schoenblum further compared the concept of trust to *waqf* as follows:

Whereas the trust has proven remarkable flexible, resilient, efficient and responsive to changing conditions affecting intergenerational management of family wealth, the *waqf* extremely remained a static institution, rigid, inefficient, inability to adapt to modern condition, and populist concerns about alternative political power centers. (Schoenblum, 1999, p. 1226)

To respond to these critiques and find a solution to these matters, the International Council of Fiqh Academy (ICFA)[6] firmly asserted that it is "compulsory" to ensure the "perpetuity" of the *waqf* and its benefits in developing *waqf* assets in a *Shari'ah*-compliant manner. Furthermore, the ICFA states as follows:

… The conditions given by the creator of an endowment with regard to the investment of the *waqf* is binding and does not nullify the requirement of *waqf*. It is also binding, even if he stipulates that the fullinvestment returns are to be spent on specific areas. In this particular case, the investment returns cannot be used to enhance the principal amount, which is the *waqf* itself. If the creator of a family *waqf* did not stipulate any restrictions and did not stipulate that the *waqf* should be invested, then it is impermissible to invest part of the yield, except if such investments are approved by the beneficiaries. However, if it concerns a charitable *waqf*, it is permissible to invest part of it for a prevailing *maslahah* (public interest), subject to stipulated rules.

[6] Resolution no. 140 (15/6), 2004

The *fatwa* above ensures the flexibility of *waqf* (including cash *waqf*) as long as the founder stipulates it so that the *waqf* deed might not be burdened with rigidity. The avoidance of static perpetuity has been discussed by Kahf (2007), who proposed the activation of temporary *waqf*.

3.5. Moral Hazards

An understanding of donations as devotions to God is the fundamental difference between the Islamic and secular concept of charity. Furthermore, Muslims believe that "God never fails to reward the giver, the desire to be close to God and perform good works are some of the motives of *waqif*" (Makdisi, 1981, p. 39). Although Islam as a way of life provides complete guidelines for good ethics in honesty, moral value, high commitment, integrity, and other good things, in practice, without a good governance system, which interprets Islam's moral value, moral hazard can still occur. This can cause considerable damage to *waqf* assets.

In terms of *waqf* management, the lack of any published information regarding the investment/financial performance of the *waqf* periodically emerges as an issue of good governance practices for *waqf* management. Good governance in *waqf* is crucial in order to reduce moral hazard on the part of both the founder or trustee/*mutawalli* and the government. Historically, on the founder's side, there have been some bad practices in the past, including selfish motives, arrogance, corruption, a desire to be famous, prestige, excessive gratitude, and misappropriations (Makdisi, 1981). Some facts from the *mutawalli*/trustee side, in many cases, generated unsacred *waqf* circumstances such as "an abuse of privilege power toward *waqf* assets done by incumbent officers in many places and times" (Makdisi, 1981). Kuran states that the value of *waqf* can be diminished especially after the founder's death if "*mutawalli* and the appointed employees will be tempted to embezzle" (Kuran, 2001, p. 868). Cizakca asserts too that the trustee lent cash *waqf* at a higher rate to the sarrafs and bankers in the eighteenth century (Cizakca, June 2004, p. 12). An additional *waqf* management issue that has generated principal–agent problems is outlined as "there was no guarantee that these two agents –*mutawalli* and judge – will share the same interpretation of the founder's stipulations" (Kuran, 2001, p. 866). Besides the founder and *mutawalli*, the role of government in the past reduced the value of *waqf* assets (Ozbek, 2000; Ener, 2000, cited from Kahf, 1999; Kuran, 2001).

3.6. Good Nazir Governance

Moral hazard problems can be reduced through good *nazir* governance applied to all *waqf* institutions. This can be achieved through a clearly defined relationship between the *waqif*, *mutawalli*, *waqf* board, and *maukuf'alaih* that provides the structure of *waqf* through which the objectives of the *waqf* are set, in addition to the mechanism of accomplishing those objectives, monitoring performance, and always ensuring there is

compliance with Islamic *Shari'ah* rules and principles. Nevertheless, as the ICFA resolution states, "*Waqf* management ought to be subjected to good governance practices, through *Shari'ah* Advisory Councils, good management, financial reporting and auditing."

The management of *waqf* institutions also creates dilemmas and has a marked effect on society because of the large amount of money required to centralize and thus mobilize a *waqf* fund. However, based on past experiences, the evidence shows that the centralization of *waqf* institutions can lead to inefficiency and the destruction of *waqf* assets (Cizakca, 2000).

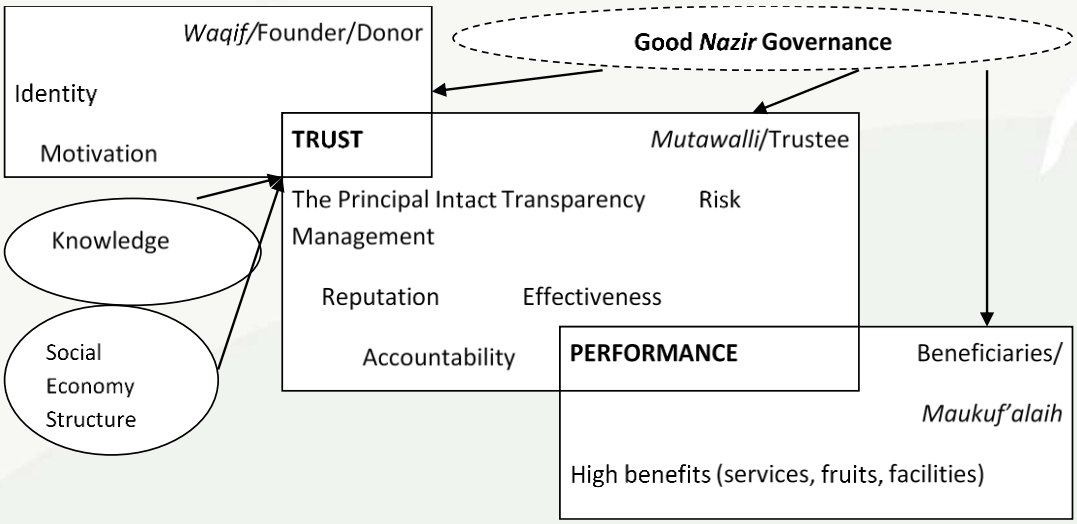

Figure 1. *Nazir* Governance Model

Mobilizing a large fund is only possible if the government centralizes the *waqf* institution, and the government may prove to be an ineffective manager of third sector activities. Small *waqf* institutions have a relatively limited ability to gather *waqf* funds, and even if there are a lot of *waqf* institutions established, it is still difficult for them to match the scale economies. In addition, many *waqf* institutions have their own objectives and beneficiary portfolios spread across a number of areas, which can weaken their ability to mobilize a large fund. However, scale economies are important in order to reduce costs, remain competitive, and ultimately have a significant impact on society.s