

FATAWA AWQAF 2013-2015

From: Sylvia

Sent: Wednesday, December 11, 2013

Question: Good cash Waqf management

Dear Sir,

Before, bear with me please if I take up too much of your time.

I am an undergraduate student in Institute of Islamic Studies Darussalam, Gontor. Indonesia. I am the student of Mr. Lahuri bin Nadim, ISID Gontor Indonesia.

Now, I am writing a thesis about Cash Waqf management. I want to know, how the good cash Waqf management is. As far as I know, the management of cash Waqf is not an easy thing because, we have to keep its perpetuity. So, I would be very grateful if you could supervise me in this matter. I wonder if you could also explain me about a good cash Waqf management.

I am looking forward to hearing from you. Thank you very much.

My Answer:

Dear Sylvia.

Assalam Alaykum Wa Rahmatu Allah wa Barakatuh

Cash Waqf is understood in two meanings: Waqf of an investment deposit in an Islamic bank which generate return that is spent on the objective of the Waqf. Similar to this is a Waqf of a sum of money to be entrusted to a person in order to invest it and generate income whereby the income is spent on the objective of the Waqf. Its management is simply by selecting a good and highly trusted investor like a big Islamic bank.

The second kind of cash Waqf is where the principal of Waqf is in cash form and itself to be used for giving interest free loans to persons who need loans. This was practiced in the Ottoman state for a long time and apparently was also known in Andalus (Spain when it was Muslim). This form of Waqf requires two main guidelines in its management: 1) need to charge beneficiaries all the cost of operation which usually consists of: risk of inflation, risk of default and cost of administering the fund and its account. And 2) prudent management which reduces default and admin. expenses. The latter is no more than rules of good governance and known in management science.

Best Regards,

Wassalam

Prof. Dr. Monzer Kahf

From: Ann

Sent: Friday, April 04, 2014

Question: Waqf regulations

Assalam Alaykum, Dr. Kahf,

I don't think that I have met you, but I am the mother-in-law of I was a founder of the Islamic School of which has now closed. We are left with a relatively large property near downtown Seattle. We have tried to lease it for more than a year unsuccessfully. We have been advised to set up a trust, to sell the building and to invest the money. We are also considering asking the Islamic Development bank to develop it. I am contacting you because we are not certain about the regulations for a Waqf. We have been told that we cannot sell the property at all. Others have said we can only sell it if we purchase another property. We want to make the

best financial decision for the Muslim community, but we also want to be certain that we are following the requirements for a Waqf. We would very much appreciate hearing your advice on how we should proceed.

Ann

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Ann

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

I think we have met in the Quraishi camp between 72 and 75. At least I may have met your husband and definitely know his brother who was in New Jersey, is he still there?

It is unfortunate that the school is no more there, but I think this was for a long time ago!

I personally believe that all community properties in America, schools, Islamic centers, mosques, cemeteries and their likes must be treated as Awqaf.

A Waqf must remain Waqf until the Day of Judgment. If the existing property is no more used for the school, is there a nearby school especially serving the same community to which this property may be transferred on the condition that they use it for school use. A Waqf real estate property may be sold provided the money is used for buying another real estate property which will be used for similar objective. I do not advise to use the fund of Waqf for buying share unless the founder made it as a condition and I don't advise a founder to do that unless for long term investment in income shares such as utilities only.

Please if you have any other question don't hesitate to send it, you and your family and Dr. Fuad are very dear to me and Mayssun.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Syahnaz

Sent: Thursday, December 11, 2014

Question: Waqf of unit trust and company shares

Assalam Alaykum Prof Kahf,

My name is Syahnaz. I am an officer attached with the Department of Islamic Development of Malaysia. I am currently on my final semester as a PhD candidate at the University of Malaya in Kuala Lumpur.

My research is related to contemporary instruments that can be proposed in order to enhance the Waqf development in Malaysia.

I am looking for an expert opinion regarding the implementation of contemporary Waqf as follows:

1. What is your opinion with regards to the Waqf of unit trust? Whether this model is viable or not since the nature of unit trust is subject to buy and selling process.

Can a person Waqf the unit trust that he bought? Will it violate the salient feature of Waqf which can't be sold?

My answers to all these is yes, except the last it is no it does not violate.

2. What is your opinion if somebody Waqf the company shares that are traded in the

exchange/bursa? Will it violate the nature of Waqf?

If the Waqf is shares, there should not be traded. But if the Waqf is cash to trade shares this is permissible and they can be traded.

There is a Qatar by Mama AL Fiqh in 2009 that allows the Waqf of shares and unit trust.

But the question arises when it mentions that the shares cannot be traded in suq maliyah or bursa.

I explained the difference above.

This decision is quite contradicted with the practice of Johor Corporation in Malaysia that they had made Waqf over their shares traded in bursa. And the shares perform quite well in generating return/dividend to the beneficiaries.

I need details to give opinion.

3. Btw, what is your opinion regarding buying and selling unit trusts that are created or derived from Waqf properties? The units are then offered to the public at certain price the money collected then channeled to the fund or buying other properties.

It depends on how it is structured; it can be structured to have people buy units in Waqf for trading shares or any other properties.

This model has been applied in Malaysia with the normal properties/real estates but have yet to be tested with Waqf properties.

I need more details

The question is whether the units created from the Waqf properties are considered as Waqf as well or considered as normal units that can be sold to the public with the purpose of generating more income to the Waqf for further development.

You need to describe in details a structure before I can give an opinion.

Really hope to get your expert opinion regarding these issues to be quoted in my thesis.

Jazakumullah. Regards,

SYAHNAZ

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Syahnaz

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Please see my answers below the questions:

Wa Allah A'lam

Wa Alhamdu Lillah Rabb al 'Alamin

Wassalam

Prof. Dr. Monzer Kahf

Assalam Alaykum,

Dear Prof Monzer Kahf,

Basically, my question is whether REIT structure can be used to develop Waqf property.

REIT is a unit trust that mainly invests in real estate that generates income for examples commercial or office buildings, mall, service apartment and hospitals. So the question arises whether Waqf property can enter into REIT structure for the purpose of raising funds for example for refurbishment or acquiring more new assets.

The REIT mechanism involves the sale of the Waqf property from the Mutawalli (as the owner

or sponsor of the Waqf asset in this case is the State religious councils of Malaysia or SRCs) to the SPV/REIT company with condition that the asset would be sold back to the SRC after certain period of time for example 30 years. The REIT company can be a subsidiary of SRC as long it is registered with the Securities Commission of Malaysia (SC) in order to manage and run the investment portfolio. During the tenure, the ownership over the property is transferred to the trustee. Under the REIT guidelines of SC of Malaysia, all the assets must be sold to REIT company in the process of establishing investment portfolio. So in this case, does the asset in the REIT structure for the period of 15 year remain as Waqf asset or not?

The REIT company then will issue units which can subscribe by the investors. The investors will buy the units that represent the beneficial ownership over the rent (receivables) of the Waqf properties. Correct me if I'm wrong that the investors they don't buy the Waqf properties but the rentals generated from Waqf properties in the form of dividend. Does this mean the units issued out of the Waqf properties are not Waqf too?

The investors are also given options to Waqf all or part of the dividend they received to Waqf. For the REIT company, all the cash received from the investors will then be channeled to project A and B.

Project A can be a project of acquiring new building that later on can be Waqf asset too.

Project B can be investing in joint capital project or unlisted company.

For your information, the nature of REIT is actually perpetual. It can be forever depends on the performance of the company. Most of REIT companies in Malaysia are listed REIT meaning the units are traded in the stock market. REIT can also be unlisted but it is not popular. Usually, the sponsor or the owner of the asset will become the majority shareholders of the REIT company in order to have control over the investment portfolio.

Based on a real case in Malaysia, al-Hadharah Boustead REIT has just recently privatized their company. After they acquire all the shares from all the investors at a certain price, al-Hadharah as the owner or sponsor of the assets are now in the process of transferring or acquiring back the asset that they had injected into the REIT. In this scenario we can see that, even though during establishment of REIT, the owner or sponsor of the property sell it to REIT company, end of the day they have right to get the property back no matter what happen with a special clause stipulated in the deed. This means that, the owner won't simply loose the asset. The asset will then be transferred back to the original owner.

With regards to the practice of Waqf of company shares, Johor Corporation has Waqf certain portion of listed and unlisted shares. Can a company, Waqf their shares that are listed in the market? A prominent Turkey based multinational company, i.e., KOC had also Waqf their listed shares since 1969 and they perform well.

However, JCorp has faced some difficulties in managing their shares that in 2009 they have exercised Istibdal of the shares due to bad performance of the Waqf shares during the 2008 financial crisis.

Recently, they did ask me, what are the precautionary measures they should take in order to curb this issue. For example, are there certain benchmark from Shari'ah perspective that they need to follow, how much of the loss of the Waqf properties are considered as lost? is it 1/3 or 1/4 that needs them to do Istibdal of the Waqf properties asap.

Should there be any lost in this case, would the stock manager be liable to bear the loss or the Waqif that is Jcorp has to top up the losses. The loss is definitely is not predictable as it is subject to the market condition.

Really appreciate if you can shed some light on this as well.

Thanks. May Allah bless you.

Regards,

Syahnaz

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillah Rabb al Alamin, wa al Salatu wa al Salamu ‘‘ala Sayyidina Muhammad, wa ‘‘ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Syahnaz

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

There are a few important points I believe in their importance and I do not accept compromising them.

1. Al ‘inah (example the highlighted sentence below as repeated more than once) is in complete contradiction with the fundamental principles of Islamic finance and with Shari’ah. any opinion otherwise is a misreading and misunderstanding of the Shafi’i school.
2. Earning in Islam can only be by owning a property or offering labor. There is no other way of earning. Talking about finance earning is by real full complete ownership of an asset. Beneficial ownership of a flow of future income is not Shari’ah compliant. One must own the asset which creates the income in order to deserve this income.
3. As private ownership is sanctioned in Shari’ah, a result of it is: conditions of Waqf founders are treated as text of law Giver. This is because Waqf comes from private property and with owner’s will. Accordingly a Waqf property cannot be diverted to any other use as long as its original use is still available.
4. Same also means that founder’s conditions, explicit or implicit, must be respected completely. This is why when a person makes a Waqf out of shares (with no provision in the document of Waqf to give authority to trade them) these shares cannot be sold regardless of the market price. After all shares represent part ownership of the company, market price is irrelevant as you very well know.
5. Cash Waqf is permissible and has been practiced since as long as the first one hundred year of Islam. It is recognized by the Fiqh Academies. It may take one of two forms: 1) cash to be lent to people who needed and returning the same, this is unchangeable as decreed by the Waqif; and 2) cash to be invested and made to grow by what Fuqaha call Taqlib (transformation into goods/assets then into cash again). Here if the Waqif restricts the space of investment we must abide by his/her restrictions, if he/she did not impose restrictions, investment is open as per the discretion of the Nazir. This also means that Istibdal of Waqf is extremely limited unless made easy by the Waqf document itself.

For Waqf to contribute to REIT: it is a violation of Shari’ah and the will of founder to sell the Waqf land to REIT and buy it back. Alternatively the Nazir rents the land (with fare variable-at-intervals rent) to REIT with an agreement explicitly separating ownership of land from ownership of construction over it (this is permissible in Shari’ah and under all laws. It is also permissible to REIT to rent the land as it remains owner of all its property which is construction only). REIT issues units whereby investors will own the building (not including the land). A condition may be added to assign part of the rent of the land to buy units of REIT from the investors at the market price (i.e., from the listing Exchange). This is only if the conditions of the Waqif permits increasing the Waqf capital (otherwise such increase in the asset of the Waqf asset represent deprivation of beneficiaries from their right to the total revenue of the Waqf property).

Units if REIT can be made Waqf, if they are without a permit to trade, Mawquf units themselves remain Waqf and only their revenue (no to include capital appreciation) is to be distributed to the beneficiaries (who may be different from the beneficiaries of the land).

I hope I helped, if you have any other comment please write again.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al 'Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Syed

Sent: Saturday, April 19, 2014

Question: Retirement and estate planning, Trusts and Waqf

Dear Dr. Kahf

Assalamoalaikum

I hope you have been well. Your advice and opinion has guided me considerably in the past and I pray to Allah that you are rewarded for this kindness. I have a few questions pertaining to some important financial decisions. I would highly appreciate your input and advice

1) I want to be Shari'ah compliant when discussing and deciding about trust/estate planning. Is there any such service in the US

A living trust for the purpose of estate planning is based, in Shari'ah, on the concept of Wakalah which is agency. If you intend to have a living trust so that estate goes to your heirs after death, you have to comply with the Shari'ah rules regarding inheritance, properties, and Wakalah. Please see the suggested format for it on my website www.kahf.net please read it CAREFULLY, AND HAVE YOUR LAWYER AND FINANCIAL ADVISOR READ IT CAREFULLY. If they suggest any change please be sure to test any such suggestion on the Shari'ah aspects. I will be glad to review any such change they may want to make.

Alternatively if you intend a trust to be for charity it must be founded then on the concept of Waqf. This requires changing property ownership effectively at the time of setting the trust and put in it all conditions you desire for distribution (the Wakalah trust also requires, according to American laws to make the ownership in name of trustee, the basic difference is the assignment of properties after death, if family, it means returning of property to heirs. If it is Waqf there is no distribution of principal to heirs).

2) I am interested in a 529 saving planning for college fund. Is this permissible?

It is permissible to establish it. you need to select funds that have least Haram and every year make purification by estimating, to best of your educated guess and according to best info you can obtain, by giving to charity the Haram amount of income. This makes the fund then permissible and Halal for your children beneficiaries.

3) I am considering a life insurance policy by amfam, which is not whole life nor term It is somewhat in the middle. It does not give me dividend, but accumulates tax deferred cash value, and retirement option. It is a permanent policy. I understand it is difficult for you to say whether such a coverage is Shari'ah compliant but in your opinion, any such policy, which is permanent, halal at all

This I don't understand well, please explain to me what do you mean by permanent policy. From the description you mentioned it is regular life insurance which is interest-based. If it is necessary for your objective, you are only entitled to your principal (total of premium you paid only) not to any increment above it.

If this insurance is any different, please give me detailed explanation to study and give opinion.

JAK for all your help

Syed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. Syed

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Please see my answers below the questions:

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Dr. Kahf.

Does the same principle apply to retirement funds that a) I will be entitled to the value paid over time and nothing over it b) try to calculate whatever "haram" is there and pay it to charity.

Also for a more personalized strategy are there Shari'ah compliant financial advisers in the US. I really need one.

Thank you again for your guidance.

Syed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. Syed

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Yes, of course. How can a Muslim be entitled to earn interest or from share of companies overwhelmed with Haram activities, interest and otherwise. The same rule applies to all investment funds in America, even those that are described as Islamic. The Islamic funds minimize the amount of Haram and usually tell you each year of the percentage they estimate of the Haram. In saving IRS funds, 401K and Retirement funds you have little choice to minimize Haram because. This is why you need to always estimate the Haram and exclude it from your property by giving it to Muslim charity.

I don't know of any personalized Shari'ah financial advisement in America, I know there are several funds who are run on the basis of Shari'ah tolerance levels (always with the principle of purification), like Amana fund, NAIT Iman fund, Azzad fund, check with them they may offer personalized advisement.

Wa Allah A'lam

Wa Alhamdu Lillah Rabb al 'Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: feda

Sent: Sunday, October 26, 2014

Question: Waqf and temporary Waqf

Assalam Alaykum professor Monzer,

Reading some of your articles, I had some questions regarding the Waqf as an economic Islamic concept;

-Why should not we consider the temporal Waqf as a 'Sadaqah Jariyah'? what is the difference?

-In your paper 'Role of Waqf in the Welfare of the Ummah', what do you mean by making the property perpetual by accounting procedure?

-Is Lebanon the only country to limit the family Waqf into two generations? what about Egypt?

Is Zakah required on Waqf? Does the nation state tax the Waqf property in Islamic countries?

Thank you prof. for your cooperation, and forgive my lack of economic information!

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Feda

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Perpetuity means making the Waqf property permanent for its cause. It is a great idea which was not known before the Islamic Waqf. Think of it as similar to shareholding companies/corporations. They are permanent for their objectives.

At the same time temporal Waqf is permissible but less frequent than permanent. This depends on three factors: 1) nature of the property, a horse doesn't live more than a given number of years, 2) the will of the founder such as making a house Waqf for a mosque for 5 years, 3) There are certain ideas for which a Waqf can be created which are temporary such as sustaining an orphan until she graduates from university and have a job. In such a case the Waqf may use up its principal and revenue together like what is known in finance market as annuities.

Waqf Dhurri was cancelled and prohibited in Egypt during Abd al Nasir and in Syria during Husni al Za'im in 1949 it is not regulated in Saudi Arabia (left to classical Fiqh). Only Lebanon has it regulated for two generations.

Accounting perpetuity: means setting aside every year part of the revenue so that when the property is worn completely there is sufficient fund to replace it with a new one. This is called capital replacement provision and more often called capital amortization.

In many countries, including most Western countries Waqf (trusts, endowments and foundations) is given tax privileges. In most Muslim countries it is tax free and in many country it is also given water and electricity privileges.

In Shari'ah it is not subject to Zakah because it is not owned by a natural person. In Maliki school Waqf Dhurri is subject to Zakah as it is considered still owned by the Waqif and his heirs after him.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Bashar

Sent: Friday, December 19, 2014

Question: سؤال عن زكاة الوقف المؤقت

أخي الدكتور منذر قحف حفظه الله ،
السلام عليكم ورحمة الله وبركاته، أدعو الله أن تكون والعائلة بخير.
هل يزكى مال الوقف المؤقت الذي أوقف لعشر من السنين على أن يعود إلى واقفه بعد نهاية المدة؟
وإذا أوقف الوقف على مصرف من مصارف الزكاة كالإنفاق على الفقراء فهل تحسب هذه النفقة كل عام كجزء من زكاة
الوقف وتجزئ في زكاة أمواله الأخرى؟
وجزاك الله خيرا
بشار

My Answer:

الأخ المكرم الأستاذ بشار
السلام عليكم ورحمة الله وبركاته
الوقف الخاص (الأهلي) دائما أم مؤقتا أرى فيه رأي المالكية بخضوعه للزكاة عبي رأسمال الوقف نفسه (أنا أرى الزكاة على
الأصل قياسا على الأنعام وليس الإيراد فقط، أما الإيراد فيدخل ضمن زكاة المنقولات من نقود وغيرها)
الوقف الديني أو الخيري إذا كان دائما ليس فيه زكاة في رأيي فخيريته أو دينيته هي زكاته
الوقف الخيري أو الديني المؤقت أميل فيه للرأي القائل بزكاته خوف إساءة الاستعمال ولكنني أحسب الانتفاع الديني أو
الخيري كجزء من الزكاة الواجبة فإذا زاد هذا الانتفاع عن مقدار الزكاة ارتفعت الزكاة. ومثل ذلك الوقف المشترك بين
الخاص والخيري.
مع أسامي التقدير وأعز التحية
أ. د. منذر قحف

From: Aminah

Question: Waqf Investment

Sent: Friday, February 27, 2015

Assalamualaikum Dr.

I am Aminah, PhD student in a University in Malaysia, Skudai Johor. My study is focused on Waqf investment. This is my question:

1. Tradable securities is a category of securities that includes both debt and equity securities, and where an entity intends to sell in the short term for a profit that it expects to generate from increases in the price of the securities.

My question is would investment of Waqf funds in tradable securities (which may suffer losses) be permissible?

As Waqf comes from private ownership, it is the desires and conditions of the Waqif that matter. A Waqif may set equity securities as Waqf and make the condition of either keeping them and take their dividends only for distribution or selling them and trade securities. Equity securities may also be made Waqf with the condition of trading. In this case unless the Waqif specifically makes a condition to distribute both dividends and capital gain I argue that capital gain should not be distributable, rather added to the capital invested because capital gain is not revenue from the property, it is rather its appreciation. Otherwise keeping the monetary amount fixed throughout the Waqf life would reduce it to nothing because of inflation.

If a Waqif makes a condition to trade debt securities, although he may make debt securities as Waqf, this condition is not valid and either the cash at maturity should be deposited in an Islamic bank or for buying equities with no trading. \if we have an old Waqf property, it must not be used in securities and must be kept as real estate because in the past the intention of Waqif, even if documents are lost, cannot be to invest in securities as they were not existing then.

2. Whether it is permissible to use income derived from the Waqf assets as collateral for purposes of raising financing?

Any action which deprives beneficiaries from their rights as mentioned by the Waqif is not permissible. This includes using part of the revenue for increasing its capital unless the Waqif makes such a condition. And includes your case of using it as collateral. Revenue of Waqf is the right of the beneficiaries. Nothing else.

Thank you very much Dr for your answers.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Aminah

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

Please see my answers below the questions:

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf
