

# FATAWA AWQAF AND TRUSTS 2016

From: Jessie

Sent: Monday, January 18, 2016

**Subject: Islamic Finance and Human Development**

Dear Dr. Kahf,

My name is Jessie. You spoke a few months ago with my colleague Yasmine. We are students at the LSE researching Islamic Finance for social development.

I had one follow up question from your conversation with her. You mentioned that there is a bond with a Waqf objective. In such a structure individual can purchase a small portion of the corpus/base of the Waqf and will receive a receipt for this purchase. The returns from this bond then go towards a social purpose and are managed by a Mutawalli.

Is there a specific name for this structure of a Waqf? How would it differ from a Sukuk financed Waqf? Is there anywhere you would suggest that I research to learn more?

I so appreciate your time. Hope you are having a lovely Sunday.

Best wishes,

Jessie

**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 Jessie

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I do not ever remember that I mentioned a bond Waqf. If I did I was wrong. I may have mentioned a certificate, share or Sukuk. A bond is a term used for interest-bearing document.

Now, are there Waqf shares? The word share is used in the language meaning only not in the technical meaning as known in corporate shares.

Its dynamics are as follow: a group or organization set a target project and invite donors to donate on the basis of Waqf, usually a unit amount is defined like 100 Riyal or \$100. For payment receipts are issued. Funds are managed by Mutawalli set usually by the issuing org. donors just give the money and walk out having no touch or relation whatsoever after donating (the receipt give zero rights). Fund are used for the Projects and if the nature of it is to give return, it is then used for the pre-set objectives.

Almost every mosque built in Syria, Lebanon, Palestine, Jordan, Egypt, Morocco, Algeria and Tunis over the last 50 years is financed this way. these of course provide the utility of prayer space.

Also there are projects that give return. There is in Jeddah a group of people who created an organization to serve the Qur'an and distribute copies of it to needy Muslims anywhere in the world. They fund their activity by what they call share of Qur'an. Units of 100 Saudi Riyal are collected and invested and the return only is used for printing and distributing copies of the Qur'an. Also in Saudi the Muslim world league has a project called Sanabil al Khayr or Ashum al Khayr (shares of good deeds) based on units of 100-riyal contribution for a Waqf whose income is used for helping the poor and needy.

I am not aware of specie called "Sukuk financed Waqf" and the term seems to me contradicting because Sukuk are certificates of investment similar to shares, they represent equal units of ownership in an asset or project that gives revenue. This is the way they are defined by AAOIFI. On the other hand, Waqf is a pure benevolent property used for spending on a good idea, or the poor or descendent of a person. There is no return to the investor in Waqf other than reward from God when the donor may get only after death!

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Ashfaq

**Sent:** Thursday, September 01, 2016

**Subject: Mosque on Waqf or on Trust laws?**

Dear Brother

Assalam Alaykum,

I have a question regarding the Awqaf (Waqf) of mosque and its legitimacy.

Here in India Some of our Muslim Brothers Build a mosque in a land and register it as per Indian Trust Act

Sir As you know the subject-matter of a trust must be property transferable to the beneficiary and any such registration shall become private in nature, and shall contradict the very principle of Awqaf, i.e., the owner ship of Waqf shall not become private natural or legal.

Sir, so according to my opinion, so registered building for the purpose of mosque shall not become Waqf and building remain private and cannot be a Waqf or mosque.

Could you please enlighten me in this regard? So as to help people know the correct Waqf and its Shari'ah rulings. Jazaqallh Qhair

May Allah Bless You

Ashfaq

**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. Ashfaq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I am not familiar with the Trust laws in India. But in America trust laws accommodate having a property remain public (I mean not privately owned now or in the future) and a Mosque can be registered as a trust property.

If you are definite that laws in India requires a trust property to turn into private (which I doubt very much!) then you are right. I think people register it as a trust because they want to avoid the control of the authorities over it since India has a law of Awqaf for Muslims and it is kind of rigid and run by corrupt organization.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf  
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**From:** Ashfaq

Dear Brother Monzer

Wa Alaykum Salaam Rahmatullah Wa Barakatuh,

It is so absurd and unrealistic that you expect a person should leave his country in order to pray at mosques built by Government and so on.

The subject I have discussed here is in the context of a democratic secular country.

Up course, the concept of Waqf (Endowment), Waqif (Endower) Sharia Rulings of it being endowed and validity of sharia rulings needs to studied in depth.

The extract here is your findings on the Waqf where you make a point that I quote "*According to the Islamic Shari'ah, Mosques and mosques related Awqaf must not be private properties of any person, natural or legal. Mosques are places for prayers and other religious and community activities for all Muslims in the area. Historically Muslim jurists consider Mosques open to all Muslims that they cannot be privately owned. It is an agreed upon position of all Muslim Jurists that the moment an owner of a real estate opens her/his property as a mosque for the public to pray, it becomes a Waqf.*"

I believe having been studied the laws of Indian Trust Act, If one deduces it being legal in the light of Sharia and jurisprudence there would be a severe fallacy being the validity of Waqf and would contradict the very report you published which are available in the net, same is attached for your reference

However, India has separate set of laws for mosques and Waqfs by way of **Indian Waqf Act 1954** a purely a body corporate to manage and control the affairs of the Waqf barring all the legal provision to enact the mosque as Private.

Jazaqallah Qhair.

Ashfaq

**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. Ashfaq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

In all Muslim minority countries where the government does not establish mosques and spend on them, it is permissible to register the mosque as a trust in the name of a board of trustees. It is also permissible for this board to defend the interest of the mosque and if need arises to prevent any person whom the board believe it may hurt the property or abuse it or de-sacred it from entering the property. This means that in India, you have no point in objecting to a mosque being registered as a trust and in the name of a board of trustee. If you do not like then live in a country in which the government establishes and spends on mosques.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf  
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**From:** Ashfaq

**Sent:** Thursday, September 01, 2016

Dear Brother Monzer.

Your reply in this matter has generated more queries and questions when it comes to legal aspect of the Waqf.

Brother, if a person who deeply understands what Indian Trust Act is all about and for which it is applied, then he could arrive with more argument and debate.

It is a law pertaining to the private property with the nomination of Beneficiaries.

One must understand what the rights of the beneficiary are in the said Law. It is the exclusive legal right of a beneficiary to Rent and Profit of the property and right to transfer his beneficial interest.

The said trust act is being already attached for your reference.

*For example*, suppose, let us assume that in ensuing days, the Waqf run by Indian Trust Act has accumulated lot of revenues and property by way of donations and contributions, a successor of any beneficiary who happens to be his son or legal heir, subject to the provisions available in the Act/Law who challenge in the court of law saying that I quote " *my father has beneficial interest with the trust property, since his demise fetch me lot of financial burden his benefits are to be made available to me by way of Indian Succession Act.*" I un quote. or any Public Interest Litigation as the case may be.

Now Could you please enlighten me as to, what will be the probable legal standing of the judiciary under the above scenario when the parliament of particular country formulated laws precisely to protect the interest of beneficiaries under the said law?

I appreciate your answer if you could please convince me in this regard.

May Allah grant us deeper understanding and insight? Jazaqallah Qhair

Ashfaq

**My Answer:**

I do not agree with you, you are wrong in thinking that the Trust act is only for that. It can also be for an objective under trustee's authority. You need to open up.

W Assalam

Prof. Dr. Monzer Kahf

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