

Contemporary *Shari'a* Compliance Structuring for the Development and Management of *Waqf* Assets in Singapore

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I. Introduction

Waqf complements many other forms of charitable act for the Muslims community in Singapore. Singapore Muslims are fortunate to be able to practice its religious activities freely. Some of these religious activities are further supported through an Act to govern the religious affairs of Muslims in Singapore the act is called the Administration of Muslims law Act (AMLA).¹

In this Act, to name some, it provides provision for the creation of the Islamic Religious Council (Majlis Ugama Islam Singapura or MUIS) to oversee all the religious affairs of the Muslims community such as the administration of *Zakat* in respect of collection and disbursement, *Halal* certification, management and administration of *Waqf*, *Hajj*, mosques and *Madrasah*.²

Singapore is a secular state with 14% Muslims of which majority of them are Malays. The largest faith category is the Buddhist as Chinese forms the majority of the population.³

There are 99 *Awqaf*⁴ registered in Singapore with over 200 properties and with an assets worth about S\$300 million.⁵ Sec. 56, of the AMLA regulates the administration of *Awqaf* in Singapore. *Waqf* forms the largest assets value of the total assets managed by the Islamic Religious council of Singapore.

The paper shall discuss in brief the history, the founder and the legal aspect of *Waqf* in Singapore. Followed by a brief information on the structure and administration of *Waqf*

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1 Administration of Muslim law Act (AMLA) cap 3. of the Singapore statute. The act can be access through www.agc.gov.sg.

2 *Madrasah* is a religious school. There are 6 fulltime *Madrasahs* in Singapore. They provide both the main stream education curriculum such as maths, science and the human sciences and equipped them to take the national and international examination such as the G.C.E. 'O' and 'A' level besides giving them the religious curriculum.

3 According to government statistics, the population of Singapore as of September 2008 was 4.84 million, of whom 3.6 million were Singaporean citizens and permanent residents (termed 'Singapore Residents') Chinese formed 74.2% of 'Singapore Residents', Malays 13.4%, Indians 9.2%, while Eurasians and other groups formed 3.2%. Accessed on 23 Oct 2009 at <http://www.singstat.gov.sg/pubn/popn/population2009.pdf>.

4 Plural for *Waqf*.

5 *Waqf* assets value as at financial year Dec 2008, extracted from MUIS *Waqf* Funds report and financial statement as at 31 Dec. 2008.

in Singapore. Then, the next section will showcase the various investments, financing and development strategies used to develop *Waqf* assets with some examples of development undertaken by MUIS. Subsequently, the paper shall outline the various allocation for the beneficiaries (*Maukuf Alaih*) benefitting from the *Waqf*. The paper shall then conclude with the challenges and prospect of *Waqf* in Singapore and globally.

II. Historical Background of *Waqf* in Singapore

The first known *Waqf* that was created in Singapore is the *Waqf* of the Omar Mosque of Kampung Melaka which was endowed by the late Syed Omar Aljunied a trader from Indonesia who would probably originates from Yemen in 1820 (Ibrahim, 1965). The first *Waqf* legislation was passed by the British legislation in 1905, which was provided under the Muhammedan and Hindu Endowments Ordinance (chapter 27) enacted on 8th September 1905.⁶ Most of the *Waqf* that was created by the early settlor was effected during the early 18th century this is due to the spice route prevalent at the point in time where merchants from Yemen and from the middle-east region sets roots here in Singapore and created *Waqf*; the tradition which they emulated from the rich *Waqf* history in their country. There are also *Waqf* founders from Indonesia Archipelago of the Bugis descendant example of which is the *Waqf* of Hajjah Daeng Tahira Hj Daeng Tadaleh and some from India such as the *Waqf* of Ahna Ally Mohammad Kassim.

Most of the *Waqf* was created during the early migration of the Muslims i.e in the late 19th and early 20th centuries. However, to date there was no creation of new *Waqf* probably due to the following reason:

- i) Lack of information on the creation of *Waqf* which was not aggressively promoted.
- ii) Property prices escalated beyond the means of many Muslims Singaporean to bequeath the property as *Waqf*.
- iii) There are many other forms of donations which is aggressively targeted at Muslims in Singapore such as madrasahs, mosques and other charitable organisations.
- iv) As all *Awqaf* is vested in the Majlis the preference for the wakif to manage their own *Waqf* without any interference from the authority via self appointed trustee or creating *Waqf* overseas.

2.1 Definition and Types of *Waqf* in Singapore

In the Administration of Muslims Law Act (AMLA), *Waqf* is defined as follows:

“Wakaf” means the permanent dedication by a Muslims of any movable or

⁶ The Statute of the Republic of Singapore, The Mohammedan and Hindu Endowments ordinance 1905.

immovable property for any purpose recognised by the Muslims Law as pious, religious or charitable.

The AMLA further breakdown the *Waqf* into 2 types of *Waqf*, that is general *Waqf* or '*Wakaf Am*', another type is '*Wakaf Khas*' or specific *Waqf*. These definitions are extracted from the AMLA as follows:

“Wakaf Am” means a dedication in perpetuity of the capital and income of property for pious, religious or charitable purposes recognised by the Muslims law and the property so dedicated;

“Wakaf Khas” means a dedication in perpetuity of the capital of property for pious, religious or charitable purposes recognised by the Muslims law, the income of the property being paid to persons or for purposes specified in the Wakaf, and the property so dedicated;

Notice that the AMLA used the word *wakaf* which is a Malay spelling and consonant for *Waqf*. This spelling is used both in Singapore and Malaysia. In Malay, the word '*Am*' means general and the word '*Khas*' means specific.

The provision provided in the definition stipulated that the *Waqf* must be created by a Muslims, i.e. the *Waqif* in this case must be a Muslims. As in other countries for example Kuwait it does not stipulate the faith of the founder i.e. a non-Muslims is allowed to create a *Waqf* (Zaki, 2006).

Notice also that the assets (*Al-Mawqoof*) need to be permanent in nature. There are differences in the opinion among the jurist on the permanency issues of the assets. The popular opinion among the jurist is that for the endowment to be classified as *Waqf* the permanency issue is important to distinguish it from the normal *Sadaqah* with the exception of Imam Malik and some of the *Shia* section (Rahman, 1980). It should be noted that the *Waqif* cannot revoked the *Waqf*, as it is an irrevocable bequeathed.

All the assets that have been consecrated for *Waqf*, originally have a freehold tenure. However over time with land acquisition act, some of the *Waqf* has been acquired and compensation money was received for the *Waqf*. This compensation money was invested in time deposit and has now been converted back to an asset based by pooling all the cash *Waqf* in the register of the Majlis for the purchase of the 11 beach Road, the single property which have a shareholding of forty-three⁷ *Awqaf* in its portfolio.

As custodian of the *Waqf* assets and properties, it is important that the *Waqf* should not

⁷ Based on the internal documents of MUIS-shareholdings are reported as at 31 Dec. 2008 with a total investments of \$30.76 million.

be liquidated even though it has in this essence being acquired. It is worth noting that even a *Waqf* which has only S\$2,000 left as cash, has also been pooled to be part of the owner of 11 Beach Road. Hence such structure can give rise later to the manner in which new *Waqf* can be created such as issuing of shares for the ownership in the properties such as a *Waqf* REITs.

In Johor, Malaysia the issuance of *Waqf* shares has taken place and it has gained popularity among the Malaysians there (Ahmad, 2006).

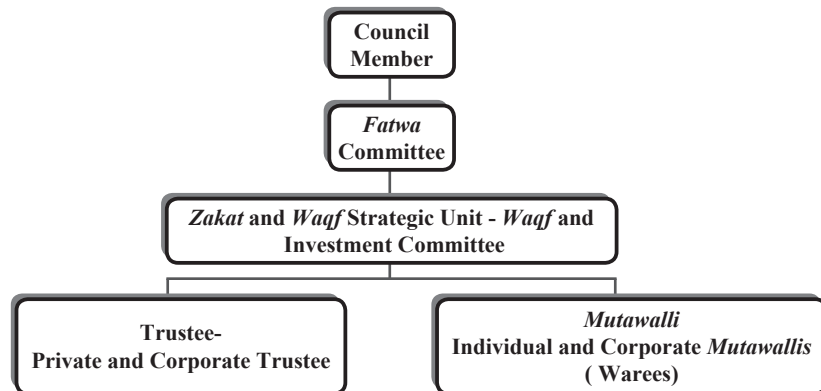
In Singapore, there are three types of *Waqf* being administered, the charitable *Waqf*, the family *Waqf* and a combination of the family and charitable *Waqf*. The family *Waqf* are also administered, registered and are required to be vested under the Majlis. Countries for example in Turkey have abolished the family *Waqf* (Cizakca, 1995), while in India no registration is required for *Waqf Ahli* (Rahman, 1980).

III. *Waqf* Administration in Singapore

All *Awqaf* is vested under the Majlis Ugama Islam Singapura (MUIS). MUIS is a statutory board which is under the Ministry of Community Development Youth and Sports (MCYS). It has a minister which is the Minister in charge of Muslims Affairs.⁸

3.1 *Waqf* Administration Structure

The *Waqf* administration is under the Strategic Unit of *Zakat* and *Waqf* in MUIS. All matters regarding the selling, development of *Waqf* assets are first tabled at the *Waqf* investments committee, which will then be escalated for the decision making at the management and MUIS council level. Where there are *Shari'a* issues the matter shall be heard in the *Fatwa* committee. Any investments, purchases or financial obligations or implications which exceed the amount of \$5,000,000 will need the Minister's approval. The organisational structure is depicted in the diagram below.



⁸ Currently the Minister in charge of Muslim Affairs is Dr. Yaacob Ibrahim who is also the Minister under the Ministry of Water Resources and the Environment.

Note that the department which oversees the *Waqf* administration which is under the *Zakat* and *Waqf* Strategic Unit of MUIS will oversee the whole compliance with regards to the three types of administrator of the *Waqf* that is the Trustee which is the private and corporate Trustees (BMT) and thirdly Warees Investments Pte Ltd who acts as the *Mutawalli* of MUIS *Waqf* which is not managed by the other two groups. Hence MUIS will play the regulatory roles while the Trustees and *Mutawallis* will play the managerial role and they will need to report and seek approval for example cases like selling and purchasing of assets. Annually, without fail they need to submit full set of accounts to MUIS during a stipulated time in accordance with the Act.⁹

Where there are no private Trustees for the particular *Waqf* concerned, MUIS becomes the trustees and engage Warees Investments Pte Ltd to act as the *Mutawalli* to manage and develop the assets. Warees Investments Pte Ltd is a wholly owned subsidiary of MUIS to manage all *Baitulmal* and *Waqf* properties.¹⁰ Almost all the functions of *Waqf* such as tenancy matters, development, sale and purchase and maintenance of properties are undertaken by Warees Investments Pte Ltd. By segregating this function, MUIS is able to focus on the regulatory roles and improving its corporate governance on *Waqf*.

There are private trustees and corporate trustees managing the *Waqf*. The private trustees are mostly relatives or descendants of the late *Waqif*. For the corporate trustee, only British and Malayan Trustee,¹¹ which is a trust company in Singapore manages three *Awqaf* in Singapore. This happened due to their historical management of the *Waqf* before the incorporation of MUIS.

All the appointment of the trustees and *Mutawallis* has to go through MUIS for approval, the same goes for any retirement of trustees. This monitoring is necessary to ensure that record of the trustees or *Mutawallis* managing the *Waqf* are centrally documented and kept.

There will be periodical meetings between *Mutawallis* and trustees to update on latest development of the *Waqf*. Some of the private trustees have come to sought MUIS help in the development of its *Waqf*. Hence joint development has been carried out with the expertise emanating from Warees to spearhead the development.

There are legal provisions in the AMLA in section 58 to 64, where matters relating to *Waqf* administration are provided. These provisions include the vesting of *Waqf*, the registration of *Waqf*, the financial provision for *Waqf*. In respect of the other regulations and policy on *Waqf*, an internal policy and workflow documents are prepared to provide the

⁹ Provision for the submission of account is stipulated in Sec.73 of AMLA.

¹⁰ Warees Investments Pte Ltd was incorporated in year 2001 with a paid up capital of \$15 million with and authorised capital of \$50 million. Their functions include projects, facilities and lease management and advisory and consultancy in real estate development , investment and management.

¹¹ BMT is incorporated in 1924 in Singapore and it is the oldest trust company which is listed on the Stock exchange in Singapore. Homepage can be accessed through www.bmtrust.com, web accessed on 20 dec. 2007.

general guidelines in matters relating to the administration of *Waqf*.

In terms of administrative strive for excellence; MUIS has achieved an ISO 9001 for its management and administration of *waqf*. MUIS is constantly striving towards excellent management system. It has achieved the mark of the Singapore Quality class which marks a commitment of the organisation in meeting excellent standards in its processes, leadership, customers and result oriented achievement.

IV. Development and Financing Strategies Used in the Management of *Waqf* Assets in Singapore

MUIS has embarked on many aggressive development projects commencing in 1990s. After the Rent Control Act was lifted, the *Waqf* development has been stepped up. In developing these *Waqf* assets, many contemporary *Waqf* instruments and innovative financing structure are used. The paragraph following this will discuss some of the methods used for structuring the *Waqf* assets.

4.1 *Istibdal*

Many of the projects that were undertaken used the concept of *Istibdal*, and *Istibdal* is allowed in many of the *Waqf* projects that were undertaken by the Majlis. The *Fatwa* committee of Singapore has allowed *Istibdal* for the following cases:

- i) The assets is in a dilapidated state.
- ii) The asset is in danger of acquisition.
- iii) The assets are located in an unsuitable location such as promiscuous area.
- iv) The assets can yield better return by relocation and redevelopment.

Istibdal are currently applied to *Waqf* properties which are commercial in nature. So far no mosques has been relocated or undergo a deliberate *Istibdal* process, except where the mosques have been acquired through land acquisition act and where force *Istibdal* were applied as a replacement over the acquired mosque. However for the *Madrasahs* there is one *Madrasah* which has gone through a planned *Istibdal*, where it has been relocated to give it a new life with better facilities. The *Madrasah* that has gone through an *Istibdal* is the *Madrasah al-Maaarif al-Islamiah*. The *Madrasah* was initially located in Ipoh Lane, the *Madrasah* needed major repair and redevelopment due to its expanding student size and the current building could not accommodate the burgeoning student population to have a proper learning environment. As a result of this, a proposal to swap the land from the existing place was done. This is made possible because the land at Ipoh lane fetches a higher price than the

land that was relocated for the *madrasah*. Since the *madrasah* is not a commercial entity, it makes more economical sense for it not to be located in a prime area. The exercise to relocate its premises is important as it gave the *madrasah* a new lease of life with better facilities and a new building without resorting to high capital outlay and borrowings to redevelop its building.

However while *istibdal* can be used in many of the development that meets the above criteria, it should be noted that the assets must meet the following conditions:

- i) The assets must gain a higher yield than the previous assets.
- ii) The new assets must be identified first and assessment of the assets should be carried out to ensure better quality and value than the previous assets are done before the current assets is being disposed.
- iii) The assets to be purchased should be freehold in nature.
- iv) The assets which are being disposed should be sold for 99 years at least.
(though this is not a requirement, having this criterion will at least propagate the *waqf* assets as the absolute ownership will return to the *Majlis* once the leasehold period is utilised).

4.2 Internal Funding – *Baitulmal*

The first few projects saw the development of the *Waqf* properties through the internal funding through *Baitulmal* fund. The *Waqf* are assets rich and cash poor. The first *Waqf* development in Duku Road with the building of 4 terrace houses from the *Waqf* Jabbar paves the opening for more development to come. The development saw the *Waqf* income multi-fold from a rental income of \$200 per month to \$2,400 per month. This has led *Majlis* to take up bigger projects to develop its *Waqf* properties.

Next *Waqf* Kassim was developed with a total development of \$15 million. It is a mixed development with the mosque, the commercial complex and 40 units of residential apartments. *Baitulmal* serves as a financing bridge for the *Waqf* as once the development has received its housing development permit, the *Waqf* can eventually sell its properties and hence the home owner will now need to pay for the expenses on a progressive basis based on the project completion stage. Since it is fully sold, the bridging finance from *Baitulmal* fund is used only for a short period. While in this model it has to give away part of its *Waqf* premises to be leased for 99 years, the intention of the *Waqif* to have the *Waqf* to maintain and provide money to the mosque has now been better fulfilled. Before the development in 1991, the *Waqf* received an annual income of \$1,321¹² only, after the development it received

¹² The income received in 1991 was very low due to the existence of the Rent Control Act. The Act forbids the owner to charge market rental rate and the rate is peg at a nominal amount only. The Act was only lifted in year 2000.

an annual income in year 2008 an amount of \$569,656.¹³ This shows an increase of 430% in terms of income received. With the development, the mosque has now received a brand new mosque, it does not have to raise its own fund for the development of the new mosque, which is bigger and has better facilities. Then there are commercial complex being built to give the mosque income. In all, each parties of the transactions benefit and most importantly, with the development, the *Waqf* are given a new lease of life, hence this is what all *Waqif* aspires its *Waqf* to fulfil.

4.3 Long Lease (*Hukr*)¹⁴

Some of the development of the *Waqf* properties after assessing its risk and return analysis has resort to the method of joint development. Often the tenant will enter a leasing contract with the Majlis to refurbish the development. Hence in the leasing contract which includes the terms for the refurbishment against the lease terms and condition, an amount will be computed for the total amount of refurbishment to be undertaken.

For example to refurbish or do an addition and alteration to the property it will require a total amount of \$100,000. This amount is then pro-rated over the lease period say for 10 years. Hence for each year the gross rent of say \$5,000 is then discounted by the capital that the lessee has undertaken. Example the rent will be locked at \$3,333 per month for the next 10 years.

In this example, the *Waqf* will not have to bear the burden of raising capital and the added advantage is that it has a secured tenant for the next 10 years. Hence the *Waqf* will be assured of a steady stream of income and will not have any borrowings to worry of. The only disadvantage is that the *Waqf* will not be able to increase its rent if the market turns up favourably. However the opposite is also true which will in turn benefit the *Waqf*. This method provides risk free and assured cash flow for the *Waqf* which is the very essence of the *Waqf* to provide consistent annual income to its beneficiaries.

This type of financing was undertaken by the Shiah Dawoodi Bohra properties at 509, Serangoon Road. The land is now occupied by a petrol station. The *Waqf* has given a long lease to the owner of the petrol station to raise fund for the building of the mosque which is the beneficiaries of the said *Waqf*. Hence a long lease of 15 years was contracted so that an advance amount can be used to develop the dilapidated mosque. This type of financing was also used for other *Waqf* properties in Singapore, a case in kind is the *Waqf* at Upper Dickson

13 MUIS Annual Report 2008.

14 *Hukr* means monopoly or exclusivity, this mode of financing was used in 12th century Egypt and Syria (Heyneman, 2004; Baer, 2008). The lessee can also charged a fixed rent or variable rent depending on the value of the property. This same contract are used in different country but are term differently for example in Tunisia it is called *inzal* and *nasba*, *muqata'a* in Turkey and *jalsa* in Morocco (Heffening 1934, Baer 1982).

Road belonging to *Waqf* Sharifa Zain Alsharoff, and the tenant a renowned franchise Indian Food chain ('the franchiser') rented the property at a discounted amount. The discounted amount is computed based on the capital outlay that has been advanced by the franchiser to refurbish the property. In this method, the *Waqf* property will be renovated and the *Waqf* need not raise any financing on its own. At the same time, the *Waqf* enjoy a periodical rent which at least will be able to benefit the beneficiaries of the *Waqf*.

4.4 Selling of Existing *Waqf* Properties

Most jurists forbid the sale of *Waqf* property. Although this is not a popular decision to take that is to sell the *Waqf* properties in order to develop the other *Waqf* properties. However, it is sometimes a necessary solution to keep the *Waqf* properties viable. The selling of the existing *Waqf* properties can only be done if the particular *Waqf* has more than one property. The example was undertaken by MUIS in the development of its *Waqf* Jabbar properties situated at Duku Road. MUIS develop the property in 1991 and completed in 1993. The development consists of four units of three-storey terrace houses costing \$1.6 million Singapore dollars. To repay the development cost of the properties, 2 units of the properties were sold. Although in this case the land area of the *Waqf* has now been reduced, the value of the *Waqf* has been enhanced. The net assets value of the property increased from \$14,821 in 1990 to an asset value of \$2.8 million in FY2006. The income of the *Waqf* has also been enhanced such that the properties which used to earn an income of \$68 per annum in 1990 saw a rental income of \$106,357 in year 2006.¹⁵ This translated to a 1,563% increase in the yield of the *Waqf*. The advantages of using this methodology is that the development cost will be fully paid by the sale of the properties hence the *Waqf* is left with no debt. The only disadvantage is that the *Waqf* portion of the land has now been reduced. Even though the land area has been reduced the net value of the assets has increased as reflected above to S\$2.8 million. However this problem can be overcome by selling it on a leasehold basis instead, the downside to this solution is that usually a leasehold property will fetch a lower price than freehold properties. Arising from this first case, all subsequent properties are later sold on a leasehold basis instead of a freehold basis.

4.5 External Financing – Using the *Musharakah* Bond

In order to create a large scale project, bigger financing needs will be required. MUIS

¹⁵ Figures abstracted from MUIS annual report 1990 and 2006 respectively. For FY 2006, the rental income posted as only \$21,000 from one property, the reason is that the other property was sold and reinvested in the 11 beach Road property as part ownership in the 11 Beach Rd properties. The account reflects as interest to enjoy tax concession instead of return on investment. There is a contentious issue here, as the contractual documents regarding the investment in Fusion Investments Pte Ltd at 11 beach Road is an investment property, this is so because the Islamic finance regulation in Singapore was not yet developed to recognise the income to be classified as a *Musharakah* income instead of tax income. To be consistent with the *Shari'a* contracts, the tax concession needs to be further explored.

discovered this when it decided to seize the opportunity of creating a large scale project in one of its *Waqf* premises. The properties are a mixed complex comprising of a mosque, a commercial complex and 103 rooms of service apartments. The project located at Bencoolen Street needs a total finance of \$35 million for its development. In view of its good location it is envisaged that the project viability is very high. Since the properties are *Waqf*, there are concerns to reflect a high debt amount in its book. In view of this, *Baitulmal* undertake the development project to mitigate the risk for the *Waqf*. In return the *Waqf* will benefit from the rental income of the commercial complex and at the same time will be able to benefit from a wholly brand new mosque.

4.5.1 Workings of the *Musharakah* Bond

Please refer to the diagram below on the structure of the *Musharakah* bond undertaken by Majlis Ugama Islam Singapura.

To raise the capital for this development an innovative solution of raising fund through a *Musharakah* bond was structured. The detail of the structure is as follows:

i) The first part of the contract — the joint venture contract

The *Waqf*, *Baitulmal* and Warees (a wholly owned subsidiary of MUIS to handle *Waqf* properties) entered into an agreement to build the mixed development at Bencoolen Street. The *Waqf* contributes land and some capital. *Baitulmal* will provide the necessary amount needed to develop it i.e. the \$35 million through the investors and Warees provide a nominal amount and their expertise.

ii) The second part of the contract — the *Ijarah* (leasing) contract

In order to provide return for the investors a leasing contract is entered between the Special Purpose Vehicle (herein called the SPV) to enter a lease agreement with Ascott International Pte Ltd.¹⁶ Ascott agree to lease the property for a period of 10 years. Hence a steady stream of income is secured and this can be matched with the return to be given to the investors. Although the bond was issued for only 5 years tenure the rental agreement was signed for 10 years. Eventhough there's a mismatched of the period this does not posed as an obstacle as there is an option of renewing the bond after 5 years.

iii) The Profit distribution

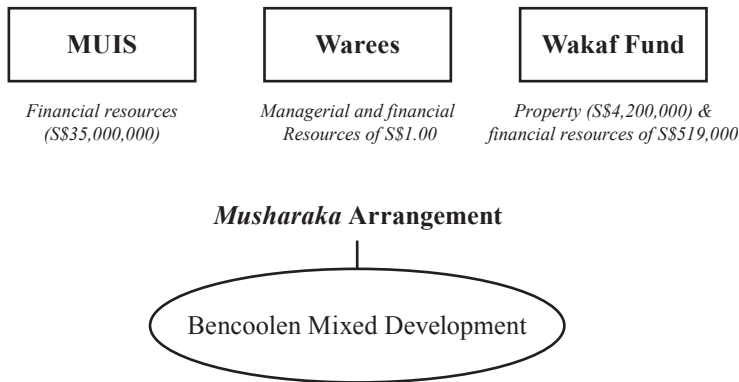
In the *Musharakah* agreement above, the profit shall be divided accordingly within the

¹⁶ Ascott International Pte Ltd which belongs to Capital land is a service management company which manages many service apartments in Singapore and now overseas.

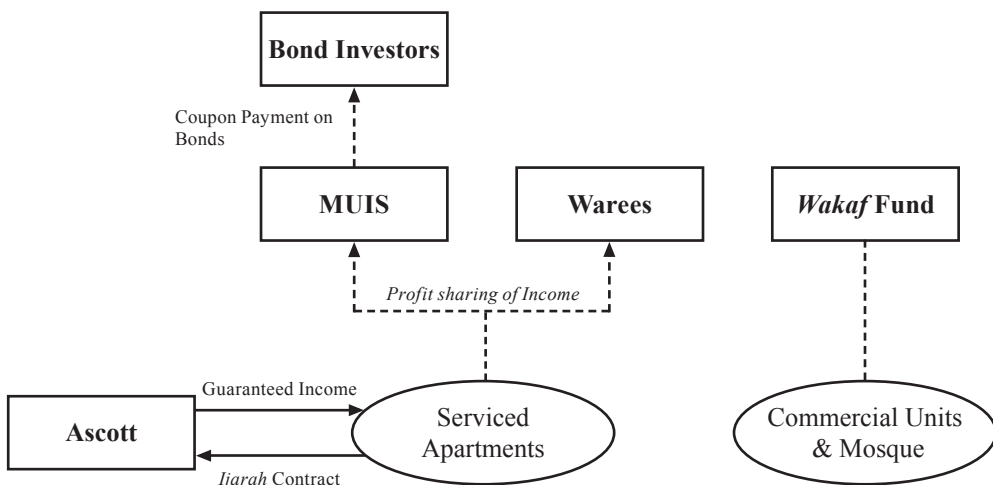
proportion of the capital invested. The investors through *Baitulmal* will earn a steady stream of income based on the agreed rental income received in this case it was contracted at 3.03% The *Waqf* will get a brand new mosque with increase capacity for its *Jemaah* and 4 storey of commercial properties to provide income for the mosques to maintain and run its operation. Since *Baitulmal* bears most of the risk to undertake the \$35 million investments it brings in, in return *Baitulmal* will receive the service apartment with a 99 year lease. Warees Investments Pte Ltd will receive a nominal investment return and professional fees for managing the development.

Diagram 1: Musharakah Bond Structure

The first part of the contract — The Joint Venture Agreement



Second part of the contract — the leasing or *Ijarah* Agreement to give the income stream to the Investors



4.5.2 Value Creation

The above innovative solution in raising the fund through the capital market has created an expansion in the value of the *Waqf*. There are many advantages in such structure of which firstly, the need of the beneficiaries of which the *Waqf* is created has been met, the need for the mosque to be refurbished and to create greater capacity for the *Jemaah*. It can now accommodate the *Jemaah* twice the number it used to accommodate. The mosque now has a steady stream of income from the commercial properties that is apportioned to the *Waqf*. The *Waqf* has no capital; this is made possible by allowing the long lease of its property to enjoy the benefit it will receive for the *Waqf*. However the only setback is that the *Waqf* needs to sacrifice part of the land it uses to *Baitulmal* for 99 years. In some countries such as Egypt and Syria this option of ‘selling’ *Waqf* properties on a long lease which was then popular in the 12th century of the Ottoman empire has been abrogated in the 20th centuries to avoid the loss of control and total loss of *Waqf* assets as it is difficult to keep track and administer the long tenancy duration¹⁷ (Baer, 2008). In the context of Singapore, although it is a long lease, to maintain the perpetuity nature of *Waqf*, such arrangement is acceptable as the reversionary interest of the title of the property will return to the *Waqf* after 99 years. The stringent accounting disclosure and the good governance of the Singapore government in keeping records are factors which create confidence in pursuing such contract. Lastly, for the first time in history an Islamic capital market was introduced to the financial sector, creating demand for *Shari’ah* compliant fixed income investments to the investors locally. In all, the development has caused a multiplier effect on the economy and has created a positive effect on all parties concerned.

Hence from the above exercise trustees and administrators are always faced with major decision making on the investments and financing option for *Waqf*. There are dilemmas and often these are questions posed by the trustees or administrator of *Waqf* assets such as whether such investments will result in the reduction of the *Waqf* assets, the risk involved and whether the return is sustainable. These are issues and questions which are frequently posed and this is a conflict where management of *Waqf* assets are concerned.

¹⁷ The instrument *Hukr* (*Hikr*) existed in the 12th century in Cairo and Syria. The idea is to ameliorate dilapidated *Waqf* so that the *Waqf* can be revived by the tenants as the trustees or administrators of *Waqf* are cash strapped and unable to revive the dilapidated *Waqf*. Continuing from this popularity the other instruments such as *Idjaratayn*, *Khulluw* and other similar contracts were introduced. The alienability of the *Waqf* land which was initially not possible has been made possible by such contract. Though that was the original intention due to lack of proper administration and system the *Waqf* property which was subject to such long contract has created a problem of monitoring and has given rise to the fraudulent act of the tenant to sell the property outright or to claim the whole property as private property and abolished the *Waqf* element. In view of the humongous problem it posed to the *Waqf* properties, in 1952 by art.7 of law no.180 *Hukr* on *Waqf Ahli* was abolished in Egypt and followed by later Law no.295 of 1954 which provide for the voluntary sale and termination of *Hukr* on *Waqf Khayri* (public *Waqf*). The same contract was also abolished in Iraq and Turkey. Please refer to the Encyclopaedia of Islam, by G. Baer, on an elaborated description of the abovementioned contract.

V. Investment Decision of *Waqf* Properties

Should *Waqf* be exposed to high risk to get better return or should it be contented with low risk and low yield return on the return of its portfolio? These are often questions being asked by the administrator of *Waqf*. What rate of return is sufficient as a benchmark to the *Waqf* properties. Some *Waqf* are fortunate because all its properties are located in the sought after property belt, fetching high rental income. However some *Waqf* properties do not have the same fate and are faced with meagre or high rental vacation period on its properties. The two factors below are part of the concept for the investment strategies for *Waqf*.

i) The capital preservation and capital expansion concept

Since the nature of the *Waqf* is of a capital preservation concept, the *Waqf* cannot have its capital to be eroded. So what are the strategies used to ensure that the capital will not be depleted?

ii) Meeting the increasing needs of the beneficiaries

Most often the *Waqf* is created many years ago, hence the need of the beneficiaries may be sufficient at the point in time. However with inflation and the rising costs of most expenditures the *Waqf* can no longer match the expenditure needed to finance the beneficiaries needs. This has led to many of the expectation stipulated in the intention of the *Waqif* to fall short of the requirement of the *Waqf* to provide for the beneficiaries as the *Waqif* purported it to be.

The following paragraph will attempt to give more depth and breadth to the various factors listed above and how the decision making of *Waqf* administrators and trustees are shaped in the nature *Waqf* investments and management is implemented.

5.1 The Risk Return Strategy of *Waqf*

Because of the capital preservation concept of *Waqf*; *Awqaf* administrator would not want to take high risk on the investment of *Waqf*. As a result if the *Waqf* has a property they will not expose or put the property at risk, mortgaging or leveraging the property in order to increase the value of the property further. More so development on a large scale which often is put off because of the heavy financing required to undertake the project. For the cash *Waqf*, investment return are usually benchmark based on the current bond yield which gives 1% over the inflation rate, some are not invested as there are limited investment opportunity for *Shari'a* compliance instruments. Take for example in Singapore where there are limited and almost none *Shari'a* compliance fixed income instrument other than its own *Musharakah*

bond. This has led to the low than expected income for cash *Waqf*.

For the property development, pertinent question should be raised whether the chances of the property to be developed will in essence increase the future income flow of the *Waqf* in many folds and whether it will also increase the capital value of the *Waqf*? This is important as during the development phase there are trade off that has to be undertaken by the *Waqf* in terms of reducing the income stream for the beneficiaries now as opposed to a higher income stream later. It is also important to note that for a long term investment strategy usually a portfolio can withstand higher risk due to its longer investment horizon (Nuffield, 5 Mar 2007). According to Jim Garland, from the Jeffrey Company, Ohio, for a perpetual investments such as *Waqf*, where the capital is kept in perpetuity, then what matters is the income and not capital gain (Nuffield, 5 Mar 2007). He further defined income as the ‘fecundity’ of the portfolio which was defined as:

“ the amount of cash the fund can provide for its current beneficiaries ...without endangering the fund’s ability to provide similar amounts of cash, its inflation adjusted terms, in perpetuity.”(Nuffield, 5 Mar 2007)

While the study is on the endowment, similar references can be made for *Waqf*; the *Waqf* needs to have income to provide for its beneficiaries and with inflation and increasing needs a portfolio which meets this demand is necessary and whether property assets class will provide the desired income has to be tested over time.

In the long run, property usually appreciates in value. The portfolio of *Waqf* assets in MUIS has increased from \$100 million to \$300 million in a matter of 15 years. The annualised capital gain on the property is 13 % year on year. This value will not be possible without taking mitigated risk in developing the properties, deliberate changes made to the administrative structure and employing experts in the field of *Waqf* development and the progressive *Fiqh* issues in relation to *Waqf*.

5.2 Capital Preservation and Capital Expansion Concept

i) Selling of *Waqf* on a 99– years lease basis

This concept applies from the many development activities that were undertaken. Many of the *Waqf* has to go through an *Istibdal* process. In Singapore, more than 50% of the *Waqf* properties that was managed have one way or the other gone through an *Istibdal* process. The *Istibdal* concept has propelled the way to expand the *Waqf* further and has helped in saving the *Waqf* from further deterioration of the value and revenue it needs to generate. The concept of selling the *Waqf* on a 99 years basis has helped the *Waqf* to expand its *Waqf* capital. The

money it received from the *Waqf* is then used to purchase another property, in this case the *Waqf* has naturally expand its assets based. From such transactions it is now possible for the *Waqf* to expand its capital while still preserving the capital that it originally has.

ii) Development, addition and alteration to existing assets to increase assets value

The other method of capital expansion is through development of its assets which has been aggressively done, this concept is to develop the properties, from a vacant land to say an apartment or commercial buildings, the asset after development will have increase in its capital value, however to do this, careful decisions need to be undertaken and deliberate stashing aside a certain amount of money for future development. Some applied the method of a sinking fund while others will forego to distribute the amount entirely and apportioned say a certain percentage to be accumulated in its reserve to be used later for the development of its *Waqf*. This is a very important factor in *Waqf* management because the main purpose of the *Waqf* is to maintain a perpetual life span of the *Waqf* with a continuous stream of income for the beneficiaries which in turn will fulfil the purpose of the intention of the *Wakif*.

iii) Fresh injections of new *Waqf*

The third way of expanding the *waqf* is through the fresh injections of new *Waqf* (Kahf, 1998). The *Waqf* can be expanded through fresh donations and fund raising activities. Active marketing concept and public education campaign on the creation of *Waqf* can help the public to create and contribute towards the *Waqf*. There are cases where rich family members or the descendants of the *Waqf* are willing to inject new funds to ensure that the *Waqf* survive and thrive.

5.3 Increasing Needs of the Beneficiaries

When the *Waqf* was created the *Waqif* has calculated the usufruct based on the value of its assets and the kind of revenue it will be generating and created its beneficiaries based on the expected revenue that the *Waqf* will be able to generate. In essence the revenue and expenses should match proportionately, so that there should not be gross insufficient income to benefit the beneficiaries as intended by the *Waqif*. Take for example a *Waqf* was created and its income is to be distributed for the maintenance of a particular mosques. The *Waqif* when creating the *Waqf* has estimated that it will receive a certain amount of income and will be able to finance the maintenance of the mosques. After 30 years, expenses have increased tremendously, what used to be a \$10 utility a month has now increased to say \$100 of utility a month. A caretaker which used to run the mosque for free or for nominal fee has now had to be run by a maintenance company which needs to meet many requirements by the regulatory body in terms of the safety and maintenance requirement of the new sophisticated building.

Many fees have to be paid; it used to cost \$100 a month to run a mosque 30 years ago has now increased to say \$15,000 a month to run the same mosque. If the *Waqf* income does not keep pace with the expenditure of the mosque then the *Waqf* has now not being able to achieve its objective fully. Hence the administrator or the *Waqif* has failed to anticipate the rising cost and the desired return from the property. For example *Waqf* Jabbar net distributable income was only \$14,028¹⁸ as at FY 2008, however the Mydin mosques which is the sole beneficiaries of this *Waqf* total operating expenditure for the year 2008 was \$330,081¹⁹ therefore the *Waqf* can only provides for 4.2% of the total expenditure of its beneficiaries. Another mosque which is the Sultan mosque in Singapore has a total of seven *Waqf* to fund its operating expenditure, however the *Waqf* with a total disbursement of \$105,000²⁰ accounts for about 9.3% of the total operating expenses of the mosques. Therefore these findings confirmed that the model does not fulfil the needs of the beneficiaries and need to be revamped to achieve the initial objectives of the *Waqif*.

It is therefore important to take into cognizance and account of the expenditure to match up the kind of revenue it needs to generate. Many examples of endowment trust such as Yale and Harvard have now gone to deficit because the expenditure has outstripped the revenue.²¹ For example Harvard University's Endowment caters more than 1/3 of the operating budgetary expenditure of the university. The expenditure has helped in financing student financing needs, faculty salaries and maintenance. In the case of the mosque, inflation and expanding needs of the society has changed therefore it is important that the concept of the *Waqf* expansion needs to be built into the *Waqf* overall investment strategy to ensure the sustainability of the *Waqf* is met.

VI. Management of the Beneficiaries

In Singapore, an annual exercise is conducted to ensure the consistent disbursements of beneficiaries are done. After the audit of the accounts, which in return will determine the net income of the *Waqf*, the proposed allocation to the beneficiaries is being carried out. There are two types of beneficiaries one which is named by the *Waqif*, in which no changes can be made unless the beneficiaries no longer exist. Second, where the beneficiaries are more general and hence a committee is formed to decide the charitable allocation to the desired institution.

¹⁸ Source MUIS *Wakaf* Funds FY2008, income calculated excludes the interest income and expense from the shareholdings in Fusion Investments Pte Ltd. Only rental income and operating expenses are computed.

¹⁹ Mydin mosque financial statement as at 31 Dec. 2008.

²⁰ MUIS *Wakaf* Funds FY 2008.

²¹ For the fiscal year 2009, Harvard managed to disbursed \$1.7 billion of its income to its beneficiaries. This amount represented more than one-third of its budgetary operating expenditure. The figure and sources are extracted via <http://news.harvard.edu/gazette/story/2009/09/harvard-management-company-announces-fiscal-2009-results>. Accessed on 23 Oct. 2009.

In making the allocation of the disbursement the following principles are adhered.

- i) To follow religiously or closely the allocation and beneficiaries as stipulated in the *Waqf* deed.
- ii) Where the beneficiaries no longer exist a cypress doctrine is created and a *Fatwa* is obtained to vary the intention but to still follow closely the original intention of the *Waqf*. For example if the allocation is to provide for the poor in the particular mosque, if the mosque no longer exist, then we shall provide the poor in the nearby mosque (mosque B).
- iii) Priority of needs
Where the allocation is to be given in general to mosques or charity then the first principle to look at is the needs in the society. The *Waqf* being part of the whole economic and social system in the community will be looked wholesomely in terms of the needs existing in the society. If the need is to provide for an Islamic education then deliberate allocation will be made to align with the overall community's strategic mapping to tackle this issue. However where family members of the *Waqif* has indicated their preference for the custom (*Urf*) of the charity carried out by the *Waqif*, which does not contradict with the overall intention of *Waqf*, then such *Urf* shall be respected and disbursement will be based on the *urf* of the founder.
- iv) Seniority
This is related to *Waqf Khas*, in which, after applying the principle 1,2 and 3 above, ceteris paribus, if there are two poor relatives, the senior relative will have the benefit first.

6.1 Statistical Information of *Waqf* Disbursement in Singapore

Below is the table of amount disbursed by country and by types of allocation.

Table 1: Disbursement by Country in FY 2009

| Country | % |
|-------------------|------|
| Singapore (Local) | 92 % |
| Middle East | 4% |
| India | 2% |
| Indonesia | 2% |
| Total | 100% |

Source: MUIS – *Zakat and Waqf* Strategic Units

From the table above, the distribution to other countries signifies the origin of the *Waqif*. These philanthropists created *Waqf* not only to help the community here in Singapore but also repatriated some income for the welfare of their communities of their country of origin.

Table 2: Amount allocated based on local distribution — by types of disbursement in FY 2009 (in percentages)

| Types | % |
|------------------------------------|------|
| Mosques | 65% |
| Charitable | 6% |
| <i>Madrasah</i> (Religious School) | 11% |
| Poor and Needy | 11% |
| Others | 6% |
| Total | 100% |

Source: MUIS – *Zakat* and *Waqf* Strategic Units

Most of the *Awqaf* were created for the purpose of building and maintenance of mosques. The *madrasah* is another popular intention of the *Wakif*, followed by the poor and needy. Having seen the disbursement pattern of the *Waqf* in Singapore, what impact does it have on the Singapore society?

VII. The Economic, Social and Religious Impact of *Waqf* in the Singapore Society

The creation of mosques by the early philanthropist has created the religious needs of Muslims in Singapore. A mosque is a very crucial and important institution where Muslims are concerned. Now there are altogether 70 mosques in Singapore, it does not only provide religious needs for the Muslims in Singapore but has become a social centre and recently an interfaith centre for the non-Muslims to understand about Islam.²² It have served and played a part in the overall nation building of the country that it resides in. As one of the attributes of the Muslims in Singapore which the Islamic Religious Council or MUIS propagate is that a good Muslims is one who promotes nation building.

Besides the mosques there are six full time *Madrasah* of which four are created through the instruments of *Waqf*. This is an important institution to produce the needed religious leaders in Singapore to lead in the religious affairs of the Muslims in Singapore.

²² Al-Nahdhah mosque situated in Bishan, is one such mosque which integrates a harmony centre in its building. The harmony centre serves as an interfaith centre to understand Islam better. Assessed through the website : <http://www.mosque.org.sg/an-nahdhah/index.php> on 2nd April 2008.

Other social contribution is the distribution of the poor and needy, for medicine, for scholarship, for burial purpose and other general charity.

The economic contribution can be clearly seen through the various developments undertaken as mentioned in the earlier section of this paper.

The earlier example on the development of the *Waqf* properties has created a whole creation of wealth, development, employment and many real economic activities that are created by embarking on the development. First the opportunity was open for Muslims investors to invest in a fixed income securities in a *Shari'a* compliant manner. Among the investors are the mosques and Islamic institution. Second the once dilapidated *Waqf* with its run down mosque has now been able to be restored and in addition received a steady stream of income. Third the setting up of the service apartment has given rise to the employment of many people in this sector that is the service sector. Fourth, the creation of more *Halal* restaurants for the Muslims was created.

As Michael Hodgson (1974:124) (Kuran, Summer 2004) mentioned that *Waqf* is a primary “vehicle for financing Islam as a society.” Although in the case of Singapore *Waqf* has not entirely been able to finance the whole economic and social sphere for the Muslims community it has and does contributed significantly to the religious life of the community in Singapore as expressed in this paper.

VIII. The Global Impact of *Waqf*

Waqf has not only provided religious, social and economic needs of the people in the country, but also in the country of their origins or their forefathers. Take for example the earlier *Wakif* who came as a diasporas group of Muslims in Singapore, created beneficiaries in their country of origin. In MUIS record, there is about 10% of the income which is repatriated to overseas country. It is very interesting to note that this investment vehicle operate exactly like an MNC's where the vehicle is created in the country where it can best generate the investment return and in return repatriate its income to its home country. Hence higher income can be generated by diversification of its *Waqf* overseas. This is evidence in many of the *Waqf* which is managed in Singapore, of one particular example is the *Waqf* of Kader Dawood and Meydin. The properties of the said *Waqf* are located in Joo Chiat, a historical Malay *Kampong*²³ area. The beneficiaries are entirely for three mosques in India. The *Waqf* has generated substantial income in comparison to the cost requirement needed in India for the maintenance of the mosque; the income generated can actually maintain a whole township by the Indian standard if the value of the currency and the cost of living is translated in the

²³ *Kampong* is a Malay word to describe village- Joo Chiat is nearby the Geylang area which historically had many Malay dwellers, the area has now been designated as the Malay ethnic area.

village town in India where these mosques reside. It is therefore wise to set up *Waqf* where the assets can give higher relative value to the beneficiaries and this will not be limited by the origin of the country they live in, as we are in the age of globalisation such matching of yield and return is important to create the necessary income.

IX. Conclusion

Waqf which is one of the most powerful charitable instruments used from the time of the prophet to this day have evolved and set to play a bigger and more important role in the society in future. With many countries reviving its *Waqf*, we will see a more developed administration and management of *Waqf* globally. The Islamic Development bank together with Kuwait *Awqaf* Foundation and many other *Waqf* authorities have paved the way to revive many of these *Awqaf* and have initiated the cross fertilisation of ideas on the management of *Waqf* through conference and training platform for the *Waqf* to be managed in the most efficient manner possible.

As custodian and administrator of *Waqf* assets, it is incumbent upon them to ensure that *Waqf* is efficiently managed and administer, using the latest technology, administrative prowess and innovative solution in developing its *Waqf*. This process to achieve a higher level of competent in the management of *Waqf* is important as highlighted earlier in this paper, because the sustainability of the *Waqf* depends on these factors.

For Singapore, although Muslims are a minority in a secular state, the migration of Muslims to Singapore has enabled the Muslims in Singapore to benefit from the rich heritage it has bequeathed to the community. However the challenge is for the current Muslims to bequeathed more properties as a form of *Waqf* for the future generation of Muslims community in Singapore. Although with high property prices which is beyond the reach of many Muslims in Singapore to consecrate the property as *Waqf*, there are many other innovative solutions that can be used to create *Waqf* as what has been done in many other countries such as the *Waqf* shares in Malaysia and the cash *Waqf* in Turkey.

It is also hoped that in future a global benchmarking for *Waqf* administration, standards and *Shari'a* guideline be developed to facilitate the management of *Waqf*, as one of the greatest Muslims endowment systems in the world.

Glossary

| | |
|---------------------------------|--------------------------------------------------------------|
| <i>Am</i> | : general |
| <i>Haji</i> | : the pilgrimage to mecca |
| <i>Hukr/Hikr</i> | : long lease |
| <i>Ijarah</i> | : leasing |
| <i>Istibdal</i> | : to exchange or barter one piece of assets to another piece |
| <i>Kampong</i> | : village |
| <i>Khas</i> | : specific |
| <i>Madrasah</i> | : Islamic school |
| <i>Mawquf</i> | : assets dedicated as <i>Waqf</i> |
| <i>Musharakah</i> | : joint -venture |
| <i>Mutawalli</i> | : administrator or supervisor of <i>Waqf</i> |
| <i>Shari'a</i> | : Islamic law covering all aspect of life |
| <i>Urf</i> | : custom |
| <i>Wakaf</i> | : malay spelling for <i>Waqf</i> |
| <i>Waqf</i> (pl. <i>Awqaf</i>) | : muslims charitable trusts; muslim endowment |
| <i>Waqif</i> | : settlor; founder of <i>Waqf</i> |

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