A Juristic Study on Investment of Awqaf: from Classical to Contemporary Modes

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Abstract

Awqaf (endowments) had played a significant role in the progress and development of human civilization. It is a need of time to revitalize the roles of awqaf for the advancement of human society and civilization. Hence, this paper intends to make a juristic study on utilizing awqaf funds through investment and financing based on the classical to the contemporary modes. The paper will be qualitative in nature, in which analytical and descriptive methods will be followed. The analysis primarily relies on classical and contemporary juristic views and discussion. The paper claims that the investment of awqaf properties could be accomplished in two forms, investment of the original awqaf assets and investment of its proceeds. The investment modes to be analyzed in the paper are, for example, hikr (long lease with large advance lump sum), lease with dual payment, kadik (tenant's improvements to rental property), mursad (construction for rent swap with a waqf), sharecropping, partnership, diminishing partnership, manufacturing agreement, lease ended with ownership as well as investment in purchasing permissible financial papers and securities. The paper also explains the issue of substitution and modification of awqaf properties as it is of paramount importance in handling the awqaf properties for the welfare of society.

Introduction

Throughout the history, waqf made a significant contribution for the development of human civilization. Waqf contributed in building universities, hospitals, mosques, schools and colleges, giving scholarships to the students and even providing foods for animals and so forth. Revitalizing the role of waqf means reviving the role of a huge voluntary institution dedicated to serve humanity and its societal development. With this spirit, the present research is a humble effort to study the various investment modes of waqf assets, intending to reaffirm the historical role of waqf in social development. Actually, there is an integral relation between waqf and investment, as waqf itself is a form of investment. Waqf means to retain the original asset and to dedicate the proceeds for various charitable purposes. The investment also refers to either capital formation or revenue generating.

In the present day, the crumbling status of the waqf can be addressed by initiating new waqf estates and reforming the existing ones. This could be achieved through investment of waqf properties and its proceeds onto different classical and contemporary modes of investment. This is the main concern of this paper. The paper begins with a discussion on the investment and its legal ruling, waqf and its characteristics, followed by both classical and contemporary modes of investment of waqf estates and properties.

Investment and its legal ruling

The Arabic word for investment is 'istithmar', derived from the root word (th m r), which means fruit, yield, proceeds and the like. Words that are derived from this root are mentioned in numerous places of the Qur’an and Sunnah. Muslim jurists discussed 'istithmar' when they explain the issue of being prudent and imprudent. They said: the prudent is he who is able to invest, reform and manage his properties; otherwise he is imprudent. In the economic sense 'istithmar' means: using the funds in productive means, either directly by purchasing the machineries, or indirectly like buying stocks, bonds and the like.

To make the wealth circulate and to invest is a collective obligation on the nation. The investment activities and process shall be carried out, so that

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wealth would be available for everyone, hands would be operative, and the basic needs would be fulfilled for all, if not in abundance. In this connection, the legal maxim says: "what is indispensable for the obligation to be accomplished is obligatory in itself" (Zaydan, 2003).

Nevertheless, question might arise on the obligatory status of investment on the individual in case of having surplus wealth. Actually, the wealth belongs to Allah, and ownership of the mankind is not unrestricted. So, one must invest his wealth in Shari'ah compliant ways, either by himself or through the partnership mudarabah, musharakhah and the like. He should not leave his productive wealth idle and should let it play its role in the economy, which yields the general wellbeing of the community. Moreover, the strength of the community and nation hinges upon the strength of its individuals, particularly in light of the Islamic provisions that recognize individual ownership, while the state ownership is limited. Hence, the individual shall bear the big responsibility in increasing the wealth through investment, (al-QurahDaghi).

Shaykh al-Qaradawi says: the Prophetic narrations and traditions have drawn the attention of the guardians to invest necessarily the wealth of the orphans, so that it would not be eaten up by the Zakah. Hence, it is obligatory on the caretakers of the orphans to let their wealth grow, as well as they must pay out the Zakah thereof, (Fiqh al-Zakah).

Likewise, the investment of the wealth is advocated in the verse says: "in order that it may not (merely) make a circuit between the wealthy among you" (al-Hashar: 7). This is because wealth do not circulate except through the distribution of alms and the investment, which renders advantage for everyone of workers, craftsmen, traders and the like.

Furthermore, among the noble objectives of this Shari'ah is the preservation of the wealth and that can only be achieved through the investment and growth thereof. Also, one of the objectives of the Shari'ah, is the reconstruction of the universe pursuant to the way of Allah swt as He says: "it is He who hath produced you from the earth and settled you therein" (Hud: 61). It means: He commanded you to construct what you need thereof such as to build houses, plant trees and so forth. Also, one other objective of the Shari'ah is to appoint the successor, which requires carrying out the affairs of the earth, managing, utilizing and reconstructing that. Nonetheless, all these cannot be achieved perfectly except through the investment, (al-QurahDaghi).

**Definition of waqf**

Waqfis defined as, "holding the wealth so that it can be utilized in valid ways while retaining the original asset without changing the ownership thereof" (al-Sharbini, 1958). Waqf also is defined as, "retaining the capital and dedicating the proceeds to the charitable purposes” (Ibn Qudamah). According to these definitions, waqf has some characteristics that are as follows:

a. **Waqf**s considered one of the important Islamic rituals. It is one of the perpetual charities by which human being seek the closeness to Allah, the Exalted. Hence, Islamic provisions shall be observed in creating and managing the **waqf** properties. Also, staying way from any illegal involvement is must to initiate and maintain the **waqf** funds. So, **waqf** is not to be made with the illegal properties, in terms of the essence, acquisition and the like. In respect of investment of **waqf** funds, all the investments must be pursuant to the respective Shari'ah rules and regulations.

b. Retaining the capital or original asset is one other significant characteristic of **waqf**, as far as all the Schools of Islamic law are concerned, (Ibn al-Humam, al-Sharbinin& Ibn Qudamah). This means, in the language of investment, the initiation of **waqf** itself is considered an investment; and in the language of accounting, it is the wealth that cannot be spent and disbursed. Hence, the **waqf**shall be managed in such ways that its initial condition is retained, in terms of maintaining its production ability and so forth. This requires the necessary renovation and restoration of it, in order to have the smooth survival of it. Likewise, the original asset or capital of **waqf**shall not be spent on the beneficiaries. All that means that the creation of **waqf** is itself an investment process.

c. Another important feature of **waqf** is that, the proceeds earned from the investment of **waqf**must be dedicated to the beneficiaries and charitable purposes.

d. With regard to the ownership of **waqf**, scholars have disputed thereof. Hanafi and Maliki Schools view that the ownership would be retained for the creator of **waqf**, whereas Shafi’i and Hanbali Schools assert that the ownership of the creator would be removed from the **waqf** and shifted to the beneficiaries if they are specified, or to the ownership of Allah, if beneficiaries are not specified. Whatever it is, all scholars agreed that transactions like sale, **hibah** etc. remain invalid in the **waqf** properties, and proceeds earned would be for the beneficiaries. Thus, there are two rights and two objectives in the investment of **waqf**. One is in the asset per se, and the objective is to retain that, while another is in the proceeds and the objective is to invest the asset in order to generate the revenues.
Waqf asset must be something that has value and valid utilization. Scholars agreed that, if usefulness of the asset ends after utilization, waqf cannot be made by such asset. But, if the asset can be utilized once and again in the course of time, waqf would be permissible (Abdul Halim Umar: 2004).

**Waqf and investment**

"There is an integral relation between waqf and investment. Investment in one sense refers to the capital formation, i.e., creating investment projects. The creation, renewal and management of waqf serve the job of capital formation and creating investment project. This is realized from the first part of the definition of waqf which says: "hubs al-ast", i.e. retaining the capital. Another sense of the investment is utilizing the capital in the projects that yield proceeds and revenues. The aim in creating waqf is also to generate incomes and earnings, so that it would be spent on the welfare. This is inferred from the second part of the definition of waqf which says: "tasbil al-thamarah", i.e. dedicating incomes to charitable purposes, (Abdul Halim Umar: 2004). Having said that, in real sense waqf is investment, since the owner wants to halt it in order to reap its output on the Final Day of Resurrection. Also, in terms of retaining the capital, while the consumption will be from the yield, fruit, revenue and profit. The waqf assets either produce fruits as in the case of fruitful trees and orchards, or produce usufruct or rent as in the case of leased assets, or generate revenues and profits as in the case of cash waqf, (al-QurahDaghi).

**Modes of investment in waqf**

Investment in waqf can be made by either creating new waqf, or by annexation, replacement and renovation of the existing waqf properties. With regard to the waqf, the main problem in the present time is the breakdown of creating new waqf estate, though it is very much needed. This problem can be addressed by using some contemporary ideas of financing, such as the idea of democratizing the financing, based on the participation of a number of people to finance in the initiation of specific waqf project, the idea of financial papers that can be used as an instrument to actualize the idea of democratizing the financing, as well as the idea of investment fund considering it an organized framework for collective investment. Applying this idea, anwaqf project would be established that is dedicated to the charitable purposes, and the estimated value of the project is $100 million. So, to create a collective waqf fund the sukuk (investment certificates) would be issued with a nominal value and let us assume it $10 for each certificate. Then it would be made public for general subscription and would be sold to those who are interested to participate in waqf, according to the capability of each one of them. By this way, $100 million could be collected in the form of waqf, in which a large number of Muslims may participate. Nevertheless, this is based on a fiqhi ruling that permits the multiple creators in a single waqf for the same or various purposes, as stated in al-Mabsut: "if there is piece of land that is common between two owners, and both of them donated the land by making it waqf for the charitable purposes, and then gave it to a custodian to take care of it, it would be permissible. This is similar to the case that if two persons donate something to a single person, such donation is permissible. Actually, the prohibition in donation arises when there occurs a joint ownership, and here is no joint ownership. So, all has become single donation from multiple donors. This idea is being implemented in some countries like Kuwait, Saudi Arabia, Oman, and others.

Secondly: investment in waqf can be made by the renovation, alteration and addition to the existing waqf assets. Basically, one other problem regarding waqf in the present time is leaving the ancient waqf properties idle and inoperative. Consequently, their productivity is going decreased and devastated. This problem can be addressed by collecting and managing enough funds to revive these awqaf properties using various modes of financing and investment. The source of the investment would be either auto-financing, i.e. financing from the waqf itself, or financing by the third parties, (Abdul Halim Umar: 2004).

**Auto-financing**

Auto-financing comprises the following:

1. **Financing from the revenues of awqaf:** in this case financing would be from the revenue of the same waqf if it generates revenue, on the basis that the reformation and reconstruction of waqf asset should be given priority over the beneficiaries. Also, the surplus from the revenue of one waqf would be spent on the construction of another waqf.

2. **Financing from the same waqf by substitution:** all fiqhi Schools agreed that any transaction of awqafis considered valid so long as it safeguards the interest of the waqf and its beneficiaries. This is applied in the waqf when it remains unused. This is realized in many ways, like: the substitution by selling the original waqf asset against another asset or against the cash amount and then creating another waqf with that amount, (Abdul Halim Umar: 2004).

Hanafi School permits the substitution of waqf, when it is destroyed or generates little income, with another waqf. Ibn Abidin, a Hanafi jurist, gives a scenario by saying that, "Substitution should be specified. For example, when the beneficiaries do not
get any revenue from the *waqf*, and there is someone who wants to exchange the existing un-productive *waqf* with another land or property, which generates income for the beneficiaries. In this scenario, substitution is permissible. It may also be valid in the case when *waqf* yields some revenue, but someone else wants to exchange it with another property that yields more revenue. Without such a situation, *waqf* cannot be substituted or exchanged with another. (Ibn Abidin).

Maliki School, allows the substitution of the moveable *waqf*. In respect of immovable *waqf*, they do not allow its replacement, though it might be devastated. However, they do not agree to leave it in devastation; rather they say it must be renovated by several ways like, renting it out with advance rental and so forth. Nevertheless, Maliki School permits the sale of immovable *waqf* asset if it is destroyed and in joint ownership while some part is endowed and other part is owned. A famous Maliki book, *Hashiyat al-Dasuqi*, writes: "the whole asset would be sold out, even though the price of some part would be enough for its renovation; in order to ward off any harms caused by multiple participants. Yes, the *waqf* asset could be sold out, if it becomes destroyed that does not generate any revenue to reconstruct it, and also nobody is found who leases it for years and pays rental in advance to renovate it; otherwise it is not valid to sell it out" (al-Dardir).

Shafi`i School holds the stand of Maliki School and says, substitution of the moveable *waqf* is valid while replacement of the immovable *waqf*, that is destroyed, is not valid. It could be renovated by revenues or any other ways, (al-Sharbini).

Hanbali School allows the replacement of *waqf* in general like the Hanafi School. In this respect, it is stated in al-Mughni: "If *waqf* gets destroyed and does not generate revenue, it would be sold out, and something else would be purchased with that money that generates revenue, and then it would be made *waqf* like the first one" (Ibn Qudamah).

### Financing by third party

Investment can be made in *waqf* by collecting funds from the third parties, and that could be made by various ways, comprised of both classical and contemporary modes, as discussed below.

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**Fig. 1:** Various modes of investment in *waqf* (Abdul Halim Umar, 2004).

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**The classical forms of investment in waqf**

The *fiqhi* sources mention that there are three forms of *Waqf* investment, namely: Hikr, *Ijaratayn* and *Mursad*. Nevertheless, all these three forms are basically based on the lease arrangement. This would be long term lease, in which the rental would be settled in advance. In these transactions, a large sum of the rental would be collected earlier to construct, repair and renovate the *waqf*, while the lesser portion would be distributed among the beneficiaries. Thus, these forms combine both *waqf* and investment together. The legal status of these modes of investment would be subject to the legal ruling of the long-term lease agreement, which is permissible to some scholars and invalid to some others. (Abdul Halim Umar: 2004). Nevertheless, the essence of these three modes and what makes them different from each other would be discussed in the coming sections.

**Hikr (monopoly) or Haqq al-qarar (right to stay)**

Hikr means endowed or monopolized property; the plural form is 'ahkar', and hakara means everything that is monopolized. As a juristic term it refers to three meanings: the endowed or monopolized property per se, and hence it is said: 'this is the monopolized property of so and so'; long term lease of the property; and the rental determined on the *waqf* property in long term lease and the like. Shaykh Ilish says: "whoever occupies the vacant land he owes to the authority of *waqf* something known in
Egypt as ‘hikr’, so that the waqf does not go in vain, (Fath al-Ali al-Malik).

In case of endowment hikr is a means brought by the scholars to treat the problem of endowment lands and properties that the management of waqf is not able to construct there or to plant thereof, or there is construction but revenue thereof is little comparing to the case of demolishing the existing constructions and then rebuilding thereon. Hence, in this case scholars allowed hikr and haqq al-qurur, which refers to a contract whereby the land will be leased for a long tenure, and the tenant will be given the right of staying therein to construct, or to plant as long as he pays the reasonable rent of the land that he received, without paying attention to the construction and planting. (Khalifah Babakr al-Hasan).

In fact, this type is close to the lease with two rentals in terms of the length of time as well as in terms of receiving two types of rent: one is large in amount taken in advance close to the value of the land, while the other is a small amount taken annually or monthly. But, it is also different that in case of hikr the construction and development works carried out by the tenant, where he spent large sum of money; whereas in leasing with two different rentals based on the length of time, it is borne by the waqf management, where the management has to spend a large sum of money in building, construction and development. (al-Quarah Daghi).

The legal ruling of Hikr

With regard to the legal ruling of hikr in awqaf, Muslim jurists have three opinions. First: the majority scholars view that it is valid, though the creator of waqf stipulates otherwise (Ibn Abidin, al-Dardir, Ibn Qayyim). However, this is subject to some conditions like, the waqf asset is devastated and unused, the management does not have enough funds to reconstruct it, and nobody is there to lend the necessary funds for waqf. Hanafi School added one more condition: the replacement of existing waqf that generates revenues is not possible with something else (Ibn Abidin). Second: the majority of Shafi’i School and some of Hanbali School assert that it is permissible absolutely, (Ibn Hajar al-Haythami). Third: some Shafi’i scholars like al-Adhru’i, al-Zarkashi, etc. view that it is not permissible at all, (Tuhfat al-Muhtaj). Nonetheless, we prefer the first opinion that restricted the validity of hikr with securing the benefit of waqf, and having no better option than that. No doubt, in this case hikr is better than leaving the waqf idle and unused, (al-Quarah Daghi).

Duration of Hikr

It is commonly known that the arrangement of hikr includes a specific period to hold the asset, though it may be long. However, it has been customary – as al-Adawi says- in Egypt that, the hikr continues forever, even though the period is made specified at the time of leasing, yet they do not intend the specification of that period. To us – in Egypt- the custom is like the condition, so whoever rents a piece of land for a specific period, after passing the period he can continue holding the land and the caretaker of the endowment does not have right to get him out, (al-Adawi ala al-Kharshi). Hanafi School also views that, muhtakir has right to stay if he makes constructions on the land and he can continue to stay there as long as his construction exists therein. So, he shall be forced neither to remove his construction nor to pluck out his plantation as long as he pays the reasonable rent fixed for the land rented, (Ibn Abidin).

However, the jurists did not ignore two things: First: it is permissible to give condition that after expiration of the stipulated period muhtakir will get out of the land; because condition stipulated in the contract is to be given preference over prevailing custom. Second: though muhtakir remains in the land against reasonable rent it shall not cause to endanger the waqf. Hence, if there is fear that muhtakir might take over the waqf, or through exercising this right there would be ill-treatment to the waqf, in this case it is permissible to bring the matter before the judge and then the judge would revoke this. (Ibn Abidin, al-Adawi, al-Dardir). Nevertheless, if the construction on waqf land, which is built by the muhtakir, is ruined and disappeared totally, then the right of muhtakir to stay there will be terminated upon the expiry of leasing tenure. The same ruling will be if the trees that are planted by muhtakir in agricultural waqf land become vanished and destroyed, (al-Mawsu’ah al-Fiqhiyyah).

Ijarah bi Ujuratayn (lease with two types of rentals)

The scholars have invented this mode to treat the problem occurred in the waqf assets in Istanbul in 1020H when fires broke out and damaged most of waqf properties or distorted the scenery thereof, meanwhile the management of waqf did not have funds to reconstruct these properties. Hence, the scholars suggested concluding the lease contract under the supervision of the Shar'i judge on the deteriorated assets with two types of rentals: one is in the form of a large sum taken in advance equivalent to the value of the land, so the manager of waqf receives that and reconstructs the waqf properties with that. While the other is yearly rental deferred, little and renewable every year. Naturally, in the long-term contract it is noted that the tenant recovers all amounts throughout the long tenure, (Abul Hasan, 1995 & Kamal Ju’ayyit).

This form of investment and financing treats the problem of the invalidity of property sale, so the same purpose intended in the sale is actualized through the large sum of rent taken in advance. Also, it actualizes the benefits of the tenant to stay a long time in the leased property, whether it is a house or shop or store or the like. Furthermore, the presence of the rental protects the waqf property from the
tenant's allegation that he had owned this through purchase, for example. Also, what is built on this waqf land would remain the property of the waqf, not that of the tenant, (al-QurahDaghi).

Mursad (Construction-for-rent swap with a waqf)
This is an agreement between the management and the tenant of the waqf, to construct and develop the waqf asset, where the expenses will be borne by the tenant, which will be deducted from the rental of the waqf in a specified duration. (Ibn Abidin, Ibn Rushd, & Ibn Taymiyah). Some said: it means, a person rents land from a waqf in order to build a building on it for the waqf, on the condition that the construction expenses will be deducted from the rent in future, (ISRA Compendium, 2010). Nevertheless, this will only be when the land becomes devastated and yields nothing to fix it, and nobody wants to rent it for a long time, so that the rental could be taken in advance to fix it. So, in this case there is no choice but this form of lease that comes in the last ranks of possible ways to lease the waqf assets, (al-QurahDaghi)

The contemporary forms of investment in waqf
The following are some of the contemporary forms of investment, in application and practice. Essentially, they are based on Islamic contracts, which have been discussed in fiqhi books. In the following section, we will highlight the essence of these forms, its fiqhi origin, and modes of application to the waqf.

Mudaradah Investment Certificates (Sukuk al-Mudarabah):
This investment form is based on the legal mudarabah (silent partnership) contract, in which the institution of waqf would be considered manager (mudarib) and the certificate holders would be the capital providers. This form would be applied to the waqf estates which do not generate income, and there is no auto-financing arrangement to construct and develop the estates. Hence, an intensive study would be made to determine the essential amount for construction, and then such amount would be divided into small portions, and certificates (Sukuk) would be issued accordingly by the waqf authority. Each certificate has a nominal value and it carries a portion of that amount. Afterwards, these certificates would be offered for public subscription through some financial institutions. In this way the institution of waqf will collect the necessary amount specified, and construct the building, and then rent that out accordingly. The rental proceeds will be distributed to the certificate holders proportionately, while the institution will deserve the portion of mudarib for management services. Simultaneously, the institution will repay gradually the value of the certificates, up until it redeems all the certificates upon maturity. So, at the end, the institution would acquire the building along with the acquisition of the land. This mode of investment is already applied in Jordan with the name ‘Sanadawat Al-Mudarabah’ to raise the necessary funds for the construction on their waqf lands. The International Islamic Fiqh Academy of Jeddah has discussed this mode of investment, and issued the resolution no. 30 (5/4). The Academy has validated it with some conditions relating to the issuance of the certificate, circulation and relations within the respective parties. This form of investment (sukukul-muqaradah) is an appropriate mode in the contemporary variable situation. This relies on the idea of democratizing the financing. Moreover, in this arrangement the collected funds would be repaid from the revenues periodically, along with providing an investment instrument that could be circulated according to the fiqhi provisions of mudarabah partnership, (Abdul Halim Umar: 2004).

Manufacturing Contract (al-Itisna)
Al-Itisna’ is one of the contracts that majority scholars declared it valid, albeit they disagreed to associate it with salam contract, and then it will be subject to the tough conditions of salam whereby price must be delivered in contracting session as far as the stand of majority is concerned, or within three days according to the view of Imam Malik. However, what concerns us here is al-Itisna’ arrangement that is validated by a group of scholars including Hanafi School of law. Moreover, this is endorsed by the Islamic Fiqh Academy in its seventh session, whereby the text of its resolution no: (66/3) stipulated that, al-Itisna is the contract concludes on the work and asset in liability, binding for both parties if the respective terms and conditions are available thereof.

The waqf management could utilize al-Itisna contract to construct large and useful projects whereby the management of waqf makes an agreement with the Islamic banks (or the investors) to finance the real estate projects, factories, and the like on the waqf lands or others, through al-Itisna arrangement, while the price of the asset to be manufactured will be paid by installments over several years. Since among the features of al-Itisna is delivery of the price on the spot is not mandatory thereof; rather price thereof is allowed to be deferred or by installments, which renders more flexibility in this contract that is not available in salam contract. In most cases Islamic banks involve in the parallel itisna contracts, whereby they do not construct or manufacture anything, rather they just make an agreement with the contractors to execute the projects with the same specifications that were agreed upon between them and the waqf management, (al-QurahDaghi).

Financial Lease (al-Tajir al-Tamwili)
This is also known as 'al-Ijarah al-Muntahiyah bi al-Tamlık', i.e. lease that ends with transferring the ownership. It has numerous forms. What is relevant to the waqf is that, the management (or caretaker) of waqf leases the waqf land to the investor (individual or company) with the permission to construct buildings, shops, apartments and the like according to the agreement, and to exploit that for a period of time, and at the end of contract, everything what the investor builds in it will return to the waqf. Nevertheless, this could be done with a promise of hibah in the contract, or any clause in the contract should contain the conditional hibah or promise to sell, while at the end the sale will be arranged with a new contract.(al-QurahDagli).

**Diminishing Partnership (al-Musharakah al-Mutanaqisah)**

The regular form of partnership whereby the management or caretaker of waqf agrees to invest a portion of its own fund with a successful partner in a joint venture either industrial, or agricultural or commercial, irrespective of whether the partnership is (mufawadah) Equal-Share or (inan) Cooperative. Nevertheless, it could also be the Proprietary partnership whereby the management or caretaker of waqf participates with other party to buy the apartment, or factory, vehicle, ship, aircraft or so on. Diminishing Partnership in favor of the waqf whereby the management of waqf will submit a viable project (factory, real estates, or the like) to an Islamic bank, or to investors, while there will be a typical partnership between them according to their participation, and then the bank or the investor will sell their shares or portions gradually throughout the period agreed thereon with the amounts agreed upon. Nevertheless, sometimes the exit would be finally by selling all the shares or portions to the waqf management once. Likewise, no issue will arise if the waqf management sells its stakes in the same ways prescribed in MMP.

Nonetheless, it is also possible that the waqf management may provide only the commercial lands it has which are desirable, while other party provides funds for the constructions thereof, and then they have partnership according to their participations or the value thereof, and then the yield will be shared between them by the ratios agreed upon. Afterwards, throughout the period agreed upon the financier (partner) will sell its shares to the waqf management by installments or all at once.

However, in this arrangement it is not permissible to terminate the partnership by transferring some waqf lands in the possession of the partner, but under the terms of the replacement, and then the partnership must be brought to an end if the well-being of waqf requires so.

**General conditions for the investment of waqf**

The nature of the investment is to have profit and loss, and most of the investments, made by the state or government institutions, are not at desired level if not failure, even not at the level of private investment. Moreover, the endowment funds are the public welfare funds that have a special feature considered to the Muslim jurist. Hence, they did not allow operating it with dupe, and with less than the reasonable price. Thus, some conditions are stipulated thereof that to be observed in investment of endowment funds as follows:

1. In investment all the necessary cautions and prudent actions shall be taken, and all the available valid guarantees shall be arranged. We have mentioned earlier that the International Fiqh Academy has validated the guarantee of third party for investment bonds. Hence, the waqf management (or the caretaker) shall find out such guarantee as much as possible, if not the management has to approach the government to do so.

2. The investment shall be made relying on technical methods, modern means and feasibility studies. To entrust with the investment the people of sincerity, competency and experience shall be chosen.

3. Planning, monitoring, and internal control over the investment shall be maintained.

The priorities, degree of risk in investments, and fiqh of dealing with banks and investment companies shall be taken into account. So, the management of waqf shall not deal except with Islamic banks and companies who ensure adequate security, safety and guarantee as much as possible. Hence, the management of waqf shall aim at the investments that are still safer and less risky such as real estate investments and so forth.

**Conclusion**

The study reveals that the investment of waqf funds leads to the preservation of waqf properties, so that these are not eaten up by the costs and expenses. Moreover, investment contributes to achieve the objectives of waqf for social, economic, educational and moral development. In addition, one of the objectives of waqf that is intended to be sustained is perpetuation. This can be achieved only through fruitful investment; otherwise the expenses, costs, and maintenance may eat up the capital of the waqf, if it is not handled by worthwhile beneficial investment. The management or caretaker of waqf should pay much attention to this aspect, and should allocate a handsome portion of waqf revenue for investment along with the investment of other liquid funds thereof.

In addition, the study shows that, diverse ways and modes could be utilized to have a robust and fruitful investment in waqf. Classically, three forms were well-known for investment in waqf, and these are Hikr, Ijarah bi Ujratayn and Mursad. Actually, in all
these three arrangements the underlying contract is the same, and that is lease contract. Typically, this lease contract is for long tenure, in which a significant amount of the rental is taken in advance to renovate the waqf property, and the rest is spent on the beneficiaries. Nonetheless, it is worth mentioning that the mind of earlier Muslim scholars had become able to derive all these forms of leasing, which gives the only message that the fiqh should not be stopped; rather it must be responsive to solve all the problems.

Investment in waqf could be made through various contemporary modes such as partnership -silent (mudarabah) or diminishing (mutanaqisah)-, manufacturing arrangement, financial lease or lease that ends with transferring the ownership, and so forth. Last but not least, various types of investment certificates also (Sukuk) could be issued for necessary fundraising for waqf. In this respect, such certificates are not limited to the muqaradah (silent partnership). Rather, it could be sukukijarah (lease), whether operational or financial, sukekumusharakah(partnership), whether regular or diminishing, as well as other types of certificates that conforms to the provisions of Islamic law.

REFERENCES