

ISLAMIC FUND & WEALTH MANAGEMENT

A way forward

This publication is very timely, as it not only broadly contributes to IIBF's university flagship initiative on Islamic social finance, but it also specifically provides updated information on fund and wealth management with regard to current policies and practices. Empirical findings, case studies discussions, seminal as well as recent related literature are gathered in this book to cater for everyone inside or outside the fund and wealth management industry. With *Sharī'ah* as the governing principles, the fund and wealth management industry has remarkably flourished throughout the years. Parallel with the consistent and coherent growth, this book offers insights and in depth investigations covering different aspects that may influence the continuous prosperity of this industry and caters for all players in the field.

Areas such as unit trusts, asset management, *Takaful* as well as pension funds together with several innovative products and wealth distribution mechanisms are put forth and discussed like *Waqf*, an endowment fund that combines investment performance with social distribution opportunities for the benefit of the society or *ummah* as well as technological fund-raising mechanisms such as crowd funding, aim at mitigating problems pertaining to access to financing for those entrepreneurs in need of capital.

All the key components of Islamic fund and wealth management are discussed in this book, thus it is a must read for those involved in this area, especially those responsible for developing policies and practices, in order to carefully engineer more competitive and innovative products and mechanisms based on the findings and outcomes of these studies. Anyone who regards fund and wealth management as crucial knowledge for a more sustainable wealth-managed future should also read this book, including those who also seek productive retirement and pension funds, which follow *Sharī'ah* principles.

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Chapter 21

Waqf Unit Trust: *Sharī'ah* Issues and Applications

Aznan Hasan, Syahnaz Sulaiman, Azman Mohd Noor, Issyam Ismail and
Nazrul Hazizi Noordin

Abstract

This chapter discusses on the potentials of *waqf* unit trust as an alternative asset class promoting the sustainability of *waqf* funds. *Waqf* unit trust does not only cultivate philanthropic values through deeper public penetration but also encourage for effective *waqf* administration practice. Despite its potentials, *waqf*-unit trust is still at the inception stage, calling for more in-depth studies to explore its practicality from legal and *Sharī'ah* perspectives. This chapter, therefore, looks into *Sharī'ah* deliberations on the permissibility of the application of *waqf* unit trust in the context of the Malaysian *waqf* legal framework. It also brings attention to some proposed models, which can be useful reference for *waqf* stakeholders in structuring *waqf* unit trust products.

1.0 Introduction

Waqf contributes towards promoting the well-being and social development of nations since the golden age of Islam. It was once recognized as one of the world's most influential third sector institutions (Sadeq, 2002; Mohd Nahar & Haneef, 2015). Claimed by the Historian Marshall Hodgson (1974) as 'a vehicle for financing Islam as a society', *waqf* serves as an effective tool for raising adequate capital to be channelled to fund various economic and social activities in a sustainable manner. In fact, a similar concept to *waqf* had been adopted in Europe in the establishment of the world's famous educational endowment such as Merton College, University of Oxford (Arjomand, 1998). This success story of *waqf* has not only inspired the formation of today's modern not-for-profit organizations and non-governmental organizations (NGOs), but has also left some influence in determination of their organizational objectives.

Given the potentials in lifting the nation's socioeconomic level, series of *waqf* development and transformation programs have been taken at both state and federal level by *waqf* stakeholders in Malaysia including Jabatan Kemajuan Islam Malaysia (JAKIM), Jabatan Wakaf, Zakat dan Haji (JAWHAR), Yayasan Wakaf Malaysia (YWM) and State Islamic Religious Councils (MAIN). Despite of these commendable efforts, it is observed that *waqf* assets in the country are mainly concentrated in the form of real estate. For instance, in 2014, 97 per cent of *waqf* assets worth RM134 million in Selangor were lands and buildings, while only 3 per cent or RM 5 million remained in cash. The amount of movable *waqf* assets in Malaysia is certainly lower compared to other countries, be them where Muslims are majority or minority. For example, Singapore and Kuwait had 13 per cent and 41 per cent of their *waqf* assets invested in cash deposits and other capital market instruments in the same year respectively. In fact, the concentration of fixed *waqf* assets in Malaysia is even higher than that of endowments in Europe, for instance, Yale Endowment and Harvard Endowment which hold only 25 per cent and 27 per cent of their assets in commodities and real estates.

Having lower liquidity compared to other asset classes such as equities and bonds is said to be the main reason for *waqf* lands and buildings have been left underdeveloped. Several previous studies concluded that the issue of lack of funds faced by *mutawalli* (*waqf* managers) could impede the sustainable development of *waqf* assets in the country (Mallamood, 2006; Ahmad & Muhamed, 2011; Sohaimi & Syarqawi, 2008; Sulaiman, 2012). Zarqa (1994) added that it is inarguably important for *mutawalli* to obtain adequate sources of funds and high liquid *waqf* assets in order to realize the *waqf* ultimate objective is to serve the needs and affairs of *ummah*. Unfortunately, it is found that the 'asset-rich, cash-poor' syndrome has adversely affected many *waqf* institutions in Malaysia (Abdul Karim, 2007). JAWHAR reported that up to the end of year 2014, there were only 7.2 per cent of *waqf* properties in Malaysia comprising of 11,000 hectares of land worth approximately RM1 billion had been developed, while the rest are left abandoned due to insufficient funds.

There is a serious need for *waqf* stakeholders to look into the possibility of investing *waqf* assets in financial instruments that offer higher liquidity and can be effectively monitored. Despite of the recent interest shown by commercial Islamic financial institutions to take part in the national *waqf* development agenda, there is still a limited number of *Sharī'ah*-compliant *waqf* investment products offered in the Islamic

capital markets, leaving *waqf* proceeds to be kept in Islamic fixed deposit accounts in most cases. In the view of diversifying the current *waqf* asset portfolios, this chapter, therefore, attempts to shift the *waqf* stakeholders' attention to Islamic unit trust, a modern financial instrument which could be potentially integrated into *waqf*. Apart from being compliant to *Shari'ah* principles, its risk profile generating competitive returns while preserving the initial capital makes Islamic unit trust a perfect match for *waqf* investment.

In Malaysia, the market capitalization of Islamic unit trusts has shown a significant improvement over the past several years, depicted by a tremendous growth of net asset value (NAV) of Islamic unit trust funds in the post financial crisis period from RM21 billion in 2009 to RM57.6 billion in 2016 (Securities Commission Malaysia, 2016). This hence improves the net asset value (NAV) of Islamic unit trusts to Bursa Malaysia's market capitalization ratio from 18.7 per cent in 2011 to 21.7 per cent in 2016. The recent statistics provided by the Securities Commission Malaysia (SC) also show an increased number of *Shari'ah*-compliant funds from only 17 out of total 127 funds in 2000 (13%) to 199 out of total 641 funds (31%) in 2016 alongside a three times growth in the number of management companies from 13 companies in 1992 to 35 companies in 2016.

Despite the exciting prospects offered by Islamic unit trust funds, the practice of *waqf*-unit trust is still at the inception stage, calling for more in-depth studies to explore its practicality from legal and *Shari'ah* perspectives. This chapter, therefore, looks into *Shari'ah* deliberations and issues related to the application of unit trust as investment instrument for the sustainable development of *waqf* assets in Malaysia. It provides the compilation of both classical and contemporary Islamic jurists' opinions, *fatwa* and *Shari'ah* resolutions on the permissibility of *waqf*-unit trust and other matters which have a direct relevance to it such as the issues of *istibdal* (replacement), cash *waqf*, *waqf mu'āqqat* (temporary *waqf*) and *waqf musha'* (undivided *waqf*). It also brings attention to some proposed models, which can be useful reference for *waqf* stakeholders in structuring *waqf* unit trust products.

2.0 Concept of *Waqf* Unit Trust

Under the principle of *qurbah* (piety), *waqf* is the act of endowing one's property for charitable purposes in order to get rewards from AllÉh s.w.t in the hereafter (Kahf, 2003). Apart from the relationship between

human being and their Creator (*habl min AllÉh*), *waqf* also covers people's affairs among themselves (*habl min al-nas*) in the spirit of *mahabbah* (love), *ukhuwwah* (brotherhood), *ta'awun* (cooperation) (Sulaiman, 2008). Different from other philanthropic and redistributive instruments such as *zakah*, *sadaqah* and *hibah* which are mainly to help the needy and aim at poverty alleviation, *waqf* is argued to be able to cover wider aspects of social and economic development including religious (Mohammed Noor, Ghazali, & Mat Rani, 2014; Rahman, 2009; Shapoe & Santoso, 2009), provision of public infrastructures such as hospitals, universities and libraries (Van Leeuwen, 1999; Hassan, 2007; Çizakça, 1998), education (Gaudiosi, 1988, Setia, 2011; Harun, Possumah, Mohd. Shafiai, & Mohd. Noor, 2014; Hadi, 2009; Hashim, 1990; Sulaiman & Abdul Manaf, 2009; Raja Nor Ashikin & Nor 'Adha, 2014), poverty alleviation (Khan, 2010; Saifuddin, Kayadibi, Polat, Fidan, & Kayadibi, 2014; Shahimi, Mohd Marzuki, & Embong, 2013; Shirazi, 2014) and employment (Mahmood & Shafiai, 2013; Ramli & Jalil, 2014; Ahmad & Muhamed, 2011), hence meeting the society's needs at large. This in return reduces the cost of serving the public needs including management and maintenance expenditures for public infrastructures borne by the government.

On the other hand, Islamic unit trust fund (also known as Islamic mutual fund) is a type of collective investment scheme that offers investors the opportunity to invest in a diversified portfolio of *Sharī'ah*-compliant securities, *sukĒk*, money market instruments, real estates or commodities. The type of the funds is determined by the assets or constituents that have largely created the portfolio. It determines the risk of a fund and the kind of investors the fund is targeting. Fundamentally, there are three varieties of unit trust funds namely Islamic equity funds (deals in shares), *sukĒk* funds (fixed income funds which is relatively more stable) and money market funds (Securities Commission Malaysia, 2009). Islamic unit trust fund provides investors with opportunity to diversify their investments into various financial assets. It is managed by professional fund managers who invest the money collected in a diversified portfolio of *Sharī'ah*-compliant financial instruments depending upon the objective of the fund. Investors can earn income from investment in Islamic unit trust fund through capital gains and/or distribution of income.

The concept of *waqf* unit trust is not new. In 2004, Dompot-Dhuafa Batasa Syariah *waqf* fund was first introduced in Indonesia on fixed income basis where up to 80 per cent of the fund is allocated in *Šukūk* and the rest in Islamic money market. The returns of the fund were between

11 to 13 per cent and part of the dividend can be channelled to *waqf* (Siswantoro & Dewi, 2007). Unfortunately, the fund was terminated and converted to hajj fund in 2006 due to lack of participation from the investors as the fund was deemed to be ambiguous, relatively small in size with very little promotion as well as some market risk issues (Rizki & Dodik Siswantoro, personal communications, 30 April 2017). 10 years later, BNI Asset Management in collaboration with Dompe Dhuafa, a well-known *waqf* institution in Indonesia, established a *Sharī'ah* compliant mutual fund with a special *waqf* feature. This new fund of Reksa Dana BNI-AM Dana Dompot Dhuafa, which is actually a rebranding to the previous Batasa Syariah fund, provide an avenue to the unit holders to endow some of the dividend for *waqf* purpose. Not only have the investors, BNI-AS as the fund manager will also allocate one-third of the management fees to *waqf* fund (Harris S. Dalimunthe, personal communication, 1 Mei 2017). In terms of fund allocation, about 98 per cent is allocated in corporate *Sukūk* while the rest of 2% is invested in *Sharī'ah* compliant deposits.

In the context of *Sharī'ah*-compliant investment, *waqf* unit trust can be defined as the units that are channelled (for the purpose of *waqf*) by donor (*waqīf*) through:

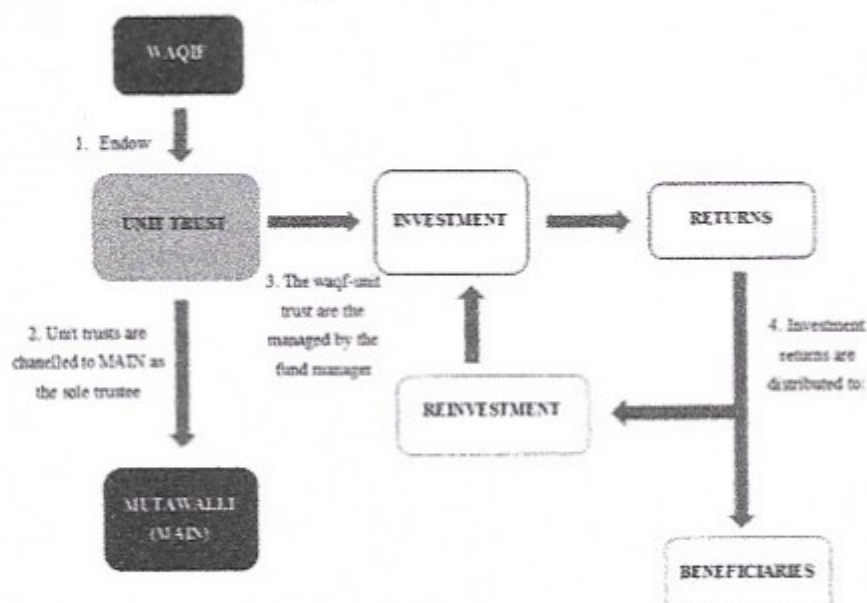
- (i) Direct contributions: by surrendering the ownership of unit trusts which are fully owned by *waqīf* in a perpetual manner or up to certain pre-specified period of time, or through cash contributions which proceeds will be used to purchase units (the purchased unit trusts are declared as *waqf* assets, not the cash received);
- (ii) Indirect contributions: by purchasing other units (which will be endowed to generate returns for beneficiaries) using the dividend received from unit trust investments (not endowed) or management fees paid to the fund managers.

3.0 Application of *Waqf* Unit Trust

This section presents several proposed structures and parameters for implementing *waqf* unit trusts as follows:

3.1 Structure 1: Endowment of Unit Trusts

Figure 1: Structure 1



Step 1: The *waqif* endows the unit trusts owned by him or her.

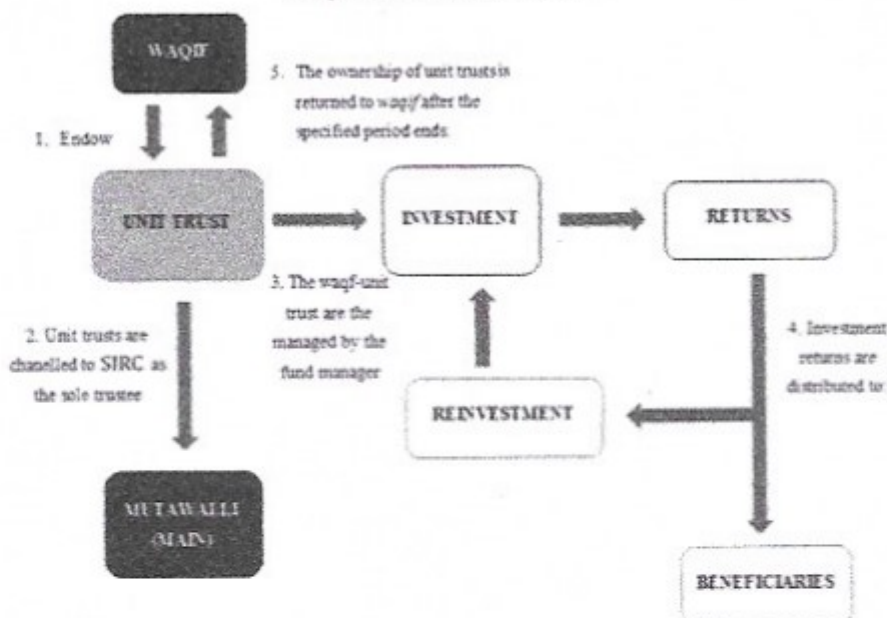
Step 2: The endowed unit trusts are channelled to State Islamic Religious Council (SIRC) as the sole trustee.

Step 3: The fund manager is responsible to manage the investment portfolio.

Step 4: The investment returns will be distributed to beneficiaries. Where applicable, some portions of the returns are channelled for reinvestment purposes.

3.2 Structure 2: Temporary Endowment of Unit Trusts

Figure 2: Structure 2



- Step 1: The *waqif* endows the unit trusts owned by him or her for a pre-determined period of time.
- Step 2: The endowed unit trusts are channelled to SIRC as the sole trustee.
- Step 3: The fund manager is responsible to invest the *waqf*-unit trusts and manage the investment portfolio.
- Step 4: The investment returns will be distributed to beneficiaries. Where applicable, some portions of the returns are channelled for reinvestment purposes.
- Step 5: After the *waqf* period ends, the ownership of the unit trusts is returned to the original owner (*waqif*).

4.0 Possible *Sharī'ah* Issues on *Waqf* Unit Trust

4.1 *Sharī'ah* Issue 1: The Use of Unit Trusts as Underlying Assets for *Waqf* Investment

Unit trust is a modern financial instrument which legitimacy as the subject matter of *waqf* has never been extensively discussed by classical Muslim scholars. Hence, *Sharī'ah* interpretations on its permissibility by the fatwa authorities as well as contemporary Muslim scholars are necessary in order to set the direction of its future implementation. As far as the authors are concerned, there is only one *Sharī'ah* resolution concerning on the permissibility of endowing the unit trusts. In 2009, the *Majma' Fiqhī* in its 19th meeting held in United Arab Emirates resolved the permissibility of *waqf* in the form of financial instruments including unit trust, shares, *Ṣukūk*, intangible rights and benefits as follows in Resolution No. 181 (IIFA, 2009):

"It is permissible to endow shares (which are Sharī'ah-compliant), Ṣukūk, intangible rights, benefits and unit trust, as they are all assets recognized by Sharī'ah".

4.2 *Sharī'ah* Issue 2: The Existence of the Elements of *Waqf Musha'* (Inseparable)

The ownership of the unit trust by the unit holders is based on a pro-rata basis. In other words, every unit holder has an ownership over the units in the portfolio based on the price paid by them. From *Sharī'ah* perspective, the practice is called *musha'* which reflects the ownership over undivided shares in a property. *Musha'* can be defined as a joint ownership of two people or more in an asset without any separation or preference in the ownership.

The application of this principle of ownership in the context of *waqf*, is then called as *waqf musha'*. In this situation, a *waqif* (donor) endows his undivided share in a joint property or asset without separating it from the rest. Further elaboration of *waqf musha'* is as follows:

- 1) Syafi'i and Hanbali School: they are of the opinion that *waqf musha'* is permissible whether the asset is divisible or not (Ibn Qudamah, 1983).
- 2) Maliki School: they discussed *waqf musha'* in two situations (Al-Dardir, 1991):
 - When an asset is divisible: *Waqf musha'* is valid even if it is divisible, but it must be separated if the other owners want it to be divided.
 - When an asset is indivisible: there are two opinions among the Malikis which argue for and against the validity of *waqf musha'* in the event of assets are not divisible. But, the most favorable opinion among the jurists is that *waqf musha'* is not allowed to applied on indivisible asset (Zuhayli, 2009).
- 3) Hanafi School: it is agreed among the Hanafis scholars that *waqf musha'* on indivisible asset is valid. But, if the asset (e.g. land) is endowed for the purpose of constructing mosque or as cemetery, it turns to be invalid (Al-Marghinani, n.d). According to Abu Yusuf, indivisible asset is valid as a subject matter of *waqf* as good as a divisible asset. The justification lies to the fact that Abu Yusuf perceived that *qabd* (taking possession) is not a condition for a valid *waqf*, likewise the separation, which is only a mechanism or medium that will lead to *qabd* (Al-Kasani, 2008). However, according to Imam Muhammad Ibn Hasan, *waqf musha'* is not valid in the event of divisible assets which are separated before endowing. According to Imam Muhammad Ibn Hasan, *qabd* is a condition for a valid *waqf* and *qabd* can only be realized after the asset has been separated (Al-Kasani, 2008).

Essentially, the consensus view of the majority of Muslim scholars on the permissibility of *waqf musha'* can be deduced from the popular *hadith* of Umar who endowed his shares, which is a portion of conquered land after the war of Khaybar (al-Qushayrī, 1998). The dissenting views on the legitimacy of *waqf musha'* by some scholars was due to their concern that indivisible *waqf* asset is incapable to generate benefits if it is attached to each other or not being separated. To the contrary, this situation does not happen in unit trust because every unit holder in the same or different portfolio will still enjoy the returns from the unit trusts

without any impediment and restriction. Furthermore, every unit holder can sell the units anytime they wish to without affecting the ownership of other unit holders in the portfolio. Based on this observation, the researchers are of the opinion that there is no issue from the *Sharī'ah* point of view to allow *waqf* of unit trust even though the basis of the structure is *musha'*.

4.3 *Sharī'ah* Issue 3: Substitutions of Underlying Investment Assets (*Istibdal*)

The price of unit trust price tends to fluctuate in the market, depending on the performance of underlying securities or shares in the portfolio. The question, therefore, arises whether price fluctuations will affect the perpetuity of the *waqf* hence consequently jeopardizing the validity of the *waqf*. In this regards, if the price or value of the unit trusts falls, it will not have any effect towards the validity of *waqf* as the amount of ownership in the unit trust is not affected and remains the same. Immovable properties such as land and house are also subjected to the risk of price fluctuation although majority of Muslim scholars still regard these assets as valid subject matters of *waqf*.

However, if the value of the unit trust keeps on decreasing and the *mutawalli* is of the opinion that for the interest (*maṣlahah*) of the *waqf*, the unit trusts must be sold, then the fund manager can take the necessary action based on the condition of the *waqif* or on the basis of *istibdal*.

In the Special Meeting of the National Fatwa Council for Islamic Religious Affairs of Malaysia held on 3-4 November 1996, the Council resolved that *waqf istibdal* and *waqf* of shares is indeed viable and important to facilitate the development of *waqf* properties. In the case of *waqf* of unit trust, the endowed units cannot be simply liquidated unless it is clearly stipulated by the *waqif* or through the process of *istibdal*.

In general, the scholars of Hanafis and Hanbalis allow the *istibdal* to protect the *waqf* from any depreciation in value particularly when the *waqf* asset has been abandoned or unattended for a long time. Furthermore, the two schools allow *istibdal* to be performed if the exercise may entail greater profits or may bring more benefits to the *waqf* asset and beneficiaries (Khaznah, 2013). According to Ibn Taymiyyah, if there is a necessity (*hajah*) for *istibdal*, the *waqf* asset must be substituted with a similar asset. However, if the necessity ceases to exist, but there is greater benefit or *maṣlahah* for *waqf*, then the *istibdal* process is permissible provided that the exchange is for a better quality of asset.

The authors are of the opinion that the view that allows *istibdal* when there is essential necessity or *darurat* is more preferable to maintain the sustainability of *waqf* assets from being manipulated by irresponsible parties such as the fund manager. The *istibdal* of the unit trust is also permissible when the professional fund managers forecast some other potential assets that can offer better return or profit for the unit holders. This execution, however, must be carried out with prudent as recommended by the appointed authority such as the investment committee and subject to approval by the *mutawalli*.

4.4 *Sharī'ah* Issue 4: The Legality of *Waqf Mu'eqqat*

Waqf mu'eqqat (temporary *waqf*) refers to the act of endowing assets for a specific period of time. At the specified date or maturity period, the asset shall be returned to the original owner (*waqif*). The Islamic jurists seem to have dissenting opinions in this matter. Majority of the Islamic jurists prohibit the practice of temporary *waqf* as it does not satisfy the main condition of perpetual *waqf* hence nullifying the fundamental nature of *waqf*.

In contrary, temporary *waqf* is allowed by Maliki school, whom opined that permanent transfer of ownership is not a condition for a valid *waqf* (Al-Sowi, n.d). Thus, it is allowed to endow an asset for a specific period of time and return it to the original owner after the *waqf* period ends. For instance, a *waqif* may specify to endow his house for a month whereby the ownership of the house shall be returned to him after the period of a month.

The mode of temporary *waqf* as allowed by some Shafiites scholars (al-Bujayrimi, 1995) is being temporary for particular beneficiaries but the ownership will never return to the *waqif* such as giving a house as *waqf* for a beneficiary and then after a period of time to another and finally for the poor people. The exception goes to making a *waqf* for building a mosque or a cemetery.

Considering the importance of temporary *waqf* propagated by the view of Malikis, there are many *fatwas* and *Sharī'ah* rulings issued by the contemporary *Sharī'ah* authorities allowing the practice of *waqf muaqqat*, among others, includes:

- i. International Islamic Fiqh Academy, Resolution No. 181, in its 19th meeting in 2009 (United Arab Emirates)

- ii. AAOIFI *Sharī'ah* Standard no. 33, 3/1/4
- iii. Selangor Fatwa Committee (Malaysia) 1/2014, 4 February 2014

Table 1: Parameters for Implementing *Waqf* Unit Trusts

Parameters	Description
Parameter 1: <i>Sharī'ah</i> Compliance & Legality	<p>1/1 – Fund managers must ensure that all investment activities of <i>waqf</i> unit trust are <i>Sharī'ah</i> compliant. This can be achieved by:</p> <p>1/1/1 – Meeting the requirements/criteria/qualities to be deemed as <i>Sharī'ah</i>-compliant investment set by the jurisprudence's authoritative bodies, for instance, the <i>Sharī'ah</i> Advisory Council (SAC) of Securities Commission (SC) and that of Bank Negara Malaysia (BNM).</p> <p>1/1/2 – Establishing a <i>Sharī'ah</i> Committee who is responsible to review and advise on <i>Sharī'ah</i> matters related to the <i>waqf</i> unit trust.</p> <p>1/2 – The entire process of <i>waqf</i> unit trust, for instance, collection of proceeds, marketing and promotion, investment, <i>istibdal</i> and distribution of profits must be conducted in accordance to the national and/or state's <i>waqf</i> legal framework.</p>
Parameter 2: Supervision and Oversight	<p>2/1 – Supervisory and oversight responsibilities related to the governance and administration of <i>waqf</i> unit trust funds include the following:</p> <p>2/1/1 – Majlis Agama Islam Negeri (MAIN) acts a sole trustee (<i>mutawalli</i>) for the <i>waqf</i> unit trust fund.</p> <p>2/1/2 – <i>Mutawalli</i> has duties and responsibilities for supervising and oversight the administration of <i>waqf</i> unit trust. MAINs may appoint any institutions to perform the administrative duties on their behalf.</p> <p>2/1/3 – The amount of all fees due to the fund managers and its source of payment must be agreed between <i>mutawalli</i> and fund managers.</p> <p>2/1/4 – <i>Mutawalli</i> must establish its own supervisory and governance framework in order to ensure the <i>waqf</i> unit trust funds are properly managed by the appointed fund managers.</p> <p>2/2 – Supervisory and oversight responsibilities related to the collection and distribution activities of <i>waqf</i> unit trust funds include the following:</p> <p>2/2/1 – <i>Mutawalli</i> must decide which parties should be responsible for collection and distribution of <i>waqf</i> unit trust. <i>Mutawalli</i> is responsible to supervise the collection and distribution activities of <i>waqf</i> unit trust funds.</p> <p>2/2/2 – <i>Waqif</i> must ensure that their money or unit trusts which are intended to be endowed must be channeled to authorized institutions by MAIN.</p> <p>2/2/3 – In the event of money are collected from <i>waqif</i> for the purpose of <i>waqf</i> unit trust, <i>waqif</i> must be informed that the proceeds will be used to purchase unit trusts. Hence, the purchased unit trust will be declared as <i>waqf</i> asset instead of the cash channelled by the <i>waqif</i>.</p>

	<p>2/2/4 – Unit trust funds endowed by the <i>waqif</i> must be <i>Shari'ah</i>-compliant.</p> <p>2/2/5 – The appointed fund managers are encouraged to endow some of the management fees received by them to purchases more units for <i>waqf</i> purpose.</p> <p>2/2/6 – All promotion and marketing activities associated with <i>waqf</i> unit trust must correspond with the ultimate objective of <i>waqf</i> and not solely profit-driven and bias towards the interest of certain individual or a group of people.</p> <p>2/2/7 – All relevant information on the <i>waqf</i> unit trust must be provided to <i>waqif</i> or investors in a transparent and timely manner.</p> <p>2/3 – Supervisory and oversight responsibilities related to the investment of unit trust funds include the following:</p> <p>2/3/1 – <i>Mutawalli</i> has duties and responsibilities for supervising and oversight the investment activities of <i>waqf</i> unit trust.</p> <p>2/3/2 – <i>Mutawalli</i> must equip itself with adequate knowledge and expertise of supervising <i>waqf</i> unit trust investment activities.</p> <p>2/3/3 – Fund managers appointed by <i>mutawalli</i> must have knowledge, expertise and capabilities to manage the <i>waqf</i> funds in ways that consistent returns can be generated and the initial capital can be protected.</p> <p>2/3/4 – Fund managers must determine the risk tolerance level, investment strategies and governance framework for the <i>waqf</i> unit trust investment which must be agreed by <i>mutawalli</i>.</p> <p>2/3/5 – Supervision of <i>waqf</i> unit trust investment activities must be done on an ongoing basis.</p> <p>2/3/6 – Guidelines or clear-cut Standard Operating Procedures (SOPs) for supervision of <i>waqf</i> unit trust investment should be established by <i>mutawalli</i>.</p> <p>2/3/7 – Report on <i>waqf</i> unit trust investment must be made publicly available.</p> <p>2/3/8 – Effective communication and cooperation between <i>mutawalli</i> and fund managers in ensuring the sustainability of <i>waqf</i> unit trust investment are highly crucial.</p>
Parameter 3: Risk Management	<p>3/1 – Fund managers should establish an effective risk management system and due diligence process.</p> <p>3/2 – Capital protection must be placed as the ultimate objective of <i>waqf</i> unit trust investment.</p> <p>3/3 – <i>Waqf</i> unit trust investment must achieve the balance between profitability and capital protection.</p> <p>3/4 – Fund managers are responsible to ensure that <i>waqf</i> unit trust funds are not exposed to extremely high investment risks that can devalue its capital in a long run.</p> <p>3/5 – Fund managers must ensure that <i>waqf</i> proceeds are not invested in high volatile asset classes.</p> <p>3/6 – Fund managers must create highly diversified portfolios of <i>waqf</i> unit trust investment.</p>

	<p>3/7 – The process of <i>istibdal</i> (e.g. sell units and use the receipts to purchase other units) in <i>waqf</i> unit trust investment can be done in the following situations:</p> <ul style="list-style-type: none"> i. <i>Waqif</i> has stipulated that <i>istibdal</i> must be done through assets trading. ii. The unit trust funds experience significant capital loss where high maintenance and management expenditures have to be borne by <i>mutawalli</i>. iii. The unit trust funds and its constituent assets become <i>Sharī'ah</i> non-compliant. <p>3/8 – <i>Istibdal</i> can only be done with the consent received from <i>mutawalli</i> and must not expose the <i>waqf</i> unit trust to high investment risks.</p>
Parameter 4: Sustainability	<p>4/1 – The primary objectives of sustainability of <i>waqf</i> unit trust investment and distribution of benefits to the <i>waqf</i> beneficiaries must be balanced by <i>mutawalli</i>.</p> <p>4/2 – In view of enhancing the sustainability of <i>waqf</i> unit trust funds, the fund managers must take measures ensuring consistent returns are channelled to the beneficiaries and promote capital growth in a sustainable manner.</p> <p>4/3 – In the event of capital deterioration occurs in the previous years, the returns generated in the next coming years must be used to purchase new units to restore the initial value of <i>waqf</i> unit trust funds (capital intact).</p> <p>4/4 – <i>Mutawalli</i> must ensure that management fees and other expenditures are paid before returns can be distributed to the beneficiaries.</p> <p>4/5 – Some investment profits may be retained as a reserve capital for the purpose of reinvestment.</p> <p>4/6 – All promotion and marketing activities related to <i>waqf</i> unit trust investment must be actively conducted.</p> <p>4/7 – Various forms of incentives may be provided to investors or <i>waqif</i> such as subsidizing management fees and provision of tax rebates.</p>

5.0 Conclusion

Waqf-unit trust is an Islamic financial innovation which could bring benefits to the *waqf* institutions in Malaysia and other countries as well as *waqf* beneficiaries. It is however, still conceptual in nature and yet to be widely implemented. The *fatwa* and *Sharī'ah* deliberations addressing its permissibility in specific are almost non-existent in literature. This study, therefore, aims to bridge the knowledge gap by examining the permissibility of application of unit trust as investment instrument for the sustainable development of *waqf* assets purpose in Malaysia from *Sharī'ah* perspective.

In addition, the views of *Sharī'ah* scholars on the permissibility of matters which have direct relevance to *waqf*-unit trust, namely, cash *waqf* (e.g. the permissibility to use the cash *waqf* proceeds to purchase units from *Sharī'ah* perspectives) and *waqf* financial instruments such as *Ṣukūk* and shares (as underlying constituents of unit trust funds) are incorporated in this study. This study also discusses *Sharī'ah* issues related to the application of *waqf*-unit trust including the uses of unit trust as *waqf* underlying assets, the legitimacy of *waqf muaqqat*, cash *waqf* and *waqf musha'*, reinvesting investment returns as well as *istibdal* process. The findings of this study conclude that there are no explicit prohibitions or impediments from *Sharī'ah* perspectives in implementing *waqf*-unit trust. This study hopes to shed some light on the *Sharī'ah* views of *waqf*-unit trust to the *waqf* stakeholders in Malaysia which future implementation could be given a full consideration. This study also wishes to contribute towards the efforts of establishing a contemporary *waqf* assets class which could become an effective instrument for cultivating philanthropic values in the society.

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