



Refereed Biannual Journal Specialized in Waqf and Charitable activities

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Abu Hurairah (may Allah be pleased with him) reported, The Messenger of Allah (peace be upon him) said: "When a man dies, his deeds come to an end except for three things: Sadaqah Jariyah (ceaseless charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."

[Narrated by Muslim]



AWQAF is based on a conviction that waqf—as a concept and an experience—has a great developmental potential which entitles it to contribute effectively to the Muslim communities and cope with the challenges which confront the Umma. WAQF also reflects the history of Islamic world through its rich experience which embraces the various types of life and helps in finding solutions for emerging problems. During the decline of the Umma, WAQF maintained a major part of the heritage of the Islamic civilization and caused it to continue to pass from one generation to another. Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its materialistic capacity and investing its genuine cultural components in a spirit of innovative thinking, leading to comprehensive developmental models conducive to the values of justice and right.

Based on this conviction, AWQAF comes up with a keen interest to give waqf the actual prestige in terms of thinking at the Arab and Islamic levels. It centers on waqf as a specialty and attracts waqf interested people from all domains and adopts a scientific approach in dealing with waqf and relating it to comprehensive community development. Waqf is originally known to be a voluntary activity which requires AWQAF journal to approach the social domains directly related to community life, along with other relevant social and economic behaviors. This might bring about a controversy resulting from the society – state interaction and a balanced participation aiming to reach a decision touching the future of the community life and the role of NGO's.

Objectives of AWQAF

- * Reviving the culture of waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization had witnessed up to date.
- * Intensifying the discussions on the actual potential of waqf in modern societies through emphasis on its modern instruments.
- * Investing in current waqf projects and transforming them into an intellectual product in order to be exposed to specialists. This is hopefully expected to induce dynamism among researchers and establish a link between theory and practice.
- * Promoting reliance on the civilizational repertoire in terms of civil potential resulting from a deep and inherent tendency towards charitable deeds at the individuals and nation's levels.
- * Strengthening ties between the waqf on the one hand, and voluntary work and NGO's on the other.
- * Linking waqf to the areas of other social activities within an integrated framework to create a well-balanced society.
- * Enriching the Arab library with articles and books on this newly approached topic, i.e. waqf and charitable activities.

Publication regulations

AWQAF journal publishes original waqf-related researches in Arabic, English and French.

It also accepts summaries of approved M.A's and Ph.D's and reports on conferences, and seminars dealing with the field of waqf.

Materials meant for publication in AWQAF Journal should abide by the following :

- * The material should not have been published or meant for publishing in any other magazine.
- * The material should abide by the academic ethics in connection with documenting the sources and references, together with the academic processing.
- * A research should fall between 4000- 10.000 words, to which a 150-word summary must be attached.
- * A research should be typed on A4 paper and it is preferable to send an electronic copy on CD (word).
- * All researches and articles will undergo a confidential refereeing.
- * AWQAF Journal approves of all books' presentations, theses' summaries, seminars' and conferences' coverages which are compatible with the journal's publication regulations.
- * Material once sent for publication, whether published or not published, is unreturnable.
- * The journal is entitled to re-publish or translate any material separately without checking with the relevant author.
- * Researches shall receive a remuneration for the publishable researches and studies as per the respective rules and regulations in this regard, in addition to 20 offprints of the research as per the relevant rules.
- * AWQAF journal shall not assume the least responsibility for the attitudes of the authors reflected in AWQAF journal. All Submissions should be sent to:

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Editorial



Endowment Investment A Support of Sustainable Human Development and Societal Advancement

During the recent historical era, endowment – in its capacity as one of the constituents of the Islamic civilization - has restored its role in the social and developmental activities.

Endowment has a basic role in fulfilling the needs of the community members as reiterated in the history of the Islamic civilization. Endowment has contributed to financing and spending on almost all avenues of public interests. Such role is continuous in our contemporary era. Its effect could not be ignored in solving many of the problems of public expenditure shortages.

The economic significance of endowment is increasing as it primarily aims at developing the society, fulfilling its current and future needs and making use of it in the development process. Endowment contributes to creating and developing the human capital, assists in establishing the infrastructure and the social capital, provides an opportunity for employing





laborers and minimizing unemployment and contributes to increasing the commercial activities of the society. Endowment is an economic support and a protective shield for the poor, the needy and the orphans jeopardized by economic fluctuations. In addition, endowment realizes the concept of sustainable development.

Undoubtedly, the development of endowment and the investment of its assets are necessary to protect it from depreciation and at the same time they increase the number of the beneficiaries from its revenues. Endowment properties and assets are increasing with time when endowment stakeholders optimally invest and develop them, urged common Muslims to consider the benefits of endowment in this world as well as the Hereafter and innovate new charitable means to spend on them from the investment revenues of the endowment properties and assets.

Endowment investment has become one of the economic concepts widely spread all over the Muslim communities. It has been heartily applauded by the researchers of Islamic Economics and specialists in endowment affairs. Endowment, by its very nature, is a long-term charitable investment approach. Its benefits are useful to successive generations. It maintains the property and channels it towards public welfare. Besides, it realizes the principle of social solidarity among the community members.

Social considerations – in their capacity as the original targets of endowment – have the priority in the endowment investment hierarchy. Accordingly, endowment properties shall be invested in investment projects which have actual social and economic revenues while avoiding barren investment as much as possible. In addition to developing and increasing endowment properties, such investment adds new commodities and services to the local economy, provides job opportunities for the unemployed, contributes to increasing incomes and enhancing the standards of living, trains and rehabilitates the cadres of local businesses, increases exports and decreases the imports of basic commodities. All such processes represent a realization of the original objectives of endowment whether directly or indirectly.



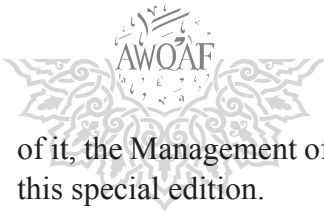
There are social considerations which must be observed in the field of investing endowment properties such as:

- Balance between social and economic returns.
- Balance between the interests of the generations of beneficiaries in terms of the benefits they harvest and the revenues of endowment.
- Giving priority to the public interest over the personal interest in case of necessities.

In all cases, Shariah-related considerations and control could not be ignored when talking about the investment of endowment properties, especially with regard to the identification of the types of investment and preference between the available investment alternatives and the criteria applicable in this respect. Investment of endowment properties is controlled by a set of Shariah-related controls derived from the sources of Islamic Shariah which represents the legal reference of investment decisions and the guide in practical application.

Due to the importance of the issue of the social revenues of endowment investments as they contribute to clarifying the means of harvesting benefits as well as their legal and social controls in a manner which rationalizes the work of the organizations concerned with the endowment affairs, the General Secretariat of Endowments organized the Third International Seminar of Awqaf Magazine in the Moroccan capital Rabat in collaboration with Al Hasania Hadeeth House in the Kingdom of Morocco and the Islamic Institute of Researches and Training of the Islamic Development Bank in Jeddah during the period from the 23rd to the 24th of Jumadah Al-Oula 1435 AH corresponding to the 24th to the 25th of March 2014 AD under the title “Endowment Investments between Social Returns and Shariah-related and Legal Controls” under the noble patronage of His Majesty King Muhammad VI, the King of the Kingdom of Morocco.

Four scientific peer-reviewed researches have been presented. Motivated by the desire to disseminate the endowment culture in a contemporary veneer so that endowment institutions and their employees shall make use



of it, the Management of the Magazine hereby presents these researches in this special edition.

The research on the “Management and Investment of Endowments Resources: Problems and Challenges” by Dr. Abdulrazzaq Isbaihi discusses the modern management of endowments in its recent forms and how they should be qualified to cope up with the level of aspirations and ambitions. Besides, the research addresses the problems and challenges of managing and investing endowment resources.

As for the research of Dr. Tariq Abdullah “Towards an Integrated Strategy for Endowment Investments: A Social Approach”, it deals with the management of investing the properties of the charitable endowment institutions. He reviewed the discussions and queries of endowment stakeholders on prioritization and relevant means of maximizing the revenues of endowment projects. He also presented an example of the investment plans in the contemporary endowment experiments. Besides, he discussed the objective conditions of building an investment strategy for the endowment institutions in the Islamic world, the prerequisites of such process such as the identification of social priorities, a strategic partnership between the endowment investments and the Islamic world needs and the effect on supporting the march of the Islamic world countries in a manner which promotes their human capital and makes use of their financial treasures in order to drive the developmental track in the Islamic world countries.

On another plane, the research of Dr. Majidah Al Zayyani “Legal Guarantees of Endowment Investments in the Light of Moroccan Endowment Code” addressed the legal guarantees aiming at stabilizing endowment investments and protecting them against risks in the Light of Moroccan Endowment Code. In addition, it reviews the guarantees aiming at improving the climate of such investment.

The research of Dr. Al Ayyashy Fadad “Investment of Endowments: Shariah Bases and Economic Determinants” drew attention to several points related to the endowed properties for utilization and channeling the



revenues in accordance with the conditions of the endower. The essence of this research is the investment of this type of endowment whether it has been real estate assets, cash money, current or investment accounts, securities such as shares and sukuk, funds or endowment investment companies.

In addition to these researches, this Issue contains an essay on the “Public Book Safes and their Role in Intellectual and Scientific Illumination in Morocco ... The State’s Efforts and the Endowment Institution” by Dr. Muhammad Al-Hajawi. He reviewed the intellectual role of libraries in the history of Morocco and the care submitted to them by the endowment institution and the rulers and scholars of Morocco.

Finally, the Issue outlined several scientific publications issued by the Department of Studies and Foreign Relations within the framework of Midad Project for Publishing and Distributing Books and Studies which aims at disseminating endowment awareness in the various classes of the society.

May Allah support us

The Editorial Team

Researches



Management and Investment of Endowments Resources: Problems and Challenges

Dr. Abdulrazzaq Isbaihi
The Secretary General of the Supreme Council
of Financial Control of the Public Endowments

In the Name of Allah the Most Gracious the Most Merciful

**Praise be to Allah, peace and blessings be upon the Messenger of
Allah, his family, companions and allies**

It is not exaggeration to say that “investment is the essence and facet of development and economic progress”⁽¹⁾. We don’t exaggerate if we say that building a promising future of Endowments depends on paying attention to the investment of their resources in a manner helping them to achieve their objectives, assume the function assigned to them, and meet the accomplishments expected from them; so that they shall not only maintain their previous gains but also experience new areas.

(1) Muhammad Mubarak Juhair: The Optimal Investment for the Arab Countries, Cairo, Almelijy Printing House, 1997, Page 12.



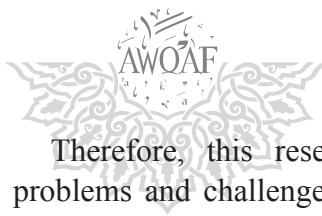
However, the reality of the endowment investments asserts that this area particularly hasn't found the required attention. So, it depends often on outdated conceptions and deficient practices. This reality is supported by the fact that scientific research in this issue hasn't been up to the minimum required level and this justifies the cause of the rare compilations in this regard. On the contrary, there are many compilations covering investment in sectors and areas other than endowments and such investments witnessed significant development, whether at the practical level or the actual performance.

Hence, it is important to raise the issue of "Management and Investment of the Endowment Resources" as an emerging issue, which will contribute to upgrading the method of management and rehabilitation of endowments to be at the level of expectations.

Here, it is important to clarify that this research isn't related to the management of endowments, but it is related to the management of endowment resources through detailing the problems of such management, the challenges related to it, and the problems and challenges related to the investment of such resources.

So, as any problem results in a challenge to be encountered, we will combine the problems and the challenges and distinguish between them, only based on what is related to the management of endowment resources and the investment of such resources.

Here, we come to the main hypothesis of this research which is summarized in the assumption that the nature of the management of endowments in general differs from the nature of the management of their resources. Consequently, the problems and challenges confronting the investment of endowment resources aren't necessarily the same confronting the management of Endowments, particularly in relation to the nature of supervision in each of them as it differs in terms of concept, professionalism, surrounding environment, objectives, and risk management ... etc.



Therefore, this research aims to highlight the before-mentioned problems and challenges in order to contribute to achieving theoretical and practical accumulation aiming to establish a scientific edifice related to the management and investment of endowment resources, contributing ultimately to the development of endowments and their developmental and human role worldwide.

In this research, I have followed the qualitative analysis method rather than the quantitative analysis method, as it is the most appropriate method for the study of the management and investment of the endowment resources through proposing some notes and ideas, which are considered by the researcher to contribute to developing this management, solving its problems, and facing its challenges.

Therefore, our study of the topic shall be through the following sections:

Section 1: Problems and Challenges of the Management of endowment resources.

Section 2: Problems and Challenges of the Investment of Endowment Resources.

Then, the two sections will be followed by a conclusion, in which we will outline the research important outcomes and recommendations.



Section 1

Problems and Challenges

of the Management of endowment resources.

It is well-known that there are many tasks emerging from the management of endowment resources, starting from receiving and maintaining them, to distributing and delivering them to their eligible beneficiaries, up to their development and investment.

As we believe that the research in such scientific forum should focus on the issues raising problems, challenges, and discussion and with regard to which visions and conceptions differ; so, we will focus in our research on such problems and challenges resulting from the management of endowment resources in its relation to development and investment.

Thus, this Section will be divided into two topics. Topic 1 will include the problems and Topic 2 will address the challenges resulting from such problems.

Topic 1

The Problems Related

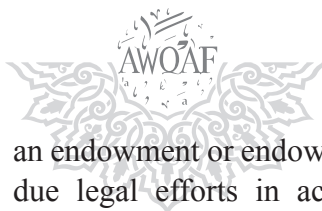
to the Management of endowment resources

We will try to consider the topic of the problems related to the management of endowment resources through addressing two main problems and a separate subdivision will be assigned to each of them. The first problem is related to whether investment is included in the duties of endowment guardian (the first subdivision). The second problem includes combination of the management of endowments and the management of endowment investments (the second subdivision).

The First Subdivision: The Problem Related to whether Investment is Included in the Duties of Endowment Guardian:

The endowment guardian is defined according to Islamic Jurisprudence as “The person accepting to assume the duty of overseeing and supervising





an endowment or endowments disposed according to Shariah and exerting due legal efforts in accordance with rightness and rectitude and the requirements of the endower”⁽¹⁾.

The duties of guardian were confined to the normal conduct of the endowment business according to the requirements of the endower in terms of its management, receiving its revenues and their delivery to the eligible beneficiaries. Therefore, some persons denied any right of such guardian to “assign any part of the endowment revenues to develop its capital, unless the endower requires that and the beneficiaries of it approve such; as their right is related to such revenues after maintenance of the endowment and its capital without any decrease; provided that they are worthy to get donations. Then, their approval will serve as an establishment of a new endowment in addition to the current endowment with its very same conditions and purpose”⁽²⁾.

This means that an explicit requirement by the endower has to allow the guardian to invest; otherwise, such guardian may not do so unless the beneficiaries approve that, as the right devolves to them. When they approve that, the endowment will be established and it will be related to the benefit as a personal right. This isn’t agreed by jurists, as endowment isn’t applied retroactively; so that the benefit shall be subordinate to its principal according to the rule which says that “the subordinate follows the principal”.

This issue drives us to inquire about the nature of the duties of the guardian and whether they include the investment of endowments resources. We also inquire about the limits of the right of the beneficiary

(1) Jasim Alaboudy: Guardian of Endowments in Andalusia and Morocco in the Hijri 8th and 9th centuries according to Al-Miyar Almoarrab by Alwinshirisy, the Scientific Record of Andalusia Seminar ... Centuries of Fluctuations and Benevolence, Section 5 “Shariah Sciences”, Series of Peer-Reviewed Works (10), Publications of King Abdul Aziz Public Library, Riyadh, Kingdom of Saudi Arabia, 1417 AH, 1996, Page 314.

(2) Muhammad Mahmoud Aljammal, Management and Investment of Endowment Funds in the Islamic Jurisprudence and the Regulations of the Qatari General Department of Endowments, publications of the General Department of Endowments in Qatar, 1433 AH, 2013, Page 61.

in the endowment fund and whether such beneficiary has the right in all endowment revenues.

Replying to these questions, we see that there are liabilities to be met by the guardian before distribution of the revenues to the endowment beneficiaries such as the endowment service, as even scholars preventing the guardian from investment with the purpose to increase the endowment capital agree that such liabilities are due on the management of endowment through its repair, maintenance, and caring for it; so that endowment beneficiaries continue to benefit from it and the endower continues to have the endowment reward from Allah⁽¹⁾.

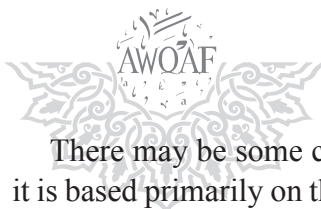
Many jurists paid attention to the development of the revenues of the endowment original; however this issue is less important than maintaining the endowment original.⁽²⁾

If this is applicable, can't we consider that the investment expenses are included in the costs resulting automatically from the endowment? Especially that some endowment assets are naturally consumable and reserves have to be provided to invest in (such as quarries for example)?

Can't we consider investment as an implicit requirement by the endower? As the intention of the endower is to benefit the endowment beneficiaries and the investment increases such benefit, consequently, it achieves the intention of the endower even more and as the intention of the endower is the sustainability of his / her alms and the investment achieves such sustainability; so, we can consider investment as an implicit requirement by the endower. If there is an explicit requirement by the endower not to invest, this requirement will be met and the revenues will be divided totally to the endowment beneficiaries. But, if there isn't such requirement, strictness in this regard won't be unnecessary.

(1) Ibid, Page 60.

(2) Fouad Abdullah Alomar: Investment of Endowment Funds ... Economic Conditions and Development Requirements, Issue No. 12 of the Study Series winning in Kuwait International Competition of Endowment Studies, Publications of the Secretariat General of Endowments, Kuwait, 1428 AH, 2007, Page 58.



There may be some confusion in relation to the private endowment, as it is based primarily on the special interest of the endowment beneficiaries. For the public endowment, the public interest is more considerable and it is achieved through the investment of wealth instead of its distribution only.

The Second Subdivision: The Problem Related to the Lack of Distinguishing between the Management of Endowment and the Management of endowment resources:

It is known that overseeing endowments was carried out at the beginning by individuals or families under or without judicial control. Then, it was managed by governments due to the interference of the official authorities of countries. Later on, a tendency to root some independence from the governmental management through institutional work has started to appear.

However, the common orientation in all these stages, to varying extents among countries, is that endowment management of all types (individual, family, governmental, and institutional) assumes exclusively the management of various operations and activities related to the management of the endowment, including investment and development.

Therefore, it is natural that the management of endowment investment has the same features of the management of endowments themselves, in terms of governing controls, their requirements, or their effects. We mean that the individual guardianship of endowments and their investments together required some moral specifications in the characteristics of the guardian, which are related to his honesty and sincerity, without paying significant attention to the requirement of professional efficiency. Hence, the responsibility of such guardian was also related to the framework obliging him to pay due diligence. Consequently, it is common that the guardian is honest and isn't obliged to provide guarantee unless it is proven that he committed infringement or negligence. The management of investment doesn't require honesty only, but also it requires efficiency qualifying the efficient person to achieve good results and serve as guarantor in return of incentives and rewards for profitability.



For the governmental management of endowments, it has been marked by extreme centralization, subjection to the effects of political factors, and lack of performance evaluation on objective bases⁽¹⁾. This often resulted in improvisation and randomness of investment, prevalence of obsessions and complexity, wasting of investment opportunities, and lack of learning from investment mistakes.

Important features of this investment also include:

1. Focus on direct investment which means that the management of endowments exclusively manages such investment project, controls and takes decisions related to it. The results of this orientation included increasing risks of endowment investments and bearing the consequences of such risks by the endowment management exclusively, if any.

The issue riskier than that is the lack of income of endowment properties and wasting opportunities available for financing and investment due to waiting on the part of the management of the endowments for achievement of its ability of self-finance for its projects and this always has not been achieved.

It should be noted that the management of endowments, due to obsession featuring its investment behaviors, may sometimes resort to the option of direct investment due to lack or inadequacy of guarantees of indirect investment. The management of endowments may also attribute that to the lack of investment institutions which projects are consistent with the particularity of endowments, especially religious particularity; which preventing involvement in investment transactions not consistent with Shariah or including violations according to Shariah.

2. Adherence to the traditional investment tools: for example, lease has been considered as the best method of the investment of endowment properties. However, while this was valid in previous ages, it is no

(1) Mundhir Qahf: Islamic Endowment ... Its Evolution, Management, and Development, Damascus, Dar Al Fikr, Damascus, Muharram 1421 AH, April 2000, Page 286.



longer valid currently, especially that lease is used currently as a tool of ownership through the lease contract leading to ownership. In addition, there are many problems related to lease, as the lessee may fail to pay the rent, sublease the leased property, grant it to a third party without permission by the lessor, change the use of the leased property, neglect it, conduct changes damaging or reducing its value.

The issue riskier than that is that when the management of endowments restricts its investments to the possession of properties built from the harvest of the substitution processes and lease them to recover the price of purchase and profits within a long term not less than 15 years; then, the possibility of feasibility evaluation is considered as a type of “administrative luxury” if it isn’t already unattainable.

Topic 2

Challenges Related to the Management of Endowment Resources

The problems we detailed in Topic 1 put the management of endowment resources in confrontation with the challenge of the inclusion of its investment within the main duties of overseeing endowments. This requires the change of the concept of overseeing from management for conducting business to be a management for taking measures (the first subdivision). In addition to rooting this belief, another more developed belief is necessary. It is the belief related to fixing professionalism in the management of endowment investments (the second subdivision).

The First Subdivision: The Challenge of Changing the Concept of Overseeing from a Management for Conducting Business to a Management for Taking Measures:

The endowment management nowadays can’t solve the problem related to poor investment, as long as the investment isn’t prioritized by such endowment management; based on the special understanding of the duties of overseeing endowment, which we previously explained. So,



the endowment management faces a challenge that paying attention to investment is among its priorities and this can't be translated practically without overcoming another challenge, which is to change the concept of overseeing from a management for conducting business to a management for taking measures.

The management of conducting business is the management which duties are confined to ensuring the normal conduct of business of an institution or a foundation, as its interference is restricted to the limits previously planned. So, the role of it is primarily executive. This role can be described as neutral and it results in the management invariability, which means lack of interaction with the developments and changes that may occur.

Unfortunately, this type of management prevails in the developing countries, including the Arab countries. This type of management is marked that "it doesn't include any incentives for proficiency, initiative, or innovation; as promotion is according to seniority, error means punishment, and proficiency and innovation don't deserve reward but in rare cases. So, adherence to the set instructions and rules becomes an objective by itself, irrespective whether such adherence to meeting needs and achieving objectives is effective"⁽¹⁾.

Even if this traditional type of management is consistent with some sectors of purely administrative nature, it isn't absolutely appropriate to the service and economic sectors, as the case of the endowment sector.

The confinement of the duties of endowment management to the literal execution of the provisions of the endowment deed and giving holiness to

(1) Abdullah Alshamly: Policies of Investment in the Arab Countries, 2008, Page 9.



the conditions of the endower⁽¹⁾ are some of the significant causes which result in stagnancy of some endowments, as the conditions developed by their endowers were consistent with the then reality of such endowments according to the estimation and conceptions of such endowers. But, such conditions can't be valid for all times and places or responsive to the requirements of every age and time.

“The management of taking measures” means that the management shall take all necessary measures, not only to ensure the normal conduct of the business of the institution, but also to improve the institution, develop its work, enhance its efficiency, and achieve its goals and objectives in the best manner possible.

No doubt, such type of management is able to interact with the actual requirements in accordance with what supports the achievement of the objectives of the institution. Consequently, the role of such management is positive and active, as its action program isn't based on instructions and orders, but it emerges from the projects supporting the general strategy of the institution. Therefore, the action of such management has the flexibility necessary for adaption to developments.

The duty of the guardian is more supreme than mere provision of a service in return of wage. The function of the guardian exceeds the limits of conducting the endowment business, managing its matters, and maintaining its properties to caring, keeping, and seeking for methods to

(1) Some scholars exaggerated when they said and applied that “Word of the endower is considered as a provision of the Legislator”, so they gave holiness to words and phrases of the endower as the texts of Shariah. This converted endowment from its field related to transactions into the field of worship, from the scope of jurisprudence to the scope of worship, and from the conciliation context to the execution context. This phrase means two issues. **The first issue:** we use the same cognitive tools to conclude to the indication of Shariah text, in order to know the intention of the endower through the words thereof, in terms of explicit and implicit words, as the case of distinguishing in a Shariah text between conclusive indications and presumptive indications, in terms of the intention when a phrase is ambiguous, and in terms of the methods of combining and weighting phrases, which may show discrepancy between them. **The Second issue:** this phrase means that we have to respect the will of the endower, as long as that is within the possible, legal, and interest limits.

develop it. Thus the role of the guardian exceeds the neutral role to be a positive and active role supported by effective mechanisms for control and accountability.

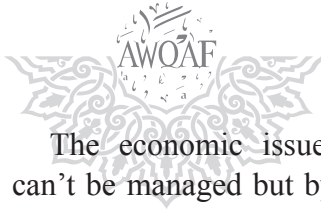
Whereas the violation of the guardian of the endowment conditions - according to Jurist Abdullah Ibn Allaq⁽¹⁾ - is considered negligence⁽²⁾; explicit obligations have to be identified for the guardian in a form of action program or a schedule of liabilities, which includes taking measures necessary for the investment of endowment resources in accordance with the standards of professionalism and governance. Then, such guardian will be held accountable in the light of the liabilities he achieved and he will be considered negligent if he doesn't achieve the results meeting the conditions.

The Second Subdivision: The Challenge of Professionalism in the Management of Endowment Investments:

Solving the problem related to combining the management of endowments and the management of their investments and the resultant disadvantages requires to face the challenge of achieving professionalism in investment, as the endowment resources are not only funds to be invested in any manner or orientation but they, just like other funds, are subject to the rules of investments. So, any failure to be aware of such rules and use them optimally wastes such investment. The matter may be worse when there is expenditure in vain according to wise people and this is foolishness to be prevented.

(1) He is Muhammad Ibn Ali Ibn Qasim Ali Abu Abdullah Ibn Abdullah Al Andalusi Al-Girnati, grandson of Imam Abu Al Qasim Ibn Juzai, who is an Interpreter of Quran. He explained Ibn Alhajib Alfaray in several volumes. He explained Fraied Ibn Alshat and other books. His Sheikhs are Ibn Loub, Al Maqri and Al-Khatib Ibn Marzouq and others. He was Sheik of some scholars such as Al Mantoury, Judge Ibn Seraj, Judge Abu Bakr Ibn Asem, and others. He dies on Thursday, Shaban 2nd, 806 AH. Refer to Ahmed Baba Al Tanbiky, Nail Alibtihaj Betatriz Al Dibaj, verified by Ali Omar, Cairo, Religious Culture Library, 1423 AH, 2004.

(2) Abu Al Abbas Ahmed Ibn Yahia Alwinshirisy: Almiar Almoarrab wal Jame' Al Nogharab of Fatwa of the people of Tunisia, Andalus, and Morocco, explained by a group of jurists under supervision of Muhammad Hijji, Publications of the Ministry of Endowments in the Kingdom of Morocco, 1401 AH, 1991, 7/207.



The economic issues became more complicated. So, investments can't be managed but by professionals, as this requires to conduct some procedures such as evaluating the investment climate, the available investment opportunities, and the expected risks.

Some results of professionalism in investment are to know the important factors negatively affecting investment which are common in all types of investment including endowment investment such as:

- Poor efficiency of the infrastructure which affects the costs of investment (such as prices of transport and distribution services) and consequently the expected returns of investment.
- Lack of clarity of the tax structure⁽¹⁾ which affects the ability of the investor to identify the tax basis to which such investor is subject, in addition to high tax rates of companies.
- Poor efficiency of labor is one of the most significant obstacles of the investment even if they don't require high costs.
- Lack of economic openness which results in the lack of various sources of inputs of production and investment commodities used in investment and the poor export capacity of the new investment projects due to poor production capacity and lack of openness of foreign markets for access of the products of those countries.
- Various legislations regulating investments as this results in lack of transparency and clarity in addition to the lack of the laws related to intellectual property, laws regulating competitiveness, and preventing monopoly.⁽²⁾

(1) Some countries exempted public endowments from taxes such as Morocco. Article 151 of the Code of Endowments provides that "Public endowments shall be exempted concerning all disposals, actions, operations, and incomes related thereto from any national or local taxes, tax fees, or tax clearing".

(2) Abdullah Alshamly, Ibid, Page 16.



Section 2

Problems and Challenges

of the Investment of Endowment Resources

According to the method we followed in Section 1 of this research, we will first address the problems related to the investment of endowment resources (Topic 1). Then, we will address the challenges related to this investment (Topic 2).

Topic 1

The Problems Related to the Investment of Endowment Resources

There are various problems related to the investment of endowment resources. Some problems are related to the particularity of endowments. The prominent problems of these types are the problem of the financial estate of the endowment and the problem of the evaluation of profitability of the endowment investment (the first subdivision). Some other problems are related to the nature of investment itself in relation to endowments such as the problem of investment environment and risks (the second subdivision).

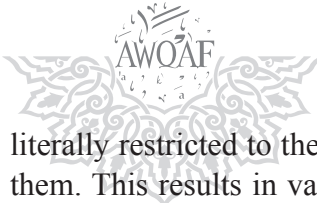
The First Subdivision: The Problem Related to the Financial Estate of Endowment and the Evaluation of the Profitability of the Endowment Investment:

We will address this problem through addressing the issues related to the financial estate of endowment in part 1 and the issues related to the evaluation of profitability of endowment investment in part 2.

Part 1: The Problem Related to the Financial Estate of Endowment:

Some jurists see that “the endowment allocated for a certain purpose shall not be used for another purpose”⁽¹⁾. This means that we have to be

(1) Refer to my book: The Civil Protection of Public Endowments in Morocco, Publications of the Ministry of Endowments and Islamic Affairs in the Kingdom of Morocco, Rabat, Alamnieya Printing House, 1430/ 2009, Page 194.



literally restricted to the words of the endower and refrain from violating them. This results in various financial estates as each endowment has its financial estate independent from other endowments.

As there are endowments which we can't know the conditions of their endowers, due to waste or lack of the endowment deed and endowments which conditions can't be met, due to change of the economic and social conditions⁽¹⁾; endowments having significant revenues exceeding the needs according to the conditions of their endowers; and other endowments which revenues no longer meet even the requirements of repairing and maintaining the endowment property for sustainability, we can say that the impossibility of solidarity among endowments, particularly public endowments, results in inactivity of many endowments. Moreover, the lack of such solidarity isn't proper to the current circumstances; as the promotion of public endowment requires the development of a unified strategy for all endowments.

The Supreme Council of the Financial Control of Public Endowments in Morocco prepared a legitimate study on this topic. This study concluded -after the review, discussion and comparison of the opinions of jurists- that "the Islamic Shariah doesn't forbid combining the revenues of endowments in one account and spending such combined funds on the beneficiary charitable bodies, for which the endowment has been allocated in accordance with the needs, interests and the following controls:

1. Combining revenues must have a clear interest. Such interest may be represented in accurate and audited accounts, protection and development of endowments, protection of the beneficiary bodies, paying attention to the charitable bodies neglected by the endowers, or facilitation of the work of the guardian or the Ministry regarding supervision, overseeing, control, follow-up, and accountability.

(1) Examples of that include: the condition according to which the endower requires to spend the revenues to host convoys of pilgrims using primitive means of transport in the journey of pilgrimage or to treat people wounded by storks [according to Mukhtar Al Sihah: birds eating serpents], or to spend on a Quran memorization class which has been destroyed or poor people who adopt a certain doctrine.

2. The endowed mosques have to be prioritized; as we shouldn't pay attention to a mosque without endowments more than a mosque with endowments, as long as such mosques with endowments play their role and as long as they are visited by worshipers. Sidi Abdulqader Al Fasi in his "Al Nawazil" said, after he quotes the answer of Abdullah Al Qury on the topic, "If the yield thereof is needed, the revenues thereof shall not be transferred to another body. The opinion that endowments may be transferred and combined must be restricted by the fact the endowed body doesn't need such endowment". So, if the endowed mosques become inactive and abandoned for any reason, their endowments may be transferred to another mosques playing their role.
3. The important mosques visited by great numbers of worshipers and playing important roles in religious awareness and educating people with their rights and duties have to be prioritized. Grand mosques, mosques in which Friday prayers are performed, mosques in which Shariah sciences are taught, Quran is memorized and lessons of preaching and guidance are given don't have to be equal to those small mosques, in which only the five prayers are performed. Expenditure has to be commensurate with the need on one hand and it has to be according to the interest of Islam and Muslims on another hand" ⁽¹⁾.

The diversification of financial estates of endowments due to their variances and independence can't help towards practicing a real investment of their resources. Optimal investment requires the provision of the necessary financing or the (natural, financial, or human) resources ⁽²⁾. This can't be provided to the required extent, unless the various endowments are combined and solidarity among them is achieved in accordance with financial and accounting controls and standards ensuring meeting the

(1) An unpublished study prepared by the Supreme Council of Financial Control of Public Endowments; by the respectable jurists: Alyazid Alrady and Muhammad Shrhably.

(2) Muhammad Mubarak Juhair: Optimal Investment in the Arab Countries, Ibid, Page 14.



intentions of endowers without breaching the needs of the society and the requirements of development.

Part 2: The Problem Related to the Evaluation of the Profitability of Endowment Investment:

The evaluation of the profitability of investment in the endowment sector is addressed taking into account that this sector belongs to social projects which are originally non-profit. In addition, the outputs of such projects are in the form of inconsistent services. Moreover, each type of such projects is established to achieve various objectives which are often unclear and each type has objectives completely different from other types, as it is established to generate various types of benefits for the individual and the society” ⁽¹⁾.

This means that evaluation isn’t necessarily based on the material return and the components of evaluation are not quantitative. “This results in the personal estimation of their value, whether the project achieves them, and whether the project is efficient to employ the resources dedicated to provide them” ⁽²⁾.

Due to this particular nature of the projects of social investment, some concerned persons suggested to evaluate this type of investment via one of these methods: “the Cost and Benefit Analysis Method” and “the Cost-Effective Analysis Method”.

In accordance with the first method, “the values of costs and benefits resulting from the establishment of a social project are calculated and specified”. As for the second method, it is applied through “measuring the cost of achievement of similar results previously recorded in similar programs” ⁽³⁾.

(1) Afkar Muhammad Qandil, Evaluation of the Projects of Social Investments, 2004, Page 19.

(2) Ibid, Page 9.

(3) Ibid, Page 18, 19.



The Second Subdivision: The Problem Related to the Investment Environment and Risks:

We will address this problem in two parts. The first part will address the Investment Environment (Part 1) and the second part will address the Investment Risks (Part 2).

Part 1: The Problem Related to the Investment Environment:

The investment environment plays a basic role in encouraging or limiting investment; as the investment environment is the climate in which investment projects take primary opportunities for success or failure.

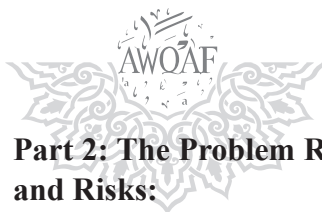
In order to evaluate the guarantees provided by any investment environment, the legislations related to this field are considered in terms of incentives, exemptions, advantages, facilities, allowed fields of investment and the required conditions⁽¹⁾.

The components contributing to the evaluation of the investment environment includes the political, economic, and social circumstances in such country or region hosting the investment and considering whether they provide the protection necessary for the investors to be reassured concerning their investments.

While the investment environment, with the characteristics referred to above, affects the various types of investments of whatever nature or stakeholder, the investment environment of endowments has its particularity which makes the reputation component significantly affecting the profitability of endowment investment negatively or positively. Therefore, we have to take into consideration this component.

(1) Some writings tried to address this topic in the Arab region through considering its legislations in this field and the extent of easiness of practicing business activities, such as:

- Abdullah Abdulkarim Abdullah: Guarantees of Investment in the Arab Countries, Amman, Culture House, 1429 AH/ 2008.
- Abdullah Alshamly: Policies of Investment in the Arab Countries, Ibid.



Part 2: The Problem Related to the Relationship between Investment and Risks:

It is known that risks are inherent in any investment, as “It is difficult to avoid the risks of investment because it stems from the changing nature of the economic life which results in the difficulty of expectation of all variables affecting the effectiveness of the investment decision in full accuracy and objectivity” ⁽¹⁾.

It is also known that in economic literature that the higher the risk, the more the opportunities of achieving significant profits. On this basis, the selection of investors depends on balancing returns and risks as “some investors prefer investment projects defined as safe, associated with the least degree of risk, and the generation of limited economic returns. Other investors prefer achieving significant economic returns associated with high degree of risks” ⁽²⁾.

The importance of classifying investment projects is manifested with regard to the expected returns and the associated risks as follows:

- A. Selecting the investment project achieving an economic return commensurate with the intention of the investor and the ability thereof to avoid or accept risks.
- B. Identifying projects associated with high risks which have to be avoided if they threaten the financial position of the investor and its sustainability in the business field.
- C. Conducting prior estimation of the possibilities of success or failure when comparing investment projects taking into consideration the estimation of the potential variables.
- D. Estimating the type and nature of risks associated with the investment project which can be classified as business risks and financial risks⁽³⁾.

(1) Muhammad Othman Esmail Hemid: Basics of the Economic Feasibility Study and Evaluation of Investment Risks, Cairo, Dar Alnahda Alarabiya, Issue 5, 1990, Page 198.

(2) Muhammad Othman Esmail Hemid: Basics of the Economic Feasibility Study and Evaluation of Investment Risks, Ibid, Page 199.

(3) Ibid, Pages 199, 200.



The World Bank, when preparing a report on development worldwide in 2005, “conducted an opinion poll for companies (a specimen of 26,000 companies in more than 53 developing countries) concerning the types of potential risks, which drive those companies to seek investment in a certain country or avoid it in another country in search for safe investment or the safest investment in the light of achieving appropriate returns directly proportional to the size of risks to which they are exposed.

The results of this opinion poll showed that companies are significantly hesitant to invest in countries where there are ambiguous policies, unclear and confused investment and economic policies in general. This component constituted 28% of the total potential risks. Then came the instability of the macroeconomics at a rate of 23% of the total potential risks. The components of ambiguous policies and instable macroeconomics constitute more than 50% of the volume of potential risks encountered by the capital seeking investment opportunities around the globe”⁽¹⁾.

Any investment decision to accept or refuse the investment opportunity associated with the investment project is taken in the light of incomplete information as it is related to the future of uncertainty. Such investment opportunity is associated with continuous expectation of events and variables unexpected to occur but they are potential to occur and associated with a degree of risks to be considered and evaluated quantitatively in order to take the appropriate decision”⁽²⁾.

The measurement and evaluation of risks are one of the most important variables affecting the decision of investment which result in acceptance, amendment, or refusal of the investment project and evaluation of the economic feasibility of the investment opportunity associated with the investment project”⁽³⁾.

(1) Abdullah Alshamly, Ibid, Pages 14, 15.

(2) Muhammad Othman Esmail Hemid: Basics of the Economic Feasibility Study and Evaluation of Investment Risks, Ibid, Page 200.

(3) Ibid, Page 198.



While the risks related to the investment are a basic component controlling the behavior of the majority of investors whether to go ahead or refrain, they are the most significant factor restricting the endowment investment track. One of the particularities of the management of the affairs of endowment includes the prohibition of allowing to enter into transactions of high risks. Otherwise, this will be deemed as negligence requiring accountability and proving liability.

Topic 2

The Challenges Related to the Investment of Endowment Resources

The problems related to the investment of the resources of endowments, which were addressed in topic 1, impose challenges related, on the one hand, to the necessity to correct the misconceptions concerning endowment investment (the First Subdivision) and, on the other hand, to adopt effective tools in the business practice of such investment (the Second Subdivision).

The First Subdivision: The Challenge Related to Correction of the Misconceptions on Endowment Investment:

We can address the challenge related to correction of the misconceptions on endowment investment through explaining how to improve the reputation of the endowment institution (Part 1) and correction of the confusion between endowment as investment and investment transactions made to develop its resources (Part 2).

Part 1: The Challenge of Improving the Reputation of the Endowment Institution:

The reputation sensitivity of the endowment institution imposes a challenge against the institution when it practices investment; to take this issue seriously from two sides: from the side of the view of people in this environment towards endowments and their conceptions on them and their investments and from the side of the prevailing conception of such people concerning the involvement of endowments in the field of investment.

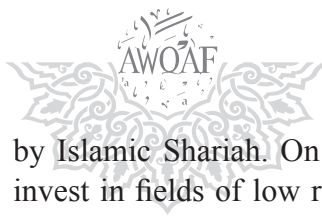


From the first side, we often find some persons who make confusion between endowment investments and the social role of endowments. Consequently, they find justification, even on the psychological level, to allege that endowments are non-profit, but they only provide social services. If this is right, in principle, there is nothing forbidding endowment from achieving profits, as this is not an objective by itself, but this is a method to achieve a more significant target, which is to maximize the return, through which the intentions and objectives of the endowers may be achieved more effectively and more adequately. In addition, the social services and the important public interests assumed by endowments are shouldered through the roles they play and the duties they undertake, and not through what their investments should be.

From the second side, the relation of investment environment of endowments to the nature of the prevailing conception regarding this institution requires to pay attention to the necessity of eliminating doubts concerning the real objectives of the endowment institution, so that nobody conceives that it became an investment institution and it deviated from its real objectives; as such conception may affect the new endowment transactions. Consequently, the endowment institution may lose its profits through investment or even more.

Part 2: The Challenge of Distinguishing between the Endowment as an Investment and the Investment Process of its Resources:

The argument that endowments are a social sector and the evaluation of its investment shouldn't be on a material basis is an argument tainted by confusion between the services provided by endowment, which make it an investment in the human element, and the investment of endowment resources which has to be subject to the general rules of investment. Consequently, there is a challenge requiring the bodies in charge of endowment investments to apply to them the rules with which all investors comply without any restrictions except for some issues related to the particularity of endowments, whether in terms of the fields of investment or its priorities. Endowments are not allowed to invest in fields prohibited



by Islamic Shariah. On the other hand, endowments may be obliged to invest in fields of low returns, but they are of high profitability in terms of their reflection on the social aspect. In addition, priority is given to such endowment investments of long-term returns, on the ground that endowment is related to the rights of the future generations in addition to the current generations. Therefore, the investment project of future profitability, even if its current profitability is low, is preferred.

It should be noted that subjecting endowment investments to quantitative or material evaluation shall not drive us to turn a blind eye concerning the change occurring in the recent years on how to evaluate investment profitability. Although the achievement of profit is the common objective of all investment projects, it isn't the only objective of all foundations, organizations, and institutions. "Each foundation has to develop its own objectives which meet the needs of the groups cooperating to ensure that the sustainability of such foundation is possible"⁽¹⁾.

Thus, we can say that the standard has no longer been only the maximization of profits, but it tends to the maximization of benefits. This resulted in "a growing belief that the maximization of profit became a narrow view, as it doesn't meet the full scope of the new motivations and stimuli of the organizers (the investors). This is proven by the fact that the greatest benefit will be achieved if the investment decision-makers develop an approach resulting in the minimum extent of the potential maximum losses"⁽²⁾.

Accordingly, the evaluation of investment as an efficient investment is based on how it "achieves the maximum expected return compared to other investments at the same level of risks. The same term is also applied to an investment asset or a combination of individual investments exposed to less risks, compared to other investments generating the same level of

(1) Muhammad Shawky Bishady: The Economic Feasibility of Investment Projects, Cairo, Dar Al Fikr Alaraby, 1987, Page 18.

(2) Muhammad Mubarak Juhair: The Optimal Investment of Arab Countries, Ibid, Pages 17, 18.

returns”⁽¹⁾. So, the standard is the “optimal investment” in terms of returns and risks.

The Second Subdivision: The Challenge Related to Adopting Tools of Effectiveness in the Endowment Investment:

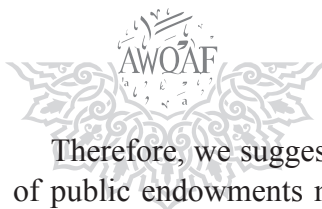
The solution of the problem related to the financial estate and the risks related to endowment investment requires to practice such investment to the greatest possible extent of effectiveness. This requires to balance between an economic necessity which is combining endowments, and a Shariah necessity which is respecting the will of the endowers (Part 1). This also requires to adopt the tools and methods controlling the effectiveness of investment in general, in the forefront of which are the feasibility study and investment diversification (Part 2).

Part 1: The Challenge of Balancing between Combining Endowments and Respecting the Will of the Endowers:

The unity of the financial estate of the public endowment will allow to cover deficit in some endowment disbursement channels, help to develop an integrated strategy to promote the status of the endowment institution, and allow more opportunities to develop and invest the returns of the endowments. In spite of all these pros, there are some cons basically including the lack of meeting the will of the endowers, particularly in the case of the insufficiency of some endowment disbursement channels, due to the distribution of returns jointly among such various disbursement channels. This gives a negative image to the individuals concerning the management of endowments and may undermine their confidence in it. Consequently, they may refrain from endowment due to the loss of confidence.

So, the challenge addressed concerning this issue is how to balance between the requirements of the investment in terms of combining endowment resources, and the requirements of maintaining the reputation of the endowment institution by assigning to each endowment its resources.

(1) Munir Ibrahim Hindy: Modern Thought in the Investment Field, Alexandria, Manshat Al-Maaref, 1996, Page 274.



Therefore, we suggest that the principle of unity of the financial estate of public endowments must not prevent the adoption of the principle of assignment in some issues such as those required by the nature of endowments or the endowments which endowers require to be independent. In addition, we suggest to adopt the closeness policy in managing the affairs of public endowments through combining the revenues of public endowments at the local level and spending on the endowment disbursement channels according to the requirements of the endowers, while assigning a certain proportion contributed by a national investment fund which returns will be assigned to achieve some solidarity among endowment disbursement channels at the national level.

We think that ensuring the requirements of the proper application of this idea may have good results at the level of the revival of the endowment culture for the citizens, recovery of their confidence in the endowment system, and encouraging them towards endowment. It also ensures amount of funds necessary for practicing real investment.

Part 2: The Challenge of Dependence, in Relation to Investment, on the Feasibility Study and Diversification:

As risk is inherent in investment in general and it is unavoidable, it is possible, on the other hand, to manage risks and deal with them, so they can be almost non-existent or of insignificant effect. This issue has its scientific techniques requiring professionalism in this field.

One of the tools used in advance to control, as much as possible, the future of investment transactions is the attempt to foresee such future through “the Feasibility Study”. It is defined as “the set of practical bases derived from economics, administration, accounting, and transaction researches used to collect, study, and analyze data in order to conclude outcomes determining whether such projects are feasible in several legal, marketing, technical, financial, and social aspects”⁽¹⁾.

(1) Muhammad Shawky Bishady: The Economic Feasibility of Investment Projects, Ibid, Page 7.

However “the process of the project idea emerging in the mind of the investor, development of this idea stages, and its entering into effect are an integrated-dimension process. It is conducted into various consecutive stages and requires several integrated studies depending on each others. It helps specify the economic returns expected to be achieved by the investments project in the light of the environmental, technical, financial, and economic variables surrounding the investment opportunity around which the project idea revolves”⁽¹⁾.

In addition to the feasibility study, risks can be avoided or at least decreased through another method, which is the adoption of the diversification method. Some studies point out that “regular risks, which can be avoided through diversification, constitute 50% of the aggregate risks and they may be up to 70% or 75%. In addition studies point out that most irregular risks may be avoided through forming the investment portfolio of 10 investments or little more randomly selected, even if the appropriations of the investment portfolio are distributed to them equally”⁽²⁾.

On the other hand, it is important to be aware that “the exaggeration of diversifying the investment portfolio has several disadvantages, in the forefront of which are the difficulty of managing the portfolio, the high cost of searching for new investments, taking unsound investment decisions, and high average costs of purchase.”⁽³⁾.

In brief, risks, even if they are as significant as the investment, may be avoided, limited, or transferred through professionalism. Unavoidable risks are only accepted.

(1) Muhammad Othman Esmail Hemid: Basics of Economic Feasibility Study and Evaluation of Investment Risks, Ibid, Page 3.

(2) Munir Ibrahim Hindy: The Modern Thought in the Investment Field, Ibid, Page 275.

(3) Ibid, Page 278.



Conclusion

We tried in this study, according to the possible effort and allowed opportunity, to address the topic of “The Management and Investment of Endowment Resources ... Problems and Challenges”. No doubt, it is an important topic, but it faces some constraints. The most significant constraints are that it is a new and an accurate topic. Consequently, as far as addressing it requires seeking accuracy and avoidance of redundancy, its research is considered as a brick added to its predecessors and to be completed by its successors in order to achieve the required accumulation of any real scientific edifice.

Through what we have addressed in the research, it turns out that some problems related to the topic of the Management and Investment of Endowment Resources are theoretical and some of them are related to practice. Hence, it is important to face the challenges related to such problems theoretically and practically.

Finally, we can list the important findings concluded to by the research as follows:

- Investment is a key duty assumed by the guardian, even if there is no explicit requirement; as it is a part of the intentions of the endower as long as it ensures the continuity of his / her alms and increases them, achieves more significant benefit for the beneficiaries of the endowment, and achieves the public interest related to the investment.
- Monopoly of the management of endowments in all types (individual, family, governmental, and institutional) with regard managing the investment within the operations related to managing the endowment affected investment and prevented it from achieving the expected results.
- While endowments are a social sector, the investments related to their resources have to be subject to the standards of evaluation of investment in general while taking into consideration the requirements of the particularity of endowments in terms of the fields and priorities of the investment.



- Although risk is inherent in investment, risks may be managed so that they shall be almost non-existent or of insignificant effect in accordance with scientific techniques requiring professionalism in this field.
- The reputation of the endowment institution has significant sensitivity and a great effect on the profitability of the endowment investment, whether negative or positive. So, they have to be taken into consideration.

Important Recommendations:

- It is important to change the concept of guardianship from the management of conducting business to a management of taking measures, as a condition to interact positively with the requirements of the reality, in accordance with the principle which supports the achievement of the objectives of the endowment institution.
- It is important to depend on professionalism in the investment as it is one of its important rules and if it is breached, the endowment resources will be wasted and the opportunities to develop and invest them will be lost.
- It is important to balance between the requirements of the investment, in terms of combining endowment resources and the requirements of maintaining the reputation of the endowment institution in terms of respecting the will of the endowers.

May Allah help us and we trust in Allah and seek His support.

Researches



Towards an Integrated Strategy for Endowment Investments.. A Social Approach

Dr. Tariq Abdullah

The Institute for Islamic World Studies
Zayed University-United Arab Emirates

Abstract:

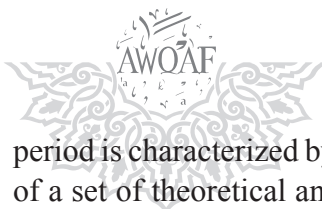
This research attempts to handle the issue of investing properties of endowment Institutions⁽¹⁾ through the discussion addressed among stakeholders of endowment and their inquiries with regard to setting priorities and methods when talking about maximizing the returns of endowment projects and whether the available options are limited to two contradicting sides: financial returns and social returns. Consequently, one of such options may be sacrificed. Or rather that the issue is more

(1) The research does not address the investment of private endowments which requires to state whether the nature of investment plans differs from charitable endowments due to the considerations related to the beneficiaries of endowment, endowed properties, and endowment objectives.

complicated and requires a broader vision to eliminate the overlap between the components of such returns. The research attempts to build on the philosophy and essence of endowment in their capacity as the key incubator of the complicated social style provided by the endowment, in which the economic and social issues are interrelated. In this context, we can say that the key issue of discussing endowment investments is primarily related to defining social returns, their status and functions in the endowment system. The clarification of the components of this equation is a key issue to set an investment strategy including the endowment essence and activating its key objectives. Meanwhile, such strategy is a strong source to extend the track of such investments and their impact on various social groups and various societal institutions. The research presents a model of investment plans in the contemporary endowment experiences, especially the US experience. This experience is marked by harmonization between the social and financial issues through keeping three key values in each endowment investment project: achieving quality, stipulating professional dealing with investment issues and media and assuming social responsibility. The last section of the research addresses the objective requirements to develop an investment strategy for the endowment institutions in the Islamic world and the requirements of such process, such as setting social priorities, a strategic partnership between the endowment investments and the needs of the Islamic world and the effect of such in general on supporting the progress of the Islamic world countries, achieving promotion of their human capital and benefiting from their material wealth in a manner serving the developmental progress in the Islamic World countries.

Introduction:

The end of the 20th century is related to the technological revolution in the information sector through the accelerated pace of the economic cycle, the high flow of capitals, and the high ratios of international trade. These orientations were asserted in the 21st century while it steps forward in its first decade so that it becomes actually the century of globalization. The same



period is characterized by the gradual abandonment of nationalist countries of a set of theoretical and practical pillars which have been constituting a key part of the duties assigned to them. No doubt, contemporary theorists, even if their analyses of globalization and its mechanisms are different in the world countries, they agree unanimously that it has effects on everybody. We see that the Islamic nation is liable to inquire about the means qualifying it to deal with such challenges from a position of power and creativity. We see that the reactivation of the self-components of the nation may be a key element for the success of this orientation. We also conceive that endowment has elements which make it the corner stone of a project of a future unity among Muslims and a safety valve of this nation which witnesses the age of globalization.

In this context, it is useful to remind that the endowment system is a vivid example of the experience developed by the Islamic experience to develop their societies. Endowments worked towards supporting the social and economic relationships of various institutions; thus constituting a component stemming from the Islamic experience through which the nation kept the unity of its peoples despite its extended geography and large area. The endowment system could establish a great network of social, cultural, and economic relationships, which created a common field through which governments cooperate with the non-governmental sectors to fulfill social needs.

No doubt, the development of the endowment sector within the last three decades included many positive aspects. We may be right if we say that the Islamic world witnessed within the last two decades an “endowment revival”, so to speak. However, we realize that this revival lacks more efforts and planning, so that the Islamic peoples may sustainably reap its benefits according to booms and occasions and so that this revival is effective in its societies.

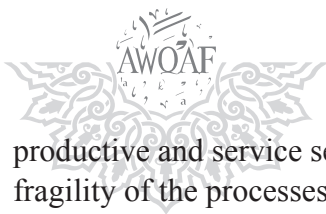
It should be noted that the contemporary endowment experience in our Islamic world is concerned significantly with meeting individual needs which are often independent from the social needs which have priority



related to achieving sustainable development. This orientation is supported by the lack of interaction between endowment institutions on the one hand and the needs of the society represented by various sectors on the other hand and considering that the relationship with the society passes through its members. This resulted in the lack of the philosophy of endowment and the essence of its activity as asserted by the historical Islamic experience, in terms of the current development of the alms concept, whether in relation to the shift from the individual level to the collective level (from giving alms for a person to giving alms for a purpose) or in relation to the qualitative shift in time through the shift of alms from being “current” to being “sustainable” (or ongoing). Consequently, this results in improving individual charitable behaviors up to the level of a social action from a broader way. Abandoning this broad prospect of endowment resulted in the conclusion that its institutions became unable to set priorities and consider the society as a gathering unity. In this context, we can say that one of the most significant problems suffered by endowment in the various Islamic countries is the lack of a strategic vision for its activities and this resulted in confusion of policies and programs, whether due to the many changes to them or the extreme routine and the lack of creativity, or due to confusion and the lack of a clear vision. This prevented the occurrence of a qualitative accumulation and consequently reduced the opportunities of actual benefits from endowment resources ⁽¹⁾.

This phenomenon is the outcome of many factors such as: the low level of making public policies, the lack of institutional traditions in this regard, the lack of an integrated vision considering endowment as a subsystem of a broader system including society movement on the various levels, and the lack of clear objectives and priorities. This negatively affects the content of the policies of endowment institutions and programs, beside the lack or fragility of coordination among them on the one hand and the

(1) One of the forms of the lack of complete benefit from endowment resources is the existence of annual surplus of endowment revenues which are not disbursed at many endowment institutions (especially, governmental endowment institutions)!



productive and service sectors on the other hand, in addition to the lack or fragility of the processes of evaluation and internal auditing.

For these reasons, we can say that the mere provision of properties and financial resources for such endowment institution is insufficient to establish the desired relationship between it and the achievement of the sustainable development, in the forefront of which is building a balanced and fair society as there must be an integrated strategy for governmental and non-governmental endowment institutions based on a clear vision. In addition, there must be agencies, institutions, and human resources necessary to implement it effectively and efficiently.

This paper attempts to focus on the importance of reconsidering the methods of thought adopted by the endowment institutions in our Islamic world when specifying their investment programs through linking endowment activity, in terms of service and investment, with an integrated project of comprehensive development, on the top of its priorities are knowledge, eliminating poverty and building a firm infrastructure.

The First Section analyzes the civil nature of endowment and its reflections on the plans of endowment institutions and, in particular, their investments. The Second Section researches the features of the contemporary US experience of endowment investments. The Third Section considers the requirements of developing investment strategic thought inside endowment institutions and re-linking to the priorities of the social system in the various Islamic countries.

1. Attempt to Specify the Social Return:

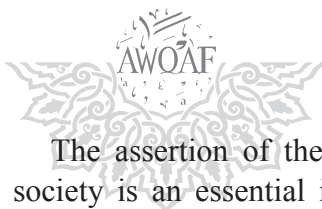
A. Endowment as a Complicated Social System:

Social analysis focuses on monitoring regular patterns in the society which aim at achieving certain objectives. In accordance with this rule, a case of the legalization of social behavior takes place in a manner consistent and harmonized with the needs of the individual and the society. In this

context, the General Systems Theory⁽¹⁾ provides a vision to understand human societies through monitoring analytical units “systems” in order to provide an integrated and holistic vision concerning the consideration of a society and its movement and consequently, concerning understanding of interaction of its total components. Social activities and functions are formed, according to this theory, in main systems and subsystems correlated through mutual relationships among all human phenomena and motivations. Such main systems and subsystems have rules which govern the relationship among them and this consistently and inconsistently affects their social outputs according to the degree of interaction with them and the degree of consistency or inconsistency among each other.

The Islamic civilization provided various mechanisms targeting to build an Islamic society whose members have mercy on each other, sympathize with each other, their hearts are harmonious and apply the image drawn by the Messenger, Muhammad, Peace and Blessing of Allah may be upon him, when he depicted believers in their relationship with each other as “a structure supporting each other”. In this context, we can consider endowment as a complicated social system working towards developing the collective behavior and directing relationships among individuals in a manner achieving the balance of the group and the sustainability of its civilized action. Therefore, endowment has been prominent among the most important subsystems emerging in the Islamic societies so that it establishes the actual relationship between the heart belief and the practical application. Hence, we can say that the most important addition of endowment in its historical experience in the Islamic societies is that it has become one of the dynamic social mechanisms of the Islamic civilization. Consequently, it could, through its various correlated fields, constitute a qualitative resource of developing the self-capacities of the Islamic societies especially in relation to building a civil environment which produces social effectiveness.

(1) Refer to Lars Skyttner , General Systems Theory , World Scientific Publication, London, 2001.



The assertion of the relationship between endowment and the civil society is an essential issue not only because it reflects its philosophy concerning the voluntary contribution of individuals to meet the needs of the society, but also because this belonging is necessary to achieve the sound balance of such society and assert the existence of various sectors and avoid the control of some of them of all institutions of the society. It is a different conception to achieve balance of societies through the interaction among qualitatively different patterns of social action. In this context, endowment emerges as one of the most important methods which on the one hand prevents the orientation of predominance in the management of societies whether by governments or private sectors, and on the other hand it provides a civil mechanism operating according to characteristics reflected on its general performance, not only in relation to the level of its final services, but also in relation to benefiting from its financial capabilities and how they are dedicated for the service of the society. Therefore, we should not limit talking about the investment of endowment capitals to the legal and juristic nature of endowment, but it is important to link it to its civil nature. Therefore, the holistic vision of the issues of developing endowment properties depends on the harmony among the methods available to invest capitals, revenues, and endowment appropriations on the one hand and the investment orientations and the type of the final returns on the other hand. This means that the issue of investment is not only related to the increase of endowment capital revenues, but also it is related to the ultimate outcome of all components of the endowment system in terms of the increase of social returns as outcomes distributed to various levels which exceed the targeted groups to include a broader and more complicated social environment.

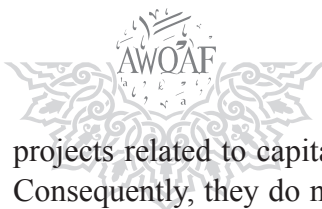
B. Investment Returns and Social Returns:

The general orientation prevalent in endowment literature focuses, when talking about investment issues, on the material return of endowment properties which could be monitored through the increase ratio of their financial revenues through economic activities related to the economic

development of the Islamic societies over their various historical stages⁽¹⁾. In the agricultural economy, as lands are a key component of endowment properties, the lease (Ijarah) of various types, for example, serves as an investment form to protect endowment capitals and face their deterioration. Moreover, this form treats some serious crises exposed by such endowment capitals. In addition, the lease is consistent with endowed properties whether they are residential (houses) or commercial (shops and bakeries). Jurists discussed important issues related to concluding the lease agreement such as term and fair rental value. In the commercial, industrial, and service economy, Murabaha and Istisna' agreements, issuing Sukuk and endowment shares, and even the Build-Operate-Transfer (B.O.T) system, methods proposed by jurists or economists, occupied the forefront. In addition, the opinions concerning the issue of specifying risks concerning endowment capitals took two tracks. The first track is represented by the proponents of the opinion of limiting risk into ranges which do not harm endowment capitals which should be protected even if returns are low, as protecting capital is more important than such high supposed returns. Consequently, they advised to avoid adventure through high risk projects which could not be expected and protected in a manner achieving endowment interests and preventing it against the risks of wasting the rights of the beneficiaries. In this context, some technical directives were given such as seeking the help of specialized investment bodies and the diversification of financial means. The proponents of the second track assert the importance of maximizing the returns of endowment profits so that its mission continues and its effect on the society is maximized. It is also possible to have an orientation open to available investment opportunities and experience risks, which may be high, but they may result in a qualitative leap of the capacities of endowments.

Although both groups of proponents did not deny the existence of a social return of endowments, they agree concerning separating investment

(1) Refer for example to Fouad Abdullah Al Umar: Investment of Endowed Capitals ... Economic Conditions and Development Requirements, the Secretariat General of Endowments, Kuwait, 2007.



projects related to capitals from social services provided by endowment. Consequently, they do not see a social role played by endowments rather than the service provided by endowment revenues for its beneficiaries. Hence, talking about social returns is general and not binding. Consequently, it is difficult to include such social returns in the planning processes ⁽¹⁾.

Predominance of this orientation may be interpreted by two components. The first component is related to the difficulty of identifying “social returns”. While the evaluation of material returns is a technical issue related to the management of capitals, which may ultimately be transformed to quantitative components, talking about social returns will be more difficult due to the interrelation of qualitative and material components at the same time. The second component is related to the before-mentioned lack of ignoring the civil nature of endowment when addressing endowment, its components, and effects. Consequently, this results in the separation of endowment and its components from the broader social environment and dealing with it as a dependent unit.

On the other side, the General System Theory helps us to link the system to its environment and to attempt to realize the entire correlations between its visible and invisible components on the one hand and between the system and other systems on the other hand. Therefore, the process of highlighting all effects and outcomes resulting from the interaction of the social system is a complicated issue. However, it is essential to understand accurately any social phenomenon.

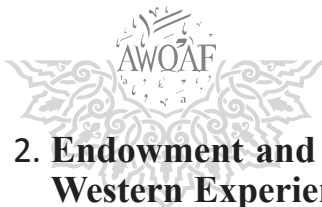
In accordance with this background, we could identify the social return of endowment through the positive outcomes on the life of individuals and social groups which are produced by endowment including both service and investment sides at the macro-level and especially in terms of the living systems related to it in three key issues: welfare, environment, and sustainability. We cannot talk about endowment in relation to its

(1) Refer also to Abdulqader Ibn Azzouz: Jurisprudence of Endowment Investment in Islam, the Secretariat General of Endowments, Kuwait, 2008.

emergence and its returns unless we take into account the achievement of its components such as investing its capitals in orientations consistent with its contents which include the values of synergy, social justice, and sustainability. The orientations of investment and the methods of developing capitals in institutions is not actually dependent, in terms of their holistic outcomes, from these values even if the announced purpose is to develop the financial returns of endowment institutions but they also assume a “social responsibility” of importance not less than that targeted by the endowment services.

In this regard, it is important to indicate that a great attention has been paid to talking about the social responsibility of investments by the western economic literature as of the sixties of the 20th century. The use of this concept started out in the relationship with private companies and economic institutions whose objectives focus on maximizing profits in order to shed light on the importance of rationalizing the economic performance of such companies and assigning them with a part of “social responsibility” through developing their investment methods and identifying their direct and indirect responsibilities concerning the effects of their decisions and activities on the society and environment. The social responsibility of any institution is based on the principle of including holistic social, environmental, and economic dimensions in its strategy to direct its investments “socially” through capital markets towards institutions (and consequently projects) which comply with meeting standards such as sustainability, validity, taking into account expectations of other social groups, interests of societies, and local development.

The western endowment experience provided practical patterns of applying the social responsibility of investment by focusing on the concept of social returns of the endowment projects. It may be useful in this regard to address some features of this experience.



2. Endowment and Investment Plans in the Contemporary Western Experiences Higher Education in USA as an Example:

Charitable work in the West depends primarily on benefiting from the changes which occurred as of the early seventies to the administrative and investment development and application of strategic thought as a key component of charitable and endowment works which took an institutional nature far from spontaneity and improvisation so that they became a basic introduction of economic and social development. It is important to assert that the wind of administrative change is not related exclusively to the Western private or governmental institutions but they are also related to the voluntary field. We can say that the current strategy of the Western experience is to go ahead with the voluntary sector to an advanced stage which included it as a key partner in making the future in this century. It is not futility to include volunteer work in the European Draft Constitution. Moreover, it is a part of a firm conviction in those societies that volunteering represents a distinct sector which has to assume a part of social responsibility. While Western Europe stepped forward in this field, the USA experience of developing endowments in the educational fields is considered a unique model deserving to consider it and monitor its important features.

The record levels in the field of donation and volunteer work in general are remarkable in the US experience. The charitable organizations of various types were up to 1,238,000 (one million two hundred thirty eight thousand) organizations in 2011 and the Americans donated in the same year USD 316.23 billion, which equals 2% of the USA Gross Domestic Product ⁽¹⁾.

(1) <https://www.charitynavigator.org/index.cfm?bay=content.view&cpid=42>

In order to give an image of the annual donations in the USA through comparisons, we can refer to the numbers of 2009. Donations total amount exceeded the individual GDP of all Arab countries except for the Kingdom of Saudi Arabia! and 12 Arab countries collectively (Bahrain, Oman, Iraq, Jordan, Syria, Yemen, Mauritania, Djibouti, Sudan, Somalia, Comoros, and Tunisia)! It equals double the GDP of the Arab Republic of Egypt! It also equals double the GDP of the United Arab Emirates! (See World Development Indicators: <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>).

These figures have indications concerning the volume of responsibility assumed by endowment institutions concerning managing such capitals. It is axiomatic that the issues of investing such capitals is tackled in financial markets and banking institutions. However, the scientific approach of this experience results in different outcomes at least in terms of conceptions and plans and strategies reflected by them.

A report published in 2007⁽¹⁾ titled “Strategies for Increasing Endowment Giving at Colleges and Universities” concluded that the main source of endowment capitals development in US colleges and universities is the donations of donors! The total endowment capitals in the higher education were up to USD 340 billion in the fiscal year 2006 to which donations contributed by more than 50%! This percentage is not confined to 2006 in particular, but it was a base of a previous study conducted by the same two researchers throughout ten years (1994 / 2003). The report did not deny the importance of the outcomes of investments managed by the institutions for their assets and the role of revenues generated by developing endowments. However, it indicates that among the three components of endowment capitals (disbursement for beneficiaries, investment outcomes, and donations), donations play the greatest role to specify the extent of the firmness and stability of any endowment institution. Consequently, it is considered as the key guarantee for such endowment institutions to achieve their societal objectives and help towards directing investments to assume their “social responsibility” through selecting investment projects of high social returns.

In this context, various US universities emerged as advanced examples of endowment institutions whose number is 1694 institutes and universities⁽²⁾. The common characteristic of these universities is that

(1) Fred Rogers and Glenn Strehle “Strategies for Increasing Endowment Giving at Colleges and Universities» Commonfund Institute, USA, 2007.

(2) In addition, endowment schools providing primary, basic, and secondary education prevail. Statistics indicate that there are 24,402 endowment schools (from kindergarten up to secondary stage)! See: Donald Stewart, Pearl Kane & Lisa Scruggz “Education and Training “, in, *The State of Non Profit America*, Lester Salamon (Editor), The Brookings, 2003, p. 107.



each of them carries the name of the main donor as an acknowledgement of his/ her pioneering role in its establishment and scientific beginning. Consequently, such universities have, as of their establishment till now, adopted the endowment forms to primarily finance them. Therefore, they are legally classified as non-profit institutions. Hence, we may call them as endowment universities as a part of the higher education sector in the USA.

Such universities assert the close relationship emerging early in the USA between endowment and the social system which extended with its historical development to the components of the infrastructure such as centers of research, health, relief, and combating poverty. In this context, Harvard University constitutes a clear case of the role played by the strategic planning in the endowment field concerning establishing the edifice of the infrastructure of the higher education in the USA through the stunning development reflected by this University and the position occupied by it in the scientific field inside and outside the USA. Since its establishment in 1636, Harvard University⁽¹⁾ launched a principle of engaging endowment as a major player in the field of higher education and nearly all universities followed this principle. Despite the simple launch of “Harvard” project, the development of it over three and half centuries is considered as a resounding success by all standards and asserts the validity of the equation of “John Harvard” which considered donation as a firm base to establish a distinct education which is not subject to the rules of supply and demand and does not entirely depend on governmental budgets, which witnessed instability in many countries including Western countries!

Like Harvard University, endowment universities in the USA rooted a close relationship between the culture of donation on the one hand and the academic field and the programs of scientific research on the other hand, so that we cannot conceive the scientific infrastructure in the USA

(1) Concerning the history of this University, see: Keller, Morton and Phyllis Keller. Making Harvard Modern: The Rise of America's University. Oxford, New York: Oxford University Press, 2001.

without endowment. Therefore, all universities, including governmental universities, do their best through programmed and studied processes to develop their endowments and launch new academic programs in order to finance them through donations in general. Hence, the strategy of institutions to develop assets depends primarily on calling for establishing new endowments through donations as any endowment institution has an authority specialized in management and development of endowments and verification that the revenues of their properties are disbursed according to their specified disbursement channels. Harvard University presents a good example of including the call for establishing endowment in the finance strategies of the US universities. This University launches apparently and transparently its strategy, and in this regard it makes use of the tax exemptions and various economic means to stimulate donors to participate in an approved program provided by the University. The University provides various programs for the public to donate based on innovation, creativity, response to the societal needs, and facilitation of the methods of donation to a large extent. This resulted in achieving great success by Harvard University on this level as its capital endowments are more than USD 32 billion⁽¹⁾, which came as an outcome of a total of 10,800 endowments donated within the decades following the establishment of the University so that it constitutes the largest academic endowment worldwide⁽²⁾. In addition, the assets of its libraries include more than 16 million volumes! The university owns also some scientific museums and 100 libraries! The most important library of them is Widner Library, which is the largest university library worldwide! The experience of Harvard University to combine this large number of endowments was not out of the blue, but it translated a long-term strategy which started out as of the date of its establishment and the successive managements worked constantly on it, which is attracting donors. The literature concerned with the history of this University asserts that a key component of evaluating the Chancellors

(1) Harvard University: Fact Book ,2009-10 Harvard University News Office, 2010, P.45.

(2) The Harvard Guide Finance : <http://www.hno.harvard.edu/guide/finance/index.html>.



of Harvard University⁽¹⁾ (and other US private universities) is based on their ability to attract new endowments for the University⁽²⁾.

On another hand, the strategies of universities related to calling for endowments are associated with the investment policies supervised by specialized economic managements. For example, Harvard University assigned this responsibility to a financial entity (The Harvard Management Company) which works independently. The assignments of this management include the optimal investment of the endowment properties along with maintaining the value of assets. It is important to remind of the losses experienced by the investments supervised by this Management as it recorded the highest losses in the history of educational investment. The University lost about 27.3% of its financial properties! This equals to USD 11 billion in one year! This amount of loss is sufficient to cause the collapse, bankruptcy or at least the hindrance of any investment project. On the contrary, it was just a transient loss as the donations flow has significantly limited the effects of such loss. Consequently, the programs of Harvard University were not affected and the University did not occupy a lower rank in the world universities ranking.

Harvard University has been protected within 2009 by its holistic strategy in developing its endowments depending on the following three components:

A. Establishing Qualitative Endowment Patterns:

The US endowment institutions, including Harvard University, worked constantly on raising the spirit of competition among each other in terms of achieving some quantitative and qualitative indicators such as the number

(1) It is important to indicate that the list of Chancellors of this University includes famous economists such as (Larry Summers) who occupied the position of the US Secretary of Treasury under President Clinton! Then, he assumed the position of Harvard University Chancellor in 2001.

(2) Pierre Buhler, Paul C. Light, Francis Charhon: «L'économie du don aux Etats-Unis, une source d'inspiration pour la France» Centre français sur les Etats-Unis, Institut Français des Relations Internationales (IFRI) , Paris, 2003. p. 14.

of their endowments, whether financial or in rem, in addition to their administrative efficiency, the types of programs, and attracting the best administrative and financial experts. These indicators are approved for determining the annual classification of the voluntary institutions⁽¹⁾. The main objective of the US endowment institutions is to provide a qualitative service qualifying them to contribute to the society advancement. Consequently, the success to achieve this objective is the method adopted by such institutions to convince donors to contribute to supporting their endowments. Hence, attention has been paid to developing endowment programs and proposing them to donors. The most famous form in this context is the “Endowment Chairs” which are considered a symbol of scientific excellence as they provide teaching and research capabilities in the academic programs. Each US university has a large number of such endowment chairs, as such universities attract donations to teach dedicated academic programs. Despite the high budget of such endowment chairs (USD 500,000 at least per each scientific endowment chair), the current number of them in many US universities asserts the fact of the record levels of donations in this country.

For example, Columbia University dedicated USD 200 million of donations received in 2009 to create 100 scientific chairs in return of USD 750,000 per chair! Harvard University currently includes 300 scientific chairs. It created 90 chairs out of them since 1959. In addition, governmental universities endeavor to activate this form and create endowment chairs. University of Minnesota is currently seeking to convince donors to establish twenty endowment chairs. Wisconsin University, which created 64 scientific chairs throughout the last four decades, endeavors in its future plan to create tens of new chairs.⁽²⁾

(1) These indicators include: Scientific publications issued by universities and winning by teaching staff of prestigious scientific awards, such as Nobel Prize, in addition to the quality of educational programs.

(2) <http://www.time.com/time/magazine/article/0,9171,837391,00.html#ixzz105M1mX5B>



In addition to donations received from inside USA, the US universities managed to finance many scientific chairs through foreign endowers, including endowers from the Islamic world. Many chairs related to Islam were created whether in terms of historical or contemporary aspects. For example, Harvard University created, since the early 20th century, the first chair for Arab studies. In 1960, Aga Khan Endowment contributed to creating “the Islamic architecture program (*Aga Khan Program for Islamic Architecture*)”. In 2005, Prince. Al Waleed Bin Talal donated an endowment to create “The Islamic Studies program (*Prince. Al- Waleed Bin Talal Islamic Studies Program*)” which includes four chairs for teaching the Islamic history and culture.

B. Dependence on Specialists in Financial and Media Fields:

Investment plans of endowment institutions are based on two coherent sides: financial experience and media experience. Fundraising programs in the US universities depend on these experiences in accordance with five-year plans primarily targeting to attract new endowments. Some institutions and authorities were established to study and evaluate the track of donation for the interest of universities through the “Index of Higher Education Fundraising Performance”, which includes 66 private and governmental universities, including US major universities such as Harvard University and Massachusetts Institute of Technology⁽¹⁾. This Index is analyzed periodically and the endowment orientations are dedicated for higher education.⁽²⁾

The universities announce the new donations at the end of each campaign to highlight their achieved success. In this regard, New York University

(1) 2013 Annual Report on Higher Education Alumni Giving Summary of Annual Fund Key Performance Indicator © 2014 | 2000 Daniel Island Drive, Charleston, SC 29492, USA.

(2) 2008 Report, which adopts the analysis of the “Index of Higher Education Fundraising Performance”, concluded that the endowment orientations of US universities experienced reduction of the number of donor institutions. Meanwhile, the rate of grants increased. See *Index of Higher Education Fundraising Performance 2008, Target Analysis*, April 2009.(www.blackbaud.com/targetanalytics).

received a property donation amounting to USD 500 million in 1994. In 1999, Vanderbilt University received USD 340 million. In addition, Rensselaer Polytechnic Institute received USD 590 million in 2001. However, these figures are not compared to donations received by major universities, as Harvard University could collect USD 2.1 billion within five years (1994 - 1999). Princeton University achieved USD 1.4 billion within 1995 - 2000. Columbia University in New York State collected within 1990 - 2000 USD 2.75 billion. John Hopkins University received USD 1.8 billion through a campaign within 6 years (2001 - 2007). Moreover, specialized bodies work on investing and distributing endowment returns according to certain laws to avoid conflict of interest and they provide annual reports, which spread the spirit of trust between donors and universities. In addition, new endowers are honored annually and achievements of attracting new endowments or providing grants are announced. At the control level, the US endowments are subject to an internal control and the tax authorities strictly control such institutions which benefit from tax exemptions. All US universities, especially endowment universities, worked constantly on posting their financial documents on their websites to be available for the public.

C. Assuming a Part of the Social Responsibility:

The available figures assert a qualitative orientation of some endowment investments of the relevant US universities towards investment levels in which the social return is prioritized whether through selecting investment projects or attracting new endowments tailored for endowers and meeting their charitable orientations. This achieves more than one objective. On one hand, the US universities invest through creating academic programs related to the issues of volunteering and related issues of donation, civil society, and public participation in managing societies. Despite the low number of the stakeholders of such programs such as private companies and economic institutions, investment in such programs has important returns in terms of the social aspect even if they are long-term rather than being of material nature. They qualify specialists to work in endowment



institutions including universities. Consequently, such investments increase the efficiency of the endowment sector on the medium and long term. On the other hand, the investment of capitals is dedicated for key issues such as SMEs, combating diseases and epidemics and alternative energy.

Talking about investing endowment capitals is related, in the Western experience, to a holistic vision of the endowment project in its various dimensions. This can be useful for endowments in the Islamic world through focus - when planning - on the issues of integration and correlation among the components of endowments at their various levels.

3. Towards a Strategic Thought for Endowment Investments in the Islamic World:

Although the concept of strategic planning emerged in the mid-seventies of the last century, it spread widely thereafter and the process of taking a decision to identify the future orientation became the primary concern for decision makers in the economic, political, and social institutions. Some endowment institutions⁽¹⁾ in our Islamic world realized the importance of this issue, as strategies were developed in which their business fields, objectives, and how to select the methods achieving their future objectives were identified. However such attempts, which are few, are disadvantaged by their adoption of the procedural orientation in the processes of strategic planning more than the idea or the holistic vision. This orientation in particular was criticized in the West since the mid-nineties of the 20th century when light was shed on the failure of the processes of strategic planning due to degradation of the strategic thought. The famous saying of the American writer Henry Mintzberg may summarize this criticism: "Strategic planning differs from strategic thinking. the first is an analysis through information and the second is synthesis ⁽²⁾." Synthesis is a process of combination and arrangement. Therefore, this requires familiarity

(1) The Secretariat General of Endowments in Kuwait may be one of the first governmental endowment institutions which followed this approach since its establishment in 1993.

(2) Mintzberg, Henry. Rise and Fall of Strategic Planning, in Harvard Business Review, 1994, January-February, p.107.



with the various dimensions of the institution, identifying the type of its relationship with other parties, detecting capabilities and points of weaknesses and identifying the general orientations irrespective of the details. Strategic thinking is in conclusion awareness of the inside and the outside at the same time.

Although the relationship between strategic planning and strategic thinking is axiomatic, the practical status quo often formulates it in procedural rules which conclude by exceeding the stage of strategic thinking and reducing its scope and access directly into the technical stages of the projects.

Despite the abnormal social movement experienced by many Islamic countries and the challenges encountered by them in this stage of their history, the endowment institutions are required - due to many necessities such as the historical necessity - to reconsider their methods, plans, and projects so that they are present in this historical moment to contribute to building the future of the countries of the Islamic world as they did in the past. In this context, we would like to say that being armed with strategic thought is more important than the mere existence of projects, programs, and plans which may be apparently sound and convincing, while they may not be the most proper or rather, the method of providing them may reduce their effectiveness and outcomes in building the future. This stage requires awareness of the status of the endowment sector and realizing the correlations between it and various other sectors in addition to understanding the key challenges encountered by the society. Therefore, the endowment institutions cannot set their strategies and plans away from the society strategy as if they are isolated islands! The risks of this orientation in the endowment sector are related to redundancy, dispersion and fragmentation of efforts, and consequently their inability to make effective social changes and this restricts the role of endowment work into narrow limits despite their juristic and legal legitimacy.

Leaders of the governmental and non-governmental endowment sector assume a major responsibility in making necessary changes inside



endowment institutions in terms of administrative, legal, and financial aspects so that plans and projects do not transform to mechanical and accounting operations. However, they have to be related to a process of hard work and organized continuous efforts based on a deep clear vision in order to enhance the performance of the endowment sector and link it to the civilization status of the Islamic societies and consequently connect endowment institutions to such effort in order to help them achieve their objectives. We think that the main features of the strategic thinking related to endowment investments are related to the following:

3.1 Asserting the Principle of Social Investment: Education Pattern:

The social approach of the topic of investing endowments enables us to include this topic as a component of the endowment system in its holistic levels and its reflections of significant roles and capabilities in the life of societies. Therefore, investment is considered as a key component of development. It provides societies with the factors of human and knowledge force. Investment is one of the means of reducing economic disparities. Moreover, it lays the foundations of sustainable development. However, the status quo of most countries of the Islamic world apparently indicates that the main investment orientations are related to projects targeting quick profit with almost full lack of social returns and a minimized extent of assuming a part of the social responsibility.

While this orientation is justified in the private sector (in terms of endeavor to maximize the material benefit), it is not consistent with the philosophy of the endowment sector. In addition, the contemporary experiences of the Western countries asserted the priority of directing endowment investments towards projects of high social returns as they mainly express the nature of endowments. Consequently, the investment orientation of the types of projects cannot be dependent from the orientations selected by the endowment institutions to develop their capitals.

For example, investment in education is a missing orientation in the endowment work although most endowments dedicate a part of



their revenues to education! The lack of contribution by endowment to education from the gate of investment and limiting its relationship with it to disbursement of revenues on individuals and institutions shall not contribute to developing one of the most important and challenging priorities for our contemporary Islamic world.

The educational map changed in the Islamic world and especially in the Arab countries through the effective reduction of the budgets of governmental education and the resulting serious effects on the quality and outputs of education. The reports of the international organizations concerned with education indicates that the Islamic world faces gaps between the outputs of the educational systems and the needs of countries in the process of economic development. Consequently, education is marked by its poor relationship with the economic growth due to the significantly low level of education. Despite all efforts exerted for literacy, the average of illiteracy in the Arab world is still double the average of illiteracy in Asia and Latin America for example!

As an inevitable result of the poor governmental educational institutions and the financial and human challenges encountered by them, a strong orientation for private (national or international) educational institutions emerged and the educational process has been included in the commercial equations! Education became one of the consumer goods subject to the economic law of supply and demand! While the experience of private education requires a deep objective evaluation, the Islamic and Arab world urgently requires strategic alternatives in the field of education which maintain the sacredness of education on the one hand and the quality of the programs provided by it and the targeted outputs on the other hand. We think that the presence of endowment in the educational field has not been paid due attention and consideration, despite its seriousness and the possibility of its contribution as a strategic partner to the educational process and its contribution to maintaining a qualitative education and building institutions of high efficiency, which participate in the advancement of their societies.



There are many evidences of the effectiveness of this orientation. On the historical side, the Islamic civilization benefited from endowment through building its educational edifices in an unprecedented manner in the history of humanity. Main educational institutions were built through an expanded use of the endowment forms. All historical evidences assert that such institutions, starting from establishing universities, schools, and Quran schools, providing the infrastructure such as libraries and school supplies, dedicating budgets for the salaries of scholars and teachers and paying grants to students, were created according to the endowment system. The Islamic societies could meet their educational needs through urging their individuals to contribute to supporting and financing such institutions which are widely spread throughout the Islamic world. The contemporary evidences of such matter are various. The voluntary sector, in the forefront of which are endowment educational institutions, occupies an important and effective position in the scientific life in the West in general and in USA in particular as we have previously indicated.

Consequently, the endowment experience provides an actual image of a rooted relationship between endowment and the education sector and any observer of the disbursement orientations of endowments, whether in our Islamic history or in the developed contemporary societies, concludes that such orientations are not generated from individual fragmented selections but they express a strategic selection which strongly relates between the main needs of an ambitious nation on one the hand and prior precise planning to employ its resources to achieve such ambition on the other hand.

The relationship between education and endowment is not limited to helping learners and institutions, despite its importance, but it is related to the vision of education as a “strategic” issue in its relation with the renaissance and progress projects. In order to achieve that, this relationship requires availability of main components which work collectively towards achieving sophisticated education according to the best of endowment abilities.



Education, including its subjects, curricula, and outputs, is a major stage in the plan of establishing the society of knowledge and a main source of the comprehensive civilization advancement. Such education has objective and qualitative determinants exceeding the informational quantity received by students in the various educational stages to teaching methods and objectives. On this ground, the educational system in each society has to control the educational outputs. Consequently, it accurately identifies the purpose of the educational process itself.

In this context and in a world overwhelmed by a huge amount of information flowing from several media, it is no longer useful that the ambition of education is to fill the minds of students with a little or large amount of information. On the contrary, it is necessary to develop educational performance to produce a creative personality able to exceed obstacles and find solutions. It is the battle of knowledge quality on which educational institutions compete in the countries which decided to join the community of knowledge. For example, the Asian tigers - since the sixties of the 20th century - took a decision to build a community of knowledge. They dedicated all capabilities and employed the legal means for this purpose. This enabled it at the end of the same century, i.e. after about four decades to be a strong party in the fields of scientific and technical creativity and consequently to compete the traditional forces (USA, Japan and Europe).

It is natural to address various accurate and difficult questions concerning the requirements of such supposed partnership and relationships between education and endowment on the strategic side, the effect of such on the contribution of the endowment sector to correcting the educational path in the Islamic world, and the contribution to answering all questions and concerns resulting from the developments of the social systems in the Islamic world. Consequently, this opened the way to find an actual alternative on a ground of strategic partnership between endowment and education in the Islamic world countries in a manner promoting their human capital and benefiting from their material wealth.



Considering the potential roles currently played by endowment in the light of political, economic, and social mobility marked by the growth of the civil society movement and the aspiration of the Muslim peoples to benefit from strengths and abilities asserts the capabilities of the endowment sector to contribute again to providing a major part of self-protection for the Islamic nation and providing an actual image of endowment interaction whether in terms of knowledge (formulating thought and philosophy of endowment according to the requirements of time and place) or in terms of mechanisms transforming ideas to social, economic, and cultural values responding to the strategic needs.

The various efforts exerted within the last three decades in the endowment fields provided strong evidences of the abounding capabilities of the contemporary endowment experience in the Islamic world especially in the light of changing the governmental agenda and the gradual withdrawal of governments from many social fields in order to provide the private sector with the opportunity to form the social and economic scene. The orientation asserted by the Western experience in the voluntary sector addresses important questions to the stakeholders and the persons working in the field of endowment investments in the Islamic world which are related to setting an investment strategy for endowment capitals which benefits from their capabilities in the context of transformations of the political, social, economic, and technical infrastructures of the countries.

3.2 Finding an Objective Relationship between Disbursement Channels of Endowments and their Investment Orientations:

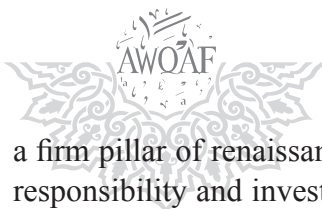
Nowadays, talking about a strategic vision for endowment investments actually leads us to the questions addressed in our Islamic world concerning the projects of renaissance, eliminating the state of weakness and fragility, and maximizing the benefit from the self-components of the nation. On this ground, we can approach the inquiry concerning the future of endowment institutions through contribution to re-balancing the country / society equation. Consequently, this results in paying attention again to all practical patterns enhancing such balance and contributing to



its achievement. Keeping balance among the components of this equation constitutes the main factor of the effectiveness of such institutions as their strength was associated with fixing social and economic safety valves which enabled their various categories to achieve a significant part of their objectives.

In this civilization context, the establishment of endowment institutions was related to a broad and open vision which enabled Muslims to realize the components of the integrated society and conclude significant reasoning translated by benefiting from endowment and its components by all social components. Consequently, the sectarian, doctrinal, religious, tribal, and ideological belongings were overridden! On the other hand, the activity of the endowment institution is marked by diversity in terms of its purposes ranging from preserving human dignity to animal welfare. Here, we are in particular concerned with the private (or civil) nature of endowment which enabled it to be an “adjuster” of the Islamic societies. Such institutions were established through a collective consideration seeking for the values of Islamic knowledge vision and their holistic purposes and particularly in their solidarity aspect and formulating such values in patterns which constituted over time and the accumulation of experiences. This is a bright aspect of the Islamic urbanization. Endowment openly interacted with the diversity related, to a large extent, to the social experience of countries formed under the Islamic rule to be a model of the active social mediator in the cultural and psychological unity of such peoples. In addition, the thought, customs, and legislations of endowment jurisprudence are available in all Islamic countries without exception in a convergent manner to a large extent on both levels of vision and practice.

While we look forward to the future of the endowment sector, it is very important to reconsider the significant orientations of the endowment investments in order to plan for a methodological case which may allow significant and multiple participation in a renaissance project which mobilizes all capabilities and benefits from creativities of the self and others. We can say, without exaggeration, that endowment may serve as



a firm pillar of renaissance projects through assuming a part of the social responsibility and investing its abilities to identify a balanced and human developmental vision. We think that bridging the relationship between the material capabilities of endowment on the one hand and the priorities of the renaissance of its societies on the other hand undergoes the processes of linking the idea of endowment disbursement channels in terms of the benefits generated by the social groups from the endowment revenues and the societal movement which may be produced by investment through the accurate selection of the projects generating high social returns.

3.3 Building Strategic Alliances to Develop Able and Capable Endowment Investments:

We think that a part of the achievements of the endowment sector is supposed to be related to infrastructure through an actual partnership with the governmental and private sectors. This requires to reconsider the endowment projects related to infrastructure (education, student support, scientific publication ... etc) and redirect them in a wider correlated framework so that such programs are reformed and combined according to an integrated strategy serving certain objectives to which institutions of the endowment sector consistently endeavor while ensuring the existence of an explicit and direct relationship with the strategic needs of the Islamic countries in the field of education. In this context, we do not think that each endowment institution can alone, however the amount of its resources, build such projects which are able to be civilization edifices affecting the buildup of generations. The current circumstances, whether in terms of economy (freedom of transferring capitals) or in terms of legislation related to establishing private and non-governmental projects, provides endowment institutions with the freedom of building new alliances with the private and public sectors in order to produce a distinct endowment educational pattern and engage endowment as an active partner through directing its investments strategically in a manner serving the issues of the nation and achieving some objectives which have not be achieved by governmental and private institutions such as:

- **Achieve Quality:** The philosophy of endowment includes sophistication and searching for the best as endowers donate their cherished capitals and present the best of their properties seeking for the satisfaction and reward of Allah. The observer of endowment deeds may apparently detect the controls set by endowers to ensure the quality of service provided by their endowments. The first reflection of endowment on social projects is to provide them in a form rather than the form of “goods”, whose prices are specified only according to supply and demand. Rather, it is related to achieving quality and providing a distinct service directly consistent with the societal objectives. This orientation may be lacked by private investments in the Islamic world. The focus of endowment investments on qualitative projects actually stems from the organic relationship between establishing endowment and providing all capabilities for its success. Consequently, the issue of quality is implicitly and explicitly supposed whether in relation to the final product (the service) or the methods of accessing them (investments).
- **Ensure Sustainability:** Financing obstacles hinder the development of public investments which face, since the end of the 20th century in most Islamic world countries, scarcity of financial sources. This enforces many of such investments to sacrifice quality such as health and education for example. As for the experience of the private sector in the Islamic and Arab world, it is generally, with few exceptions, marked by the urgent endeavor to gain material profit without exerting adequate efforts in developing and financing infrastructure. For many reasons which cannot be mentioned herein, this sector, especially in the Arab world, has not attained a stage of awareness allowing it to invest on the long term. Therefore, this sector is still following the saying of economists that “capital is a coward”! This means that once any economic shock occurs, the private sector will change the orientation of its investments from traditional goods to attractive and profitable goods and from a slack market to a promising market. So, the relationship of this sector with projects of social return is not based on firm grounds, but it is significantly affected by the occasional benefit which targets profits even if it affects quality.



Hence, endowment contribution to finding finance sources which are real, sustainable, and socially oriented within a balanced vision to invest and develop them serves as a radical solution for the issues of finance and its real capabilities to eliminate social challenges in critical issues such as knowledge, health, and the environment.

- **Engage the Society:** The principle of the contribution of endowment to solving the problems encountered by the social sectors is to assert the principle of participation of the society including its individuals and institutions to execute strategic decisions taken by governments. It is not secret to say that this orientation is currently one of the missing mechanisms in the Islamic societies which get used to depending on governments and their authorities. In their turn, governments took over most social areas. This resulted in many forms of structural imbalance which is still affecting any attempt for renaissance and progress. The social role of endowment is materialized in working towards rebuilding the self effectiveness of societies through playing distinct roles in controlling and managing endowment institutions by the various groups involved in the social activities. This orientation is more important and prioritized in the field of endowment investments in particular as the society becomes a senior partner in developing, supporting, protecting, and controlling them.
- **Focus on the Principle of Teamwork:** This principle is directly related to reviving the idea of cooperation and integration between the endowment institutions on one side and the institutions of the private and public sectors on the other side in the current time of fragile relationships among the Islamic world countries and predominance of the local concerns rather than the communication among them. The importance of teamwork is not only related to the procedural aspects, but also and primarily to the principle that modern institutions are only built through teamwork and this principle justifies the success attained by the Western countries. We have witnessed that as of the early 21st century in various universal experiences which actively move towards mass participation in building the future of the people. The observer of the status of the endowment sector will find that



the degrees of coordination and interaction among its endowment institutions inside and outside the Islamic countries are still limited.

We think that this is time for the people working in the endowment sector to think on passing to a qualitative stage investing the realized achievements and scoring a higher degree of coordination. This can be made through establishing endowment consulting firms assuming the issues of developing investments of current endowments at the international level through future planning for them and setting strategies related to building practical patterns which widely activate coordination among the Islamic countries in the field of endowment investments. The success of this type of institutions is related to their independence from governmental and non-governmental institutions and even from such institutions contributing to their establishment in order to ensure creativity and assert the idea of the endowment itself and its philosophy of achieving the independence of the endowment institution financially, legally, and administratively in a manner achieving the real objective for which they were established. However, such independence does not mean the lack of external control of such endowment institutions as such control is a part of the endowment philosophy which paid attention to the protection of endowment institutions against violation and prejudice to rights whether by the persons working inside or outside the endowment institutions. The control of the endowment institutions establishing such consulting firms is the best control. The Western experience has many examples of consulting firms which are administratively and financially independent while they are subject to the control of their founders ⁽¹⁾. In addition, the International Law went a long way to protect such type of institutions.

(1) It is very important to get acquainted with the universal experiences in this field especially in the USA, the Western countries, China, and India as such consulting firms are distributed on all strategic fields. They set policies, propose pioneering projects related to qualitative leaps and propose new orientations. The largest number of such institutions adopts the endowment form even those formed by some governments. See for example: Andrew Rich: *Think Tanks, Public Policy and the Politics of Expertise*, Cambridge University Press, New Edition, 2005.



Conclusion:

The experience of the endowment sector in the Islamic world within the last few decades demonstrated that the endowment institution is able to get developed, grow, and keep pace with the reality and its updates. It is normal that many specialists address the necessity of the reconsideration of directing endowment investments in a manner serving social priorities and opening discussion concerning the possibility of the existence of an actual investment alternative on the grounds of strategic partnership between the endowment investments and the needs of the Islamic world. It is also required to state the objective requirements helping towards their creation and sustainability and the relevant general effect on supporting the progress of the Islamic world countries in a manner achieving the promotion of their human capital and benefiting from their material wealth. It is the responsibility of various parties but it is primarily assumed by the persons working in the endowment sector and the relevant institutions in order to attain the accumulation of the endowment work, how to expand it, link it to the concerns of societal development and the importance of such in the advancement of the Muslim peoples and the realization of sustainable development. It is natural for the persons working in this sector to assume the responsibility of meeting the requirements of the success of such partnership in terms of the strategic aspect and the effect of such partnership on the contribution of the endowment sector on correcting the developmental path in the Islamic world.

Researches



LEGAL GUARANTEES OF ENDOWMENT INVESTMENTS IN THE LIGHT OF MOROCCAN ENDOWMENT CODE

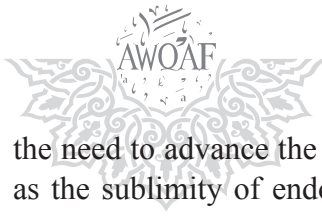
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Preface:

Investment is the basis of economic progress and the backbone of comprehensive development. Through it, money is brought out of the recess cycle to useful movement and the pace of society progress and welfare is pushed forward. No marvel then that investment attracts the attention of researchers to establish its theories and fundamentals, and no marvel that practitioners dedicate a significant part of their work to planning and programming it.

If the above importance of investment is continuously increasing, linking it with endowments has become a realistic demand imposed by





the need to advance the nation's economic and social development paths, as the sublimity of endowment mission and the importance of the roles it assumed throughout history necessitates not only its maintenance, but also increasing its return in such a way that contributes to fulfilling the terms and intentions of endowers alike and encourages other benefactors to endow, after reviewing how successful endowment is in achieving the two objectives of obtaining the satisfaction of the Creator (Almighty) and achieving the worldly interests of the beneficiaries of endowment.

It should be noted that the unique nature of endowment makes it an open regime to various investment modes within specific Sharia controls. This matter requires consideration of Sharia and economic bases of every research on endowment investment, so as to enable unification of the economic and Sharia vision on investing in endowments ⁽¹⁾. Endowment investment is the field where public economic objectives can be achieved only within Sharia controls emanating from the peculiar nature of endowment property.

From this perspective, we could define endowment investment as “a means to maintain endowment and a mechanism to increase its revenues to achieve religious and worldly objectives and fulfill the terms and intents of the endowers”. Thus, endowment investment is a field where three necessities intersect: 1) investment, being a kind of property that loses its value whenever its movement is frozen, 2) preservation of endowments which is not achieved by mere maintenance, as they must be invested and returns must be increased to ensure their continuity and 3) the benefit of the beneficiary parties and the expansion of the fields of benefit can be achieved only through integrating the endowed property into the backbone of the investment process. We are not free to order or prioritize these three objectives, as they are all necessary for the movement of endowments and

(1) Some economists hold that investment is generally “the set of monetary assets with economic nature used in the production process and leads to increase in business productivity”. See: Mohamed Hesham Khojakeyah, Principles of Economics, Dar Al Anwar, Beirut, p. 379. In this economic sense, investment is a basic mechanism of increasing income. However, limiting its function to increasing financial flows alienates it from directing the compass of values.

their sublime goals. Then, we ought to emphasize the necessity to follow Sharia controls of endowment investment, which constitute the general framework within which the endowment investment process circulates.

As the subject of this paper is the legal controls of investing endowment property, we will try to consider these controls within the same framework that governs endowments in general, i.e. Sharia controls. This, as we think, facilitates the study of overlap between legal, Sharia and economic rules governing the endowment investment.

Introduction:

Throughout the Islamic history, endowment has been a means of social and economic development, which made it penetrate many areas and meet different needs, thereby allowing us to describe it as a regime of supporting various community projects. It was assisted in this role by the efforts of jurists on establishing its relevant rules. Such rules combine strictness in protecting endowment on one hand, and openness to all methods and modes that increase its value on the other hand. It is needless to say that this duality ensures the continuity of endowment and opens the fields of benevolence within defined Sharia controls that reflect and enhance the unique nature of endowments.

Legislators formulating various endowment legislations had nothing but to consider the sublimity of this mission in all the rules framing endowments, a matter which manifests the uniqueness of this regime⁽¹⁾,

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- (1) The last paragraph of the Recitals to Moroccan Endowment Code summarizes this philosophy as follows:

“As an emphasis by our Majesty on the independence of endowments, as derived from its sheer Islamic nature, we were keen, through this Code, on maintaining its uniqueness and provide it with modern legal means that ensures its successful protection, and management regimes that facilitate its usefulness and exploitation, and investment methods that enable it to contribute to economic and social development projects and restore to it the role it has been playing throughout the history of our glorious country.”

The Moroccan Endowment Code has been promulgated under the Glorious Decree No. 1.09.236 issued on 8 Rabee Awwal 1431 AH (23 February 2010 AD), published in issue No. 5847 of the Official Gazette issued on the 1st of Rajab 1431 AH (14 June 2010 AD). The Code consists of 170 articles in five chapters: Establishment of Endowments and Consequences; Public Endowments; Subsequent and Joint Endowments; Regulation of Public Endowment Financial Affairs as well as the fifth chapter on Transitional and Concluding Provisions.





through protecting it with a set of legal guarantees that achieve its objectives and respond to its philosophy. Considering an endowment as current charity no doubt requires the provision of legal rules that ensure the renewal of benefaction and continuity of producing charity instruments. This can be achieved only by immunizing an endowment with requirements that not only consider its effects, but also start with the stage of establishing it including the establishment of its legal status and finally investing and controlling it.

The provision of legal guarantees to endowment investment is obviously important within the overall guarantees which endowment needs in general, as investment is the field where law and economics intersect. Should it be related to endowments, there would be more need to draw and integrated relationship between these two fields and Islamic jurisprudence, which is the main reference and first and foremost control of the endowment regime.

Thus, investment in general, and endowment investment in particular, requires a number of rules which role is not only limited to setting the legal foundation, but also extends to the economic support of the concerned regime. As the effect of regulating the rules on establishing endowments (whether related to the endowers, the endowed, the endowed property or the mode or formalities of its documentation) is not limited to the provision of the requirements that frame the validity of endowments, but extends to effecting the way they are invested. In addition, the effects of some protective requirements of endowment (such as the invalidity of affecting attachment on it and that it never becomes outdated as well as exempting it from taxes) extend to investment endowments, so long as they are related to its subject and returns.

We may not need many evidences to indicate the importance of establishing the legal status of any organization in the field of investment. It is only sufficient in this respect to note the focus of the investment policy of different countries on providing the legal requirements that constitute guarantees and incentives encouraging investment. Based on such, we can hardly find an investment regime reform without revision of legal rules on investment in a way that provides a firm legal infrastructure.



Despite the importance of the legal guarantees designed to protect endowment investment from risks, they cannot achieve the desired objective on their own. This is because the development of this kind of investment is conditional to the provision of another legal basis with no less importance than the said rules. This basis is one of the factors that contribute to improving the investment climate, based on the development-conducive guarantees provided by governance tools.

Realizing the importance of the relationship between the legal and economic aspects in endowment investment, Moroccan legislators adopted in the Endowment Code⁽¹⁾ an integrated approach that responds to known

(1) It is noteworthy that before issuing this Code, endowments in Morocco were governed by a number of diverse laws, over 15 decrees, the most important of which are:

- His Majesty's Decree dated on 16 Shaaban 1331 AH (21 July 1913 AD) on the Regimen for Improving the Status of Public Endowments.
- His Majesty's Decree dated on 10 Ramadan 1331 AH (13 August 1913 AD) on the Collection of Temporal Rental of Endowment Property and Disregard of Execution Orders.
- His Majesty's Decree dated on the 1st Rabee Thani 1332 AH (27 February 1914 AD) on Penalties, Tenancy, Session, Key and Decoration, as amended by His Majesty's Decree dated on 7 Ramadan 1334 AH (8 July 1916 AD) on Unbuilt Lands with Utilities.
- His Majesty's Decree dated on 3 Ramadan 1334 AH (4 July 1916 AD) on Licensing the Lease of Agricultural Lands for 2 Years through Brokerage.
- His Majesty's Decree dated on 3 Ramadan 1334 AH (4 July 1916 AD) on Licensing the Lease of Artisan Shops without Brokerage.
- His Majesty's Decree dated on 7 Ramadan 1334 AH (8 July 1916 AD) Regulating the Compensations for Endowment Estates upon which the Interest Exists.
- His Majesty's Decree dated on Rajab 1335 AH (22 May 1917 AD) Regulating the Lease of Endowment Estate for 3, 6 or 9 Years.
- His Majesty's Decree dated on the Last Day of Rabee Awwal 1336 AH (3 January 1918 AD) Regulating Control Over Private Endowments.
- His Majesty's Decree issued with the force of a Law No. 1.77.83 dated 24 Shawwal 1397 AH (8 October 1977 AD) on Private and Common Endowments.
- Decree No. 2.79.150 dated 20 Jumadah Awwal 1399 AH (18 April 1979 AD) Defining the Method of Forming the Committee Assigned with the Liquidation of Private and Common Endowments, and the executive regulation thereof.

Despite the existence of these endowment provisions, they were flawed with some formal and objective gaps which required a legislative intervention, not wholly irrelative to old provisions but amending some and maintaining the proper provisions thereof, while creating new provisions





that are consistent with the major directives of this provision. An unpublished technical card prepared by the Committee formulating the final draft of this Code, summarized these matters as follows:

Some amendments made by the Moroccan Endowment Code:

- Increasing the term of tenancy to achieve stability for the tenant and ensure similar rental value for endowments.
- Limiting the scope of liquidation to private endowments, rather than common ones.
- Restricting the term of the creation of private endowments to three categories.
- Changing the liquidation regulation and the bases upon which it is built in consistence with the will of the endower and in such way as to fill the gaps and correct the flaws of the current regulation.

Some of the new provisions in the Code:

- Referring most of the regulation requirements to regulatory provisions.
- Eliminating some of the requirements and provisions that are classified under general rules.
- Codification of Islamic Jurisprudence rules defining the main bases of endowment as well as its conditions and consequents in general.
- The prohibition of cancelling endowments, save in exceptional cases, after being limited to public endowments.
- Providing a legal method through which the Ministry can be aware of all endowment creations.
- Formulating an exact regulation to settle customary titles resulting from public endowment estates.
- Setting the legal foundations for an active regime to control endowment estates.
- Conferring the legal personality on public endowments since their creation.
- The provisions that real estate charges collected for the benefit of third parties may not be claimed from endowments regarding non-endowed properties.
- The provision for the prohibition of effecting attachment on publicly endowed property, or their acquisition by virtue of time or actual possession.
- Treating debts due to endowments as priority debts.
- Relying on actual possession in case legal possession (through registration in the real estate record) cannot be proved, and dispensing with the actual possession in case the latter is proved.



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- Treating an endowment as effective between its parties against third parties upon the conclusion of the agreement, in contrast with the Decree on Real Estate Conservation.
 - The requirement to conserve publicly endowed properties and correcting all real estate charges imposed irrelative to endowments.
 - Formulating special requirements for endowment actions in terms of capacity and applicable rules of proof that take the special nature of endowments into account.
 - Facilitating the methods of proving endowment creation (recognizing an endowment bill unless otherwise proved, recognizing the endowment deed written in the hand of the endower, proving the dispositions made on endowments by the reports written thereon).
 - Treating an appeal action submitted by public endowments as a cause for suspending the execution of appealed awards, in exception from the requirements of the Civil Code.
 - Entitling endowments to reconsider awards issued in endowment creation actions, so long as there is a proof of the endowment of the money, within 5 years from the date the award becomes final.
 - Endowed property may not be seized for public interest without the prior express consent of the government authority in charge of endowments.
 - Identification of cases in which compensation (replacement) becomes mandatory.
 - Formulating special provisions on physical compensation.
 - Regulating the lease of quarries in terms of the type and quantity of extracted material.
 - Regulating purchases made on behalf of endowments.
 - Identification of private endowment liquidation cases.
 - Regulating the accountability of private endowment guardian.
 - Entitling the Ministry of Endowments and Islamic Affairs to issue endowment bonds.
 - Entitling the Endowment Department to terminate the lease agreements of non-agricultural properties, if the endowed property is needed to establish a religious, scientific or administrative institution.
 - Regulating the rules governing the calamity affecting fruits and plants according to the Maliki school of Jurisprudence.
 - The provisions for prohibiting giving endowments by virtue of shared farming.
 - Establishing a special regime for public endowment finance that takes the special nature of endowments into account and adopts many of the legal techniques and tools used in managing the Government finances.
 - The set-up of a Supreme Public Endowment Finance Supervisory Council which



independently undertakes the higher control over the finances of public endowments and verifies the legitimacy and credibility of the revenue-creating processes and related costs.

- Exempting endowments from all taxes and charges.

Some provisions or rules maintained by the Code:

- Leasing and compensating for endowment properties through public brokerage.
- Expiry of the lease upon the expiry of its term.
- Court awards and orders on the lease of endowed properties issued for the benefit of endowments cannot be appealed.
- The title to lease, as an element of the commercial asset, may not be acquired in endowment properties.
- New customary titles cannot be created against endowed properties.

As for the formulation phases of the Code, these were as follows: two committees were formed. The first of which was entrusted with the task of formulating the preliminary draft, on which comments were made leading to the formation of a second committee which is the final draft committee.

The members of the first committee were:

- Mr. Abdul-Aziz Al Sallawi, Director of Endowments, MEIA (Chairman);
- Mr. Mohamed Al Taweel, former Professor of Islamic Law in Fez (Member);
- Mr. Saeed Dughaimer, HE Professor, Faculty of Law, Rabat, Head, Civil Code Unit (Member);
- Mr. Emhamad Al Seqilli, Former Head, Personal Status Chamber, Supreme Council (Member) and
- Mr. Abdulqader Bukhari, Head, Legislation and Endowment Control Authority, MEIA (Member)

The second committee included:

- Mr. Mohamed Al Kawwari, Director of Endowment, MEIA (Chairman);
- Mr. Abdulqader Bukhari, Head, Legislation and Endowment Control Authority, MEIA (Member)
- Mr. Abdur-Razazq Isbehi, Head of Study Unit, MEIA (Member) and
- Mrs. Majidah Al Zayani, Head, Legal Study Unit, MEIA (Member).

For more information on the actions taken to formulate the Moroccan Endowment Code and the juristic and legal rules followed in its formulation as well as the dimensions of this Code, see our book: "The Moroccan Endowment Code: A Systemic Study of Principles and Dimensions", Al Aman Publishing, Rabat, 2014.



developments in this relationship in various fields, while establishing other dimensions mainly related to striking some balance between endowment guardians, beneficiaries and those dealing with it ⁽¹⁾.

So, we will address, one by one in Argument One, the legal guarantees aiming at realizing the stability of endowment investments and safeguarding them against risks, while dedicating Argument Two to examining the guarantees that are designed to improve the climate of these investments.

Argument One

Legal Guarantees designed to safeguard endowment investments against risks

No doubt following the keenness of Islamic Shariah on the economic activity and undertaking all legitimate activities that contribute to building the society from one part and treating endowments as a tool for the fair distribution of wealth on the other part, this allows considering such money from an economic and investment perspective that achieves the objective of earth inhabitation while distributing wealth at the same time⁽²⁾.

However, the special nature of endowments imposes adhering to Shariah controls that reflect its specificity. Thus, viewing it as a continuous current charity necessitates treating the conservation of endowments⁽³⁾ as one of the most important foundations they rely on, along with developing them within the Shariah limits. No doubt, conserving endowed property cannot

(1) *Op Cit.* "The Moroccan Endowment Code: A Systemic Study of Principles and Dimensions", *ff.* 195.

(2) Referring to the Shariah controls of endowment investment, we find them ranging from respecting legitimacy to protection against risks. The legitimacy requirement is based on the special nature of endowments, which require more keenness on legitimate development that combines achieving the satisfaction of Allah and the benefit of the endowed persons. As for the protection against risks, it is, in turn, based on this special nature which shuns taking risks in risk-ridden and safety-lacking fields. Thus, the legal guarantees of endowment investments largely respect and confirm Shariah controls.

(3) It should be noted here that conservation in this context is not limited to the physical aspect of maintenance and repair, but mainly relates to the legal mechanisms that ensure this conservation.



hinder its investments. Contrarily, it is a pillar for its development in a safe environment that is free from the risks that endanger its continuity.

From another part, keeping the sublimity of endowment mission and the pioneering roles it assumed throughout the history of Islamic nation imposes on us to think hard to surround it with legal guarantees that maintains its bright image which emanates mainly from its pure religious origin.

In view of this, we will try first to examine the legal guarantees that stabilize its legal status. Then, having completed this task, we shall be able to address the guarantees provided by the legal rules framing endowments, regarding safeguarding endowment investment from reputation risk.

Section 1: Guarantees of stabilizing the legal status of endowment investments:

As the economic meaning of investment centers mainly around increasing cash flows or returns, linking this investment with endowments subjects this investment to the control of this purely Islamic regime, which, by its very nature, does not accept ignoring Shariah and value-related aspect that reflects its special characteristics. Although investment, being a tool of trading money, can serve as one of the most important pillars of the endowment regime, namely the continuity of the charity, which can be achieved only by maintaining the capital and increasing the returns, its reliance on a special legal regime cannot be limited to doubling the returns. Indeed, it is required to keep the endowment philosophy in mind and it is governed by its special controls.

Based on this, endowment investment requires reconciling the requirement of increasing returns, which generally governs investment and the necessity to take the specificities of endowed property into account, which makes it in dire need to stabilize its legal status against all that may affect its validity, especially in the documentation aspect (first issue) as well as providing the legal guarantees that can immunize the financial status of the endowed property (second issue).

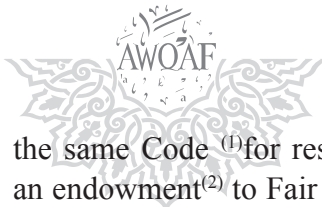


First Issue: Enhancing Documentation Guarantees of Endowments:

One cannot talk about the legal guarantees of investments without addressing the aspect of documenting endowments. It is known that the deed for documenting an endowment assumes increasing the importance due to an endowment need to establish its status at a time of receding religious deterrents, such that endowments became vulnerable to transgression and violation. While the document establishing endowment records the history of an endowment in detail and indicates its main components (the endower, the endowed and the endowed property), it also establishes a special legal and financial status of the endowment. The legal status relates to documenting all the useful data related to the main elements of an endowment, where it must be made sure that the necessary requirements of an endowment are satisfied. Securing the financial status of the endowment means documenting all the data useful for identifying an endowment in such a way that leaves no ambiguity thereto, such as designation as a property, its area, borders, the buildings and plantation it contains and the real estate costs related to it as well as its type, value and condition if it is a moveable property. We find that documenting such data ensures a good start for an endowment, thereby safeguarding it from any future challenge in a way that has positive impacts on its continuity and the ability to engage it in serving the society in a safe legal position.

Pursuant to Article 1 of the Endowment Code, an endowment is created by an agreement, a testament or by law⁽¹⁾. Such provision in the first Article of the Code for this important requirement reflects the intent of the legislators to set a general legal framework, the effect of which is not limited to the mere regulation of methods of creating endowments, so as to avoid any possible controversy regarding this issue, but also extend beyond this to safeguarding endowments against impurities that may adversely affect their validity. In addition, the provision in Article 25 of

(1) Article 1 of the Code stipulates that: “An endowment is an item of property which asset is permanently or temporarily frozen and the benefit driven from it is dedicated for a public or private charitable body. It is created by an agreement, a testament or by the force of law.”



the same Code ⁽¹⁾for restricting the eligibility to witness the creation of an endowment⁽²⁾ to Fair Witnesses (*Oudool*) can be seen as a strong legal guarantee of the validity of an endowment, thereby safeguarding it against all future allegations. It is known that Fair Witnesses practice an *ex facto* control over the agreement creating an endowment, through making sure that the main elements of the endowment and requirements therefor are satisfied. Such control starts by making sure that the endower is eligible to endow, examining the evidence which the endower provides to establish his / her ownership of the endowed property⁽³⁾, as well as making sure of the appearance of the endower in person or through a proxy to create the endowment, which requires verifying that there is a special power of attorney, as stated in Article 7 of the Code⁽⁴⁾.

- (1) Article 25 of the Code stipulates that: "Fair Witnesses shall witness the creation of an endowment. If this is impossible, the endowment creation deed signed by the endower shall be, as an exception, enough proof thereof, provided that the signature of the same is duly attested according to law.

The authentication judge shall send a copy of the deed creating the endowment, irrespective of its kind, when he is notified there of ... to the Endowment Department, with all supporting documents, No. later than eight days from the date of such notice".

- (2) Taking as an exception a deed signed by the endower and attested, pursuant to Article 25(2) of the Code, which stipulates that: "If this is impossible, the endowment creation deed signed by the endower shall be, as an exception, an enough proof thereof, provided that the signature of the same is duly attested according to the law."
- (3) Article 5 of the Code stipulates that: "an endower shall have the eligibility to donate, shall be the owner of the endowed property and shall be absolutely free to dispose thereof. Otherwise, the endowment agreement shall be invalid". In addition, Articles 6-10 provided for other rules governing endowments.

The Supreme Council has already stated that: "However, as the (...) photocopy of the endowment registration does not bear any reference to the effect that the same was owned and possessed by and under the disposition of (the endower) Haj Amohamed Al Shufani regarding the entire said land, and as he used to make all kinds of disposition on the same since he bought it, without reliance on the principle of the ownership by the endower of the endowed premise through title or purchase (...) and in the lack of proof of the ownership of the endowed premise by the endower, as stated by Islamic scholars, the argument of the Appellant (the Department of Endowments) shall be invalid." See: The Supreme Council Resolution No. 2625 dated 18/7/2005, quoted from Abdur-Razazq Isbehi, "*Trends of the Moroccan Judiciary on the Issue of Proving Endowments*", a journal article, Awqaf, issue 18, Vol. 10, Jumada Awwal 1431 AH/ May 2010, p.55.

- (4) Article 7 of the Code stipulates that: "Endowments may be created by proxy, provided that the same is a special power of attorney."

The same applies to the endowment beneficiaries, the satisfaction of their relevant requirements must be checked, especially those provided for in Article 19 of the Code⁽¹⁾, by which the legislator aimed at safeguarding endowments against invalidity due to the non-identification of a legitimate proxy for accepting on behalf of the specified endowed beneficiary. No doubt, the provision of these legal rules governing the creation of endowments provide legal guarantees for the validity of endowments, the effects of which are by no means limited to its performance, but will also extend to the provision of the suitable legal ground for investing it.

As for the endowed property, the provision for its legitimacy in such a way that ensures respect for the legal and Shariah regime that frames it remains the most important control of endowment investment. In the second section of this issue, we will illustrate the roles of these controls in maintaining the reputation of endowments in its capacity a religious and cultural heritage with special characteristics.

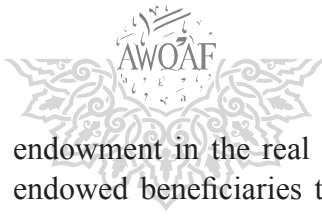
Turning to the form of endowment, we find it very important in creating an endowment and its effects, as the documentation of the endowment agreement by Fair Witnesses will overcome the practical problems resulting from the ambiguity or conflict of the wording⁽²⁾.

On another not less important aspect, namely, the possession of the endowed property⁽³⁾, pursuant to Article 26(2) of the Code, such possession shall be valid “by witnessing the evidence thereon, the registration of the

(1) Article 19 (2) stipulates that: “If the specific endowed beneficiaries lack capacity, their legal proxy shall accept on their behalf. If there is No. legal proxy, the judge shall appoint someone to accept on their behalf.”

(2) This has been observed by the Code legislators who provided for methods of solving this problem. Article 35 stipulates that “If the wording of the endowment agreement is express, the same shall be adhered to. However, if the wording is ambiguous, the intent of the endower shall be inferred, and custom and surrounding conditions may be used in this.” In addition, Article 36 of the same Code stipulates that: “If the provisions of the endowment agreement are mutually inconsistent but can be all applied, they must be combined together. Failing this, the benefit sought from the endowment shall prevail.”

(3) Article 26 of the Code defines possession as “transferring the right to dispose of and endowment from the endower to the endowed beneficiaries”.



endowment in the real estate record or by any disposition made by the endowed beneficiaries to the endowed property⁽¹⁾". It is noted here that according to the Code, the possession of an endowment may be established by three methods: checking the evidence of such possession (or "physical possession"), registering this possession in the real estate record or each disposition made by the endowed beneficiary to the endowed property (or the "*de facto*possession"). Taking the juristic rulings of possession into account, the Code legislators require that possession is made before the event that prevents an endower from disposing of their estate, as when this estate is transferred to the heirs due to death or to creditors due to bankruptcy. In addition, the Code stipulates that an endowment may only be possessed by the person appointed by the endower or the endowed beneficiary, their Shariah proxy or legal representative. Regarding a house endowed only for living, the Code requires that such house must be non-occupied by evidence thereon or by a *de facto* non-occupation. It invalidates an endowment if the endower continues to manage the endowment despite the occurrence of an event that prohibits this, save when the endower is a Shariah proxy.

No doubt, the validity of an endowment is conditional to these legal requirements which are derived from Islamic Jurisprudence (Examination

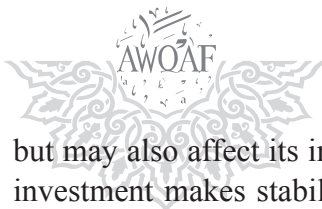
(1) The important of checking the evidence in donations has already been established. The Council has already stated that "to be valid in terms of the possession requirement, it is not enough for a donation the mere acknowledgment of the gifted beneficiary of taking over the premise unoccupied by the belongings and luggage of the donor. Fair witnesses must inspect the evacuation and possession so long as one of the requirements of the validity of a donation is its possession in the life of the donor." See: Resolution No. 4831 dated 20/10/1999, Civil File No. 347/1/4/99. Quoted from Zarouqi, Mustapha, *The Supervisory Function of the Attestation Judge over the Endowment Deed*", a journal article, Moroccan Al Qabas, special issue, "Features of the New Endowment Regime in Morocco in the Light of the Developments of the Endowment Code", issue 4, January 2013, p. 199.

of the evidence and disposition of the endowed property) ⁽¹⁾or which are inferred therefrom (registration in the real estate record). In Al Tuhfah, Ibn Assem said: "The validity of an endowment is conditional to possession". Al Tsuli commented saying *"This applies also to all donations, including gifts, charities or donation unless used to effect marriage"*. In *"Hasheyat Al Desouqi"*, commenting on Al Dardeer's view that *"whoever endows something while being healthy, even if such endowment is made to the poor, but fails to possess until one of these three prohibitories occurs (i. e., bankruptcy, death or lethal illness), such endowment shall be invalid"*. It was stated that *"donations may be made while one is healthy or ill. In both cases, the donated beneficiary may be an heir or otherwise. If donation is made while the donor is healthy and possession is made before the occurrence of the prohibitory, such donation shall be valid. Otherwise, it will be invalid, irrespective of the donated beneficiary being an heir or otherwise. If donation is made in the donor's illness, it will be treated in the same way as one third of a testament, whether possessed or not if it is not for an heir. If it is for an heir, it will be invalid, even though it is possessed, as it would be a testament for an heir, which is prohibited by Shariah."*⁽²⁾

There is no doubt that the failure to possess the endowed property will not only adversely affect the validity and continuity of the endowment itself,

(1) In this regard, Al Tsulisays: "The jusridtic school is of the opinion that it must be eye-witnessed and it is not enough to acknowledge possession by the endower and the endowed beneficiaries in contrast with the transference where acknowledgment is enough as it involves eye-witnessing. If they say in the deed "a complete possession" rather than "eye-witnessing", this would not be enough, as it is open to be interpreted as eye-witnessing and acknowledgment. If the eye-witnesses is alive, they should be inquired. If they are dead, the endowment shall be invalid unless they are scholars fully knowledgeable of the requirements of a valid witness statement. Then, it would be valid as said by Al Abdosi. If the endowed property is found under the control of the endowed beneficiary after the occurrence of the prohibitory event and the endowed beneficiary to claims possession there before, he shall not be believed unanimously as seen by Ibn Rushd unless there is a decisive proof of his claim". See: Al Tsuli, *Al Bahjah Fi Sharh AlTuhfah*, Dar Al Rashad Al Hadithah, Casablanca, Ed. 1412 AH/1991 AD, vol. 2, p, 436.

(2) Al Desouqi, Mohamed Arafah: *Al Desouky Notation on the Grand Explanation*, Dar Ehyaa Al Kotob Al ArabyaPress, Dist. House, pp 81, 82.



but may also affect its investment in the future, while the laws regulating investment makes stability (whether political, economic or legal) as one of the main foundations of any investment strategy. We think that the vulnerability of endowment assets to possible claims of invalidity due to the non-existence of possession allows us to regard this requirement as one of the most legal risks threatening the creation of endowments, which require safeguarding them with legal rules that take the juristic origin into account and provide suitable guarantees for endowment investments.

However, applying these rules to the creation of new endowments may not raise many difficulties in view of the requirement of formal documentation (that is, the notarial registration). But the problem still exists for old endowments, which lack evidence on their endowed status. We may not need to say much to prove the danger created by the lack of evidence establishing the existence of economic security upon which investment is based. Investment cannot be successful in the absence of the most important document upon which the birth of endowment investment is based.

Based on this, it is up to the entities supervising endowments to safeguard endowment investment against all that may adversely affect its stability, which requires the provision of deeds establishing endowments, whatever their kinds may be, before undertaking any investment.

Through the multiple proof modes provided by the richness of the documentary heritage, it becomes necessary to pay attention to the old endowment deeds, by maintaining them through specialists using scientific methods as well as reading and classifying them and interpreting their contents. This procedure applies to all deeds with legal authority, such as endowment deeds, endowment bills and statistical *Kananish*⁽¹⁾ addressed by the judge as well as *Lafif*⁽²⁾ certificates.

(1) i.e., books.

(2) *Lafif* certificates are notarial affidavits by a group of people. It is one of the methods of proof.

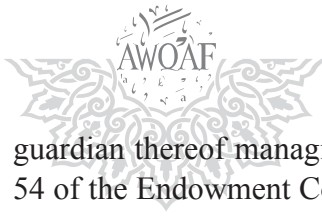
Second Issue: Immunizing the Financial Status of the Endowed Property Through Real Estate Conservation:

The system of real estate conservation is the most important legal method that secures a stable legal and financial position for a property. In view of the establishment of the legal status of the property and its owner provided by the real estate record, as well as the identification of its contents, area and charges, it represents a legal guarantee of the property against third party claims⁽¹⁾. These rules also apply to endowed properties. Indeed, the philosophy of real estate conservation is fully consistent with the endowment philosophy which is based on safeguarding it and protecting it against risks which in turn could be achieved only by providing legal guarantees sufficient to maintain it.

If we are to examine these endowment guarantees related at the same time with the system of real estate conservation, we will be required to reveal the specific nature of endowment property which justifies establishing special rules for it within the system of real estate conservation.

In view of the practical problems arising from submitting registration applications of the properties wrongly dedicated to some of the endowments guardians or even to those which belong to the Ministry of Endowments which does not own the property subject of registration but rather it is a

(1) When making a comparison between the real estate conservation system including its principles and procedures and the real estate system in the Islamic jurisprudence, it is noted that many of such principles and provisions have their origins in the books on newly-introduced juristic issues, juristic textbooks and their explanations. For more details, please see: Ibrahim Al-Hilali, Real Estate Ownership between Man-Made Laws and Islamic jurisprudence, Moroccan Magazine of Economics and Comparative Law, Issue 16, 1991, page 25



guardian thereof managing it as required by the applicable laws⁽¹⁾, Article 54 of the Endowment Code explicitly established the exclusion of public/charity endowments from the serious consequence of the irreversibility principle of real estate fees. Since “the real estate fees established for a third party’s interest do not prevent the court from considering any proceedings aiming at establishing the public endowment capacity for a registered property, provided that a lawsuit will be filed against all the enrolled assignees. In the event that the aforementioned property has been proved to be publicly entailed by virtue of a judicial decision handed down therein and acquiring the force of *res judicata*, the governor shall abolish any previous registrations and record the property with the real estate fee thereof under the Public Endowments name”.

It is noted through this Article that the Moroccan legislators expressly provided for the necessity of putting endowed properties under the custody of public endowments and correcting real estate records in which real estate properties are maintained in the name of a third party, whatever capacity this third party may have. This is fully consistent with conferring the legal independent personality on public endowments, pursuant to Article 50 of the

(1) For exempla, the registration of a property called «Makta’aKhabzo» subject of the real estate fee No. 37/2205, located in “Teesa” district, “AinA’isha” section, city of Tawnat under the endowment guardian’s name as a representative of the guardianship which has been incorporated in another guardianship and becameNo. longer an independent entity following the restructure and redistribution of guardianships later on after registration. Then, it was restored once again under the latest amendment to the Kingdom Endowment Guardianships. The entailed property named “SeediMa’rouf 9” located in the area of “Adhm”, “Awlad Amour 1” in “Al-Jadida” with the real estate fee No. 44/367 was registered under the endowment guardian of “Al-Jadida” zone as a sole owner. Examples of endowment properties which were registered under the name of the Ministry of Endowments and Islamic Affairs include an entailed property called “AbeyadhBuyazwaran” subject of the real estate fee No. 43/1572 located in “Marrakesh”, the property named “Jinan Al-zaytoun” subject of the real estate fee No. 20/9375 located in the city of “Besla”, “Tabrikt”, the Industrial District and the old mosque in “Muhamadiya” subject of the real estate fee No. 26/12880, as well as a property named “BushwaryBilklikh” subject of the real estate fee No. 20/9375 located in “Makansa” section, the district of “Aba Muhamed” village, “Tawnat” region. Refer to Isbihi “Abdul Razik”, The Civil Protection of Public Endowments in Morocco, a Ph.D. thesis on private law discussed at the Faculty of Legal, Economic and Social Sciences - Agdal, Mohammed V University, Rabat 2008. Footnote numbers: 277, 276 and 278, page 136.

Code, which stipulates that “public endowments shall have an independent legal personality since their creation. The Endowment Administration shall manage public endowments according to the provisions hereof, and it shall be the legal representative thereof.”

Looking at these two Articles in terms of their relationship with the investment of public endowments, it will be completely clear how strong is the legal guarantee provided by exempting this property from the strict application of the principle of the finality of real estate record and expressly conferring the legal personality to public endowments, with the resulting consequences of the improvement of endowment investment climate summarized as follows⁽¹⁾:

- Acknowledging the independence of the endowment financial liability from the financial liability of its guardian or person in charge of it, as well as from the financial liabilities of the endower and the endowed property. This provides a strong guarantee for public endowments in terms of the independence of their financial liabilities from those of third parties, the debts of whom are not related to the endowment, with the resulting prohibition of setting off the debts of the endowment with the debts of these persons. This independence no doubt secures for endowment investments a stable climate unthreatened by potential claims raised against endowments by a third party's rights, even though this third party is the guardian of the endowment.
- Acknowledging the independence of the endowment property from public money⁽²⁾, which reflects the specific nature of such property and makes it non-fusible in the funds of the State. Indeed, it remains totally independent from public money due to difference in nature and origin.

(1) Refer to Ali Muhie Ad-Din Al-QurrahDaghi, Endowment Debts, the events of the First Forum of Endowment Issues “Legal Commitment ... and Renovated Solutions”, organized by General Secreriat of Endowments in collaboration with the Islamic Development Bank, Kuwait, 11 – 13 2003, Edition 1, page 45.

(2) Article 134 of the Endowment Code stipulates that “Public endowments shall have their own annual budget independent from the State's public budget. Endowment budget shall be based on financial equilibrium between revenues and expenditures in accordance with the provisions of this Code and the clauses enacted for their application.



It is known how this effect provides a strong guarantee for engaging endowments in community projects within a framework of independence that reflects the originality of its system and contributes to disseminating the culture of solidarity and cooperation. Despite the importance of the role the State plays in managing the affairs of the society, the independence of endowments is still necessary to reflect the outstanding role of endowments in drawing the image of the Islamic society in the field of charitable work. We think that this independence is an incentive to those impregnated with the value of good deeds, spending money to serve the society and obtaining the satisfaction of the Creator (Azza wa Jall) as well. We may not need to say much to prove the positive effects of spreading and reviving the role of endowments on the flow of donations and increasing endowment investments.

Second Issue: Guarantees of Endowment Investment Insurance against Reputational Risks:

Insurance against risks threatening endowment investment shall not just include providing guarantees that stabilize the legal status of this investment, but it also extends to providing legal mechanisms to insure against reputational risks, which control forms a fundamental pillar that increases endowment movement and endowment investment.

The Islamic origin of endowments remains the main catalyst of all possible paths related to the life cycle of an endowment from its creation to its investment. Based on this, the requirement for investing endowments in legitimate fields (Section 1) becomes the most important control in this regard. However, such legitimacy can be viewed as a legal guarantee for endowment investment, so long as it reflects the specific nature of the endowed property and maintains its reputation.

In the same direction, the provision of guarantees to maintain the reputation of endowments is still in dire need for changing the stereotype image with which some try to describe endowment investment, namely, that it is limited to conventional projects mainly related to real estate properties (Section 2).



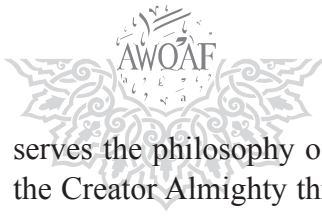
Section 1: The Requirement to Invest Endowed Property in Legitimate Fields:

As endowment is a pure Islamic system that reflects the culture of charity and altruism, the rules governing it are framed by adhering to the Islamic law. Thus, the general investment objectives of seeking methods to increase returns, or what is known as “securing the growth of the return”, cannot be taken into account on their own in endowment investment. For, the specific nature of such property necessitates strictness in the requirement of the legitimacy of endowed property and the methods or forms of its investment.

Based on this, Resolution 140 No. (6/15) on Endowment Investments, Revenues and Returns, issued by the International Council of Islamic Jurisprudence, in its 15th meeting held in Muscat (Oman) 14-19 Muharram 1425/6-11 March 2004, expressly provided for the legitimacy requirement in the first control of endowment investment, which is “investment methods shall be legitimate and in a legitimate field”.

It is the same manner adopted by the Jordanian legislator in Article 3 of the regulation on investment of endowment property, issued by virtue of Article (34) of Endowments and Islamic Affairs Law No. (32) of 2001, which specified the following: (Upon investing endowment property, the following rules should be met: A- The investment forms and fields shall be in line with the Islamic law “Shariah”, especially the legal provisions of endowment.).

The Moroccan legislator did not explicitly state that the legality condition should be met in relation to endowment investment. However, we can confirm that this condition is deemed by the Moroccan legislator to be the cardinal rule for all endowment-related matters (its creation, trading and investment); given the fact that Article No. 15 of the Law requires the legality of the endowment while Article No. 34 of the same Law stipulates observance for the endower’s requirement contingent to the condition of legality and that it is previously stated that the legality condition shall be required for the purpose of the artificial person. We believe that this



serves the philosophy of endowment which is based on getting closer to the Creator Almighty through charitable work, combining Allah's reward for the owner and the interest of the beneficiaries. It is quite natural to try to harmonize the lawful asset and the means to increase its revenues, and hence legality is required for all endowment life related matters.

Although the legality condition falls under the general rules of endowment investment as set out above, it involves a strong legal guarantee for everyone who wants to invest in the endowment field, as it establishes confidence in the endowment institution and reassures the person who invests in the endowments and who is much more concerned with gaining Allah's content than making profits.

Section 2: Expansion of the Kinds of Endowed Properties:

Muslim scholars unanimously agree on the validity of endowing properties. However, they differed otherwise due to the fact that most scholars view endowments only as being permanent. Only Imam Malik and Imamian Shiites view endowments as temporary. Based on this, Hanafi scholars required as a condition for the permanence of the endowment itself the validity of the permanence of the endowed premises, which can be achieved only for real estate properties. Shaafei and Hanbali scholars, although they admitted the endowment of moveables, they made this conditional to the suitability of this with the condition of endowment permanence.

Despite the economic importance of real estate properties, limiting endowments to these properties, with the exclusion of all other types of properties, shall deprive this institution from entering into the economic cycle that is mainly based on diversifying investment fields. The Moroccan legislators did well when they provided in Article 16 of the Code that "real estate properties, movables and all other rights can be endowed". Although the problem was not raised in old endowment codes, as they did not regulate this issue and as the endowment of movables remained governed by the Maliki School of Jurisprudence, it is noteworthy that the Code legislators respected the principle of the consistency of laws, when they provided in

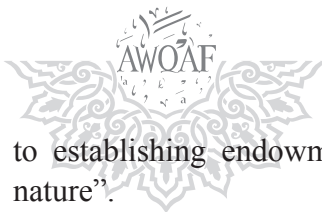


Article 23 for the permissibility of permanent and temporary endowments, which solves the problem suffered by Hanbali and Shaafei scholars due to the difficulty of reconciling the permanence of endowments and the permissibility of endowing movables.

It is also noteworthy in this regard that the said Article 16 provided for the permissibility of endowing all other rights, in a reference to openness to all investment modes that achieve the objectives of endowments and fulfill their purposes. These also can be limited only by the condition of legitimacy, such as contributing with shares in the share capital of companies and investing in securities, as well as the industrial and intellectual property rights.

Apparently, expanding the kinds of endowed property ensures involving endowments with all legitimate forms of properties in the comprehensive development, especially if we take into account the increasing importance of the value of some movable money, which out-valued real estate properties, which makes us state that it is not enough, in taking interest in endowment investments, to limit endowed property to real estate properties with the exclusion of movables as this shall paralyze the economic cycle of endowments. Leading investment experiments in the field of endowment proved that modern endowment investment forms increase endowment returns, thereby ensuring the expansion of its activities and increasing the numbers of its beneficiaries. Based on this diversification, endowments can enter into various legitimate fields, be they industrial, agricultural, scientific or financial, as well as the religious and social fields, which is seen as the most important vehicle through which endowment activity achieved its publicity and outreach.

Among the consequences of expanding the fields of endowment investment was the provision in Article 140 of the Code that “the government authority in charge of endowments may call for public charity by its own initiative and without prior permission, for the benefit of public endowments, through raising cash or in-kind donations or issuing valued bonds called “endowment bonds” the revenues of which shall be dedicated



to establishing endowment projects with religious, scientific or social nature”.

Based on this, the Minister of Endowments and Islamic Affairs issued Decision No. 68.12 on 10 April 2013, on the identification of the form of endowment bonds, method of issuing and subscription thereto and how cash and in-kind donations may be raised to establish endowment projects with religious, scientific or social nature⁽¹⁾.

In addition to the positive effects of endowment bonds on endowment returns, they are a successful means to expand the base of benefactors. For, after selecting a specific project and identifying its costs and the nominal cost of each bond, bonds are issued and offered for subscription. This method enables the endowment of a little sum of money, without the need to sums, real estate properties of movables with a high value⁽²⁾.

Thus, endowment bonds effectively contribute to spreading the culture of endowment and eliminating financial obstacles that may be used as a pretext for refraining from creating endowments. This constitutes a strong legal guarantee to improve the reputation of endowments through correcting the conventional image that some try to show to undermine the endowment ability to enter into different investment fields.

Second Argument

Legal Guarantees Aiming at Improving the Climate of Endowment Investment

In addition to the above-addressed guarantees for stabilizing the legal and financial status of the endowed property, endowment investment also needs other guarantees with no less importance which mainly relate to the provision of the conditions conducive to the financial stability of endowment (First Issue).

(1) Official Gazette, Issue 6161 dated on Shaaban 8, 1434 (June 17, 2013).

(2) Review our book “Moroccan Code of Endowment ... A Medthological Study of Bases and Dimension”, Ibid, page 220.



Good governance in this regard assumes an outstanding role in the development of infrastructures, which makes them one of the most important mechanisms that ensures good management and investment. In turn, endowment needs to develop its performance based on governance principles that are mainly based on transparency, justice and good financial and administrative management. The adoption of these tools no doubt results in increasing the efficiency of this institution and contributing to increasing its revenues.

On this basis, the Endowment Code established this direction and set a legal frame for the management of endowments, taking its special nature into account while being open to the mechanisms provided by governance to restore confidence in the endowment institution.

First Issue: The Guarantees of the Availability of Financial Stability of Endowment Conditions:

The success of the endowment investment is subject to the conditions of the financial stability thereof, which can be studied through the inadmissibility of attachment thereon (Section 1) as well as the privilege of the debts thereof (Section 2).

Section 1: The Non-Attachability of Endowment Property:

Attachment is one of the methods of mandatory execution, the kinds and formal and objective rules of which were regulated taking into account the specific characteristics of its parties, subject and cause. Although the general rule stipulates “a debtor’s money is a general guarantee for their creditors”, this did not prevent legislators from setting exceptions pursuant to which execution against debtor’s money became conditional to the specific nature of this money. Thus, cautionary and executionary attachment cannot be effected on some kinds of properties, according to



the following classifications⁽¹⁾:

- Non-attachability due to the nature and purpose of the property;
- Non-attachability in respect of the will of the donor of some form of properties;
- Non-attachability as a means of achieving certain humanistic goals;
- Non-attachability as a means of achieving the public good.

However multiple the cases of non-attachability may be and however different their conditions and the rules governing them may be, they remain subject to certain principles that set a general framework, the adoption of which has certain results. Maybe the most important rule in this regard is that “Attachment cannot be effected on something that cannot be disposed of”.

Undoubtedly, examining the attachability of endowed property will not be but examining the possibilities of wasting them. It can be said that although the subject of making up (replacement) for the endowed property ranges from absolute prohibition and conditional permissibility⁽²⁾, this establishes the principle of prohibition and does not contrast with it, so

(1) Some scholars adopt other classifications, such as the non-permissibility of absolute, relative, total or partial attachments. However, we preferred the classification set out in the body of this thesis for it is common and its elements are clear. See this in detail in our dissertation to obtain HE diploma in Civil Code under the title “Cautionary Attachment: Rules and Applications”, discussed in the Faculty of Law, Economic and Social Science, Al Hassan II University, Casablanca, Academic Year 1998-199, *ff.* 40.

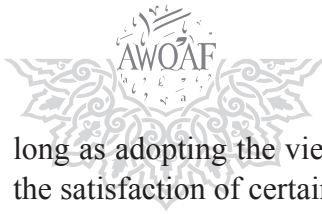
(2) Among those supporting the absolute prohibition of compensation (replacement) is Al Wazzani's saying, quoting from Sahnon, that the persistent non-inhabitation of Salaf houses is an evidence of the invalidity of their sale and that Ibn Arafah surveyed three views in this issue. The first of which was absolute prohibition which he preferred to that of Ibn Rushd as a precautionary action. See: the Maliki scholar Al Wazzani Al Mahdi, “*Tuhfat Akyas Al Nas Be-Sharh Amalyat Fas*”, p. 403. Al Abi reported that this prohibition is what is provided for in Al-Muwaziyah and Al-Utbiyyah in addition to the Code. See: Saleh Abdulsamee' Al Abi Al Azhari, “*Jawahir Al Eklil ... Exposition of the Summary of the Scholar Sheikh Khelai's Thesis on the School of Imam Malik, Imam of the House of Revelation*», Dar Al Fikr Press, p. 209.

Al Barazli reported Al Sourî's fatwa that the endowment property cannot be replaced even if there are concerns on its possible seizure and loss. He was asked about "a room endowed on top of a mosque, such that some of it is directly over the mosque and connected to an owned house. Some oppressors may live in this room staying there for long periods without rental. They may lose possession over it so that it could be rented to the commons. Now, the house owner wanted to replace this room with jars of secure water that are always abundant in the summer as in the winter. This is more useful as if the waste lying over it is removed, there shall remain a useful quantity in the room, or even more than that. Should it not be claimed by taxation, it would still be much useful. The room may partially or wholly fall apart. It may be occupied by a person who would not do anything for what is real, with the resulting fear from inflicting harm by the occupier to the neighbors... Is such replacement valid? Although, it is customary that the prices of premises occupied by an oppressor will go down, be it an endowed or owned property. Al Sourî answered: "No. This room cannot be replaced and should remain as it is." See: Al Barazly, *Al Barazly's Fatwas, "A Compendium of the Rulings on Issues as Decided by Muftis and Rulers"*, prefaced and edited by Mohamed Al Habib Al Hila, Dar Al Gharb Al Islami, Beirut, ed. 1, 2002, p. 457.

Those supporting the prohibition of replacement see that it would be invalid if made and must be terminated and nullified. In an answer made by Al Sarqusti, it was stated that "a sale of an endowed property is null and invalid. Indeed, it must be terminated and reinstated to its endowed condition before the conclusion of the sale". See: Abul Abbas Ahmed Ibn Yahya Al Wincherisi, *"Al Meyar Al Moarrab Wa Al Jame' Al Mughharreb 'An Fatawa Ahl Afriqya wa Al Andalus wa Al Maghreb"*, by a number of Muslim scholars under the supervision of Mohamed Hajji, MEIA's publications, ed. 1401 H/1991 G, vol. 7, p. 162.

The view supporting replacement, although imposing certain requirements for this process, ranges from the permissibility of in-kind replacement (that is, transference) rather than the permissibility of cash replacement (See: Al Wincherisi, *Op. Cit.*, vol. 7, p. 199), the permissibility of replacement of things other than assets (e. g., moveables) (see: Sheikh Khalil Ibn Ishaq Al Maliki, *Summary of the Scholar Khalil*, commented by Sheikh Ahmed Nasser, Al Maktabah Al Malikeyah, 1401 H/1981G, p. 252) to the permissibility of cash and in-kind replacement in real estate and moveables alike, provided that two conditions are satisfied: the existence of a cause that justifies replacement (or what is known as the apparent interest) and that replacement must be of a similar value.

For further readings, refer to the books of Fiqh and newly-introduced issues specially Al Wincherisi, *Op. Cit.*, vol. 7, pp. 209-211.



long as adopting the viewpoint that permits such disposition is subject to the satisfaction of certain conditions⁽¹⁾.

Based on the non-permissibility of disposition in the endowed property, attachment cannot be effected on such property, so long as “the prohibition of assigning it voluntarily entails its sale involuntarily, which is an apparently wise principle, as permitting its involuntary sale will not achieve the objective of prohibiting its voluntarily sale, which, in endowments, is maintaining its permanence and the interests of the charitable body it belongs to⁽²⁾”. Thus, the special nature of endowments required setting legal rules that take the religious nature and origin of this property into account, which resulted in the non-attachability of endowed property due to its non-disposability.

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- (1) The requirements of replacement have been defined in the last paragraph of Article 4 of the Resolution of the Minister of Endowment and Islamic Affairs No. 4139.12 issued on 5 Safar 1434 AH (19 December 2012) on the identification of the procedures of brokerage and RFPs and direct agreement regulations and method of their regulation related to cash replacements of endowed money, Official Gazette, issue No. 6161, 8 Shaaban 1434 AH (17 June 2013). It stipulates that “endowed property may be compensated by cash amounts in the following cases:
- If the benefit of the endowed money ceased to exist or largely decreased;
 - If it became in a condition under which it is difficult to be made use of;
 - If its revenues do not cover the costs of its maintenance and conservation;
 - If it is threatened with collapsing or prone to fall apart;
 - If its ownership is shared with third parties;
 - If the interest of endowments sorequires.”

- (2) BadawiBek (Ali), “Attachment of Endowed Premises to Pay Taxes Imposed Thereon”, a journal article, Law & Economics, Section 1, vol. 13, issue 1-2 January 1943, p. 325.

The Egyptian judiciary issued several rulings establishing the non-permissibility of the disposal of endowed property based on the permanence derived from its specific nature. In a ruling by the Egyptian Court of Cassation, the Court stated: “Really, the Appeal Court was cheated away from adopting the requirements of the Shariah rules that provide for the obligation to conserve the permanence of endowed property so that it becomes always the same, un-owned by any individual and no individual can own as well” (Mr. Mahmoud Omar Complete Works, Vol. 2, p. 162.)

In another ruling, it states that “Shariah rules provide for the obligation to conserve the permanence of endowed property so that it always remains non-disposable by any kind of dispositions” (Mr. Mahmoud Omar Complete Works, Vol. 2, p.327.).

The two rulings are referred to in the above article by BadawiBek (Ali), p. 327.

- In the same respect, see: Abu Heif (Abdul-Hameed), Execution and Caution Methods in Civil and Commercial Provisions, Al-Itmad Press, Egypt, 1923, p. 290.

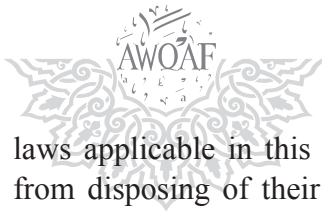


As conciliary collection of taxes does not prevent their collection mandatorily with the resulting possibility of mandatory sale, this is faced in the case of endowed property with the non-disposability save with exceptional legally and Shariah established dispositions. We have already seen that this is fully consistent with the continuity of current charity which is the essence of the endowment philosophy. This confirms non-disposability, as mentioned above and the resulting non-attachability. Thus, in Article 51 of the Code, the Moroccan legislators expressly provided that “the acquisition of the property of the status of public endowment entails their non-attachability, non-acquisition by virtue of possession or the passage of time or non-disposability, save according to the requirements provided for herein”.

In addition, Article 15 of the Code stipulates that “Regarding all dispositions, processes and operations thereof as well as all revenues related thereto, public endowments shall be exempted from any and all national and local charges and other tax deductions.” Article 87 of the same Code has already provided that “The tenant shall assume all the taxes and charges imposed on the leased property”.

These requirements as a whole undoubtedly constitute a strong guarantee for endowment investment. For, the non-attachability of this investment secures for it the stability all investment projects seek and exempting it from taxation enables it to undertake investment activities with a competitive edge.

This viewpoint is also supported by what is recorded before issuing the Endowment Code about the attachment effected by tax authorities on the current accounts of several endowment departments in the Moroccan Kingdom, after imposing taxation on endowments in violation of several



laws applicable in this regard⁽¹⁾. As this action will prevent the debtors from disposing of their money in a way that may harm their creditors, the execution of this attachment on endowment departments that used to pay compensations at that time to creditor trustees and manage a number of agricultural and other endowment investments in the urban realm created a real danger for endowment investments and the credibility of the transactions undertaken by the competent ministry.

Dire efforts were made to cancel these attachments, which result in an increasing belief in the necessity to issue a legal provision that clearly decides on this matter, without being vulnerable to any legal interpretation. For this, we think that the specific nature of endowment property which enabled it to win these legal incentive guarantees with a view to maintain it must constitute one of the strong pillars of its development through undertaking major projects that benefit the society.

Section 2: Priority of Endowment in Claiming Debts from Third Parties:

What we have said about the non-attachability as an important legal guarantee for endowment investment also applies to conferring on endowment debts the privilege of being claimed from third parties. Should

(1) This was on the background of imposing the land tax and cleanliness charge on previous years although this violates the following requirements:

- Chapter 11 of the Decree issued on 21 July 1913 on the Improvement of the Condition of Endowments, charging the tenant with the burden of paying all taxation.
- Chapter 7 of the Decree with the force of the Law on Finance for 1973 dated 8 January 1973 exempting the Department of Endowments from urban tax.
- Articles 3 and 87 of Law No. 89.37 on the Urban Tax.
- Article 29 of Law No. 89-30 on the System of Taxes due to local associations and their authorities, applied the same requirements of the urban tax to the cleanliness charge, thereby making endowments exempted from these taxes.
- Supposing the tax debts subject of the attachment are due, the requirements of Article 123 of the Royal Decree No. 15-97 on the Code of Collecting Public Debts were not respected in most of the tax claims that may relate to the 1950s.

See: our contribution to the education day organized by MEIA to endowment guardians in Morocco under the title "General Trends in the Endowment Code", Rabat, 3rd November 2010, p. 7, unpublished.



endowment prove to have debts against third parties, these debts shall assume priority when there are numerous creditors⁽¹⁾. This is due to the fact that in public or charity endowments, the title of Allah which is used to get nearer to Him is of paramount importance. In addition, these endowments relate to the rights of the endowed beneficiaries who are worthier for protection⁽²⁾. In addition, viewing these endowments from the view point of public interest it achieves for Muslims in general makes it share the said rule of priority. Again, we see this as another incentive for endowment investments in view of the strong legal guarantee it provides regarding claiming due debts in a more comfortable position than other investors who lack the coverage of a special rule in this regard.

While Article 15 of the Code creates a number of important consequences on the acquisition of property of the status of endowments, distinguishing it from other forms of properties, Article 55 of the same Code provides for treating “the debts due to public endowments as prime debts that may not be forfeited by virtue of time and the claiming of which shall assume priority after paying the debts resulting from a wife’s dowry, matrimonial enjoyment compensation (*Muta’a*) and matrimonial costs of living as well as the costs of living for children, parents and other dependents the costs of the living of whom he should assume pursuant to the provisions of the Family Code”.

(1) In varying degrees due to the existence of other protection-worthy titles. In Article 55 of the Code, it is provided that:

“Debts due to public endowments shall be treated as priority debts that may not be forfeited by virtue of time and the claiming of which shall assume priority after paying debts resulting from a wife’s dowry, matrimonial enjoyment compensation (*Muta’a*) and matrimonial costs of living as well as the costs of living for children, parents and other dependents the costs of the living of whom he should assume pursuant to the provisions of the Family Code”.

See also the Endowment Law – The Law on Collecting Rentals and Endowment Deductions for 1960 promulgated under Article 3 of the Law dated 16 Ramadan 1332 AH (16 July 1943) as amended by the Provisional Law on Islamic Endowments dated 27 Rabe’ Awwal 1331 AH, and based on Article 3 of the Law amending the Law on Islamic Endowments No. 2/55. Official Gazette, Issue No. 1496/1960-6-16.

(2) Al Maiman (Nasser Ibn Abdullah), *Endowment Debts*, a paper submitted to the First Forum of Endowment Issues, Kuwait, 11-13 October 2003, Publications of the General Secretariat of Endowments, Kuwait, p. 103.



Clearly, this privilege creates a strong legal guarantee for improving the investment climate through the provision of financial stability for endowment projects. For, the non-forfeiture of their debts by virtue of time and the possibility to claim them without no temporal limit for such claim as well as the priority they assume when there are several creditors, within the arrangement provided or by the said Article 55, achieves the objective of the stability of investments in general and endowment investments in particular.

Second Issue: Establishment of the Principle of Governance to Ensure the Proper Investment of Endowments:

According to definition of the Arab Investment and Export Credit Guarantee Corporation (DHAMAN)⁽¹⁾, the term “investment climate” means the overall circumstances and conditions that constitute the environment in which the investment process is undertaken and the positive or negative impact of these circumstances and conditions on the prospects of investment projects, and accordingly on the movement and trends of investments. It includes political, economic, social and security conditions as well as legal status and administrative regulations.

Accordingly, the elements constituting the investment climate are interrelated and interactive. They all contribute to the provision of guarantees conducive to investment. As endowments are open to all management methods based on modern legal mechanisms that provide the suitable infrastructure for good endowment investment, the most important issue in this regard remains the establishment of confidence in the endowment institution to attract more endowments. Our belief in this issue emanates from the recession that threatens the movement of endowment creation due to the lack of confidence in institutions and financial laws governing endowments.

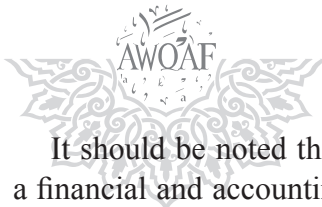
(1) Al Asraj (Hussain Abdul-Muttaieb), Integration of Development, Investment and Economic Human Rights, a presentation submitted to the 6th Arab Conference on Environmental Managemet, “*Human Development and its Effects on Sustainable Development*”, Sharm Al Sheikh, Egypt, 27-31 May 2007.
http://halasrag.blogspot.com/2013/10/blog-post_12.html

The new legal provisions that govern the financial affairs of public endowments provide the authoritative framework that guarantees the proper investment of endowments, in view of the rules and practical procedures they include, which achieve transparent and clear management and investment of endowed property (Section 1). In addition, the creation of a special authority in charge of the control over the financial affairs of public endowments shall achieve the same objective in an institutional way (Section 2).

Section 1: Establishment of Governance Principle through Authoritative Financial Laws Governing Public Endowments:

As governance is mainly based on transparency and clearness, for the first time the Code regulates the financial affairs of public endowments, beginning with the structure of their budget, revenues and expenditure items to internal control and finally to the supervisory rule assumed by the Supreme Council of Financial Control of the Public Endowments. As the body of the Code cannot accommodate all the details of the financial aspect, it refers to draft resolutions the finalization of which is entrusted to the said Supreme Council. We refer here in particular to the draft resolution on the financial and accounting system, the draft resolution on budgetary items, the draft resolution on accounting rules and the draft resolution on works, supply and service transactions concluded by endowment department on behalf of public endowments.

These reference financial texts provide methods to achieve transparency and clarity in relation to financial disclosure of all information, as the provisions of financial regulation and the identification of mechanisms necessary for book keeping give a real reflection of the current position of the endowment. This averts the misconceptions adversely affecting the required confidence in the endowment institutions and the endowment track on which the endowment investment future depends. In addition, the financial and accounting system provides appropriate mechanisms to identify the liabilities of all parties involved in the provision and implementation of the budget. This ensures transparency in the implementation of financial transactions and provides citizens with confidence concerning endowment funds.



It should be noted that the Moroccan legislator proactively developed a financial and accounting regulation for the public endowments through the Ministerial Decree No. 2685.13 issued by the Minister of Endowments and Islamic Affairs on Dhul Qa'dah 12th, 1434 AH (September 19th, 2013) enacting the Financial and Accounting Regulation of the Public Endowments⁽¹⁾. This text consists of 109 articles and it is an activation of Article 146⁽²⁾, which assigned the Supreme Council of Financial Control of the Public Endowments to develop four reference financial draft texts.

(1) The Official Gazette, Issue No. 6198, dated Dhul Hijjah 18th, 1434 AH (October 24th, 2013).

(2) Article 146 provides that:

“Management of the financial affairs of public endowments and book keeping shall be subject to special financial and accounting regulation and a compilation of accounting procedures for public endowments, each of them shall be specified by virtue of a decision taken by the governmental authority in charge of endowments, based on a proposal by the Supreme Council of Financial Control of the Public Endowments.”

Referring to this Article 158 which has enacted - for the first time in the history of Morocco - the General Framework of the Financial Control of Public Endowments, we can apparently realize the clarity of the philosophy of the draft Code in developing a new endowment regulation based on the universal approaches of transparency and governance ensuring good management and control together. This Article provides that:

“The Council shall assume the financial control of the public endowments, consider issues related thereto and express opinion regarding them, and propose all procedures aiming to ensure good management thereof in accordance with the principles of transparency and governance, thus ensuring protection and maintenance of the public endowment funds and development of sources of income thereof.

For this purpose, the Council shall practice, in addition to the powers assigned thereto in accordance with other articles of this Code, the following powers:

- Practice, upon an order by Our Majesty, all assignments of consideration and investigation of any issue related to the management of the financial affairs of public endowments and provide Our Majesty with a report of the results thereof;
- Develop a draft compilation of the annual budget related to the public endowments and the financial and accounting regulation related thereto, a compilation of accounting procedures, and the transactions regulation and submit them to the governmental authority in charge of approving them;
- Review the status of the annual financial management of public endowments, prepare an annual report of the results of such review and submit it to Our Majesty, and send a copy thereof to the Minister of Endowments and Islamic Affairs;
- Express opinion and counsel concerning issues related to the public endowments management, which are referred to the Council by the governmental authority in charge of endowments;
- And provide any proposal or recommendation aiming to improve and maintain management methods of the public endowments and develop sources of income thereof.”

Referring to Article 2 of the said resolution, we find the financial and accounting organization defined as follows:

“Financial and accounting organization of public endowment means the body of rules governing the setting and implementation of public endowment budget, controlling its financial and accounting processes, keeping its accounting books, as well as identification of the roles and responsibilities of those in charge of its implementation”.

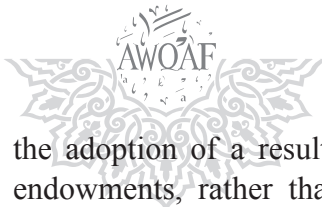
It is noted that awareness that the non-suitability of public endowment management methods to modernization requirements shall adversely affect the desired outcome of the new text, in which there is a clear desire in modernly framing endowments⁽¹⁾, has led to the provision of the legal and regulatory mechanisms required for the governance of public endowment property. It is tentative that these mechanisms shall try to respond to the requirements of modernization and synthetization through setting rules and regulations that take into account the criteria of transparency and good development of endowments. In addition, the adoption of these mechanisms would help set a strategy that allows for gradual transition from a conventional endowment financial system to a modern one that is guided by modern approaches in the management of public finance at the national and international levels and takes into account the specific nature of endowment finance and the gains achieved through past practices.

It should be noted that endowment governance cannot be achieved without the adoption of management methods that ensure good governance, which may be translated into the said authoritative provisions, through

(1) This is the wording used in the Prologue of the Code:

“As we wish to set a modern legal framework for it that enables it to cope with the comprehensive transformations witnessed by our country and takes into account its specific characteristics derived from the rulings of Islamic jurisprudence;

(...) and in confirmation by our Majesty of the independence of endowments derived from their pure Islamic nature, we opted through this Code to maintain its special nature and provide it with modern legal methods that ensure its successful protection, management systems that facilitate their good investment and exploitation and investment methods that enable them to contribute to the economic and social development projects and restore its pioneering role it assumed throughout the glorious history of our country;»



the adoption of a result-oriented budget for the management of public endowments, rather than the method-oriented approach and executive actions of financial expenditures, along with the adoption of the multi-year budget of public endowment finance, in such a way as to enable coping with major management plans of the Ministry of Endowments and Islamic Affairs⁽¹⁾.

It is noted that setting special and controllable regulations in the financial and accounting system would define the roles and responsibilities of all those involved in the management and execution of the budget so as to ensure transparency in the conclusion of financial transactions. This remains one of the most successful governance tools that inevitably contributes to improving the endowment investment climate. The identification of the mechanisms required for accounting book-keeping, for example, shall reflect a realistic picture of the current position of endowment. This, we think, meets the transparency requirement and achieves the objective of the investment which can be successful only by the adoption of the new budgetary planning approaches and enhancement of internal control over budgetary implementation.

As a budget is in essence a numeric mechanism for every institution, irrespective of the legal framework, objectives and goals, to apply the rules of the financial and accounting system, it requires relying on principles and controls that aim at establishing the bases and rules of governed management. This is due to its being a tool for the good management and administration of the institutional finance and a control tool, thereby ensuring transparency in financial disclosure. In this sense, a budget, with all the different kinds of sub-budgets, constitutes a pillar of all the programs the endowment management aims at achieving at the short, medium and long terms alike.

In order for this to be achieved, it is based on a set of principles

(1) Op Cit. "The Moroccan Endowment Code: A Systemic Study of Principles and Dimensions", p, 218.

summarized as follows:

- Setting the type of expenses and their definition within the investment or facilitation operations.
- Identification of expenses in their context and evaluation of their quantity.
- License of commitment to the allocated expenditures within the institution's management as well as the granted and authorized accreditations. This point alone represents an advanced control of commitment rather than expenditure.

It is of note that the application of these principles imposes following phases of a special characteristic in budget planning, which will govern its objectives and serve its management and control purposes. These phases are summarized as follows:

- Establishing a comprehensive vision of the developmental policy to be adopted within the coming year or years. ⁽¹⁾
- Translation of the accounting principles set out in the financial and accounting regulation of the public endowments into practical procedures.

Article No. 27 of the same law also stated that:

“Accounting laws of the public endowments’ financial management are the set of laws regulating the implementation and monitoring of the financial and accounting operations as well as the related bookkeeping. This is in addition to a set of obligations and responsibilities of the people assigned for its application.

Financial and accounting operations of the public endowments include annual budget-related operations.”

(1) It was stated in Article No. 14 of the Financial and Accounting Regulation that:

“The budget is prepared on the basis of a programming that would extend to three years for the total resources and tolerances of the Endowment Management and the method by which the programming will be set is through the governmental authority assigned with endowments.”



On another side closely related to the financial and accounting regulation of the public endowments, the Moroccan legislator issued a decree within the applied provisions of the Endowment Code of no less importance. The decree is issued by the Minister of Endowments and Islamic Affairs No. 094013 on 3 April, 2013, for the identification of the classified accounting laws of the public endowments. This decree falls within the decrees that form the financial reference for public endowments which has been authorized to the Supreme Council of Financial Control of Public Endowments by the law as per Article No. 146 of the Code.

The first Article of the Resolution of the accounting codes stated that the general objectives of this Resolution is to define “the accounting codes that show the papers and documents proving the incomes and expenses of public endowments” ⁽¹⁾

The objectives of this Resolution can be summarized as follows:

- Enacting codes that determine the responsibility of all those involved in the process of the management and implementation of the budget contributing to ensure transparency in conducting financial transactions;

(1) By reference to the provision of the Resolution of the accounting codes, we find that it divided the list of approved documents and papers attached thereto as follows:

- The first part includes the regulation of the proved documents and papers related to the incomes of public endowments (earnings of compensations, rent of agricultural and non-agricultural endowment properties, sales related to the products of trees, cereal and material of quarries).
- The second part includes the regulation of the proved documents and papers related to expenses of the public endowments.

As for the kinds of the documents and papers contained in the Resolution, they are as follows according to the second article hereof:

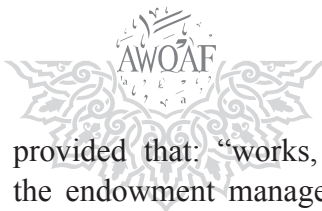
- Documents and papers to be submitted by the authorizing officer or the assistant of the authorizing officer and which support the incomes and expenses of the public endowment by which such officer is obliged and commands their implementation;
- Or the documents and papers prepared by the comptroller through his initiative;
- Or the documents and papers to be submitted by the beneficiaries of the expenses which are the subject matter of the liability or creditors;
- Or the documents and papers to be kept by the authorizing officer or the authorizing officer who is concerned with submitting the same to the control bodies according to the applicable laws.

- Unifying the concepts, procedures and documents to help the process of standardization as a key requirement in both management and control;
- Simplifying and clarifying the methods of the implementation of financial and accounting transactions by authorizing officers and comptrollers;
- Facilitating the process of compiling the financial and accounting data and subjecting the same to electronic processing.
- Clarification and facilitation of understanding the outcomes of the financial system;
- Facilitation of the preparation of annual budget and closing accounts;
- Facilitation the control and review of financial and accounting statements.

To ensure the proper governance of one of the most important fields upon which endowment investments rely, the transactions of works, supply and services concluded by the endowment management on behalf of public endowments requires, more than ever before, reliance on transparency and clearness. In this respect, public endowment transactions used to lack a legal authority⁽¹⁾, until an express provision was issued regarding the necessity for its special regulation. In Article 147 of the Code, it was

(1) Although there was no legal authority for the transactions of public endowments before the Code enters into force, the Department of Endowments used to use the help of a number of laws governing government transactions. These are:

- Decree No. 2.06.388 issued on 16 Muharram 1428 AH (5 February 2007 AD) defining the requirements and forms of government transactions, their control and management;
- The Resolution of the Minister of Economy and Finance No. 266.09 dated 2 Safar 1430 AH (29 January 2009 AD) defining the list of documents and instruments that prove proposed liabilities and government expenditure on equipment and services;
- Decree No. 1235.07.2 dated 5 Dhul-Qaadah 1429 AH (4 November 2008 AD) on the control over government expenditure;
- Royal Decree No. 66.330 dated 10 Muharram 1387 AH (21 April 1967 AD) issuing a general system for public accounting, as amended and supplemented;
- Decree No. 2,03,703 dated 18 Ramadhan 1424 AH (13 November 2003 AD) on the maturity dates and default interests on government transactions.



provided that: “works, supply and service transactions concluded by the endowment management on behalf of public endowments shall be governed by a special system to be defined by the government authority in charge of endowments based on a proposal by the Supreme Council of Financial Control of the Public Endowments.

The rules of the said system shall take into account the principles of transparency, competition and equality between competitors and advance publicity.”

In this Article, it is noted that legislators wanted to surround public endowment transactions with all the legal guarantees that can cope up with the constant development witnessed by the laws regulating public transactions. The use of the expression “transparency, competition and equality between competitors and advance publicity” may be an evidence of the legislator’s awareness of the service these principles do to governance and their absolute belief in the importance of establishing confidence in the endowment institution and those in charge of the management of endowment property.

Clearly, this Articles plays a role in establishing the principles of the governance of endowment property management and investment, as the investment climate requires realistic legal guarantees conducive to this requirement and thereby encouraging good management and investment.

To achieve this end, the Minister of Endowment and Islamic Affairs issued Resolution No. 258.13 dated 6 Zul-Qaadah 1434AH (13 September 2013) on the System of Works, Supply and Service Transactions Concluded by Endowment Management on behalf of Public Endowments⁽¹⁾. This Resolution consists of 130 Articles that constitute a strong pillar for the establishment of transparency, equality and competition.

In view of this, it is clear that the reliance by the endowment system on the general principles of governance would achieve its recognized objectives,

(1) The Official Gazette, issue No. 6198 dated 18 Dhul-Hajjah 1434 AH (24 October 2013 AD).

especially in terms of transparency and accountability, as the authoritative financial laws constitute an important tool to ensure impartiality and integrity and a successful means by which both internal and external controls are enhanced. The adoption of these mechanisms in the field of managing endowment property undoubtedly ensures maximization of confidence in the endowment institution and helps encourage the creation of endowments, the pace of which has remarkably receded.

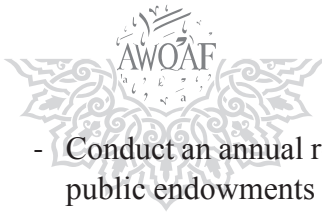
Section 2: Institutional Establishment of Governance:

Being aware of the importance of governance, Moroccan legislators not only set an authoritative framework for public endowment finance, but also created a controlling authority via a special institution, namely, the Supreme Council of Financial Control of the Public Endowments. Referring to Article 158 of the Code, we find it including a number of important requirements that are not limited to control, but extend to the establishment of governance and propose whatever would develop the endowments and improve its investment methods. Thus, the said Article provides that:

“The Council shall control the finance of public endowments, study related issues, give its opinion thereon and propose all actions that aim at ensuring its good management according to the principles of transparency and governance, so as to protect publicly endowed property, maintain it and develop its revenues.”

To this end, the Council, in addition to the powers it assumes under other Articles in the same Code, has the following powers:

- Undertake, upon by Our Majesty’s order, all examination and investigation actions regarding all issues related to the management of the financial affairs of public endowments and provide Our Majesty with a report of the results thereof;
- Develop a draft annual budget of public endowments, the financial and accounting regulations related thereto, draft accounting regulations and the transactions regulation, and shall submit them to the governmental authority in charge of endowment for approval;



- Conduct an annual review of the status of the financial management of public endowments and prepare an annual report of the results thereof and submit the same to Our Majesty, with a copy thereof sent to the Minister of Endowments and Islamic Affairs;
- Express opinion and counsel concerning issues related to the public endowments management, which are referred to the Council by the governmental authority in charge of endowments; and
- Provide proposals or recommendations aiming to improve and maintain the management methods of the public endowments and develop their revenues.”

In this Article, it is noted that Moroccan legislators entrusted the Council with investigation tasks the methods and philosophy of which are totally different from inspection tasks. For, controlling public endowment finance, studying the issued related to it and expressing opinion thereon would satisfy the governance requirement that links accountability with responsibilities, which constitutes an important legal support that is not only related to management but to development as well, in view the financial and procedural control it provides in assigning this Council the authority of proposing all procedures that aim at good management according to the principles of transparency and governance, so as to ensure the protection of publicly endowed property, maintain it and develop their revenues.

Based on this, in Article 6, Decree No 139.11.1 issued on 8 Ramadan 1432 AH (9 August 2011 AD), on the Establishment of the Bylaw of the Supreme Council of Financial Control of the Public Endowments created a “permanent committee on the development and improvement of the management methods of endowments.” Pursuant to Article 11 of the same Decree, the said Committee shall “itself or through others, undertake the task of conducting any research or study on the different development fields of public endowments and improve their revenues and management methods and shall prepare the recommendations and suggestions of the Council which are referred to the government authority in charge of endowments after being approved by the General Assembly of the Council.”



Through the tasks assigned to this Council and the close relationship between these tasks and the authoritative financial provisions, it is noted that they provide the opportunity to deepen the strategic approach and planning in the management of endowments by subjecting endowment investment filed to a strategic conception.

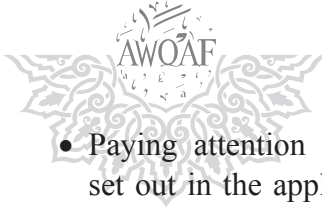
In addition, deep examination of these provisions allows us to say that they establish the subjection of investment to proactive analysis and risk-based management that safeguard endowment investments in full consistence with its special characteristics and protect endowments from undertaking unplanned investments.

Conclusion

Investment of the endowment property is one of the leading issues which attracts the attention of researchers and practitioners alike. The significance of such orientation stems from the essence of the endowment itself which is primarily based on endowing the assets and prohibiting their related transactions except under specific conditions while liquidating the benefit in a manner which guarantees the continuity of the sustainable charity. Therefore, it is necessary to maintain such assets from loss as a means to realize their noble objectives, develop and invest them in a manner which serves the general philosophy of this special legal system. Whenever the endowed properties increase and their returns are multiplied, such matter shall contribute to establishing the endowment and disseminating a cooperative culture which guarantees the solidarity of the society and the peaceful cohabitation of its components.

Taking into consideration the pioneering roles of endowment in all religious, social and economic fields which make it a significant catalyst of human development, the need for legal provisions which guarantee its optimal investment and promote it has become a dire necessity.

For this reason, we have attempted to address the legal guarantees of endowment investments through two issues and we conclude with proposing the following recommendations:



- Paying attention to the documentation aspect of endowment as set out in the applicable legal provisions in order to guarantee the protection of endowment investment against related risks.
- Increasing the rate of preserving endowment properties after providing the deeds which prove their endowment.
- Expansion of the types of endowment properties and their related investment fields in a manner which guarantees the change of the typical misconception on the endowment investment.
- Commitment to investing in Shariah-compliant fields so as to express the particularity of the endowed property and observe the requirement of good reputation.
- Activating the legal provisions which establish governance whether with regard to the public endowment properties or their control.

Our sole intention is Allah Who guides us to the straightforward path.

Researches



Investment of Endowments Shariah Bases and Economic Determinants

Dr. Al Ayyashy Al Sadeq Fadad

In the Name of Allah the Most Gracious the Most Merciful

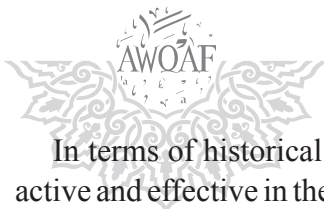
Praise be to Allah, Blessings of Allah may be on His Messenger, his wives, his companions, and their followers until the Doomsday

Introduction: Importance and Scope of the Research:

The research in the topic of the investment of endowments and its resources in terms of Shariah and economy has special importance for Shariah, historical, and financial contemporary considerations.

In terms of Shariah, the contemporary techniques, tools, and forms of investment, resource mobilization and its mechanisms to finance the investment projects, and the variety of funds and wealth all require to consider the Shariah issues related to the investment of properties of the endowments and their controls, address the significant problems and analyze them, in order to demonstrate the Shariah status regarding those issues. This will allow new opportunities for independent reasoning (Ijtihad) concerning the emerging issues related to endowments in general and concerning the investment of its resources in particular.





In terms of historical considerations, the beginning of endowment was active and effective in the social and economic life in the first Islamic era and it continued in the following Islamic eras. Endowment applications spread widely, quantitatively, and qualitatively. The Islamic civilization created forms and types of endowments which served the nation and the humanity as a whole and proved the mercy of Islam towards people. In addition, endowments could finance the most basic needs for the Islamic society in various fields, such as **the propagation of Islamic advocacy (Dawa), social care, healthcare, education**, libraries endowments, constructing roads, wells and bridges, endowment of potable water, developing cities, urbanization, and other fields.⁽¹⁾

Rationale of the Research:

In order to frame the subject of the research, we can say that the investment of endowment assets has to be in accordance with the endowed capital.

So, the purpose of the endowed capital may target to benefit directly from the endowed property, such as a house for residence, a mosque for prayer, or a grave for burial. This type of endowment could not be invested and it is only used to enable the beneficiaries (in persons and capacities) to directly benefit from such endowed property, such as benefiting through residence in a house, prayer in a mosque or burial in a grave, in accordance with the requirements of the endower. This was asserted by the resolution of the International Islamic Fiqh Academy and the recommendations of the First Endowment Forum: (The endowment assets have to be invested, whether they are real estate or movable assets, unless they are specifically

(1) For more details concerning the role of endowment in the mentioned fields, refer to Ibn Sa'd: Al Tabaqat Al Kubra, Vol. 7, Page 112-113 (Translated by: Abi Al Aaliya Al Riyahi), Al Thahabi: Siar Alam Al Nobala', Vol. 17, Page 563 (Translated by: Muhammad Ibn Essa, 431 AH.), Abu Rokba Al Saeed: Islamic Endowment and its Effect on the Social Life in Morocco, Page 244, 245, Al Tajkany Muhammad Alhabib: Mandatory Charity in Islam and its Applications in Morocco, Page 556-558, Al Sayed, Abdulmalek: the Social Role of Endowment, Page 282, 283, Waqaiya Ougly, Esmat: The Role of Endowments in the Turkish Society, and Donia, Shawqy Ahmed: The Effect of Endowment in Achieving the Comprehensive Development, Page 128.

endowed for the direct benefit”⁽¹⁾.

The purpose of endowment may be exploitation and spending revenues in accordance with the requirement of the endower, . Jurists agreed that the first duty to be met by the administrator of endowment is the endowment service, whether the endower required that or not⁽²⁾. Imam Al Nawawi said that “The duty of the administrator of endowment is the endowment service, leasing, collection of the yield and dividing it to the beneficiaries, and maintaining the assets and the yield”⁽³⁾. The administrator of endowment is authorized to assume expenditure, whether such administrator is an attorney of the endower “according to Abu Yusuf” or the poor people “according to “Muhammad”⁽⁴⁾, may Allah have mercy on them. Such Administrator of endowment is controlled in terms of infringement or negligence. His disposals are subject to interest. It was contained in Al Ashbah (The disposal of the judge within the power thereof concerning the funds of orphans, inheritances, and endowments shall be subject to interest, otherwise, it shall be invalid).⁽⁵⁾

The investment of this type of endowment is the subject of the research, whether it is real estate assets, cash money, current or investment accounts, securities (such as shares and sukuk), funds or endowment investment companies.

(1) **The Resolution of the International Islamic Fiqh Academy, the 15th Session, Muscat, 1425 AH / 2004, Resolutions, Opinions, and Recommendations of the First Endowment Juristic Issues Forum**, the investment topic, Item 3. The issue of maintenance expenses constitutes an important issue in this type of endowment which jurists detailed such as Al Ansary: Asna Al Matalib, 2/437, Al Haithami: Tohafat Al Mohatj, 6/289, Umairah and Al Borollosy: Hashiyatan, 3/110, Al Kubaisy: Endowment Rules, 2/193, Ibn Abidin, Muhammad Amin: Ajweba Motahqeqa An Asaila Motafreqa within Rasael Ibn Abidin 2/179 and Dorar Al Hokkam Sharh Ghorar Al Ahkam, 2/137, Al Sarkhasi: Al Mabsout, 6/221, Ibn Al Hammam Fath Al Qadir, Vol. 6, Page 221, 222, Al Bahoty: Kashf Al Qena', 4/266, Al Ruhaibani: Matalib Ouli Ennoha Sharh Ghaiyat Al Montaha, 4/242, 243.

(2) Refer to Al Nawawi: Rawdat Al Talebin, 5/348, Al Sherbiny: Moughni Al Muhtaj, 2/394, Al Tarabulsi: Al Esaf, Page 60, Ibn Abidin: Hashiyat Ibn Abidin, 4/366, Al Mawardi: Al Ensaf 7/67, Al Keshnawi: Ashal Al Madarek, 3/108.

(3) Al Nawawi: Rawdat Al Talebin, 5/348.

(4) Refer to Ibn Nujaim: Al Ashbah Wa Al Nathaer, Page 198.

(5) Ibid, Page 125.



As the research will address Shariah bases and the economic determinants of the investment of endowments, . It will define, at the beginning, the investment of the endowed capital and its relationship with development and finance (**Chapter 1**). Then, it will present Shariah rule concerning the investment of endowment capitals (**Chapter 2**). Then, it will address some issues on endowment investment (**Chapter 3**). Then, it will demonstrate some risks and guarantees of endowment investment (**Chapter 4**). Then, it will present forms of financing endowments (**Chapter 5**). Finally, it will present some pioneering practical experiences in some Islamic countries (**Chapter 6**). This will be as follows:

Chapter 1

Investment of Endowed Capital and its Relationship with Development and Finance

1. The Relationship between Investment and Endowment

Investment: is the effort intended to add to the already existing capital assets⁽¹⁾.

Investment of endowment capitals: is the development and increase of the endowed capitals, whether they are assets or revenues, through investment allowed methods in accordance with the Islamic Shariah ⁽²⁾.

The Islamic Shariah paid a significant attention to the investment process as it does not only maintain the current financial and human resources but it also adds to them other financial and human assets. The order to perform reconstruction in the speech of Allah “It is He Who produced you from the earth and settled you therein” ⁽³⁾ includes the meaning of development and the investment of the available resources and the sustainable endeavor

(1) Refer to Owais Muhammad Yahia: Macroeconomic Analysis, Page 113.

(2) Refer to the Resolution of the International Islamic Fiqh Academy, emanating from the Organization of the Islamic Conference, the 15th session held in Muscat, Sultanate of Oman, on Muharram 1425, March 2004.

(3) Surat Hud, Verse 61.



to increase them, in order to achieve welfare and happiness in this life and thereafter. The absolute order of Allah means obligation in accordance with the language usage⁽¹⁾. So, this requires that reconstruction includes all types of activities leading to it, such as building residences, cultivating agricultural land, paving roads, and any activity achieving reconstruction⁽²⁾. The purpose of maintaining capital is one of Shariah purposes included in the five necessities (religion, the self, offspring, mind and money). This purpose aims, among other things, to develop and invest capitals in various methods in accordance with the Islamic Shariah in order to protect them from consumption entailed by the requirements to be met by them.

Endowment - according to its definition - aims to development through building productive wealth and accumulation of capital, . Endowment indeed is a form of the investment increased and sustainable capital due to the perpetual nature of endowment⁽³⁾.

The economic content of endowment means the transformation of capital from consumption to investment of productive capitals generating revenues or benefits for the public or appropriated to a group of people in persons or capacities. This is a very important economic dimension for endowment.

II. The Relationship between Development and Endowment:

Economic development simply means the interaction between a set of forces which results in the steady increase of the real national income, which in turn results in the increase of the average income per capita⁽⁴⁾. This also means the provision of significant resources for the country for investment purposes. Endowment institution has its important role in this field, as it plays an effective role in the economic and social development

(1) Refer to Al Qurtoobi: Al Jame' Le Ahkam Quran, 4/3284.

(2) Ibid, Ibn Ashour: Al Tahrir wa Al Tanweer, 12/108.

(3) Refer to Qahf, Munzi: Endowment in the Contemporary Islamic Society, Page 23-25.

(4) Muhammad, Mahmoud Yunis, Mubarak, Abdulmoniem Muhammad: Basics of Economics, Page 404.



in the Islamic societies, as it finances various basic and public needs and services for the society and reduces the burden on economic budgets of the countries and the governments⁽¹⁾.

The idea of endowment is legislatively based on the development of the third sector, which is considered dependent from the governmental and the private sectors⁽²⁾.

So, endowment is similar to the private sector as it targets profit. It is also similar to the public sector as it pays attention to achieving the public interest and prioritizing social profitability. Therefore, it is considered a type of social property. It is not owned by a person or a country, but it is dedicated for everybody meeting the requirements of the endower⁽³⁾.

Endowment, according to its meaning and content, is considered as an economic and social institution able to play its developmental role in the society when some requirements are met, such as the existence of the will of the decision makers to activate the role of endowments, in order to achieve its entire purposes in all fields of education, health, social services, environment ... etc. In a later stage, we come to developing a strategic plan to promote the developmental role of endowment. Such plan has to be based on obvious Shariah starting points and bases while considering the requirements of the status quo and the requirements of the social and economic status of each Islamic country or society, and seriously endeavor to develop a system of the legislative regulations of endowments which has to be based on the Sunnah of the Prophet Muhammad concerning endowments and the independent reasoning of jurists which is included in their encyclopedias of jurisprudence and the rules of endowment. At the same time, this system has to be flexible and original, in order to allow broad prospects for new endowments innovated to meet the urgent needs of the society, contribute to promoting the developmental role of the endowment.

(1) Refer to Ahmed, Magzoub Ahmed: Revenues of Endowments and their Role in Meeting Public Needs.

(2) Refer to Qahf: Endowment in the Islamic Society, Page 25.

(3) Refer to Al Qari Muhammad Ibn Ali: Endowment in the Islamic Economic system, Page 14..

III. The Relationship between Endowment and Financing:

As endowment is an economic and social institution able to play its developmental role in the society, its financing status includes one of the following:

1. There may be cash surplus in the endowment institution due to the effective mobilization of resources and the failure in the disbursement of cash surplus due to the cease of some disbursement channels or due to other reasons. Hence, the institution shall play the role of the financier of the various needs of the society including health, education and other channels of charity. In addition, it finances the institutions which need finance to provide resources for their investment activities in accordance with Shariah controls and economic feasibility in order to gain profits for the endowment institution and maximize the benefits of the beneficiaries of endowments, achieve the sustainable development of the endowment institution and this will constitute an important base to classify the endowment institution as a donor institution.
2. The institution may suffer from deficit of financial resources, because most of its properties are real estate, such as plots of land or desolate houses which do not generate revenues or the endowment generates low revenues insufficient for the maintenance of the endowment and the distribution of the revenues to the beneficiaries. This results in an urgent need to reconstruct such endowments according to contemporary requirements. This, in turn, requires to have access to finance in order to invest and develop the endowment properties. In this regard, it is possible to allow partnership and cooperation with the Islamic financial institutions to have access to the necessary finance in accordance with the known types of Islamic financing or to enact a regulation or a legislation to use the surplus of some endowments to meet the urgent needs of other endowments similar to them and have the same purpose as will be indicated later.



Chapter 2

Shariah Rule Concerning Investment of Endowment Capitals

1. The Investment of endowed capital is a main purpose of endowment:

The investment of capital is a purpose of Shariah to maintain it. The purpose of maintaining capital is achieved in terms of its sustenance, including its clarity, circulation, sustainability and achieving justice concerning it. The identification of capitals means their stability and non-practice of fraud regarding them. Circulation is achieved through trading in it and refraining from garnering or monopolizing it.

Jurists inferred from the inclusive purposes special rules in the behaviors of imams, governors, and guardians, which are subject to interest. Jurists assert in this context that “the disposal by the guardian shall be subject to interest”⁽¹⁾. This is verified as the Righteous Caliphs considered the interest in the endowment and the benefit of the beneficiaries of the endowment. It was narrated that Omar Ibn Al Khattab and Othman Ibn Affan, may Allah be pleased with them, changed the form of endowment for the interest. Moreover, Omar Ibn Al Khattab did more, as he transferred Kufa old mosque to a market of dates and built an alternative mosque in another place ⁽²⁾.

Accordingly, jurists developed inclusive rules for giving Shariah opinions on the issues of endowment. They said: “Rule: giving Shariah opinion concerning endowment shall be according to the most useful benefit of it”. This rule is a branch of the rule that Shariah opinion is related and subject to the interest ⁽³⁾. Another rule also is that “The requirements

(1) Refer to Al Haithami, Ahmed Ibn Muhammad: Al Fatawa Al Fiqhiya Al Kobra, Vol.3, Page 329.

(2) Refer to Ibn Taimia: Majmou’ Al Fatawa, Vo. 31, Pager 261.

(3) Refer to Zayed Organization: Moalemat Zaed Le Al Quaed Al Fiqhiya wa Al Usouliya, 5/273.

of the endower may be violated for the benefit of the endowment”⁽¹⁾. The observer of juristic rules shall observe that there are many rules that relate the endowment rules to the interest and thus enhancing the consideration of the interest in independent reasoning on endowment rules, especially that most endowment rules are based on independent reasoning, such as: ⁽²⁾

- Endowment shall be based on the consideration of the interest.
- The disposal concerning endowment shall be according to the interest.
- An endowment of no interest is futile.

Consequently, we see that many jurists entitle the guardian to act in accordance with the interest of the beneficiaries, even if this results in the change of the features of endowment in order to increase the benefit for them and achieve the interest of the endowment⁽³⁾. Sheikh Abdullah Bin Biya justified the reason for the permissibility of the investment and development of the endowment capital in a manner benefitting the beneficiaries of the endowment by stating that the disposal of the capital of others is permissible out of need ⁽⁴⁾.

The guardian could not meet the intention of the endower by refraining from disposal of the asset, collecting revenues, and paying them to the beneficiaries, unless the asset is developed and invested, and this achieves the social and economic benefits of endowment.

II. Trading and Investment of Endowment Properties is Primarily Permissible:

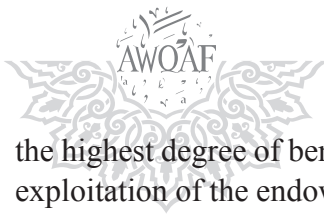
It is aforementioned that jurists decided that the duties of the guardian include developing endowment capital and paying due diligence to achieve

(1) Ibid, 9/364.

(2) Ibid, 22/409.

(3) Refer to the details of this opinion: Al Tarabulsi: Al Esaf Ala Ahkam Al Awqaf, Page 62.

(4) Sheikh Ibn Biya, Abdullah: The Effect of the Interest on Endowment, a research submitted to the 12th session of the Council of the International Islamic Fiqh Academy.



the highest degree of benefits for the beneficiaries. So, they considered the exploitation of the endowed property and the investment of it optimally as an important principle concerning the management and the guardianship of endowment.

Some jurists in various schools asserted this principle. First, they justified such issue when presenting the similarities in books, . Talking about the similarity between endowment and the partnership, they said that each of them is intended for benefiting from the surplus on the capital ⁽¹⁾. This could not be achieved except through investment and exploitation. They mentioned that the surplus of endowment may not be disbursed to poor people, but it has to be invested in buying other assets for the endowment ⁽²⁾. In addition, jurists saw that the guardian may practice trading and investment in order to achieve profits for the endowment ⁽³⁾.

In general, the permissibility of investment and the development of the endowed capitals may be supported by the following:

1. The general texts which encourage towards investing and developing capitals, such as the narration of Imam Malik that “He was told that Umar Ibn Al Khattab said that “Trade in the capitals of the orphans, in order not to be consumed by Zakat (Alms)” ⁽⁴⁾. He also narrated that he was told that Aisha, the wife of the Prophet, “was giving the capitals of orphans to traders, in order to trade in them for such orphans”⁽⁵⁾. Al Bajy said that, the saying by Umar “Trade in the capitals of orphans, “ indicates to manage and develop them, as the guardian serves as the father of the orphan, . So, such guardian is

(1) Refer to Ibn Nujaim: Al Bahr Arraeq, 5/202, Al Babarty: Al Hidayah Behamesh Al Enaya, 6/200, 201, and Damad Afandi: Majma’ Al Anhar, 1/730.

(2) Refer to Al Hamawi: Ghamz Oioun Al Basaer, 1/377. This will be applied if endowment is not for the public charities, then, it could be disbursed to poor people.

(3) Refer to Ibn Nujaim: Al Bahr Arraeq, 5/232, Damad Afandi: Majma’ Al Anhar, 1/332.

(4) Imam Malik: Al Muwatta, 1/251.

(5) Ibid.



entitled to develop and invest the capital of such orphan ⁽¹⁾.

2. The opinion of jurists on the investment of Zakat funds: this was included in the resolution of the International Islamic Fiqh Academy in Jeddah, which permitted capital investment in investment projects which are finally owned by the eligible beneficiaries of Zakat or they shall be affiliated to the legal body responsible for collection or distribution of Zakat. Such investment has to be made after meeting the urgent needs of the eligible beneficiaries and the provision of guarantees sufficient to avoid losses ⁽²⁾. So, as the funds of Zakat may be invested and they are more specific than endowments because the disbursement channels of it are specified and endowment is often allocated for public charity channels⁽³⁾, investment of endowment is more eligible to be permissible.
3. The opinion of jurists permitting assignment of funds for speculation and advances: this is the opinion of “Malikis”, a narration of Imam Ahmed selected by Sheikh of Islam Ibn Taimia, a narration of Al Ansary of the companions of Zofar, one of the Hanafis, and an opinion of some Zaidis ⁽⁴⁾. In this case, expenses of endowment will be taken from revenues and yield of endowment according to most scholars ⁽⁵⁾.

(1) Al Bajy, Abu Al Walid Sulaiman Ibn Khalaf: Al Monaqqah Sharh Al Muwatta, 2/110.

(2) Refer to the Islamic Fiqh Academy: Resolutions and Recommendation of Fiqh Academy, Page 33., Resolution No. 15 (3/3).

(3) Refer to Al Ammar: Investment of Endowment Capitals, Page 21, Al Fasy: Sharh Maiara, 2/137, Al Bahoty: Kashf Al Qena', 4/244 and Sharh Al Montaha, 2/400, Al Mawardi: Al Ensaf 7/11, Ibn Al Murtada: Al Bahr Al Zakhar, 5/152, Damad Afandi: Majma' Al Anhar Sharh Multaqa Al Abhar, 1/793.

(4) Refer to Al Fasy, Sharh Maiara 2/137, Al Bahoty: Kashf Al Qena', 4/244 and Sharh Al Montaha, 2/400, Al Mawardi: Al Ensaf 7/11, Ibn Al Murtada: Al Bahr Al Zakhar, 5/152, Damad Afandi: Majma' Al Anhar Sharh Multaqa Al Abhar, 1/739, And Abdullah Ibn Biya, Consideration of the Interest, Page 17.

(5) Refer to Al Sherbiny: Moughni Al Muhtaj, 3/556, Al Bahoty: Kashf Al Qena', 4/266, and Ibn Al Hammam Fath Al Qadir, Vol. 6, Page 222.



Chapter 3

Issues concerning the Investment of Endowment Capitals

Having reviewed issues concerning the investment of endowment capitals and its types, it turned out that the rule, in terms of detailing, varies depending on the variety of capitals and their types. We can present the important types and issues as follows:

1. Investment of the Capital with a Part of the Revenues ⁽¹⁾:

This will be undertaken by virtue of the requirement of the endower to invest or not. The requirement of the endower has to be met in both cases. This is consistent with what set out by the jurists concerning the requirements of the endowers. So, this requirement is considered by Shariah and does not contradict the requirement of endowment. The permissibility of that could be supported by the following:

1. This requirement is similar to the substitution requirement set by the endower. Jurists adopted this view, especially, when the interest of substitution is predominant as follows.
2. Jurists saw that it is permissible to exclude the yield from endowment for the benefit of the endower or anybody specified by the endower ⁽²⁾. So, as such endower may exclude from the endowment anything without any interest for such purpose for which such capital is endowed, such endower is permissible to exclude a part of the revenues and use it to develop the endowed capital⁽³⁾, in order to benefit the endowment and beneficiaries. The resolution of the

(1) Revenue refers to development, increase and yield. (Refer to Al Matrazy, Al Maghrib, Page 201, Al Nasfi: Talbat Al Talaba, 19, 146). Technically, it means the plants produced by the land, the fruits of the trees, and rent values of animals and real estate. , With regard to endowment, it means the returns of the investment of endowment assets, whether real estate, cash money, or securities ... etc (Kuwaiti Ministry of Awqaf, Encyclopedia of Jurisprudence, 23/207, 211).

(2) Refer to Alqerafi: Anwar Al Borouq fi Anwa' Al Foroq, 2/164, Ibn Taimia: Al Fatawa Al Kobra, 5/426, Ibn Al Qaiem: Elam Al Moaqien, 4/20, Al Murtada: Al Bahr Al Zakhar, 5/153, 154.

(3) Refer to Al Ammar: Investment of Endowment Capitals, Page 23.



International Islamic Fiqh Academy and the recommendations of the First Endowment Juristic Issues Forum included that: the requirement of the endower shall be met if such endower requires to develop the endowment capital with a part of revenues thereof and this will not contradict with the endowment requirement. In addition, the requirement of such endower shall also be met and nothing shall be taken from the revenues to develop the capital if such endower requires to disburse the entire revenues in the disbursement channels thereof. ⁽¹⁾

II. Investment of Revenues of Endowment:

The issue of the investment of revenues includes the following cases:

1. The endower does not require to invest or not. So, endowment in this case is free of any restrictions related to investment, as there is a requirement to invest such endowed capital or not.
2. The instrument of old endowments including requirements of the endower is lost. Both cases (1 and 2) are similar, as in the first case where the endowment instrument does not include any restriction or requirement concerning the endowed capital and the endower does not require to invest or not a part of revenues or any other financing source. In the second case, the instrument of endowment is lost. So, the requirements of the endower are unknown. This case is similar to the first case. The predominant view, Allah knows best, is the realization of the principle of the interest and to prioritize investment when there is a predominant interest for the endowment. This may be accepted, unless it is required in both cases. Sheikh Bin Biya saw

(1) The resolution of the International Islamic Fiqh Academy, the 15th session held in Muscat 1425 AH, 2004 and the recommendations of the First Endowment Juristic Issues Forum held in Kuwait on 11-13 October 2003, its activities were published under the name: the First Endowment Juristic Issues Forum: "Shariah Commitment ... and Renewed Solutions" Kuwait: the Secretariat General of Endowments, Kuwait, Jeddah: Islamic Development Bank, 1432/2012, Investment Topic, Item 4, Page 412



that this opinion could be inferred on various grounds such as ⁽¹⁾:

- A. Consideration of the predominant interest in investing endowment capital in accordance with the economic considerations rather than the need and necessity.
- B. Application of analogy based on the permissibility of speculation of the capitals of orphans. So, investing endowment capitals is prioritized.
- C. Application of analogy based on the permissibility of managing the capitals of others for a predominant interest [the resolution of the Academy and the recommendations of the Endowment Juristic Issues indicated that eligible beneficiaries have to approve the investment of revenues if such endowment is a private endowment as their right is related to it, so, they have to permit it ⁽²⁾].
- D. Consideration of the rule of “the Intention of Endower, rather than the Phrases thereof”
- E. Reference to the disposal of Umar Ibn Al Khattab concerning the capital of spoils, such as Al Sawad Land in Iraq and the Lands of Egypt and the Levant which he refused to distribute to fighters in order to invest them to provide financial resources for the public treasury ⁽³⁾.

III. Investment of the Surplus of Endowment Yield:

Surplus means the remaining revenues after the distribution of the beneficiaries’ dues and deduction of expenses and appropriations⁽⁴⁾.

(1) Consideration of Interest, Page 18-20 (Adapted and summarized).

(2) The resolution of the Academy, session 15, and the recommendations of the First Forum, the Investment Topic.

(3) The act of Umar Ibn Al Khattab in the Lands of Iraq is known. The disagreement regarding it could be reviewed in Al Mawardi: Al Ahkam Al Sultaniya, Page 644, Al Tahawi: Sharh Maany Al Athar 3/247, and Al Ammar: Investment of Endowment Capitals, Page 22, concerning his quotation of this narration.

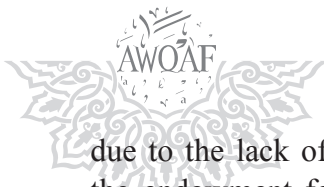
(4) Refer to the Resolution and Recommendations of the First Endowment Issues Forum (Investment), Item 6.

Primarily, the revenues of endowment have to be distributed to eligible beneficiaries in accordance with the requirements of endowers. But, when there is abundance in the revenues of endowment yields due to their great increase, lack of the number of beneficiaries, cease of some charity channels for which it is endowed, low management and maintenance expenses ... etc and this results in undistributed surplus, can such surplus be invested through purchase of assets related to such endowment? Can such assets be endowed and their revenues are disbursed for the purposes of the original endowment or for any public charity channels as an investment of surplus? Jurists have various orientations in this regard, such as:

1. Investment of surplus is permissible if the capital is exclusively endowed for a mosque. Shaafa'is see that if there is surplus of endowment revenues, the guardian may trade in it if it is endowed for a mosque, as it is considered exclusively a free capital.
2. Investment of surplus shall be entirely permissible whether endowment is dedicated for a mosque or any other disbursement channel. In this case, it shall not be disbursed for various public charity channels, such as poor people. In addition, a surplus of an endowment shall not be disbursed for another endowment, whether or not the endower of both endowments is one person⁽¹⁾, but the person in charge of such surplus shall buy other assets which revenue shall be disbursed for the beneficiaries of the endowment. Such bought assets shall not be considered as endowment as it may be sold ⁽²⁾.
3. Surplus shall be invested, even if the endowment is for a mosque as the administrator shall buy a real estate with such surplus and if the ruler sees to assign it for a certain channel, it shall be an endowment. This opinion was taken from Imam Al Ghazali and it was criticized as it is impermissible, as the endower does not own it completely. Even if there is endowment without owner, this is also impermissible

(1) Refer to Al Hamawi: Oioun Al Basaer, 1/377.

(2) Ibn Al Hammam Fath Al Qadir, 6/240, Al.Tarabulsi: Al Esaf, Page 60, Al San'any: Al Taj Al Mozhab, 3/326, Al Manawi: Taiseer Al Woqouf, 2/316, 317.



due to the lack of necessity as in this case and the assignment of the endowment for the mosque shall be prioritized ⁽¹⁾. This issue was controversial among jurists of Malikis⁽²⁾. The resolution of the Fiqh Academy and the First Endowment Juristic Issues Forum included the permissibility of investing the surplus of revenues after distribution of revenues due to beneficiaries and deduction of expenses and appropriations. ⁽³⁾

IV. Investment of Appropriations and Accumulated Funds of Revenues:

Appropriations in endowment are funds set aside from revenues in return of assets depreciation “depreciation appropriation”, maintenance, reconstruction, debts due to endowments on third parties, which are “bad debts” ⁽⁴⁾. Such appropriations are proportions deducted from the revenues according to requirements of the accounting rules and conventions. **Accumulated funds** are accumulated revenues which disbursement has been delayed for any reason. It is clear that appropriations are funds set aside for endowment to repair and maintain it for its sustainability in order to achieve the purpose of endowment based on the sustainability of the capital and the consecration of benefit. Accumulated funds are also the funds which have not been disbursed as well as similar funds such as the value of guaranteeing endowment damages and grabbing. So, such funds belong to the endowed capital and will be treated as such capital in terms of its investment ⁽⁵⁾. This was asserted by the resolution of the Academy and the Endowment Issues Forum as they included the permissibility of investing such appropriation and accumulated revenues and treating them

(1) Al Manawi: Taiseer Al Woqouf, 2/316, 317.

(2) Ibn Biya, Consideration of Interest, Page 17, Refer to Alwinshirisy: Al Miyar 7/187, and Al Rahouny: Hashiyat Al Rahouny: 7/150, 151.

(3) The Resolution of the International Fiqh Academy, session 15, and the opinions of the First Forum, Investment Topic, Item 6.

(4) Al Shuiyb, Khalid Andullah: Investment of Endowment Capitals, Page 9.

(5) Ibid.

as if they had been the capital ⁽¹⁾.

Shariah Controls on the View of the Permissibility of Investing Endowment Capitals:

At the end of this chapter, we find that the most forms referred to above indicates that the predominant attitude of the permissibility of investment is apparent and prominent. This does not absolutely mean that investment is permissible without restrictions or controls. However, the view of permissibility of the investment requires accurate controls summarized as follows ⁽²⁾:

1. Investment has to be a permissible business in accordance with Shariah. The guardian or the endowment board may not deposit endowment capital to earn usury interests, invest in usury bonds, or purchase shares in companies which business is forbidden. For companies which business is permissible and subject to transactions of bids and tenders, the Shariah Committee of the Endowment Authority or any other body may consider and decide on that as required.
2. Considering the requirements of the endowers in terms of restricting guardians concerning the investment of endowment properties and if such endower required a certain form of investment which has to be applied, as the word of the endower is considered as a provision of the legislator.
3. Avoiding risks resulting from projects of high risks which could not be expected or prevented.
4. Diversifying the investment portfolio to reduce high risks.
5. Relying on economic study feasibilities for endowment projects, documenting their contracts, and obtaining sufficient guarantees.

(1) The Resolution of the International Fiqh Academy, session 15, and the resolutions and the opinions of the First Forum, Investment Topic, Item 8 and 9.

(2) Refer to The Resolution of the International Fiqh Academy, session 15, and the resolutions and the opinions of the First Forum, Investment Topic, Al Shuiyb: Investment of Endowment capitals, Page 27, and Al Ammar: Investment of Endowment Capitals, Page 28.



6. Selecting investments forms appropriate to the nature of endowments which achieves the interests of endowment and avoids losing the rights of beneficiaries.
7. Endeavoring to achieve social profitability through endowment investments without sacrificing and maximizing financial profit for the beneficiaries of the endowment.
8. Periodically disclosing investment transactions, disseminating relevant information and announcing the same according to the conventions applicable in this regard.

Chapter 4

Risks and Guarantees

We mentioned in the controls of investments some technical standards such as the diversification of endowment investment portfolios, avoiding high risk investments and avoiding investment markets lacking relative stability.

It is known that the endowment guardian is trusted, such as a trustee, partner, speculator, lessee... etc. As a rule, the trusted person will not be obliged to guarantee something unless it is proven that he committed infringement or negligence ⁽¹⁾. Therefore, the investment of endowment capitals, especially the currently common endowment monetary funds, has characteristics similar to investments of Islamic institutions. Such institutions figured out some solutions but many of them are impractical such as:

1. **Guarantee of Attorney (Speculator or Partner) with an Independent Unconditional Agreement:** This was set out by Shariah's Standards of Accounting and Auditing Organization for Islamic Financial Institutions, the fifth standard: Guarantees, Item 2/2/2.

(1) Ibn Rajab Al Hanbali: Rules, Page 65.

2. **Voluntary Guarantee by Trustee:** This was quoted by Dr. Nazih Hammad in his book “Permissibility of Including Trustee of Guarantee in Islamic Jurisprudence” ⁽¹⁾
3. **Requiring Trustee of Guarantee:** Dr. Nazih Hammad presented in his abovementioned research the views of scholars concerning the conditional trustee of guarantee. I will summarize such views quoted by him from the books of jurists. ⁽²⁾
4. **Guarantee by a third party:** This was decided by the juristic academies, Shariah standards, and opinions of Shariah organizations.
5. **Assignment of the Speculator with the Burden of Proof:** as the allegation thereof differs from the principle which is safety. This was decided by the Third Juristic Conference of Islamic Financial Institutions organized by Shura Shariah Consultancy Company in 1430 AH / 2009, In Kuwait.

These solutions are known and applied in the Islamic Financial Institutions and we can add to them some solutions appropriate for endowment investments such as:

1. Setting aside a proportion of endowment revenues to enhance the endowed capital especially if this is contained in fund documents and considered as a requirement accepted by endowers such as the annual proportion set aside from revenues for maintenance and depreciation of asset appropriations. It is contained in Al Ashbah “A guardian has to retain an amount sufficient for reconstruction in the future even if the endowment does not require reconstruction according to the selected view of the jurist” ⁽³⁾. This is an intention of the endower to be considered even if such endower is absent.

(1) Publications of the Islamic Research and Training Institute in Jeddah, Issue 2, 1420 AH/ 2000, Refer to: Juristic Quotes in Page 26 and 27.

(2) Ibid, Page 43-56.

(3) Refer to Ibn Nujaim, Zineddin Ibn Ibrahim: Al Ashbah Wa Al Nathaer, Issue 1, Beirut, Dar Al Kotob Al Ilmiyah, 1419 AH/ 1999, Page 205.



The later jurists of Malikis mentioned that it is permissible to act concerning endowment according to its interest as it is supposed or may be asserted that if endower is alive and such acts are proposed, such endower will accept and approve it ⁽¹⁾. Jurists asserted concerning monetary endowment for investment that expenses of endowment in this case will be taken from the revenues and yield of endowment according to most scholars⁽²⁾. The resolution of the International Islamic Fiqh Academy set forth that “The requirement of endower shall be met if such endower requires to develop the endowment capital with a part of revenues thereof and this will not contradict the endowment requirement. In addition, the requirement of such endower shall also be met and nothing shall be taken from revenues to develop the capital if such endower requires to disburse the entire revenues in the disbursement channels thereof ⁽³⁾.”

2. Benefiting from the surplus, if any, to maintain and develop capital. The resolution of the International Islamic Fiqh Academy included that :It shall be permissible to maintain capital or develop revenues after the distribution of the dues of beneficiaries and deduction of expenses and appropriations”.⁽⁴⁾
3. It was indicated in loan funds that various appropriations have been created and they have been taken from revenues of endowment in this case in order to face the change in the cash value and loss of endowed cash assets ⁽⁵⁾, and this was asserted by the Fourth Juristic Conference ⁽⁶⁾.

(1) Refer to Sheikh Ibn Biya, Consideration of Interest in Endowment, Page 19.

(2) Refer to Al Sherbiny: Moughni Al Muhtaj, 3/556, Al Bahoty: Kashf Al Qena’, 4/266, and Ibn Al Hammam Fath Al Qadir, 6/ 222.

(3) Resolution No. 140 (6/15). In addition, refer to: Resolutions and Recommendations the First Endowment Juristic Issues Forum, Investment Topic, Item 4.

(4) Ibid.

(5) The Second Juristic Endowment Issue, Page 401.

(6) Refer to: The Fourth Juristic Conference of Islamic Financial Institutions, Kuwait, 2011.

4. Borrow a loan without interest or any type of loan permissible by Shariah (Islamic Financing) for the benefit of the endowment to compensate for its losses and maintain endowment capital, provided that such loan will be paid from the investments and profits of endowments in the following years.

Concerning Endowment Monetary Funds:

There are various Shariah problems and technical risks concerning the investment of endowment monetary funds. The most significant problem may be the erosion of the cash value. Consequently, this results in the reduction of endowment value until it fades and the provision of guarantee for such fund capital whether for loan without interest or for investment.

This problem may be chronic in such endowment funds. Al Dosouqy mentioned, as a quote from Hashiyat Al Sayed Al Bulaidy, that: There were 1,000 ounces of gold in Fez Villages endowed for lending. The borrowers were repaying loans in copper and hence, this amount of gold faded ⁽¹⁾.

There are some solutions which could be proposed in this regard such as:

- 1) Enhance the endowment capital with other endowments which revenues will be allocated to compensate the endowment capital.
- 2) Get sureties and mortgages to obtain sufficient guarantees from borrowers to repay loans including insurance of loans and debts at Islamic insurers.
- 3) Social solidarity through the solidarity of a group of borrowers to pay loan due on any of them who fails to pay. It is a type of cooperative solidarity.
- 4) Relate loans to gold or a currency marked by relative stability in the value of the day of making the contract. The equivalent of such currency value will not be recorded as due on debtor. This is consistent with the Resolution of the International Fiqh Academy

(1) Al Dosouqy, Al Hashiyah, 4/77.



which stipulates that: [(1) Both contractors may agree, when making the contract, to determine the deferred price or deferred currency in a currency paid once or in installments determined in various currencies or a quantity of gold. Payment shall be made in accordance with the agreement. (2) Debt in a certain currency shall not be charged on the debtor in the equivalent of such currency of gold or any other currency on the ground that such debtor will be repaid such debt in gold or such other currency agreed upon].⁽¹⁾

5) Set aside an appropriation for bad debts in order to face lack of repayment of loans or debts as indicated later on.

6) Set aside various appropriations to face the change in the cash value and the erosion of the endowed monetary assets⁽²⁾. The Fourth Juristic Conference, which discussed the issue of appropriations in one of its axes, asserted that setting aside such appropriations shall not depend on a provision concerning them in the investment contract⁽³⁾.

- Naturally, the actual fees of loan transactions may be charged on borrowers and deducted from loan fund. This was permitted by the Islamic Fiqh Academy as its Resolution No. 13 (3/1) sets forth that [Fees of service of loans may be collected, provided that such fees shall be within the limits of actual expenses]⁽⁴⁾. In addition, the Accounting and Auditing Organization for Islamic Financial Institutions permitted such matter.

(1) Refer to Resolution No. 75 (6/8) concerning the issues of the 8th session, Brunei, Darussalam, June 1993.

(2) The Second Endowment Juristic Issues Forum, Page 401.

(3) Refer to the Recommendations of the Fourth Juristic Conference of Islamic Financial Institutions, Kuwait, 2011.

(4) The Third Session, Amman (Jordan), 1407 AH, 1986.

A Historical Experience of Guaranteeing Investments of Endowment Monetary Funds:

The most significant developments of endowment monetary funds may be the Ottoman experience. Many researchers and historians pay their attention to that experience such as Dr. John Mandeville, Dr. Muhammad Al Aranaout and Abdu Soteska from Bosnia. Tamimi Foundation for Scientific Research and Information in Tunisia compiled various important articles concerning this issue and published them under the title: Studies on Monetary Endowment ... A Concept Different from Usury in the Ottoman Society ⁽¹⁾.

These historical researches provided us with examples of these endowments. However, they tried to assert that despite the decisive prohibition of usury in the Islamic Shariah, commercial prosperity and its development imposed new types of financial transactions. This drove jurists during that period to be tolerant concerning investing capitals at interest as long as returns were disbursed to needy and poor people (endowments) ⁽²⁾. Mandeville considered such development as “a revolution in the Islamic thought” ⁽³⁾!

Indeed, this view, if these endowment deeds are true and we accepted them, will result in serious effects as it will eliminate the justification of the existence of the Islamic banking and the Islamic Financial Institutions which objective is the existence of banks working without fixed usury

(1) The Book issued by the Publications of Tamimi Foundation, 2001.

(2) Introduction of Dr. Muhammad Al Aranaout, Ibid, Page 8.

(3) Ibid, Page 9.



Chapter 5

Forms of Endowment Financing

These forms are divided into two types:

The First Type: Traditional Forms:

They include primarily the lease agreement in various patterns. They are summarized as follows:

1. Lease Agreement (Ijarah): It is a commutative agreement which stipulates for the ownership of a utility against compensation. Its

(1) We studied hard the Thesis of Abi Al Saud to which this juristic opinion has been attributed and the books of the later Hanafis. However, we did not find in the juristic opinion any indication of the permissibility of investing monetary endowments at fixed usury interest. This issue has been addressed as misconceptions on the contemporary Islamic Finance. For example, Dr. Muhammad Al Aranaout published an article in Al Hayah Magazine on 17/02/2000, Issue No. 13491, Page 21 under the title "Monetary Endowment ... A Different Concept of Profit in a Modern Islamic Society" which included that "There is an important juristic and socioeconomic development in the Islamic society which occurred at the beginning of the modern age. It is the monetary endowment. Despite the importance of this development considered by John Mandeville as one of the most important Ottoman contributions to the Islamic civilization, it has not receive the expected attention in the modern studies addressing the economic and social institutions of the Ottoman Empire. In relation to Anatolia which witnessed in its turn this development after transfer of the capital of the State from Edirne to Istanbul, the serious interest in this issue began with the Turkish researcher, Umar Lotfi Barqan at the mid-sixties and the early seventies until the American researcher, John Mandeville, published his Reference Study "Charitable Profitability of Usury ... Disagreement Concerning Money in the Ottoman Empire" in 1979. Thus, after "tricks" which some people wanted to use to circumvent concerning the prohibition of usury, the matter developed to tolerance concerning the investment of endowment capitals at interest as long as such capitals are owned by a charitable institution "Endowments" and such interest are disbursed to needy people. It should be noted that such development "i.e. Monetary Endowment" appeared in practice at the early fifth century at least and imposed itself for about 100 years. Then, senior jurists of the Ottoman Empire were convinced with it and permitted it through their opinions and theses. So, instead of the endowment of plots of lands or houses which revenues are allocated for free services such as education, health, feeding the needy people ... etc, an amount of money is endowed at a determined interest (10% - 11%) which interest shall be disbursed for the same purpose.

detailed rulings are well-known in the juristic books ⁽¹⁾. It is a common financing form of endowments. The most important juristic ruling of this form related to its use to develop endowment is the lease for a long term which jurists permitted. They saw that the determination of its term to be one or two years is based on the interest of endowment and what is more beneficial for the beneficiaries of endowment ⁽²⁾, whether via one agreement or tandem agreements. With relation to the rent, it has to be the equivalent rent (ujrat al-mithl). Any person leasing an endowment against a rent less than the equivalent rent is considered a grabber. Some jurists charged the guardian with the guarantee in such case ⁽³⁾. Lease is a flexible financing method which may solve the problem of liquidity suffered by the endowment through the long-term lease of a property via an agreement or tandem agreements. The revenues generated by such lease may be used to renew obsolete endowments or reconstruct endowment lands with new buildings generating profitable income.

2. Double-rent Agreement (Ijaratayn): It means the lease of the endowed desolate property for a long term against two rental values. The first rent value is to be in advance almost equivalent to the value of the property in order to reconstruct such endowment. The other rent value is to be deferred in annual installments. Such agreement entitles the lessee (payer of rent) to dispose of the utilities of such property via selling or lease and this right is inherited before restoring them to endowment ⁽⁴⁾. The double-rent agreement has been legalized during the Ottoman Empire, as the provision of the law entitled such lessee to use, lease, transfer in return of a substitution, or mortgage ⁽⁵⁾

(1) Refer to Al Dardir: Al Sharh Ak Saghir, 5/294, Ibn Juzai: 5/294, Juristic Laws. Page 181, Ibn Nujaim: Al Rasael, Page 322, Ibn Al Monzir Said "They agreed that lease is permissible", Al Ejma', Page 60.

(2) Refer to Burhabeddin Al Tarabulsi: Al Esaf, Page 67 and 68.

(3) Ibid.

(4) Refer to Al Zarqa, General Juristic Introduction, 1/313.

(5) Refer to an anonymous author: Endowment in the Islamic Shariah, Page 76, 77.



such property. It should be noted concerning the double-rent method that the return (rent) paid annually is very low and the advance rent is used to reconstruct such endowment. For its utilities, they will be transferred fully to such lessee for an unlimited term unlike lease agreement, and it will remain as a lasting right vested to the owner and this right is inherited.

3. Usufruct Monopoly (Ihkar, Tahkir, Istihkar): This form is similar to the previous one. A person, a usufruct monopolist, assumes reconstruction of an endowed empty land in return of an advance amount nearly equivalent to such land value and such person is entitled to decide on and dispose of such land whether through building, cultivation, or any other usufruct forms in addition to an annual low rent paid to the endowment. The right of decision or usufruct monopoly is salable and purchasable and it is inheritable to the heirs of such usufruct monopolist⁽¹⁾. The endowment is maintained and developed by the advance amount.⁽²⁾.

4. Loan (Mursad): It is (a debt due on the endowment spent by a lessee to reconstruct an endowment property, due to lack of funds in such endowment)⁽³⁾. This means that the endowed land, which becomes unused and non-leased, is given to a person to build and reconstruct it. Then, the total expenses incurred by such person will be considered as a debt due on the endowment, which will be recovered by such person in installments from the endowment rent. Such person is entitled to decide on such endowment and this entitlement will be inherited. In case such person wants to transfer his right to another person, such person will buy such debt and replace such person in such property⁽⁴⁾.

(1) Refer to Ibn Abdin, Hashiyat Ibn Abdin, 4/402, Al Zarqa, Introduction, 1/570, Nazih Hammad: Methods of Endowment Investment, Page 175.

(2) Ibid.

(3) Ibn Abdin, Hashiyat Ibn Abdin, 4/402.

(4) Refer to Nazih: Investment of Endowments Methods, Page 176.

5. Purchase of Residence Right (Khuluw): it is known by Moroccans as “Jilsah” or “Zeinah”. It means purchase of a residence right in a property whether it is a house, a shop ... etc forever such as the lessee of land for cultivation or building. The holder of such property is not entitled to evict such lessee and is entitled to receive an equivalent rent in accordance with time and traditions⁽¹⁾. Therefore, some scholars saw that purchase of a residence right (Khuluw) is the benefit for which a person paid an amount of money⁽²⁾. The International Islamic Fiqh Academy distinguished, in its resolution, among many patterns of Khuluw and gave a special view concerning each of them.⁽³⁾

6. Substitution and Commutation (Istibdal and Monaqala): This form is one of the most effective methods beneficial to the endowment when used to benefit endowments and their beneficiaries. However, when the intention changed and it was used to grab endowments and take over their revenues, it became a cause of the loss of various endowments.

Substitution is conducted through commutation of endowment property with another better and wider property or through substitution of an endowment property with another property achieving benefit more significant than the capital in general or generating more revenues or income. Many jurists permitted substitution for the interest. Ibn Abidin decided that a person may conduct a substitution to have a property of more yield and revenues than current endowment. So, it is permissible in accordance with the opinion of Abu Yusuf, as the case in the opinions of Qare' Al Hidayah⁽⁴⁾. This opinion may achieve the endowment interest as there is no justification to retain endowment properties with low benefits

(1) Al Jidy: Traditions and Action, Page 469.

(2) Refer to Al Gharqawi: Al Tanbih Belhosna fi Manfat Al Khuluw Wasukna, Page 36.

(3) Refer to the International Fiqh Academy, Decisions and Recommendations of the Academy, Decision No. 6.

(4) Refer to: Al Hashiyah, 4/388.



for many years and they do not meet any need or are not expected to be leased or reclaimed. Consequently, they have to be substituted in order to achieve the interest of endowment and generate more revenues for the beneficiaries. Certainly, the lack of such substitution wastes a predominant interest for the endowment and the purposes of Shariah aim to maintain capitals and resources⁽¹⁾. This view was preferred by Sheikh of Islam, Ibn Taimia, in his argument refuting the views of jurists who see it as absolutely impressible in the Juristic School of Imam Ahmed⁽²⁾.

Through presentation of these forms, it is clear that nearly there are not differences among them as the content of them is the content of the lease agreement. In each of them, excluding the substitution form, the lessee has the right of disposal in return of an advance rent approximate to the property value and a low rent annually. In addition, all previous forms, excluding the lease agreement, indicate the poor financial position of endowments due to lack of liquid financial resources. Therefore, guardians resort to such forms even if their revenues are low ⁽³⁾.

The Second Type: Contemporary Forms of Endowment Financing:

They are the forms of the Islamic financing, and they are detailed as follows:

1. **Istisna' Agreement** ⁽⁴⁾: In this form, it is agreed between the endowment administration and a financing body to construct a building on the endowment land. Such building will be owned by such body. Then, the endowment administration will buy such building under a prior agreement in return of a deferred price in annual or monthly installments. Often, such price will be less than the expected

(1) Refer to Al Aiyashi Mahdi: Contemporary Orientations of Endowment Investment.

(2) Majmou' Al Fatawa: 28/220, 221, and 225.

(3) Refer to Mahmoud Mahdi: Forms of Endowment Financing, Page 86.

(4) Itisna' is defined as: An agreement between a person and a manufacturer to manufacture something for such person with materials owned by such manufacturer, provided that such manufacturer shall be notified with its value and descriptions. Refer to Al Kasani: Badae' Al Sanae', 5/2



rent of such building lease. At the end of paying installments, such building will be transferred to the endowments ⁽¹⁾. Contemporary applications of Istisna' agreement appeared in various contemporary experiences such as Jordan ⁽²⁾, Kuwait, the Sudan ... etc.

2. Sharing and Decreasing Sharing (Musharaka and Musharaka Motanagesa): It is conducted when a guardian gives a plot of land to a financier, in order to construct a building on it. Such building will be owned by such financier and such land will remain owned by the endowment. Then, the endowment will lease the building entirely and the rent will be divided to such endowment and the owner of such building according to the maturity of both plot of land and building ⁽³⁾. However, this form results in sharing with endowment in its assets any way and ownership of a joint share of it. We find similar forms of endowment mentioned by some jurists especially, what they mentioned concerning usufruct monopoly and other forms prevailing among Hanafis such as Al Kadak⁽⁴⁾, Al Kardar⁽⁵⁾, and Al Qima⁽⁶⁾. Similarity is not related to the form only, but also it is related to the division of revenues. The later Hanafis saw that if the holders of such rights leased such properties, rent will be divided to them and endowment according to the equivalent rent of both endowed

(1) Refer to Nazih Hammad: Methods of Endowments Investment, Page 184.

(2) Refer to the Ministry of Awqaf, Islamic Affairs, and Holy Shrines: Field Study on Islamic Endowments in the Hashemite Kingdom of Jordan, submitted to the Development of Islamic Endowment Forum, Nouakchott, 1418 AH, 1997, Page 30.

(3) Refer to Al Zarqa: Modern Methods of Financing, Page 196 and Nazih Hammad: Modern Methods, Page 185.

(4) Al Kadak or Al Jadak: A building constructed by a lessee in an endowment shop at his expense for himself based on the permission of the administrator and such added building could not be moved or transferred. Such lessee shall be entitled to reside and remain, provided that he shall pay equivalent rent as long as the building is constructed. He is entitled to sell, grant, or lease it and it is inherited. Refer to Yakan: Endowment, Page 121.

(5) Al Kardar: Construction or cultivation by a farmer in the land.

(6) Al Qima: Utilities of gardens such as clover roots and ploughs. They are called Al Qima because they are utilities of value. Refer to Yakan: Endowment, Page 122.



capital and Al Kadak for example ⁽¹⁾. For combining an endowed capital and an owned building, Ibn Abdin addressed an issue similar to it when stating the disagreement among Hanafis jurists concerning “the endowment of a building without the endowment of capital”. Capital here means the land. Ibn Abdin tended to permissibility as it is applicable and common among people ⁽²⁾. In addition, later Malikis addressed similar issues ⁽³⁾.

As for decreasing sharing, it is primarily based on the principle of sharing with the endowment, provided that such endowment will set aside a part of its revenues (profits) to buy such building gradually from such financier so that its final ownership devolves to such endowment. Consequently, such endowment will own such land and such building together. ⁽⁴⁾

3. Financing Lease (Ending with Ownership): It may be in various patterns. The endowment administration may lease a plot of land for a person for a long term in return of a determined annual rent. Such person constructs a building to benefit from it throughout such term, provided that the rent will be sufficient to pay the value of such building at the end of the lease term. Then, the endowment will agree with such lessee to buy such building constructed upon its land gradually against the rent of the land due on such lessee ⁽⁵⁾.

(1) Refer to Nazih Hammad, Modern Methods, Page 185.

(2) Ibn Abdin: Al Hashiyah, 4/389.

(3) Al Tanbih included that “It is apparent that whether that benefit of Khuluw is reconstruction such as the places about to be ruined, the guardian of endowment may lease it to somebody reconstructing it and the expenses paid thereby shall be considered as Khuluw and he will become a partner with the endower due to such reconstruction.” Then, the author of Al Tanbih mentioned the following forms of Khuluw of shops in Egypt. The endower, for example, wants to build a property for endowment and people pay to him, provided that they share such endowments. If the endower accepts such money from them, he will be considered as if he sells such shares against their payments. So, a part of a share of each person will not be endowed. So the holder of Khuluw will be considered as a partner of endowment in such share. (Al Gharqawi: Al Tanbih Belhosna, Pages 36, 37-38).

(4) Refer to Al Zarqa: Modern Methods of Financing, Page 197.

(5) Refer to Al Zarqa: Modern Methods, Page 99, Nazih: Contemporary Methods, Page 186.

4. **Speculation (Qirad):** This form is applied through conducting an economic feasibility study by an endowment institution for a project of clear cost and expected profitability. Then, it shows it to financiers who will finance such project (School, Hospital ... etc.) and establish it on an endowment land. The endowment administration will manage such project (speculator) and it will deserve a percentage of profit in addition to an annual or monthly rent of the endowment land. The profits of such project will be divided on the financiers and the speculator according to the dividends agreed on after deduction of the land rent.
5. **Salam:** If the endowment administration has agricultural land and experience in agriculture and it lacks financing to buy machines and other supplies, it can resort to a financing body and conclude a Salam agreement. By virtue of such agreement, it will receive the capital agreed upon in advance to provide the deliverables (Musallam Fieh) on term. Thus, such endowment administration will benefit from immediate liquidity by enabling it to do its business. Then, the remaining products may be sold or distributed to beneficiaries of such endowment.
6. **Adopt the Form of Build-Operate-Transfer (B.O.T) in Endowment Reconstruction:** B.O.T Agreement means, as it is set out in the resolution of the International Fiqh Academy⁽¹⁾, an agreement between an owner or its representative and a financier (Project Company) to establish an institution, operate it, and receive its returns fully or according to agreement within the agreed-upon

(1) The Resolution of the International Islamic Fiqh, emanating from the Organization of the Islamic Conference, on the 19th session held in Sharjah, the United Arab Emirates on Jumada I 1430, April 2009. The Academy Resolution asserted that: B.O.T agreement is an innovative agreement. Even if it is similar in some of its forms to the juristically known contracting and investment tools, it may be inconsistent with any of them. The resolution also set forth that B.O.T agreement could be applied to reconstruct endowments and public facilities. The resolution recommended to conduct intensive juristic research on all forms of B.O.T agreements to adjust their various rules and regulate them in provisions to be consulted and built on.



term in order to recover the invested capital with a reasonable return. Then, such institution will be handed over while properly performing as expected.

Chapter 6

Practical Experiences

Introduction:

According to the pioneering experiences of endowment in the Islamic countries, it is clear that the role of endowment could be activated through renewal of mobilization forms of the resources of endowment institutions. Paying due diligence to the investment aspect without provision of resources for endowments could not achieve the desired objective. Hereinafter, we will present the forms or patterns which the endowment institution could apply so as to be a financing institution meeting the society needs. Some of these forms and patterns are provided in some contemporary experiences and others are proposed for more research and studies in order to reach the forms accepted by Shariah.

1. Endowment Funds

The Project Idea: The idea of this pattern stems from the establishment of an administrative and legal structure in a form of a fund or board in accordance with the applicable regulations in order to achieve a certain objective (a public need) such as health development or environmental protection. Such fund mobilizes its resources from public, non-governmental and charitable organizations and governmental authorities through issuing endowment sukuk under conditions which meet the fund objectives. Resources may also be mobilized through receiving endowments in forms of financial donations or direct fixed assets. In order to clarify the idea of endowment funds, I will present two pioneering patterns in this field: the Kuwaiti Experience and the Sudanese experience.



1. The Kuwaiti Experience ⁽¹⁾:

Since its establishment, the Secretariat General of Endowments has worked in two main orientations. **The First Orientation:** Invest and develop the current endowments. **The Second Orientation:** Call to establish new endowments through special funds. A sector has been dedicated to the second orientation in order to supervise its management which is the Endowment Funds and Project Sector. It consists of some funds and projects in accordance with the purposes targeted by the Secretariat.

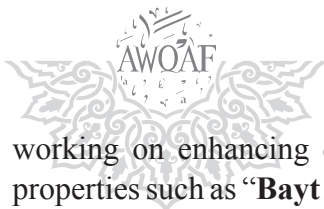
The endowment funds have special importance in the Kuwaiti experience as financial endowment units, each of which assumes a channel of charity identified by the decision of its establishment. The financial resources of endowment funds consist of the revenues of endowment capitals provided by people for the purposes assumed by each fund and the capitals assigned by the Secretariat Public for each fund.

2. The Sudanese Experience ⁽²⁾:

It should be noted in this regard that the Endowments Authority in Sudan worked in two orientations. **The First Orientation:** Promote and market new endowments through economic and social endowment projects prepared by the Endowments Authority and equipped with feasibility studies. Then, it calls charitable people of the public to subscribe in such projects according to endowment requirements developed by the Authority in accordance with the project purposes and objectives. **The Second Orientation:** Invest and develop the current endowment capitals granted by the State to the Endowments Authority. In relation to the orientation of investing current endowment properties, the Authority proceeded with investing and developing the endowment properties through combining the various endowments as the Authority established endowment institutions

(1) Refer to the Experience of the Secretariat General of Endowments, a work paper submitted to the Forum of Endowment Experiences in the Gulf Cooperation Council Countries, Qatar, 1420/ 1999.

(2) Refer to Mahmoud Mahdi: Experiences of Contemporary Endowments, Publications of Islamic Research and Training Institute.



working on enhancing development and investment of the endowment properties such as “**Bayt Al Awqaf Contracting**” and “**Savings and Social Development Bank**” which helps to finance endowment developmental projects and “**The Holding Company**” which serves as the main arm of the Endowment Authority concerning the establishment of commercial and industrial developmental projects.

II. Islamic Banks Plays the Role of Guardians:

Guardianship is trusteeship of endowments. It is such administration which cares for the endowment interests through maintenance of its capitals, its exploitation, investment of its properties and the direction of its revenues in their disbursement channels in accordance with requirements of the endower. Such person is called an endowment administrator, guardian, or trustee. The Islamic banks play an important role as endowment guardians in terms of the management and investment of endowment capital according to Shariah methods known by the Islamic financial institutions. This resulted in many benefits for endowments which entered into a partnership with various banks to establish real estate investment companies and other companies.

III. Establishment of Funds and Portfolios to Invest Endowment Properties:

The Islamic Development Bank established Awqaf Properties Investment Fund (APIF) in order to develop, invest, and manage them worldwide. Awqaf Properties Investment Fund is an investment credit fund established by virtue of Article 2 and 23 of the Articles of Association of the Bank and the memorandum of understanding between the Bank and the ministries of Endowments and their organizations in the Islamic countries in 1422 AH. The Islamic Development Bank is the speculator and the entity responsible for APIF and the maintenance of its properties. APIF proceeded with its works in Rajab 1422. Some projects established currently by the Fund are the establishment of a hospital in Turkey, execution of an Engineering University in Bangladesh, and building two residential commercial towers in Alexandria, Egypt.



IV. Islamic Solidarity Fund for Development (ISFD):

ISFD has been established after discussions and contemplation to innovate endowment forms and tools proper to the amount of challenges encountered by the Nation. The Islamic Development Bank established it with a targeted capital of USD 10 billion. 32 countries shared in it so far. ISFD aims to combat poverty in the member states in general and the African countries in particular. The Bank looks forward to the contribution of other member states as the IDFS programs started to bear fruit.

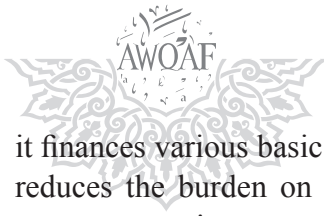
Conclusion

The research in the topic of investment of endowments and its resources, in terms of Shariah and economy, has special importance for Shariah, historical, and financial contemporary considerations.

Investment of endowment capitals is effected according to the nature of the endowed capital. Either the purpose of the endowed capital aims to directly benefit from the endowed property or the purpose of the endowment may be the exploitation and spending revenues in accordance with the requirement of the endower. The investment of this type of endowment is the subject of the research whether it is real estate assets, cash money, current or investment accounts, securities (such as shares and sukuk), funds, or endowment investment companies.

The Islamic Shariah paid a significant attention to the investment process, as it maintains the current financial and human resources and adds to them other financial and human assets. The investment process is included in the order to reconstruct the land in the speech of Allah “It is He Who produced you from the earth and settled you therein”. In addition, the purpose of maintaining of capital aims, among other things, to develop and invest capitals in various methods in accordance with the Islamic Shariah in order to maintain them from consumption entailed by the requirements to be met by them.

It should be noted that the endowment institution plays an effective role in the economic and social development in the Islamic societies, as



it finances various basic and public needs and services for the society and reduces the burden on economic budgets. Activating this role is based on some requirements such as the existence of the will of the decision makers to activate the role of endowments in order to achieve its purposes entirely in all fields. At a later stage, we come to developing a strategic plan to promote the developmental role of the endowment. Such plan has to be based on obvious Shariah starting points and bases while considering the requirements of the status quo and the requirements of the social and economic status of each Islamic country or society.

With relation to the Shariah rule concerning the investment of endowment capitals, the investment of endowed capital is a main purpose of the endowment purposes. In addition, the investment of capital is a main purpose of Shariah to maintain them. Jurists inferred from the inclusive purposes special rules in the behaviors of imams, governors, and guardians which are subject to the interest. Jurists assert in this context that “The disposal by the guardian shall be subject to the interest”. The rule, in terms of detailing, varies depending on the variety of the endowed capitals and their types. They also concluded to regard the permissibility of trading and investment of endowments according to accurate controls such as the fact that endowment has to practice a permissible business in accordance with Shariah taking into consideration the requirements of the endowers in terms of their restrictions of guardians concerning the investment of endowments ... etc.

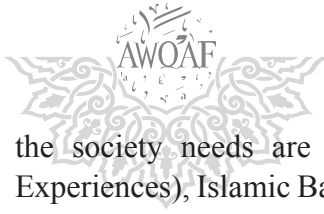
As for risks and guarantees, it is known that the endowment guardian is trusted such as a trustee, partner, speculator, lessee ... etc. As a rule, the trusted person will not be obliged to guarantee something unless it is proven that he committed infringement or negligence. Therefore, the investment of endowment capitals, especially the currently common endowment monetary funds, has characteristics similar to investments of Islamic institutions. Therefore, such institutions proposed some solutions but many of them are impractical. Therefore, the researcher proposed some solutions proper to the endowment investments such as setting aside

a proportion of endowment revenues to enhance the endowed capital, benefitting from surplus, if any, to maintain and develop capital, and borrowing a loan without interest of any type permissible by Shariah.

There are various Shariah-related problems and technical risks concerning the investment of endowment monetary funds. The most significant problem may be the erosion of monetary value. Consequently, this results in the reduction of the endowment value until it fades, and the provision of guarantee for such fund capital whether for loan without interest or for investment. The researcher proposed some solutions in this regard such as enhancing endowment capital with other endowments which revenues will be allocated to compensate endowment capital, get sureties and mortgages to obtain sufficient guarantees from borrowers, social solidarity, relating loans to gold or a currency marked by relative stability in the value of the day of contracting and the equivalence of such currency value will not be recorded as due on debtor, setting aside an appropriation for bad debts in order to face the lack of repayment of loans or debts, setting aside various appropriations to face the change to monetary value and the erosion of endowed monetary assets and naturally, the real fees of loan transactions may be charged on borrowers and deducted from loan fund and this was permitted by the Islamic Fiqh Academy in its resolution No. 13 (3/1).

For the forms of endowment financing, they are divided into two types. **The first type is the traditional forms** which primarily include the lease agreement in various patterns. **The second type is the contemporary forms of endowment financing.** They are the forms of Islamic financing such as Istisna' Agreement, Sharing and Decreasing Sharing (Musharaka and Musharaka Motanaqesa), Financing Lease (Ended with Ownership), Speculation (Qirad), and adopting the Form of Build-Operate-Transfer (B.O.T) in Endowment Reconstruction.

The researcher presented some historical and contemporary experiences of endowment investments. Among the forms or patterns which the endowment institution can apply to be a financing institution meeting



the society needs are the endowment funds (Kuwaiti and Sudanese Experiences), Islamic Banks should play the role of endowment guardians, establishing funds and portfolios to invest endowment properties and the Islamic Solidarity Fund for Development.

Praise be to Allah Whose favor complements graces.

Articles



Public Book Safes and their Role in Intellectual and Scientific Illumination in Morocco The State's Efforts and the Endowment Institution

Dr. Muhammad Ibn Muhammad Al-Hajawi

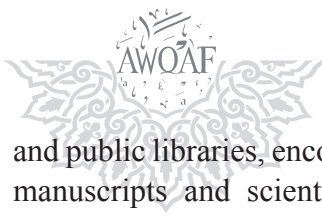
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Preamble:

One of the greatest blessings of Allah on the Islamic nation is that He made the instructions of its religion all-comprehensive of all constituents which promote the spiritual and material aspects of life. Allah guided the nation to all virtues so that it shall be really the best nation all over generations in terms of acts of worship, manners, thought and cultural model. Endowment is one of the sources of public goodness by offering benevolence and benefaction to the needy people. It also leads to economic development, construction, intellectual, cultural and scientific progress which places societies on the highest ranks. Endowment – which is derived from the gist of Islamic Shariah – covers all aspects which assist the nation on its march towards stability, safety, welfare and construction. It manifests the Islamic civilization in its most prominent illuminative role through science which it established its rules by building mosques, schools





and public libraries, encouraging authors and copy editors and maintaining manuscripts and scientific documents. Establishing public book safes and private libraries was one of the most prominent phenomena which is concerned with thought and culture and maintains the heritage of this nation. The cultural milestones of such thought started with theoretical and applied science in all avenues of knowledge. After the Islamic conquest and the foundation of Islamic cities, the Arabs mixed with other nations which have previous experience in science, writing books and organizing intellectual and administrative foundations. The Islamic nation came to realize that the way which shall take it to occupy its position among nations is the road to knowledge. During this critical era between a time which passed with its darkness and wrongs before the Islamic Invitation and another time enlightened with the illumination of belief and the call for all noble and sublime matters, the Arabs started to find their way out towards glory based on the instructions of their religion. They paid attention to compiling their heritage which expresses the history of the Arab nation (poetry, language, news and events) by writing and preserving such history from loss. They also studied, analyzed and evaluated it in order to get acquainted with the efforts exerted by their predecessors in the fields of thought, literature and language. Therefore, the sciences of poetry, literature, language and grammar have arisen. In parallel, they started to write in the sciences which originated from the gist of the Islamic thought such exegesis of the Quran, sciences of Prophetic Traditions, jurisprudence and scholastic theology. They also wrote on the newly introduced sciences in the Islamic civilization due to their interaction with the Greek and Persian thought. Such fields include mental sciences such as philosophy, logic, mathematics and astronomy as well as experimental sciences such as chemistry. While writing, compiling and collecting books, the Arabs felt the importance of maintaining books and documents so that their efforts shall not go in vain and that it is necessary for the public and specialized readers to make use of such books in the present as well as the future. The means to realizing such end was the establishment of public book safes and libraries which have been supervised by scholars and specialists in the field of documentation who maintain and appreciate the value of science.

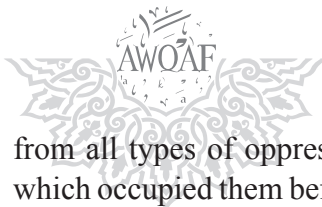
Therefore, we found that caliphs themselves pay attention to establishing libraries and selecting people with intellectual and organizational abilities to supervise them and maintain their contents. They also encouraged scholars to write and translate books and they have been very generous with them, copyeditors and translators. The House of Wisdom is a testimony to such great attention in the early phase when the features of the prominence of the Arab and Islamic culture started to illuminate in the East in all sciences to which the Arabs paid attention. This large cultural project has become a distinct phenomenon in all Islamic countries. Every caliph or governor of an emirate used to gather the elite scholars, poets and jurists and encourage them to practice writing books, get involved in creative activities and scholarly discourses. We find that some caliphs evaluate books by their weight of gold. This is a phenomenon which the old world has never known in any country or area except for the Islamic world.

The endowment institution has not been absent of this intellectual and scientific phenomenon in the Islamic countries. It was there by encouraging scholars and men of letters, providing them with money and establishing knowledge centers. In addition to its charitable role towards the poor, the needy and wayfarers, the endowment institution used to contribute to cultural enlightenment by building mosques and schools, establishing libraries and furnishing them with references and assisting students and professors get such references however rare and expensive they are. This indicates that this great cultural project has been crystallized in the minds of statesmen, scholars and charitable and intellectual organizations with a social nature.

In this study, we shall detect the intellectual role of libraries in Morocco under the patronage of its kings and the endowment institution which has been supported by the State and scholars alike.

Intellectual Illumination in Morocco after the Islamic Conquest:

Morocco has not known stability and security except after the Islamic Conquest which has been the start of a new era for its people who suffered



from all types of oppression and humiliation at the hands of the nations which occupied them before the Islamic Conquest. In the era of the Muslim conquerors who advocated the mission of mercy, the people of Morocco have been blessed with faith, justice, equality, fraternity, tolerance, benevolence and benefaction. The first State has been established on their land by the noble Idrisis. Such State cared for the people, managed their affairs with justice which makes the rich, the poor, the strong and the weak on an equal footing. The State relied on the gist of Shariah which has been revealed in order make people happy and restore them their human integrity. It is not strange that the Moroccans unanimously embraced this religion and supported the noble Idrisis in order to manage their affairs. The Moroccans came to know stability, social solidarity and intellectual illumination derived from the Book of Allah, the Prophetic Traditions of the Messenger (peace be upon him), the poetic and literary heritage advocated by the Arabs and the studies of the early scholars in the East.

The Moroccans' interest in science has been manifested in an early stage by establishing knowledge institutions and centers. The first grand mosque in Fez has been established so as to be an illuminative religious and intellectual minaret in this wing of the Islamic world. It was Al-Qarawiyyin Mosque which has been established by the noble woman Fatimah Bint Muhammad Ibn Abdullah Al-Fihri Al-Qayrawani on 245 AH from its own money during the Idrisi State. It was the first scientific university endowed by the noble lady and it has been supervised by the endowment institution. Yahya Ibn Muhammad Ibn Idris Ath-Thani (died on 249 AH) supervised its building and developed its methodology in the religious, educational and scientific aspects. This Islamic loft structure has been the first scientific Moroccan institution which hosted cultural and intellectual events in addition to the religious role. The Mosque contributed in the scientific and intellectual illumination by teaching religious sciences such as exegesis, modes of recitation of the Holy Quran, Prophetic Traditions and jurisprudence. It also featured literary and linguistic sciences such as poetry, language, rhetoric, poetic rhythms and grammar. Mental sciences such as scholastic theology, philosophy, logic, mathematics and astronomy

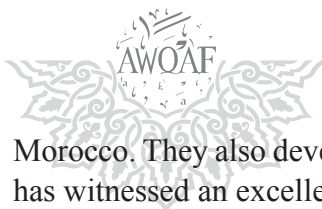


have been also provided. Experimental and practical sciences such as medicine, chemistry, engineering and agriculture have been taught in this Mosque as well. This matter drives a large number of Christians to learn the Arabic language in order to acquire these sciences from this Mosque as well as other Islamic mosques established in Muslim Andalusia.

Role of Libraries in Intellectual and Scientific Illumination:

Universities and scientific institutions shall not perform their knowledge-based role unless they contain libraries which include resources, references and documents which students and teachers use. A library is an important constituent in the informational structure provided by each specialized scientific organization. Based on this cultural and intellectual perspective, libraries in the Islamic communities are a necessity to complete the great cultural project ever since the Muslim conquerors initiated their conquests all over the globe. In Morocco which has become – ever since the Islamic conquest – a homeland for religious, intellectual and cultural illumination, the idea of establishing mosques, schools and subsidiary libraries has been clear in the minds of kings and scholars as well as the endowment institutions which have been sponsored by all successive states in order to complete their charitable and cultural projects. They considered the existence of the library as a major constituent in developing knowledge and maintaining the recorded heritage and a proof of the sustainable cultural track of the nation.

The intellectual, cultural and civilizational phenomenon of each nation is manifested in its creative productions of sciences and knowledge as well as the resources, references and scientific documents left in its public libraries which prove that such nation has maturely and informedly contributed in the scientific movement. Such phenomenon in Morocco - i.e. cultural broadness in thought and the establishment of public and private libraries – has been manifested in the minds of its scholars and kings since old eras. When reviewing the stage when the Idrisi State has been established and becomes independent from the East, it turns out that the noble Idrisis were pioneers in establishing the first public book safe in



Morocco. They also developed a cultural project competing the East which has witnessed an excellent renaissance during the Abbasid Era. Historians stated that Caliph Ahmad Ibn Qassim Al-Idrisi brought scholars to live and stay in Fez in order to teach at the University of Qarawiyyin. Besides, they stated that the Palace of Yahyah IV Al-Idrisi contained a large number of copy editors who used to copy books. His book safe has been “the first private book safe which played a major role in bringing, collecting and copying manuscripts in Morocco. It was the nucleus of the Royal Book Safe and the model to be followed by the Kings ever since the Idrisi Era to date”⁽¹⁾.

Scholars moving to Morocco from the East used to carry manuscripts in religious, literary, scientific and historical sciences. Many of them stayed at Caliphs’ courts writing, discoursing and teaching at the University of Qarawiyyin or Ibn Yusuf’s Mosque. Historians stated that Yusuf Ibn Tashfin Al-Murabiti carried many manuscripts when he returned back from Andalusia after the reputed Zallaqah Battle in which he conquered the Christians. It is well known that the Kings of Sects conquered by Ibn Tashfin used to pay great attention to literature, religious sciences and philosophy. At the era of the Muwahhidiyyah State, Caliphs used to pay attention to sciences and especially mental sciences. Caliph Yusuf Ibn Abdul Mumin Al-Muwahhidi was greatly interested in the various branches of knowledge as well as philosophy and literature. It is said that the number of manuscripts at the book safe of Muwahhidis reached four hundred thousand manuscripts. Referring to attention paid by this Caliph to science, scholars and men of letters and his interest in collecting books for his personal book safe, the historian of the Muwahhidi State Abdul Wahid Al-Marakishi said: He used to collect books from the regions of Andalusia and Morocco and search for scholars and especially those specialized in theoretical sciences until a large number of scholars gathered around him

(1) See “The Historical Status of the Existence of Manuscripts in Morocco: Manuscripts of Al-Hasaniyyah Book Safe as an Example”, Ahamd Shawqi Benbin, Manager of Al-Hasaniyyah Book Safe in Rabat, Dawat Al-Haqq, Volume 364, February 2002 AD.

in a manner unprecedented with any other previous king”⁽¹⁾. In Nuzhat Al-Hadi, Al-Ifrani stated that such attention has been a distinct feature during the Saadi era too and especially during the era of Caliph Ahmad Al-Mansur Adh-Dhahabi whose era was tainted by opulence and prominence. It is said that he “had great interest in owning books and competing in collecting them from everywhere. He collected strange books which neither his predecessors nor his successors would do. In addition, he read and understood most of his books and even wrote annotations, explained the mysterious terms and paraphrased the odd words!”⁽²⁾

Another proof of the continuous care for books on the part of all successive states is that King Muhammad Ibn Abdullah Al-Alawi endowed twelve thousand books in the various branches of knowledge so that specialized men of letters and the public readers would make use of them⁽³⁾.

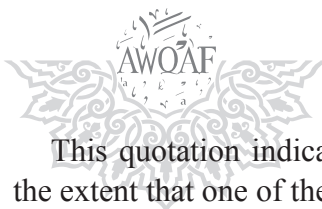
We find such great interest in books as stated in looting the Palace of the Muwahhidis after the murder of Abu Muhammad Abdul Wahid, brother of Al-Mansur, who died after the death of Al-Mustansir. Ibn Abdul Malik Al-Marakishi said: “One of the strange accidents is that when Al-Adil took Marakish as his residence after the death of his uncle Abu Muhammad and looting most of the books in the Palace Book Safe in addition to the other looted treasures, Caliph Al-Adil issued a command to Abu Al-Hassan Ali Ibn Abi Jamie to consider the organization of the remaining books of the Book Safe and mark the complete books independently from the incomplete ones.”⁽⁴⁾

(1) Al-Muajab 349.

(2) Nuzhat Al-Hadi, 122.

(3) Al-Istiqsa Fi Akhbar Al-Maghrib Al-Aqsa: 8 / 66.

(4) Adh-Dhayl wa At-Takmilah 1 / 174. The verifier of the book footnoted that the supervisors of this library have been the senior scholars of the time. Adh-Dhayl wa At-Takmilah Likitabai Al-Mawsul wa As-Silah, Abdu Abdullah Muhammad Ibn Muhammad Ibn Abdul Malik Al-Marakishi, verified, introduced and footnoted by Dr. Muhammad Ibn Sharifah, Publications of the Academy of the Kingdom of Morocco.



This quotation indicates that the book safe has been full of books to the extent that one of the scholars has been assigned to mark the complete books independently from the incomplete ones. In addition, the phrase “in addition to the other looted treasures” proves that these books have been precious and rare.

In another context, Ibn Abdul Malik stated that the Kings used to appoint senior scholars to supervise this Book Safe due to the significance of these precious books. “They had great projects for which have appointed the highly senior scholars.”

Such interest in collecting and copying books has not been limited to caliphs alone. It was a distinct phenomenon for a large number of Moroccan scholars in the various ages. There are many scholars in Morocco who moved to the East and Andalusia in order to procure books and endow them in the libraries of mosques and schools so that the public and specialized readers shall make use of them. For example, it has been related that Ali Ibn Muhammad Ibn Ali Abu Al-Hassan Ash-Shari As-Sabti (died on 649 AH) - from Ceuta which is currently under the Spanish occupation – was “a great collector of books and manuscripts. He used to buy them at high costs. He may have initiated journeys in order to get books until he collected a large number of books which contain precious information. He selected a voluminous set of books and endowed them in a school he built next to Bab Al-Qasr which is one the gates of Ceuta Sea. He allocated some of his best properties and possessions and endowed them on it”.⁽¹⁾

Due to the reputation of this library and its set of precious and rare books in the various fields of knowledge, the highly cultured judge Abu Al-Qassim Ibn Imran congratulated Abu Al-Hassan on this unique and noble work in the Islamic West by saying:

*You have selected the best books and preferred them to the worldly affairs
You have been competing in buying precious books until they have been*

(1) Ibid, page 197.

available to you and you purchase them

Knowledge which is unveiled to its people required painstaking ⁽¹⁾

On the same topic, poet Abu Al-Hassan Ibn Ismaeil Al-Aghmati wrote the following poem which Ibn Abdul Malik said that he had heard it from its composer and his words are “I heard it from its compose, may Allah have mercy on him”. The first verse in this poem is:

*You built for the people of the West perpetual glory, mastery and pride
which shall continue over time*

On it precious books, he said:

*Precious books which if collected by a serious person with rare
knowledge, he shall be strained*

*They became for the sciences of Shariah a unique collection and a
pearled crown on the forehead of religion*

I could not remunerate them in detail as they are countless

*They include books of exegesis which are the greatest, most precious and
beneficial*

*The books of the Selected Prophet's authentic traditions narrated by the
upright narrators*

*The set of selected abridged books and the books of guidance which
guide people*

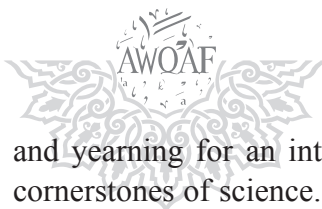
*The sciences of derivational grammar and the language in which Allah
revealed the Glorious Book*

*Books which if Al-Khalil Ibn Ahmad and Al-Asmaaei have seen their
tenth, they would have been stunned ⁽²⁾*

Such great attention paid by kings, scholars and noblemen indicates the love of knowledge, preserving religion, maintenance of heritage

(1) Ibid.

(2) Ibid, 199.



and yearning for an intellectual and scientific renaissance based on the cornerstones of science. Therefore, we found some Moroccan kings copy books with his hands, others used to write the Glorious Quran with gilt while others personally supervised the availability of the Holy Quran versions and the authentic and verified Prophetic traditions in the hands of students. Some kings used to sit down in their palace while the Holy Quran, Al-Bukhari's book and other authentic books of Prophetic traditions before them as a means of blessing. ⁽¹⁾

It is not strange that libraries are a distinct phenomenon in the cultural march of Morocco since the Islamic conquest till now. Kings, scholars and the endowment institution participated in enriching this phenomenon.

The resources included in these book safes:

The resources available in the Moroccan libraries have been versatile in terms of their contents. Such diversification embodies the comprehensive and complete cultural phenomenon of knowledge and sciences presented at grand mosques, schools and minor mosques. Religious resources include versions of the Holy Quran, books of exegesis, jurisprudence, Prophetic traditions, Prophet's biography and mysticism. Literary and linguistic resources include poets' collections and books on literature, criticism, rhetoric, rhythms, language and grammar. Mental resources include books on scholastic theology, philosophy, logic, mathematics and astronomy. Applied and experimental resources include books on medicine, chemistry and engineering. All these books have been either written by Moroccan scholars or brought by them during their journeys to the East or Muslim Andalusia. Kings, princes, scholars and noblemen used to spend large amounts of money in order to possess each manuscript which assists scholars and students in enriching the research process and later, they would endow such manuscripts so that all people shall make use of them. The scholars' journey to the East in order to perform pilgrimage has always been a journey of acquiring knowledge, meeting scholars in

(1) See Jamie Al-Qarawiyyin Book, 2 / 378.

the various countries they visited and bringing precious books with them after they come back home. The Moroccan book safes generally and the book safe of the Royal Palace especially – in spite the piracy it suffered – have become the richest book safes in the Islamic West. “The Royal book safe in Morocco with all its branches is considered the richest book safe in the Islamic West, taking into consideration the precious books in the safe such as the Fifth Volume of Al-Muqtabas by Ibn Hayyan Al-Andalusi (a unique version in the world) and the Introduction of Ibn Khaldoun which the author himself sent from Egypt to the Kings of Morocco.”⁽¹⁾

A researcher shall not be surprised with such quotation. Whenever scholars travel, they used to bring precious and rare books. For example, researchers stated that Abu Musa Iessa Ibn Abdul Aziz, the famous grammarian who died on 607 AH, was the “first person to introduce Sihah Al-Jawhari to Morocco.”

This way, Moroccans have been continuously acquainted with all writings and poetic collections of the eastern and Andalusian scholars.

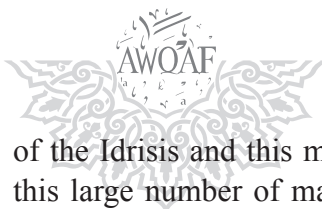
The most famous book safes which played this cultural role:

The book safes which played this intellectual and scientific role in Morocco are numerous. We shall state some of their peculiar characteristics in the various fields as follows:

First: Al-Qarawiyyin Book Safe in Fez:

Al-Qarawiyyin Book Safe in Fez – which is considered the scientific capital of Morocco – is one of the most famous book safes all over the Islamic West. It included precious manuscripts and valuable documents in all fields of knowledge which caliphs and scholars endowed used to endow so that their benefit shall be generalized. Therefore, this Book Safe is considered as the incubator of the cultural, intellectual and scientific heritage of Morocco, Andalusia and even the eastern heritage. Al-Qarawiyyin University witnessed a scientific renaissance since the era

(1) See: «The Historical Status of the Existence of Manuscripts in Morocco», Ibid.



of the Idrisis and this matter was a catalyst for this book safe to include this large number of manuscripts, books and documents. Such scientific renaissance was continuously prominent till the contemporary age. This makes its book safe full of every precious and rare manuscript in the various sciences taught such as religious, literary, linguistic, rhetoric, critical and mental books. This Book Safe still maintains a large number of such manuscripts. The Book Safe still maintains its scientific position for all students and researchers in Morocco and the Islamic world. Founded by Sultan Abu Anan Al-Mirini on 750 AH, the document of foundation of the Book Safe contains texts which necessitate caring for the Safe, keeping its contents and making them available for students and researchers in order to promote and disseminate knowledge until the end of this world. The foundation and endowment document reads as follows: “He – May Allah grant him victory – made this perpetual endowment for all Muslims until Allah bequeaths the land and whatever on it, and He is Best Inheritor. He – may Allah support him – intended to urge towards seeking, disseminating and promoting knowledge and making it easy for the people desirous to read, copy, review and compare copies. Nobody is allowed to cancel such endowment or ignore preserving and maintaining it. He intended by it the Pleasure of Allah, the Almighty, and His bounteous reward. May Allah duplicate his good deeds, promote his degrees in Paradise, preserve his monarchy and endow him with good deeds. This is dated on Jumada Al-Ula, seven hundred and fifty after Hijra. May Allah endow His gracious blessings.”⁽¹⁾

This document reveals the cultural and intellectual tendency which the kings of Morocco were keen to disseminate by providing all cornerstones of culture which facilitate seeking knowledge for students. The first constituent of such cornerstones is the availability of books in the hands of scholars and students and publishing and promoting knowledge. Therefore, we find in the document an invitation to maintain the books of the safe and

(1) See the research titled «Al-Qarawyyin’s Book Safe between the Past and the Present», Dr. Ali Al-Ghazawi, *Dawat Al-Haqq*, Volume 363, January 2002 AD.

make them accessible to every student of knowledge. Historians stated that caring for the book safe, organizing it and expanding its buildings have continued in the successive ages in parallel with the provisions of all books needed by students. For example, Abu Al-Abbas Ahmad Al-Mansur As-Saadi – also known as Adh-Dhahabi – established “a scientific book safe in the direction of Qiblah to the left of the safe of the Holy Quran. The intention has not been targeted at eliminating the building of the first book safe, but it aims at fulfilling the increasing demands of the students.”⁽¹⁾

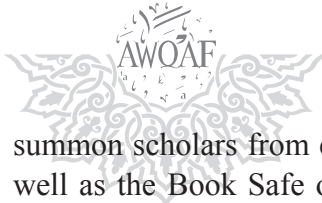
All successive states used to adopt this methodology as kings considered this library the cultural facet of the university. Till the present time, the library preserves the rare manuscripts, writings and documents in the handwriting of their authors, especially the manuscripts carried by Muslims after they left Andalusia. These manuscripts are considered a reference to the researchers all over the world for the scientific and historical documentation of the flourishing sciences phenomenon in Morocco and Andalusia as well as the scientific role played by the university ever since it has been established until now.⁽²⁾

Library of Ibn Yusuf Mosque in Marakish:

Ibn Yusuf Mosque has been established by Ali Ibn Yusuf Ibn Tashfin Al-Murabiti on 514 AH so as to be like Al-Qarawiyyin Mosque in terms of scientific and intellectual illumination in Morocco. The Mosque played this pioneering scientific role since the phase of establishment till the contemporary time, but it has been especially flourishing and prominent on all levels during the Muwahhidi era where the most famous scholars of the age have gathered from Morocco, Andalusia and the east. We have come to know that Yusuf Ibn Abdul Mumin Al-Muwahhidi was one of the caliphs who used to study science, philosophy and literature. He used to

(1) Jamie Al-Qarawiyyin: 2 / 341.

(2) We have published a research on the scientific illumination of this university under the title “The Impact of the University of Qarawiyyin in the Scientific and Cultural Illumination and Social Reform: Allal Al-Fassi as an Example of a Thinker”, , Dawat Al-Haqq, Volume 364, February 2002 AD.



summon scholars from everywhere and collect books in his book safe as well as the Book Safe of Ibn Yusuf until he collected an unprecedented set of religious, literary and mental sciences. Due to the reputation of this mosque, it has become the destination of the prominent figures of Andalusia and the East in order to teach in it and meet its scholars. It is sufficient to mention some prominent figures of the old Marakish city that acquired knowledge in this mosque and studied in its courts during the Muwahhidi era and the subsequent eras. An example is the historian of the Muwahhidi State Abdul Wahid Al-Marakishi, the author of *Al-Muajab Fi Talkhis Akhbar Al-Maghrib*. This book is a record full of the achievements of the Muwahhidi State. Another example is rhetoric critic who lived during the Marini Era Abu Al-Abbas Ahmad Ibn Al-Banaa Al-Adadi. He is the author of *Ar-Rawd Al-Marie Fi Sinaat Al-Badie* as well as other books in exegesis and rhetoric. He was famous for his epithet “Al-Adadi” because he was the most knowledgeable person in his time in math. A third example is the philosopher Averroes which the courts of the university have been illuminated by his views.

Currently, this Mosque has been transferred to a College of the Arabic Language which still teaches religious sciences and the Arabic language and especially grammar, rhetoric and linguistics. In addition, it introduced the modern curricula known in the Moroccan universities. One of the scholars of this University in the modern time, Abu Abdullah Muhammad Ibn Uthman Ibn Abi Bakr Ibn Ibrahim Al-Masfiwi Al-Marakishi Al-Idrisi (died on 1945 AD), wrote a book on the scientific renaissance of this Mosque under the title “The Yusufian University in Marakish in Nine hundred Years”. The book has been issued on 1937 AD.

As for the library of this Mosque, it has been established during the Saadi Era by King Abdullah As-Saadi on 965 AH. Historians stated that he endowed many rare books in the various fields of knowledge on this library. It is well known that most scientific Andalusian heritage has been collected in Morocco during this era after the Muslims left Granada. Undoubtedly, King Abdullah As-Saadi has collected many of the Andalusian manuscripts

in this library as well as the Qarawiyyin Book Safe and other book safes especially the Book Safe of the Great Mosque of Bitardonat, the home town of the Saadi State. During the various eras, kings and scholars used to equip it with manuscripts written by scholars in the various fields of knowledge. When we know that the university used to teach religious, literary and linguistic sciences as well as mysticism, astronomy, medicine and mathematics, undoubtedly the references of these sciences have been available in this library and they have been continuously available for researchers and students.

Jamie Al-Hurrah Library in Marakish:

This Mosque is in Marakish too but it has not attained the fame of Ibn Yusuf's Mosque. It used to teach the same sciences taught in Ibn Yusuf's Mosque especially religious and literary sciences and mysticism. Its library has been established by the pious and noble woman Masuudah Al-Wazkitiyyah, a prestigious woman interested in thought and culture. It is not strange that this woman is the mother of Sultan Ahmad Al-Mansur As-Saadi (died on 995 AH) who has been one of the most famous kings of Morocco. His era witnessed unparalleled intellectual and economic boom to the extent that historians named it the Golden Era. Historians stated that this noble woman endowed many books in the religious, mental and scientific sciences on this book safe. She possessed such books in consideration of tremendous amounts of money she paid as a means of disseminating knowledge among students. Probably, through this scientific milestone, she wanted to immortalize her name in one of the aspects of thought and culture during this era just like the noble woman Fatimah Al-Fihriyyah who built Al-Qarawiyyin Mosque in Fez out of her own money. The history of the Muslim woman in the Islamic East and West is full of feats in the field of benefaction, benevolence, scientific illumination, thought, construction and social reform.

The Grand Mosque Library in Tarudant:

This is the largest mosque in southern Morocco at Tarudant, Sous Area. Ever since it has been established, it played its religious and scientific role





and especially during the foundation of the Saadi State where their call has been launched from this city. Kings paid attention to this Mosque, brought the best scholars to teach in it and furnished its book safe with the books covering the taught sciences and especially religious and literary sciences, mysticism and astronomy. In Sous, this Mosque occupied the position of Ibn Yusuf's Mosque in Marakish. A proof of the great attention paid by kings to this Mosque is the fact that they used to send their sons to learn at the hands of its Sheikhs. For example, Ahmad Al-Mansur Adh-Dhahabi – the most famous king of the Saadi State whose efforts in science have been previously elaborated – has learnt at the hands of the Sheikhs of this Mosque just like any other student. Resources stated a document written by this Sultan where he mentioned his Sheikhs in this Mosque. He said: When the Sultan – may Allah have mercy on him – moved to Sous, he took me with him. I started studying Ar-Risalah at Sous at the hands of jurist Abu Imran Mussa As-Susi, may Allah have mercy on him. I read it twice from the book on the jurist Abu Ar-Rabie Sulayman. I used to read Mukhtasar Khalil and write down a page of it. After leaving the memorization class, I used to study it as the Sultan – may Allah have mercy on him – has not charged me to read it because of its length. I also studied Ar-Risalah from the book twice at the hands of the grammarian and jurist Abu Muhammad Abdul Aziz Ibn Ibrahim. After memorizing it, I carefully read it before him and understood its contents. I also carefully read Muqaddimat Ibn Ajrum before him several times, understood its contents and I analyzed its words grammatically. I also read Alfiyyat Ibn Malik before him two or three times from the book. I read Arabic Linguistics before the jurist and undisputedly grammarian of his time Mr. Abu Al-Abbas Al-Qaddumi, may Allah have mercy on him. I started reading Al-Alfiyyah before the highly-literate jurist Abu Abdullah Ibn Abi Al-Qassim Ash-Sharief. I could not complete it when the tyrant moved and my cousin summoned me. I moved with him to Fez and Bassit Azghar.”

This quotation has a great importance in manifesting the scientific status of this Mosque. Princes used to learn at the hands of its Sheikhs due to the prestige they used to occupy. Ahmad Al-Mansur also highlighted the



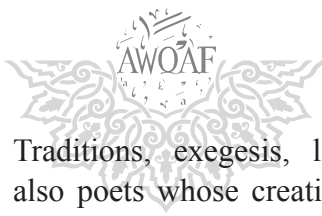
sciences taught in this Mosque and the method of teaching and selecting its Sheikhs who have scientific chairs in the sciences he mentioned. These scientific chairs were not granted except to high-profile scholars. The writer of this quotation is Ahmad Al-Mansur who was one of the kings who paid great attention to knowledge. Whenever he has a book, he used to carefully read, understand and comment on it. We have read Al-Ifrani's quotation which states his great interest in collecting and reading books. Undoubtedly, the Book Safe of this Mosque has been full of the various resources.

Dar Al-Iddah Library in Fakik:

Although not as famous as the previous libraries, the fame of this library is attributed to its founder the great scholar Abdul Jabbar Ibn Ahmad Al-Azuzi Al-Fajiji who was one of the most distinguished scholars in his time. He endowed many books and rare manuscripts in various fields of knowledge which have been a reference for the researchers of his time. The library is still maintaining this status till now due to its rare books and manuscripts which could not be found in other libraries.

Az-Zawiyah An-Nasiriyyah Library in Tamcrut:

Morocco, especially during the historical period of the Portuguese and Spanish invasions of its beaches, has been famous for the voluminous numbers of small mosques which have penetrated all its regions from the north to its south and from the East to its West. These small mosques have been established by prominent figures who performed jihadist, intellectual, educational and reformation roles. They helped in graduating a large number of jurists, scholars, men of letters and poets who enriched the scientific, literary and mystic movement in their era and liberated minds from stagnation and superstitions. Taking into consideration that these small mosques hosted science, mysticism and the call for reform and jihad, it is not strange that its Sheikhs establish libraries similar to the libraries of the grand mosques especially inclusive of religious, literary and linguistic references. The founders of these small mosques have been famous scholars in their era. They used to write in jurisprudence, Prophetic



Traditions, exegesis, literature, language and grammar. They were also poets whose creativity covers many fields. Their books have been available at the hands of the students and scholars of these small mosques. Therefore, it is not strange that the Shiekhs of these small mosques paid attention to providing the resources and references needed by students. Tamcrut library is one of these most famous libraries in south Morocco at Az-Zawiyah An-Nasiriyyah which has been one of the oldest and most famous small mosques due to the great role it played in education, disseminating awareness and reform in a large number of Moroccan cities. This small mosque has been established by Umar Ibn Ahmad Al-Ansari (died on 983 AH), but it has been known by Sheikh Muhammad Ibn Nassir (died on 1085 AH). This Sheikh renovated it and delineated its intellectual, scientific and mystic role as well as the reformative, social and religious tendency. Its library is considered as the richest book safe in Morocco as it contains many manuscripts in jurisprudence, Prophetic Traditions, mysticism, literature and poetic collections all written by the prominent figures of this small mosque that were well-known with science, literature and mysticism. Till now, the library is the destination of researchers and students of the history and thought of the prominent figures of this small mosque.

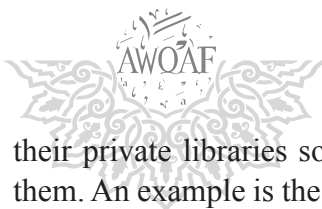
Library of the Small Mosque of Mawlai Abdullah Ash-Sheriff:

This library is located at the city of Wazzan. The scholars of this small mosque have been renowned with mysticism, religious sciences, exegeses, Prophetic Traditions and language sciences. Its founder, Abdullah Ash-Sheriff, has been one of the prominent figures of his time. This library still contains the manuscripts of a large number of the scholars of this small mosque in the fields of mysticism and religious sciences mastered by its scholars. This library is a reference for researchers in these sciences and the history of the prominent figures of this small mosque. These are the most renowned book safes which are connected with grand mosques and small mosques. Most of their manuscripts and documents are free from the fluctuations of time. Their valuable treasures still provide

researchers with their hidden pearls in the various fields of knowledge in spite of the negligence they suffered during the time of occupation which worked towards disseminating ignorance and conjuration and obliterating the milestones of thought and Islamic culture. Some official bodies in charge of culture and heritage in Morocco exerted efforts to save lots of manuscripts from loss. They photocopied large parts of them once again and worked towards maintaining them so that researchers shall make use of them. However, these efforts – although mandatory on the part of the State – are not sufficient because heritage is not sustained and people do not appreciate it and know its secrets unless it has been revitalized by researchers and specialized students of heritage who verify, explain and study it and manifest its historical and scientific status. So that researchers shall exert such efforts, they need financial and moral support because researchers revitalizes the nation's heritage anew. Such support is currently non-existent and officials do not think of it. They leave such heavy burden to individuals as if they had been solely responsible for such heritage and the scientific history of the nation. I am fully satisfied with what I say based on my field experience and my knowledge of the financial and moral hardships which heritage researchers suffer while the money of the competent ministries is spent on matters unrelated to thought and culture.

The Effect of the Endowment Phenomenon on the Prominence of Book Safes:

The phenomenon of the endowment of books by kings, scholars and noble men was the reason for such prominence as discussed earlier. Their feeling was strong that culture in all its facets and public charitable work shall not continue and produce their fruits except through endowment. They used to compete towards such aim with satisfaction and conviction. We have seen that men and women were on an equal footing with regard to such charitable and cultural work. Accordingly, the scientific glow of universities, schools, small mosques and public book safes continued in the past time and such phenomenon is still flourishing in our contemporary era due to endowment. A large number of scholars and men of letters endowed



their private libraries so that researchers and students shall make use of them. An example is the Subaihiyyah Library in the city of Sala which has been endowed by Al-Alim As-Subaihi who was one of the men of letters in this city. I made a remarkable use of its books and manuscripts. Another example is Al-Kannuniyyah Library in Tangiers in the north of Morocco. It has been endowed by the noble scholar Abdullah Kannun who was one of the prominent figures in science, jurisprudence, thought and literature in Morocco in the contemporary times. These examples have been followed by a large number of scholars in various regions in Morocco. This endowment-driven work indicates the desire to disseminate knowledge, preserve books and provide benefits to a large number of researchers.

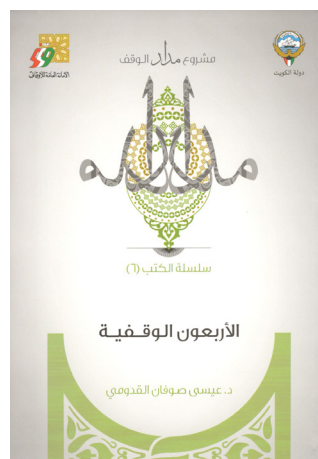
Review of the march of Morocco in building religious, scientific and intellectual institutions which maintained the clarify of doctrine, contributed to the glow of the intellectual and cultural movement through writing books, teaching and scientific debates and established public book safes manifest the virtue of endowment and the efforts of personnel working in this institution.

Morocco – in its capacity as the gate through which Islam moved to Europe in the old ages, the residence country of scholars coming from the East to Andalusia and the country where culture and thought flourished during the eras of several states – has been known by political, military and cultural glory during the eras of Murabitin, Muwahhidin, Mariniyyin, Saadiyyin and Alawiyyin. For all these reasons, officials should preserve its intellectual and cultural heritage because it represents the history of the nation in this wing of the Islamic world. The nation which neglects its culture, thought and heritage in fact obliterates with its own hands its history, civilization and glory. It is not worthy of the Islamic world and the Moroccan nation which have been characterized – since ages - with such excellent intellectual activity to be backward in the modern times and abandon the pioneering role it played in disseminating knowledge and deeds in all fields which contribute to comprehensive development. On the contrary, the Moroccan nation should have intellectual glow which reflects its history and glories.

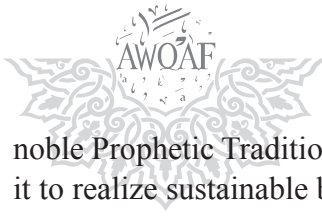
Book Review



- **Title:** Forty Prophetic Traditions on Endowment.
- **Category:** Endowment Midad Project – Book Series (7).
- **Author:** Dr. Eissa Sufan Al-Qaddumi.
- **Publisher:** Department of Studies and Foreign Relations – Awqaf Foundation.
- **Date of Publication:** First Edition 1436 AH / 2015 AD.



Overview of the Book: In this 364-page book, the author compiled forty Prophetic Traditions on endowment works. He explained them in a simplified manner and deduced the moral lessons from the Prophetic Traditions. The author presented the scholarly applications of these Traditions in a manner which supports endowment and its projects, disseminates its culture in the society and emphasizes its role in serving the society. The author manifested such ideas through the practical applications of the Prophetic Traditions which cope with the contemporary societal reality. Through the pioneering examples ever since the first Islamic century and the subsequent Islamic eras, it is clear that the Islamic endowment is the project of the whole nation. Such project maintains the nation's integrity and the necessities of its life. This affirms that such



noble Prophetic Tradition has all features and characteristics which enable it to realize sustainable benevolence and benefaction in order to fulfill the aspirations and needs of all societal segments all over the world. When compiling and explaining the Prophetic Traditions, the author pointed out that Islamic endowment is a religiously original project and an intellectually desirable project which covers diversified fields. The author paid attention to the diversified nature of the Islamic endowment and its relation with all avenues of life. He urged Muslims to exert their efforts in order to resume the march of Islamic endowment anew and encouraged them to participate in all its fields and tracks. He unveiled the treasures, magnitude and cultural contributions of endowment in order to urge Muslims towards more benevolence and benefaction and create a generation which believes in the achievements of endowment, its role in building civilization and maintaining the human integrity in the flourishing Islamic eras on a basis derived from the Qur'an, Prophetic Traditions and practical application.

- **Title: Third Sector and Social Responsibility (Horizons and Challenges – Kuwait as an example)**
- **Category: Endowment Midad Project – Book Series (7)**
- **Author: Lubna Abdul Aziz Salihin**
- **Publisher: Department of Studies and Foreign Relations – Awqaf Foundation**
- **Date of Publication: First Edition 1436 AH / 2015 AD**



Overview of the Book: In this 265-page book, the author addresses an important issue which has social dimensions. It is the (charitable) non-profit

Third Sector, its role in realizing societal objectives in the contemporary reality and how far the Arab and Muslim nation needs it. The author referred to the possibility of making use of the regional and international experiments in this field. She pointed out the interactive relation between the societal responsibility and the means of inculcating the culture of charitable work. She shed light on the concept of social responsibility, dissemination of the principles of social solidarity and the activation of charitable culture. Such charitable culture is one of the most important prerequisites of the current era in the light of the challenges imposed on the charitable sector in order to minimize its role in spite of the wide-spread charitable renaissance all over the Islamic globe. This renaissance has been derived by instinct from the noble Islamic Shariah and the Muslim considers it as a sort of social acts of worship. The study pinpointed the nature of challenges and obstacles which impede the march of social fabric of the charitable work in the Arab and Islamic world. The most manifest missions and challenges which should be taken into consideration are the necessity of coherence and integration between the charitable institutions in order to fulfill the social responsibility needs through collective work in arranging priorities and necessities. The study spotted a set of solutions and proposals in order to overcome challenges and invest the sources of the Third Sector in order to socially advance the charitable work. The study displayed a creative presentation of the active examples and the pressing needs for such models in the phase of mobility and renaissance. The study also shed light on the endowment institutions in their capacity as the largest and most important charitable organizations of the Third Sector in the Arab and Islamic world in order to push forward the endowment-related mission specifically and the charitable sector generally.



- **Title:** Awqaf Foundation in the State of Kuwait and its Role in Developing the Society (Family Development as an Example)
- **Category:** Endowment Midad Project – University Theses Series (11) – Master Degree Thesis
- **Author:** Muhammad Abdullah Al-Hijji
- **Publisher:** Department of Studies and Foreign Relations – Awqaf Foundation
- **Date of Publication:** 1436 AH / 2015 AD



Overview of the Book: The study sheds light on the role of family endowment as a positive supporter in treating psychological, social, educational and economic problems of the Muslim family especially that the Muslim family suffers from instability and faces many problems in the arena of globalization which affects its manners. Globalization alienated the Muslim family from its primary function which is represented in bringing up and building generations which are able to make achievements and positively interact with all matters of life and the construction of this world. The study states some projects which contribute to rebuilding the family through practical, realistic and applicable plans rather than mere theories. Such projects shall have an influential effect on the field of family development, growing family interaction, providing endowment projects which assist in maintaining family stability, encouraging young men to maintain values and traditions inherited through the successive generations, working hard to face challenges which encounter the society and developing radical solutions for the problems which affect the Muslim

family in the Kuwaiti society. The study pinpointed the significant role of Awqaf Foundation in the State of Kuwait. Through such role, it is possible to support the non-governmental organizations concerned with the family and setting mutual objectives to advance family development. The study concluded with a set of recommendations and proposals derived from the principles of the noble Islamic religion and which contribute to delineating social policies in order to promote, advance and care for the family.

It is worthy to mention that the original of this thesis has been scientifically reviewed in order to be published in accordance with the applicable regulations in Awqaf Foundation. The publication of the thesis has been permitted. The original version of this thesis has been awarded the Master degree in Islamic studies from the Faculty of Imam Awzaei for Islamic Studies in Beirut, the Republic of Lebanon on 1434 AH / 2013 AD.

- **Title: Documenting Endowments and Examples of Comparative Endowment Deeds**
- **Category: Endowment Midad Project – Series of Award-winning Researches in Kuwait International Competition of Endowment Researches (18)**
- **Author: Ahmad Mubarak Salim**
- **Publisher: Department of Studies and Foreign Relations – Awqaf Foundation**
- **Date of Publication: First Edition 1435 AH / 2014 AD**



Overview of the Book: This edition is 103 pages. It is an award-winning research in Kuwait International Competition of Endowment

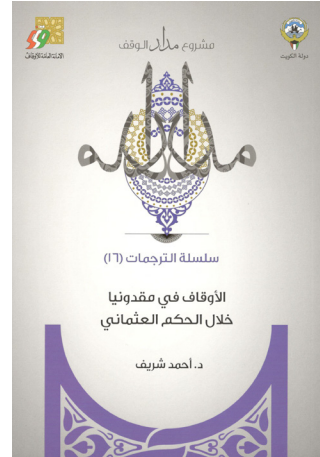


Researches. The Competition aims at contributing to the development of researches and studies in the field of endowment and charitable work and encouraging researchers and academics address the various issues and problems of endowment with the ultimate objective of developing proper solutions and evaluating their targeted benefits.

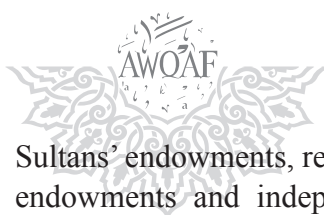
This study addresses the intellectual and legal structure of the endowment deed, the relevant requirements of deducing the philosophy of documenting the endowment deed and its relation to the theory of contracting in the Islamic thought, the legal proofs of documentation, the historical development of documenting endowments in Bahrain, the components of the endowment deed and the impediments related to documenting the contemporary endowments. The study also presented a case of registering and documenting an endowment deed in the registers of the Bahraini endowments. The deed is dated back to half of the last century. The study researches its structure, analyzed its content and introduced the role played by the endowment organizations during such period within the framework of the data of such deed. The study also figures out a proposal for documenting endowments which fulfills both legal requirements and technological development.

The research has been awarded the third prize on the second issue about “Documenting endowments in the Islamic World: Protection of Endowment and History” in the seventh session of the Competition on 1431 – 1432 AH / 2010 – 2011 AD).

- **Title: Endowments in Macedonia during the Ottoman Regime**
- **Category: Endowment Midad Project – Translations Series (16)**
- **Author: Dr. Ahmad Sherif**
- **Publisher: Department of Studies and Foreign Relations – Awqaf Foundation**
- **Date of Publication: First Edition 1435 AH / 2014 AD**



Overview of the Book: This edition is about 242 pages. It covers the experience of endowment development in Macedonia during the Ottoman regime and its basic milestones. The book also addresses the main objectives of these endowments in their various types and their contributions in fulfilling the social and economic needs of the population. The book refers to the flourishing phase of endowments and their penetration during the Ottoman State due to the tremendous financial opulence during this era. It points out the great deterioration of endowments because they have been invested by usurious loans. The book sheds light on the collapse and deterioration of endowments and their retracting social and economic role in Macedonia due to the increasing deviations in the performance of the political work of endowments and the management of their properties. The author classified endowments into six categories. The first category is movable and immovable endowments. The second category is based on their revenues. It includes charitable endowments, revenue-generating endowments, offspring endowments and temporary endowments. The third category is based on the type of endowed properties. It includes valid and invalid endowments. The fourth category is based on management. The author divided it into two types: registered endowments and unregistered endowments. The registered endowments include several types such as



Sultans' endowments, resignation of the endowment guardian, confiscated endowments and independent endowments. Unregistered endowments are subdivided into additional endowments, irregular endowments, noble and famous men's endowments and the endowments established in recognition of the virtues of heroes. The fifth category is based on rented endowments and it is subdivided into temporary leased endowments and partial endowments. The sixth category includes endowments as religious, cultural, educational and charitable endowments.

It is worthy to mention that the Translation Series is a part of Midad Project which aims at translating literatures related to endowment, charitable and voluntary work. This book has been translated by the author from the Albanian language to the Arabic language. The translation has been referred to academic reviewers by the Department of Studies and Foreign Relations.

- **Title: The Contribution of the Endowment System to the Realization of the General Purposes of Islamic Shariah**
- **Category: Endowment Midad Project – Series of Award-winning Researches in Kuwait International Competition of Endowment Researches (19)**
- **Author: Professor Dr. Nur Ad-Din Mukhtar Al-Khadimi**
- **Publisher: Department of Studies and Foreign Relations – Awqaf Foundation**
- **Date of Publication: First Edition 1436 AH / 2015 AD**



Overview of the Book: This edition is 151 pages. It is an award-winning research in Endowment Midad Project among the series of award-winning researches in Kuwait International Competition of Endowment Researches. It has been scientifically reviewed once again by referring it to peer review for the purpose of publication. It has been licensed after performing proper scientific and linguistic editing in accordance with the applicable regulations in Awqaf Foundation.

This edition sheds light on an important issue which is the management of endowment from a purposeful aspect. This issue is concerned with the presentation of the objectives, targets and purports of the rulings of endowment. It indicates that the jurisprudence of endowment is connected with the legitimate purposes and the resultant effects with regard to understanding, exerting legal efforts in order to reach a judgment, practical application of a judgment, preponderance and investment. It pinpoints the phases of contributions of the endowment system in realizing purposes and making use of them in the real state of affairs whether such purposes are related to the attainment of the five grand objectives of Shariah (i.e. preserving religion, soul, mind, offspring and property) or manifesting the major features of Islam and presenting its main concepts such as letting man construct earth, construction, reform, cultural witnessing and qualitative contribution in the entire humanitarian world. The research presented the dimensions of the endowment system with the theory of generalized purposes of Islamic Shariah. It delineated in detail the theory of purposes in the jurisprudence of endowment and the assessment of the endower's conditions in the light of the legitimate purposes. The research provided an analysis of an endowment model from the perspective of legitimate purposes. The model is Kuwaiti Charitable Funds which have been reviewed from the perspective of legitimate purposes. The research also dealt with activating the theory of the generalized purposes of Shariah and its effect on enhancing the efficiency of the endowment system in our contemporary reality.



- **Title: Juristic Rulings and the Accounting Basics of Endowment**
- **Category: Endowment Midad Project – Seminar Series (4)**
- **Authors: Dr. Abdus-Sattar Abu Ghuddah – Dr. Hussein Hassan Shihata**
- **Publisher: Department of Studies and Foreign Relations – Awqaf Foundation**
- **Date of Publication: First Edition 1435 AH / 2014 AD**



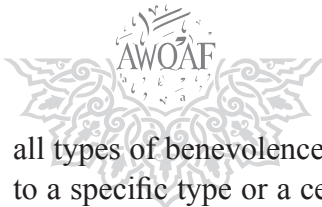
Overview of the Book: This study tackles the juristic and accounting aspects of maintaining, restoring and replacing endowment items as they are closely related to the management of endowments. The study also develops a framework of the financial statements and reports which contribute in manifesting the financial position of the organization and the outcomes of its businesses. In addition, such juristic and accounting aspects are considered one of the marketing departments which contributes in corroborating the confidence of the current and potential endowers in a manner which increases interaction with the endowment organization. One of the main objectives of this study is the presentation of juristic rulings which control the financial transactions of the endowment in terms of its revenues, expenses and channels and simplifying such transactions in a manner commensurate with the contemporary applications. Besides, the study targets at simplifying such transactions so that they shall be accessible to non-specialists in jurisprudence while maintaining the concept of originality. In addition, the study develops a generalized framework which includes the accounting concepts and basics of managing resources, revenues, expenses and channels of endowment while concentrating on

the expenses of maintenance, restoration, construction and replacement as well as the related depreciation of the endowment fixed assets and the creation of allocations and reserves in a manner which assists in the replacement costs. All such ideas are framed within the layout of juristic rulings. The study also develops the general framework of the accounting organization which generates the accounting information required for the endowment stakeholders with a special emphasis on presentation, disclosure in the financial statements and reports of the endowment, their role in advancing the mission of the endowment and its effect on the comprehensive development of the Islamic society.

- **Title: Endowment of Intellectual Property Rights (Comparative Juristic Study)**
- **Category: Endowment Midad Project – University Theses Series (18) – Ph.D. Thesis**
- **Author: Dr. Muhammad Mustafa Ash-Shiqiri**
- **Publisher: Department of Studies and Foreign Relations – Awqaf Foundation**
- **Date of Publication: First Edition 1435 AH / 2014 AD**



Overview of the Book: This study addresses an issue which attained remarkable significance during the last two years. It is the “Endowment of Intellectual Property Rights”. The theoretical framework of this issue is materialized in the fact that endowment is one of the general channels of benevolence which has not been restricted by the Islamic Shariah in the Glorious Qur’an. The generalized texts of the Glorious Qur’an cover



all types of benevolence, benefaction and goodness without being limited to a specific type or a certain time period. Adopting and adhering to such understanding stresses the all-aware and active consideration of the updates of this era and the new intellectual, social and economic conditions. In our age, intellectual property rights have become one of the sources of property taken into consideration from the social and economic perspectives. The knowledge-producing developed countries used to record patents in special departments and they used to call them “knowledge assets”. They even enacted special severe laws to deter any transgression on such assets in recognition of their significance and the extent of their effect on the economic reality of the country. Accordingly, they should have the same effect and influence on the charitable reality as embodied in endowments. This study sheds light on the endowment of rights according to the various juristic schools and the man-made laws in order to reach a selected opinion on the issue of endowing intellectual property rights and the legitimacy of the legal personality of the endowment. The study has reached a set of recommendations and outcomes in this respect.

The original of this thesis has been awarded the Ph.D. in comparative jurisprudence from the Department of Islamic Studies, Faculty of Arts and Humanitarian Sciences, Al-Jinan University, Tripoli, the Republic of Lebanon on 2010 AD.

News & Coverages

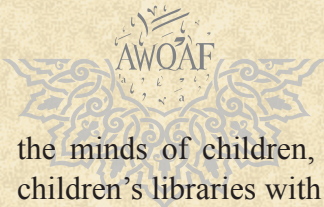


Kuwait International Competition for Writing Children's Stories in the Field of Endowment, Charitable and Voluntary Work



Under the patronage of His Highness the Prime Minister Sheikh Jaber Mubarak Al-Hamad Al-Sabah, Awqaf Foundation – represented by the Department of Information and Documentation – shall organize Kuwait Second International Competition for Writing Children's Stories in the Field of Endowment, Charitable and Voluntary Work 2015 – 2016 AD. This is an international competition held each two years to urge authors towards writing children's stories in the field of endowment, charitable and voluntary work in order to raise the awareness of community members on the significance of these fields ever since their childhood.

The Competition is one of the projects of the State which coordinates the efforts of the Islamic countries in the field of endowment. The Competition aims at establishing the concept of charitable and voluntary work in



the minds of children, develop and enrich the compiled collections of children's libraries with important and new topics, support and encourage talented people in the field of narrative creativity and channel their attention towards new topics. Thus, the Competition shall contribute to establishing the concept of endowment, charitable and voluntary work in the minds of children, crystallize religious, moral, national and aesthetic values of children and manifest the regional and international leading role of the State of Kuwait in supporting its various issues.

When writing the story, the Competition stipulates that the main idea of the story is focused on one of these issues: Endowment, Charitable and Voluntary Work. The literary work shall not contradict with the original values and humanitarian constants. The text shall be in the Arabic language and it shall be preferably translated into the English language and illustrated with graphics, if possible. The awards of the Competition shall be as follows:

- First Award: 15000 US Dollars
- Second Award: 10000 US Dollars
- Third Award: 5000 US Dollars

Supporting Post Graduate Students in the Field of Endowment

In its 2014 – 2015 plan, the Department of Studies and Foreign Relations in Awqaf Foundation implemented the project of “Supporting Post Graduate Students in the Field of Endowment”.

The project of “Supporting Post Graduate Students in the Field of Endowment” is one of the projects of the State which coordinates the efforts of the Islamic World by virtue of the Decree issued by the Conference of the Ministers of Awqaf in the Islamic Countries held in the Indonesian capital Jakarta on 1997. The Decree commissioned the State of Kuwait, represented by Awqaf Foundation, so as to be the coordinator state of the efforts of the Islamic countries in the field of endowments. Awqaf Foundation works towards realizing such role by completing several projects.

The Program provides scientific and financial support for a number of MA and Ph.D. candidates. The Program assisted in the graduation of 56 students with 25 students having a Ph.D. degree and 31 having a Master degree in accordance with the conditions and rules developed by Awqaf Foundation in an ad-hoc regulation in order to get such financial and scientific support. The Program aims at creating an academic elite specialized in the field of endowment-related studies in order to bridge the gap in the recent studies and contemporary efforts in the field of endowment.

Awqaf Foundation hopes that such effort shall be positively reflected on the performance of endowment organizations in a manner which promotes the endowment system all over the world.



AWQAF DEED

In recognition of the waqf thought and philosophy in establishing the projects and extending social services in the framework of sustainable and self-supported system, KAPF established AWQF journal deed. Therefore, this journal will not depend on pricing its issues , rather it seeks to realize the aims and objectives for which it was created. it seeks to provide the journal free of charge to all waqf-related research, concerned people and research centers.

On the other hand, KAPF is on the lookout for financing AWQAF through soliciting contributions, whether in the form of subscriptions, fixing an issue price or otherwise in an attempt towards authenticating the journal and enabling it to approach waqf as a specialty. This is meant to quality waqf to take part in social development by bearing part of this responsibilities in extending vital developmental services.

Deed purposes:

The purposes can be put down as follows:

- Contributing to upgrading waqf researches so that the journal might rank with the prestigious refereed journals.
- Laying emphasis on the typical dimension of waqf, together with identifying its characteristics and the role entrusted to it.
- Advocating methodology in approaching issues based on the link between present and future, and therefore boosting thought in practical models.
- Linking its subjects to the waqf concerns in the entire Islamic world.
- Providing the greatest number of researches, universities and research centers with this journal free of charge.
- Encouraging efficient people to specialize in waqf-related issues.
- Establishing a network for all people interested in Islamic thought, particularly waqf thought, and facilitating communications and interaction between them.

AWQAF Nazir:

- KAPF is the Nazir of AWQAF DEED.
- KAPF is Keen to develop AWQAF and solicit contributions thereto.
- KAPF is Keen to provide all facilities for publishing the journal, attending to the staff in charge of carrying out this mission in conformance with the strategy of promoting the waqf sector advocated by academic refereed journals.