

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]



Project of AWQAF journal

AWQAF Project 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 Muslim nation. The history of Islamic world countries also reflects on Waqf rich experience in devising a societal involvement which encompasses almost all diverse walks of life and helps primarily in developing solutions for emerging human difficulties. During the decline of the Muslim nation, Waqf provided shelter and support for a significant share of the innovations that Islamic civilization was famed for and assured them to pass from one generation to another.

Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its material competencies and investing its genuine perceptions that culture makers' cherish in a spirit of scholarly innovation to arrive at fully comprehensive developmental models deeply rooted into the values of righteousness, virtue and justice.

Based on this conviction, AWQAF Journal embarks upon achieving a mission that would enable Waqf to assume the real and befitting standing in the Arab and Islamic arena of thought. It therefore seeks to emphasize Waqf as a discipline and entice those remotely or greatly interested in Waqf, uphold a scientific trend towards developing Waqf literature and link it to comprehensive social development considerations.

Since Waqf originally relates to voluntary activity, such claims would require that AWQAF Journal attaches its contents to the social work lively activities closely related to private community issues and volunteer engagements, relevant intermingling concerns associated with state-society interaction while allowing balanced participation between the making of community future and NGOs role.

AWQAF Journal Objectives

- Reviving the culture of Waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization grew into until recent times.
- Intensifying the discussions on the scientific potentials of Waqf in modern societies through emphasis on its modern structures.
- Investing in current Waqf projects and transforming them into an intellectual and culture-based product to be deliberated among specialists. This is hopefully expected to induce interaction among researchers and establish a linkage between theory and practice of the tradition of Waqf.
- Promoting reliance on the civilizational repertoire in terms of social potential resulting from a deeply rooted and inherent tendency towards charitable deeds at the individuals and nation's behavior levels.
- Strengthening ties between the Waqf school of thought, voluntary work and NGOs.
- Linking Waqf to other areas of social activities within an integrated framework to create a well-balanced society.
- Enriching the Arab library on this newly emerging topic, i.e. Waqf and Charitable Activities.

An Invitation to All Researchers and Those Interested

AWQAF Journal naturally would aspire to accommodate all the topics that have a direct or indirect relationship to Waqf such as charitable activities, volunteer work, community and development organizations, and reaches out to researchers and those interested in general to interact with it; in order to meet the challenges that obstruct the march of our societies and peoples.

The journal is pleased to invite writers and researchers to contribute to one of the three languages (Arabic, English and French) to the material related to the objectives of the journal and Waqf horizons in the different sections such as studies, book reviews and academic dissertations abstracts and coverage of seminars and deliberations of the ideas published.

Materials intended for publication in AWQAF Journal should observe by the following:

- The material should not have been published or intended 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 4000-10000 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 (MS Word).
- All researches and articles will undergo a confidential refereeing.
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- Material once sent for publication, whether published or not published, will not be returned.
- The journal will be entitled to publish any material separately or within a book format without seeking permission from the relevant owner.
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Editorial



Governance: Pathway of the Endowment Organizations towards Rationalized Management

Islamic endowment is a multi-purpose organization. It has been initiated and it practices its activities in accordance with legal systems derived from the provisions of Islamic Shariah. It is operated within the scope of ever-changing organizational and administrative frameworks which are affected by modern systems. This great organization has to remain a pioneering institution in this field by rejecting any calls for stagnancy under the pretext of originality. The endowment organization should avoid any attempts to paralyze its movement through outdated organizational and administrative frameworks and the adoption thereof without taking the orientation towards the necessities of development. Such development should be commensurate with life contemporary updates without compromising legitimate basics.





In this context, contemporary organizational and administrative development produces many frameworks and applications which target at promoting the performance level of the public and private organizations.

The above-mentioned ideas and applications include governance which is a global phenomenon which has been implemented in governmental authorities, civil society and non-governmental organizations. At the outset, its implementation has been limited to financial and economic companies and institutions.

Although the idea of governance is still new and its application is limited outside the realms of financial and economic institutions, the stakeholders in charge of the endowment organization are looking forward to making use of it and introducing applied models which are more consistent with the nature of endowment and the peculiar features of the endowment organization.

Governance is one of the principal constituents of good management. It guarantees transparency, disclosure, accountability, limitation of liability, and making sure that the endowment administration adheres to legitimate provisions, applicable laws and systems, codes of conduct, Islamic morals, and all endowment-related regulations. Such guarantees shall contribute to maintaining the endowment, its assets, properties and beneficiaries' rights. They generate confidence in endowment and create a positive image on it in the whole society. Besides, they contribute to protecting the endowment from the risks resulting from mismanagement.

The significance of endowment governance is highlighted by addressing the facets of defects in managing endowment, generating confidence on the level of both the endowers and the beneficiaries, extending the bridges of trust among them and increasing the value of the endowed capitals.

Governance is a multi-tiered administrative system. Its roles are integrated in order to reach good management by realizing the specific objectives of the system as well as all its elements. The most important tools of governance include laws, systems, policies, codified procedures which regulate work in the field of endowment, balanced organizational structure commensurate with the volume and purposes of endowment, financial and

accounting reports which enable the endowment stakeholders to follow up the performance of the management bodies, disbursement of its revenues and the identification of the levels of the management efficiencies. For these tools to be effective, the following requirements should be fulfilled:

- A solid accounting infrastructure
- Allowing the endower, heirs, some designated beneficiaries and other external stakeholders to participate in the committees and councils co-managing the endowment
- An effective system of reporting, accountability, internal control and external audit
- Effective judicial control
- An integrated document including the ethical standards adopted by the endower ⁽¹⁾

Due to the significance of governance and the need to invest it in the endowment organizations as it contributes to rationalizing the work of the institutions concerned with the endowment affairs, Awqaf Foundation has organized the Fourth International Seminar of Awqaf Magazine in the Malaysian capital, Kuala Lumpur, in collaboration with the International Islamic University in Malaysia and the Islamic Research and Training Institute of the Islamic Development Bank “IDB” in Jeddah during the period 20-21 Jumadhi I 1436 AH corresponding to 11-12 March 2015 AD. The Seminar title has been “Endowment Governance” and it has been generously sponsored by the former Malaysian Prime Minister Abdullah Badawi.

Four peer-reviewed scientific researches have been presented. This special edition of Awqaf Magazine includes these researches as an expression of the will of the Editorial Board to disseminate the culture of good governance which shall be of benefit to the endowment organizations and their staff. These researches addressed governance in terms of its concept, importance and its role played in serving public and private

(1) See the research of Dr. Muhammad Ramadan: “Harmonization between Endowment Governance and Purposes of the Endowers”



organizations. The researches also tackled and identified the concept of endowment governance, its basics, fundamentals and tools in order to reach a clear understanding of the means of applying the concept of governance and its tools in the business of the endowment organizations.

The research of Dr. Fouad Abdullah Al Umar and Basmah Abdul - Aziz Al Maoud on the “Internal / External Control of the Public Endowment Organizations” has shed light on a significant and critical issue related to the governance of endowment organizations which is “Control”. The research illustrated the meaning, types and fields of control as well as its role in generating trust in the endowment organizations.

As for Dr. Muhammad Ramadan’s research on “Harmonization between Endowment Governance and Purposes of the Endowers: Systems of Protecting the Rights of Stakeholders (Endowers and Beneficiaries of Endowments) in the Management and Follow-up of Endowment Affairs and their Powers”, it has delineated the concepts of governance, its theoretical frameworks, and importance for the endowment organization. It also illustrated the means of striking a balance between endowment governance and the purposes of the endowers and the systems of protecting the rights of stakeholders in the management and follow-up of endowment affairs and their powers.

On the other hand, the research of Dr. Sayyid Khalid Rashid “A New Model of Endowment Management” and the research of Dr. Majida Al Zayyani “Legal, Organizational and Regulatory Development of the Structure of the Endowment Organization” have addressed the requirements of developing the endowment infrastructures from all aspects (legal, organizational, regulatory ... etc.) and the coincidence between such development and governance mechanisms and standards.

Dr. Abdullah Muhammad Al-Umrani submitted a research on “Compliance with the Endower’s Conditions”. It dealt with the legitimate provisions, indications and regulations of the endower’s conditions as well as the importance of identifying the endower’s conditions with respect to endowment governance. The research also introduced the governing principles of both the endower and superintendent’s conditions.

In addition to these researches, this volume contains an essay on “The Supreme Council of the Financial Control of Public Endowments in Morocco: Nature and Intervention Mechanisms” by Dr. Zahira Fontair. The essay pointed out the origin of the Supreme Council of the Financial Control of Public Endowments in Morocco, its legal nature and business mechanisms.

Finally, this volume contains a review of the book “The Third Sector and Social Responsibility (Horizons and Challenges): Kuwait as an Example” by the researcher / Lubna Salihin. The book deals with an issue which has significant social dimensions; the not-for-profit third sector and its role in realizing the societal objectives in our contemporary life.

May Allah grant us success

Editorial Team

Researches



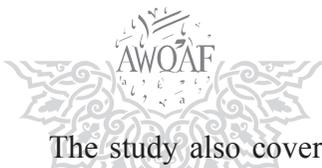
Internal / External Control of the Public Endowment Organizations

Dr. Fouad Abdullah Al Umar

Basmah Abdul - Aziz Al Maoud

Abstract:

This study aims to highlight the internal and external control and its close relationship with the governance of endowment organizations as well as its effect on realizing disclosure, transparency and fairness in the financial statements of the endowers and stakeholders of endowment. In this regard, the study addresses the importance of the control role, as it is a method of applying governance rules. The study also addresses the control effect on increasing the transparency and liability of such organization's works, especially the proper investment of the endowment properties and the optimal distribution of the return on the endowment Shariah - compliant disbursement channels and stating the effectiveness in providing services.



The study also covers the concept of “the governance of endowment organization”, its objectives and importance in rooting the trust of endowers. The study also explains the concept of “internal control”, its types such as prior and subsequent control, its fields such as accounting and administrative control and internal auditing. In addition, the study presents the concept of “external control” and its types such as the Shariah control, financial control, administrative control, popular and governmental control system, independent auditor, and judicial control and its fields.

Moreover, the study deals with the practical experience of the internal and external control in “the Secretariat General of Endowments” in the State of Kuwait, its challenges and benefits. The study concluded with the importance of internal and external control in rooting the rules of governance in the endowment organizations.

1. Introduction:

The control of public funds started as a principle and practice since the emergence of Islam, as the Messenger of Allah (peace be upon him) was keen to follow up the collectors of Zakat and alms. He also worked on maintaining public funds such as the proper care of alms camels.

The base of accounting and control of the public funds, including alms and endowments, stems from the control exerted by the Messenger of Allah (peace be upon him) on his laborers with regard to financial transactions. This is stressed in his reply to Bin Al - Lutbiyyah when he acquired some gifts after carrying out his duty. The Messenger of Allah assigned to him the duty related to Bani Sulaim alms. When he has been held accountable by the Messenger of Allah, Bin Al - Lutbiyyah said: This wealth is for you and this is a gift presented to me. Then, the Messenger of Allah (peace be upon him) said to him “Why didn’t you remain in the house of your father and your mother to see whether gifts were presented to you or not? Then he stood up to deliver a sermon to his Companions. After glorifying and praising Allah, he said: Then after, I employ some men from among you for some job which Allah has placed in my charge, and then one of you comes to me and says: “This (amount) is for you and this is a gift given to me.” Why doesn’t he stay at the house of his father or the house of his mother and see whether he will be given gifts or not if he was telling the

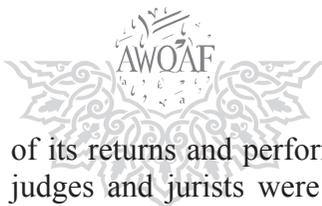


truth. By Allah, none of you takes anything of it (i.e., Zakat) for himself but he will meet Allah on the Day of Resurrection carrying it on his neck! I do not want to see any of you carrying a grunting camel, a mooing cow or a bleating sheep on meeting Allah.” Then the Prophet raised both his hands till I saw the whiteness of his armpits and said: “(No doubt)! Haven’t I conveyed Allah’s Message!”. Reported by Al Bukhari: 6979.

In addition, Abu Bakr held Muaz Bin Jabal accountable, as he said to him “Submit your account to us (Al Kattani: 1 / 73). In addition, we can follow the example of Umar Bin Al Khattab (may Allah be pleased with him) who used various methods of control, such as field follow-up, follow-up of the achievements of governors, submitting their periodical reports to him, periodical financial accounting, sudden inspection by Muhammad Bin Maslamah (may Allah be pleased with him) and sharing the governors’ properties with the Treasure House. (Al Tabarai: 4 / 74 and Bin Al Jawzi: 56).

When any person considers the literatures of jurists, such person will find their keenness on holding the endowment superintendents accountable, and controlling them, verifying that they perform the duties assigned to them with respect to the good governance of endowment. Good governance of endowment, development of its returns, and maintaining them are some of the duties assigned to the endowment superintendent or Board of Superintendence (Al Fotouhi: 1 / 429 and Al Anqari: 2 / 465). Such good governance is not practiced without a control system ensuring wisdom in taking decisions and accountability of the disposal of capitals. On the other hand, practical reality demonstrates that there are not specified legislations or clear policies identifying the fields of control on endowment organizations. However, most researchers see that most disadvantages of endowment result from mismanagement (Abu Zahra: 324 - 362 and Al Ani: 232) due to the lack of control. In addition, endowments in many countries, such as Egypt, have been exposed to various forms of corruption resulting from mismanagement, dishonesty, and poor control (Ghanem: 90). Therefore, active control prevents most forms of corruption and recovers and maintains confidence in the endowment organization.

In this context, scholars have been keen to develop a method of endowment control in order to achieve the interest of the development



of its returns and performance improvement and maintain it. In the past, judges and jurists were controlling the performance of the endowment superintendents (Abdullah: 104), as many of them paid attention to controlling the transactions related to endowments and the reconstruction of their properties, such as Judge Abdur Rahman Al-Umari who assumed Judiciary in Egypt (185 - 194 AH). He was significantly following up the endowment reconstruction and dealing with their builders the most of his day (Al Kendi: 395). The components of previous control included the accountability of disposal concerning endowment, in terms of investment and expenditure. In this regard, judges were following up endowment accounts. Judge Muhammad Bin Mousa Al Sarakhasi decreased the wage of an endowment superintendent from 500 Dinars (10%) of the endowment returns to 30 Dinars (0.6%) of the endowment returns which were up to 5,000 Dinars due to his negligence. (Al Kendi: 594).

Due to the frequent transgressions against endowments by sultans, rulers, and influential persons, many jurists strongly stuck to legal provisions in order to maintain endowments. They were keen to put the endowment disposals under the supervision of jurisdiction (Ghanem: 56 - 58) to protect them. Jurists and judges were supervising the endowment bureaus, as Judge Tawba Bin Namir introduced an endowment bureau in Egypt (118 AH) due to the lack of control bodies at that time (Al Kendi: 346). This is consistent with the opinion of Ibn Taymiyyah, as he saw that the ruler may establish a bureau including the endowment capitals account (Ibn Taymiyyah 31 / 85). Accordingly, judges could maintain endowments as possible against the State domination during this period. In addition, they maintained the endower's conditions and endowment properties (Amin: 282 - 284). In addition to the control of jurists and judges, many jobs were created to control endowments such as the control superintendent to check endowment circumstances in order to verify the progress of work in it, match it with the endower's conditions and follow up its performance (Ismael: 73).

Completing the efforts of the former scholars in maintaining endowment, in its attempt to acquire credibility and the trust of the society, the endowment organization has to work towards the development of control in order to enhance and develop its services. In order to achieve that, there

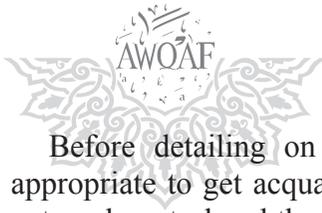
are six goals to develop control in the endowment organization, which are:

1. Creating a positive impression on its activities.
2. Enhancing the awareness of the importance of conducting control.
3. Developing control procedures.
4. Providing legislative support.
5. Developing the stimulus necessary for meeting the control recommendations.
6. Commitment to change and development.

It may be appropriate, before proceeding with investigating the subject of the study, to get acquainted with the important definitions related to the subject of the study, including the definitions of internal control and internal auditing.

Many international professional organizations provide specific definitions such as the American Institute of Certified Public Accountants (AICPA) and the American Institute of Internal Auditors (IIA). We select from them the definition of the internal control of the Committee of Sponsoring Organizations of the Tradeway Commission (COSO), **“The internal control is an effective process performed by the organization board of directors, administration, and all personnel. Such process is designed to provide a reasonable confirmation concerning achieving a set of objectives, including the efficiency and effectiveness of using the organization resources, financial reports credibility, and compliance with applicable laws and related instructions”** (COSO Committee 17, 18).

Internal auditing, as defined by the Institute of Internal Auditors (IIA), is **“An action to have access to an independent and objective advisory confirmation given to add a value to an organization and improve and develop its processes. In addition, it helps such organization to achieve its objectives through applying an organized approach to evaluate and improve the processes of risk management, setting internal control regulations, and governance processes”**. Over time, internal audit has become a major component of good and valid management, as it provides the objective evaluations which reveal whether the organization resources are managed responsibly and effectively in order to achieve the required results.



Before detailing on the subject and types of control, it may be appropriate to get acquainted with the relationship between internal and external control and the concept of governance as a modern concept with many benefits highlighted by international organizations.

II. Internal and external control and their relation with governance of endowment:

One of the control roles in the endowment organization is to get acquainted with the performance of various departments in the organization and whether they apply the legislations, regulations and procedures and to verify the good management of risks encountered by the organization and that it adopts fairness with its beneficiaries. In addition, control gives an opinion concerning the extent of effectiveness of the assignments performed by the endowment organization and the effectiveness of its activities. Therefore, such control is not only related to auditing the accounts related to such endowment organization, but particularly it aims to add a high value to the organization subject to control through specifying the weaknesses of its performance, the methods of their improvement, and the risk aspects. This is the essence of governance in the modern era and the base of calling for adopting it.

Enhancement of control is one of the bases of governance which is increasingly applauded nowadays, especially in developing governmental or non-governmental organizations and authorities, in accordance with the prophetic Hadith “Each one of you is a guardian and responsible for his wards” (Sahih Al Jamie’ Al Saghir: 4445). Usually, the rules of governance focus on various axes in the organizations, including the stakeholders of the organization and their interests, the role of both the board of directors and executive management, non-conflict of interest, systems and structure, value system, leadership, strategy, policies, building necessary administrative capacity, and the internal and external control system, which is considered as the most important axis.

If we contemplate the Hadith of Allah’s Messenger (peace be upon him) to Ibn Al-Lutbiyyah (Al Bukhari 6979), we will find that control and accounting while applying the fundamentals of governance basics, such as transparency, responsibility, accountability, and fairness are

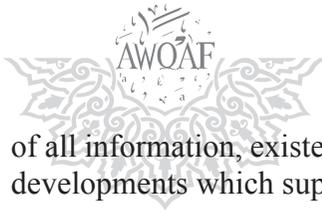


provided in this Hadith. In addition, interest in control as a method of applying the rules of governance is consistent with the orientation of the most governments of our countries towards increasing transparency and responsibility of the State works and organizations. In order to achieve such transparency, the State organizations, in the forefront of which are the endowment organizations, have to enhance their internal and external control, especially with regard to the proper investment of endowment capitals, the optimal distribution of the returns on their disbursement channels, and demonstrating effectiveness in providing services.

Despite the importance of control units of the endowment organizations as they play an effective role in tight control and development of performance, the expansion and increase of governmental organizations caused some sort of difficulty for the external control bodies such as the Accounting Bureau and the Public Control Bureau to review the performance of the endowment organization. This asserts the importance of establishing internal control units which help external control bodies. Moreover, the activation of control in the endowment organization currently needs support from other systems such as the governance system and its rules which will be addressed hereinafter.

III. “Governance of Endowment Organization”: concept, objectives, and standards:

The prominence of the role of the endowment organization as a proper and working method in the modern age and the importance of its development require, among other things, to apply the rules of governance in a manner which enhances the role of control, especially in the light of the increased number of endowments managed by institutions which have an independent organizational structure. In such independent organizational structure, the Board of Superintendence is independent from the executive management. An orientation to be appraised is the growing interest in applying the rules of governance and achieving good governance in the endowment organizations. In addition, a positive orientation in organization management currently which has a tangible effect on the performance of the endowment organization is the growing interest in the principle of transparency in transactions, clarity in the financial disclosure



of all information, existence of the known accounting standards, and other developments which support the effectiveness of control.

In this context, many researchers addressed the importance of applying the rules of governance in the endowment organizations, including the study of Hussein Al Asraj on the role of governance in regulating and developing Shariah control. This study focused on the concept of governance in the field of Shariah control in order to enhance control and increase the powers of Shariah supervisory authorities, in addition to benefiting from the governance aspects in enhancing the role of the Shariah authorities in supervision, control, transparency, and credibility. Moreover, Hussein Al Asraj indicated that the application of governance helps in finding an inclusive concept and measurements for Shariah control performance and achieving the interests of the stakeholders of endowment organizations (Al Asraj 1 - 8).

In addition, Ezz-Eddin Al Tuhami wrote about the governance of endowment and whether governance can be applied in the endowment organizations as well as its role in conducting control of all endowment capitals and providing information and data for all stakeholders of the endowment organization (Tuhami: 19 - 22).

In his study, Abd Elbari Meshal addressed the challenges and obstacles in the field of the governance of the Islamic financial organizations, especially in the field of Shariah Boards and its relationship with Shariah audit and their role in activating Shariah control (Meshal: 3).

Moreover, Hakima Abu Salama addressed the importance of applying the principles of governance in developing the endowment organizations and activating their role in achieving economic and social development (Abu Salama: 2013).

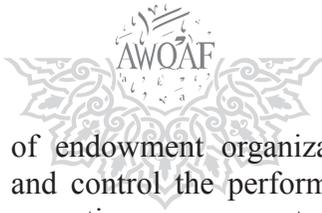
The rules of governance in the endowment organizations aim to apply systems and procedures achieving the best protection and balance among the State priorities, the rulers, the interests of endowers, donors and charitable people, the needs of the beneficiaries (the stakeholders of the works of endowment organizations), the orientations of the executive management and other related stakeholders.

The rules of governance are not legal provisions and there is no legislative obligation with respect to them. They are initiatives developed by the endowment organizations to achieve good governance in such organizations according to the global standards and the best methods which realize balance between the interests of the various parties.

The most important objectives sought by governance include conducting control and accountability to the endowment beneficiaries and stakeholders and enabling them to verify and review all administrative and financial actions of the various implemented activities and works. Therefore, control is a major substrate of the good governance system. One of the most important standards set by the Basel Committee on Banking Supervision on 1999 (Yusuf :9) is the provision of a strong internal control including the missions of internal and external auditing and an independent risk management, while considering the proportionality of powers compared to responsibilities and ensuring compliance with the regulations, laws, and procedures to ensure good governance, accurate information, and correct and impartial data. This ensures transparency, disclosure, accountability, and identification of liability. The aforementioned information demonstrates the relation of the control role as a major substrate of the governance systems and principles.

In addition, the characteristics of the endowment organization play a role in identifying the responsible control bodies. So, if the endowment organization is a public organization, it will be responsible before many higher bodies in the State, in addition to the ruler, such as the Board of Superintendence, and the control bodies, such as the Accounting Bureau, the National Assembly, and Shura Assembly. In addition, the existence of such institution as a public organization will require it to achieve various and correlated objectives. This requires various levels of control to be clear and achievable. Despite these challenges, the endowment organization will gain many benefits out of control even if it is a public and governmental organization.

Accordingly, we can conclude that the concept of “**the governance of endowment organization**” is a set of rules, principles, and procedures governing the relationships between the parties influencing the performance



of endowment organization. Through those rules, we can follow up and control the performance of the Board of Superintendence and the executive management and its efficiency with respect to the optimal use of its resources, achieving the conditions of the endowers and the benefit of all stakeholders and contributing to the economic and social development in a context of transparency, fairness, and responsibility.

IV. Internal Control of the Endowment organization Works ... Its Concept, Types, and Fields:

Internal control plays a major role in the field of organizational governance. It is considered as one of its basic requirements through the provision of effective internal control systems of the soundness of financial data related to the endowers' capitals, the efficiency of the executive management works and its good investment and development of the endowment capitals, maintaining endowment assets, its efficiency of returns disbursement, achieving the conditions and intentions of endowers, ensuring community development and meeting its needs, ensuring fairness among the stakeholders of endowment and the protection of their interests.

Consequently, the concept of internal control on the endowment organization works is a series of procedures and actions taken by all organizational levels inside the organization, starting from the Board of Superintendence and its role of general supervision, the control of achieving strategic objectives, performance efficiency, and the responsibility of the executive management to set control systems and control processes implementation. This will achieve compliance with instructions and regulations and realize objectives in accordance with indicators and performance standards. This is carried out through authority delegation, responsibilities identification, and setting policies and procedures. This also includes the executive role of the staff in the activation and commitment to the control, in addition to the internal auditors whose main role is to evaluate the effectiveness of the internal control system and the extent to compliance with them in order to provide a reasonable confirmation on achieving the organization objectives. This will be carried out by using and investing the endowment capitals and spending them according to identified disbursement channels, soundness and accuracy of the financial

data and dependence on them, and the extent of compliance on the part of the organization at the various regulatory levels with regulations, provisions, and decisions organizing them.

4.1 Types of Internal Control:

Usually, internal control is divided into two types. **The first type is** the prior control which is called preventive control. It aims to verify compliance with the provisions of the Law and the instructions of issuing decisions or taking procedures. It also aims to rationalize decisions and implement them properly and effectively. This type of control is demonstrated in the procedures and the administrative control systems set by the Board of Superintendence and the executive management, in accordance with the laws, legislations, Shariah provisions, and financial decisions governing the endowment organization work. **The second type** is subsequent control which is called corrective control, as it corrects actions, decisions, and procedures of executive management units after already taking such actions.

Consequently, internal control aims to achieve objectives such as the accuracy of financial statements, protection of the organization assets (endowment properties, investments, and cash) against error, fraud, cheating, and robbery, developing productive efficiency, achieving objectives according to the performance indicators, and compliance with the provisions, policies, regulations, and Shariah, financial, and administrative procedures. The importance of internal control is not confined to the organization management (the Board of Superintendence, the executive management, and the staff), but the auditor or the external auditor depends on the internal control system to identify the sample size that can be reliable when auditing accounts. The existence of a sound organizational plan achieving separation between liabilities affects the selection of the proper auditing procedures followed by the external auditor and the sample size.

In accordance with the professional practice standards of internal audit issued by the American Institute of Internal Auditors (IIA - 2 / 21 - 27), internal audit performs three important functions:

1. Preventive control: it is a set of procedures developed to prevent errors or deviations before their occurrence. This type of control is



demonstrated through the internal control systems and the role of control management and internal audit in detecting insufficiency with respect to the aspects of control and internal control systems.

2. Detective Control: it is a set of procedures to detect errors before their occurrence such as the dual registration of accounts and matching the bank statement to the balance of audit. This type of control is demonstrated during the implementation of the processes within the internal audit systems.
3. Corrective Control: it is a set of procedures taken to correct errors and deviations when they are detected after their occurrence. The reason and the persons liable for the problem shall be specified through implementing the audit programs.

IV.2 The fields of Internal Control:

As for the fields of internal control, they are divided into three types: accounting control, administrative control, and administrative investigation (Ahmed: 10 - 163). **Accounting control** is represented by auditing the accounting records and financial statements and information to ensure the proper presentation of the financial statements and the accuracy of the financial statements, in terms of the validity of their registration, validation, analysis, and presentation, in a manner consistent with the financial and accounting policies approved in favor of the organization and in accordance with the powers delegated to the administrative levels in the organization. Due to the relationship between the accounting control and the related financial and accounting aspects, the auditor or the external auditor is concerned with such accounting control and evaluate it to identify the extent of its reliability in preparation for specifying the scope of his / her audit and expressing the view thereon. **Administrative control** covers policies, procedures, and organizational plans related to the process of financial decision-making, so that it shall include all businesses of the administrative organization. **Internal investigation** includes a set of bases and regulations which aim at preventing and detecting errors and fraud and continuously developing business performance. Such bases cover all the organization activities and organizational units. They are binding to all administrations and organizational units and they are considered as the first

line of defense against committing errors and exposure to risk. They also ensure the soundness of endowment capitals, accuracy of their validation, and the efficiency of their disbursement.

Internal control consists of five correlated and overlapped components identified by (COSO / 20 - 86) Committee as follows:

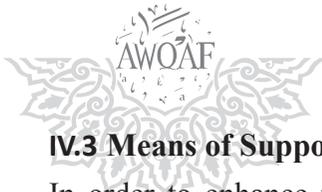
The Control Environment: It includes many components such as values which are represented by the rules of ethical behavior like honesty, management philosophy and its method of action in terms of taking decisions, responsibility accounting, the organizational structure of the institution, the clear identification of responsibilities, delegated powers, the extent of commitment to efficiency, and other matters achieving the effectiveness of auditing.

Risk assessment: Identifying risks related to the endowment organization, whether they are internal risks related to the business environment, management, and financial risks or external risks such as the risks of the competitive organizations, the legal enactments, and the economic changes affecting the organization objectives. Risk assessment also includes assessing the risk level and the possibility of its occurrence, and identifies the mechanism of its remedy through the Risk Committee or department.

Identifying the control activities: This includes policies and procedures which help in ensuring commitment to the instructions of the executive management in order to remedy the risks related to achieving the objectives of the endowment organization.

Provision of the proper information: It has to be timely and communicated to the staff of the organization, while setting the mechanism of submitting reports, their approval, and availability to stakeholders in order to efficiently and effectively take the proper decisions and continuously monitor the internal control systems and the quality of their performance.

Performance control: It refers to continuously monitoring the internal control systems and the quality of their performance in reducing risks which the organization objectives may incur. This is conducted through continuous control actions or independent evaluation.



IV.3 Means of Supporting Internal Control Systems:

In order to enhance the role of internal control on the businesses of the endowment organization, various components are required such as the provision of investigation and internal control at the level of all organizational units and departments in the organization, availability of risk management, forming an Audit Committee, and transparency and disclosure of the financial and non-financial statements in the reports as follows:

A. Investigation and Internal Control Systems: They have to identify the powers of the various departments in a manner which shall lead to the integration of efforts and the absence of conflict among them while identifying the responsibility for any error or fraud which may occur. When identifying assignments, responsibilities and duties shall be separated when it comes to preparation and implementation and document and periodically review the detailed procedures of all processes of the organization according to its activities and programs.

B. Risk Management: It includes the development of proper systems to manage the risks encountered by the organization, reduce them by identifying such risks and assess their level (high, medium or low) and the possibility of their occurrence (certainly possible, possible, impossible, rare). Later, mechanisms and procedures of dealing with such risks and reducing them are developed. This includes issuing periodical reports of risk follow-up, forming an independent Risk Committee emanating from the Board of Superintendence in order to review the risk management strategies and policies, assess various systems of risks follow-up, and propose methods of remedying and avoiding them.

C. Independent Unit for Shariah Control: As the base of the endowment organization is Shariah provisions and juristic rules, the follow-up of the organization compliance with the application of Shariah provisions issued by the Shariah Board of the endowment organization is necessary in order to ensure compliance with Shariah provisions. This is conducted by creating an independent internal unit for Shariah control, which function is to practice Shariah control, verify whether all organizational units are compliant with Shariah decisions and provisions, identify deviations and take proper actions to avoid them, enhance the confidence of the endowers

and beneficiaries of endowment in the organization business, support, develop, and achieve the organization business.

D. Independent Unit for Internal Audit: As the International Standards of Supreme Audit Organizations (INTOSAI Committee: No. 1, Section 1) provides that organizations shall create an internal audit department, which shall be functionally and organizationally independent from them to the maximum extent within their own business frames. According to the International Audit Standards issued by the Institute of Internal Auditors (IIA), the Internal Audit Department has to be independent in form and content, through its affiliation to the highest authority in the organization such as the Board of Superintendence. In addition, its reports and business results have to be submitted to the Audit Committee, which is an independent committee formed by the Board of Superintendence. Moreover, the businesses of internal control have not to be affected by the executive management and the Internal Control Department has not to participate in any operational duties to ensure the required dependence necessary to achieve its objectives.

E. The Audit Committee: The existence of an Audit Committee formed by the Board of Superintendence is one of the main components of a proper internal control (IFAC / 35 - 46). It is formed by the members of the Board of Superintendence and other independent members who have specialized financial and technical accounting experience in order to help the board perform its duties through delegation of some of its competencies to the Audit Committee. Such duties shall include reviewing the periodical financial statements and expressing opinion on them, especially with regard to the fairness and transparency of the financial reports, considering the adopted and proposed financial accounting policies, evaluating the extent of the sufficiency of the applied internal control systems, and supervising the actions of internal control. In addition, the most important role of the Audit Committee may be materialized in the fact that it is the link between the internal audit, the Board of Superintendence and the external audit in order to ensure information transparency and the accuracy and reliability of financial statements for the parties inside or outside the organization.



F. Financial Reports: The provision of periodical reports to evaluate the financial performance is considered an important means of control, as they demonstrate the endowment organization activities compared to the performance indicators to be achieved in the budgeted plan. Such reports are periodically submitted on specified dates. In order to achieve effective control, the financial performance of the organization, adopted policies and any essential changes are disclosed. In addition, the stakeholders and beneficiaries of endowment are enabled to review and have access to any basic information on the endowment organization.

- Despite the importance of internal audit and its significant effect on protecting the endowment organization, the matter of fact demonstrates the poor interest in applying internal control due to some challenges. These challenges include the lack of awareness on the part of the executive management of the business and role of internal control in the organization, failure to dedicate a proper budget for the internal audit activities, and the lack of proper cadres.

V. External Control of the Endowment Organization Businesses... Concept, Types, and Fields:

External Control is conducted by organizations from outside the endowment organization, as they are not subject to the organization or the executive management. They do not submit their reports to the organization, but they submit them to the higher or supervisory authority or any person identified by the ruler. External control is complementary to internal control, in terms of providing an independent and fair opinion. Therefore, external control is usually inclusive and not detailed. It is practiced by specialized independent organizations. External control aims to achieve some objectives, such as:

Increasing transparency: which means clarity in carrying out and publicizing transactions, with the possibility of scrutinizing and reviewing them by various partial organizations. This results in the credibility of the organization and setting trust in it (Al Umar 1419 AH, 110). Walad Al Bara' focused on the importance of transparency in the endowment organization and non-provision of incorrect information (Walad Al Bara': 336). To achieve such transparency, many endowment organizations issue



the final accounts after auditing them by an independent auditor. So, in Kuwait, Qatar, UAE and Jordan, the endowment final account is considered on a commercial basis and the accounts are audited by an independent auditor in Kuwait, Bahrain, and the Sudan (Al Umar 2003). The methods used in increasing transparency include creating boards of directors with the membership of a selected group of influential and specialized people. Most ministries and organizations of endowment in the Arabian Peninsula countries followed this method in order to provide for more transparency to the endowment organizations works (Al Umar 2003, 604). The principle of transparency can be rooted through allowing the public to review all provided statements of the charitable organization in return of a financial fee (Al Mutairi: 39). In addition, the technological development can be used to deepen transparency by using websites and publishing information on them.

The external control objectives also include **deepening external control** through a firm specialized in external control in each endowment organization. Such endowment organization is subject to the Public Control Bureau, if it is a public organization (Al Umar: 2003).

Finally, the external control objectives also include **establishing trust** by issuing regular and transparent reports to all stakeholders of the endowment organization.

5.1 Types of External Control:

Many researchers focused on the importance of the existence of various types of external control of the endowment organization activities. Hussein Shehata mentioned many types of control such as Shariah control, financial control, administrative control, popular control, and spiritual educational system (Shehata: 98, 99). Munzir Qahf suggested the importance of a local popular control and a specialized governmental control (Qahf: 86 - 88).

External control attempts to provide proper and updated reports to the Board of Superintendence, its committees or the control organizations assigned by the State in order to achieve direct control on the performance of the endowment organization with the possibility of taking corrective actions in case of low performance. In this context, we can suggest the following types of external control:



5.1.1 Shariah Control:

The importance of Shariah control on the endowment organization is attributed to the fact that endowment is an act for the sake of Allah and the endowment organization works are governed by Shariah provisions. In this context, Shariah control, whether prior or subsequent, can be enhanced and the roles of Shariah Committee and Shariah controller are activated through rooting the role of Shariah control in all aspects of work in the activities of the endowment organizations. According to the experience of the countries and endowment organizations, we can benefit from the experience of the Secretariat General of Endowments in the State of Kuwait which applies this type of prior and subsequent control to their actions through a Shariah Committee emanating from the Council of Endowment Affairs. In addition, a Department of Shariah Control has been created to assume auditing and Shariah subsequent control of all the works of the organization. Shariah audit ensures the compliance of the endowment organization with Shariah provisions of endowment and meeting the conditions of the endowers, whether in terms of the investment of the capital or disbursement of returns.

5.1.2 Governmental Control

The Secretariat General of Endowments in Kuwait is subject to the Accounting Bureau in accordance with the laws and legislations. In KSA, the endowment, as provided for by Article 10 of Endowment Law, are subject to the audit of the General Audit Bureau, which submits its notes to the Supreme Council of Endowments.

5.1.3 Administrative Control

Some countries make the endowment organization subject to administrative control as a preventive measure to reduce misconduct or abuse of power with respect to the fields of administrative decisions and actions, such as the affiliation of the Secretariat General of Endowments to the control of the Ministry of Finance and the Civil Service Bureau.

5.1.4 Control Boards:

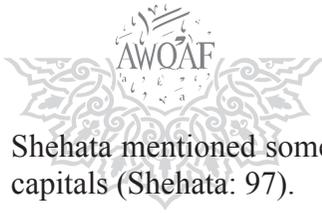
Historical experience indicates that individual superintendence resulted in various challenges which contributed to the low performance of



endowment. This usually resulted in the intervention of the State and its domination of endowments, while various cases have been filed in courts and the poor performance of endowment. The experience of the western countries in charitable work indicates that the requirement of collective superintendence through boards of trustees gives more credibility to the endowment organization and reduces individual errors in management. This is supported by the fact that most contemporary legislations support the orientation of collective management of endowments through establishing Supreme Councils of Endowments, just like the case in Kuwait (Al Umar: 2003) or Sharjah (Al Salahat: 49). Such council consists of a group of governmental officials and a selected group of people in order to practice control through a board of directors which members collectively meet the requirements of consultation, efficiency, responsibility, and honesty. It is important when applying the governance and control rules that there are independent members in the board of directors who are not directly affected by the executive management or any other parties. An example of this is that the Secretariat General of Endowments in the State of Kuwait which formed a committee from the members of the board of directors to audit and control performance. This committee consists of three members. One of them is a member of the board of directors while the other two members are independent and specialized in accounting and financial fields. In the context of controlling the performance of the board of directors of the endowment organization, the continuity of this board formation may be linked to the achievement of certain objectives and returns. In this context, Muhammad Abu Zahra asserts the importance of holding endowment superintendents accountable periodically (biennially for example) to avoid more corruption and negligence of endowment properties on the part of superintendents. (Abu Zahra: 391).

5.1.5 Specialized Technical Control:

Control may be specialized in the basic financial and investment aspects of the endowment organizations, so that the endowment investment standards, investment indicators and controls, and other specialized indicators are set. Such studies and specific control may be conducted through specialized consulting organizations. In addition, the control of subsidiary aspects may be promoted, such as investment as Hussein



Shehata mentioned some bases and methods of investing the endowment capitals (Shehata: 97).

5.1.6 Control by Independent Auditors:

This is conducted through auditing the endowment accounts by external control organizations such as audit firms. The objective of such audit is to get an independent and objective confirmation of the regularity of the endowment accounts, the validity of their procedures, and the improvement of their processes in order to assess the effectiveness of risk management, develop and control it, and improve its governance processes.

5.1.7 Popular and Non-Governmental Control:

This control focuses on the non-governmental role by benefiting from the experience of some independent influential and specialized people in controlling the performance of endowment organization by getting them involved in the Board of Superintendence which shall identify the general orientations of the endowment organization and approve its financial transactions and annual reports.

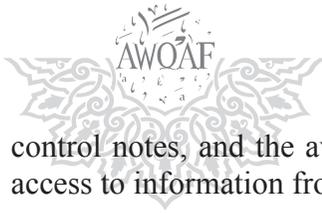
One of the relevant proposals is to consider the engagement of people in sub-committees such as the investment committee to enhance popular control on the performance of endowment organizations in the subdomains. Popular control also covers the control of the real stakeholders in the activity of the endowment organization. The stakeholders include the endowers and beneficiaries of the endowment. This can be achieved by forming a Board of Trustees of the endowment organization or a general assembly including all stakeholders of the endowment organization. Such assembly shall be considered as a method to achieve transparency in the endowment businesses and guide its actions. According to the point of view that the ownership of the endower shall be dispossessed (Al Mughni: 8 / 186), the endowers and beneficiaries of endowments in this context may inquire from the persons in charge of the endowment organization on any changes in the organization activities or capitals and business methods. They may be considered just like shareholders in a company. Consequently, even if there is not one method to apply such ruling in the endowment organization, the proposed framework can be designed commensurate with each organization, its formation, and the nature of legislations in the countries where it is operated.

Engaging endowers and beneficiaries of endowments in guiding the works of the endowment organization is consistent with the current orientation in the recent studies of engaging all stakeholders of any organization in guiding its policies and activities. This principle is not strange for both legislation and jurisprudence. Some juristic schools such as the Malikis (Abu Zahra: 321) and Hanbalis (Abu Zahra: 347) provide that superintendence may be assigned to the beneficiaries of endowments or any persons selected by them if the beneficiaries of endowments are identified and the endower does not nominate a superintendent. Some jurists confirm this orientation when there is a change in the nature of endowment. For example, when the people of a mosque want to make it higher and establish a source of potable water and shops under it but some of them objected to such actions, the opinion of the majority of people shall prevail (Al Mughni: 8 / 223). Ibn Abidin (may Allah have mercy on him) is of the opinion that the surplus amounts of the reconstruction of endowment shall be channeled to the Imam and muezzin according to the opinion of the pious people of the endowment stakeholders. (Ibn Abidin: 4 / 360). The engagement of stakeholders in guiding the endowment organization includes their provision with regular information by the endowment organization.

5.1.8 Judiciary and Legal Control:

Although it is one of the most important forms of control throughout history, it is not activated without filing a case before judiciary in case of disputes or a complaint of the dishonesty of an endowment superintendent so that the judge shall use as a reference to practice such control. When the case is referred to the judiciary, corruption would have prevailed in the endowment organization and the elimination of it becomes difficult.

The practical reality demonstrates that the effectiveness of external control in the endowment organization is based on some elements. The most important of such elements are the benefits of such control envisaged by the personnel of the endowment organization through practical examples and success stories, the top management support of the recommendations and changes proposed by the various control organizations, availability of the basic information required to evaluate the extent of applying the



control notes, and the availability of the organizational capacity to have access to information from the various departments to analyze them.

In this context, we can focus on the statistical and technological tools which help in collecting and analyzing information, as they are important in verifying the application of the control notes. In order to evaluate performance quickly and effectively, information has to be brief and relevant. In addition, the information provided in the submitted reports on the notes implementation has to be accurate (such reports have to include the necessary information only, which also has to be inclusive, clear, understood, recent, related to work, and not general). This also includes the focus on identifying the causes resulting in deviations or lack of implementing the control notes (such as the lack of sound distribution of the number of employees, the lack of material capabilities, and the lack of necessary equipment). In addition, the incentives have to be related to related to the extent of implementing the control notes, applying the rules of governance, and provision of transparency in transactions. The endowment organization can benefit from various experiences in this field, so that it set an endowment system related to applying the external and internal control such as the endowment incentive systems at the Secretariat General of endowments in the State of Kuwait.

V.1 Axes of External Control:

Although there are many axes in the control of the endowment organization, the most important axes include:

Control on meeting governance rules, quality of performing services, satisfaction of their beneficiaries, risk analysis and management, identifying the cost of performing various activities and the methods of decreasing it, measuring the inputs and resources of business performance and productivity, proper use of the organization assets, Shariah commitment, and competitiveness including the improvement of the reputation of the endowment organization and achieving the duties assigned to them, the increased confidence in it, assigning new businesses to it, diversification of the provided services, and providing services at costs less than other entities.

The axes of external control include financial performance which, in turn, covers profitability and liquidity growth, assets distribution, risk

diversification and management, good management of human resources, flexibility, and rapid adaptation to the business environment.

External control also includes studying the notes of control organizations such as the Accounting Bureau as well as the external technical organizations, considering the extent of their compliance with control instructions, and getting acquainted with the notes of the external auditor and the extent of commitment to implementing them.

VI. The Experience of Control and Internal and External Audit of “the Secretariat General of Endowments” in the State of Kuwait:

Due to the importance of studying the practical application of the external and internal control in the endowment organization, the Secretariat General of Endowments has been selected as a model for other endowment organizations. The Secretariat General of Endowments has been established in accordance with the Amiri Decree No. 257 issued on 1993. It is an organization financially and administratively independent from the Ministry of Endowments and Islamic Affairs, but there are close and significant business and cooperation relationships between them. It is affiliated to the Minister of Endowment and Islamic Affairs. It directly assumes the competences of endowment advocacy and any related affairs including managing and investing its capitals and spending its returns in accordance with the conditions of the endowers and achieving the endowment Shariah purposes. The Decree provided for forming the Council of Endowment Affairs to be the higher authority supervising the endowment affairs and proposing its general policy. It may also take the decisions necessary to achieve the objectives of the Secretariat establishment. The Decree allowed for forming committees from its members or other members to delegate some of its powers to them in order to achieve its objectives. In addition, the Deputy Minister of Endowments and Islamic Affairs is a member in the Council of Endowment Affairs.

In the context of the awareness assumed by the Council of Endowment Affairs and the executive management of their responsibilities in guiding, controlling and maintaining endowment capitals, the financial and administrative regulations and the contract bylaws which regulate the rules of contracts with third parties and stakeholders, have been issued. In

addition, the financial powers regulations and their limits and the authorities assigned to assume them according to the organizational structure have been issued. In order to activate the role of controlling and auditing the organization businesses, Article (31) of the Financial Regulations provided for establishing an office for internal audit in the Secretariat, which has been assigned to conduct financial and administrative audit and prepare periodical reports on the audit results, without assigning to it any business related to respiration in the accounting and administrative records. The Regulations also stipulate that the Office shall control all financial and administrative works of the Secretariat, including information technology systems and verification of the validity and convenience of applying policies, systems, and business procedures. The Office also studies the risk systems and the means to avoid them.

The emergence of the internal audit function evolved in the Secretariat General of Endowments and its name has been changed from the Internal Audit Office which was established has been in 1999 AD to be the Control and Audit Department, which is administratively and directly affiliated to the Secretary General who is the Chief Executive Officer. However, it is technically affiliated to the Audit Committee formed by the Council of Endowment Affairs (in terms of submitting notes and auditing results). This practice is partially consistent with the actions of good governance in terms of supervising the management reports by the Audit Committee, even if it restricts its activity, independence, and objectivity according to the requirements of the International Standards.

The responsibilities of the Control and Audit Department include:

- Proposing all types of internal control programs and following up their implementation
- Reviewing the works of the various units and departments of the Secretariat General of Endowments in order to verify whether they efficiently and effectively undertake the duties assigned to them in accordance with the approved policies, systems, and procedures, comparing the outcomes to the set objectives based on the approved programs
- Determining the extent of the accuracy and effectiveness of the administrative procedures

- Identifying the opportunities to improve and develop operational performance
- Providing the concerned bodies with the notes resulting from the audit works through written reports
- Following up with the concerned bodies regarding the remedial actions taken concerning the auditing notes.

6.1 Internal Control Bodies:

The internal control bodies in the Secretariat General of Endowments include:

6.1.1 Control and Audit Department:

It is responsible for implementing the audit assignments set forth in the approved annual internal audit plan and the special audit assignments required by the Audit Committee in writing or verbally. It is also responsible for providing senior management with the reliable objective information in the process of performance evaluation and evaluating the extent of alignment with policies and procedures.

6.1.2 Shariah Control Department

It performs its assignments by practicing the works of Shariah control and audit with regard to all departments and units of the Secretariat, including the implementation of all types of Shariah control and audit programs, verification of the compliance of the Secretariat works and activities with Shariah provisions, review of all types of processes and verification of their consistency with Shariah aspects, identification and remedy of deviations, and cooperation with the internal concerned bodies in the Secretariat to develop work in the field of Shariah control. The same note addressed in the Control and Audit Department which indicates the incompleteness of the control independence according to the rules of governance, is applied to Shariah Control.

6.1.3 Shariah Committee

Shariah Committee formed by the Council of Endowment Affairs practices its Shariah control on the works of the Secretariat General of Endowments through its competences. The Committee focuses, in



subsequent control, on the extent of the compliance of the Secretariat works with Shariah rules and provisions and the demonstration of Shariah judgment on new issues in the light of Shariah rules and regulations. On the other hand, in the **prior control**, the Committee focuses on studying the draft laws related to endowments prepared by the Secretariat or when the Secretariat opinion is considered on them, the regulations related to endowment, and the alienations transferring the possession of the endowment properties. The Committee also reviews the contracts to be concluded by the Secretariat with respect to endowment except for the typical contracts already approved by it, and the rules of prioritizing expenditure from endowment returns in accordance with the conditions of the endowers before approving them by the concerned bodies in the Secretariat.

6.1.4 The Council Specialized Committees:

They include the Endowment Project Committee, Resources Development and Investment Committee and other committees of the Council which approve the Secretariat processes in accordance with the fields of their works and competences, follow up the developed plans, and practice its control and supervisory role by reviewing departments plans, periodical achievement reports, performance evaluation, realization of objectives, application of policies, and submitting recommendations to the Council of Endowment Affairs.

6.2 External Control Bodies:

External control bodies include independent governmental bodies and non-governmental technical bodies from outside the Secretariat General of Endowments in order to verify whether the data and information are valid and accurate. External control bodies include:

6.2.1 Accounting Bureau:

It is an independent organization allocated for financial control. It is independent in accordance with the law. The Bureau provides the Government, the National Assembly, and the competent Minister with an annual report of its works and notes, including its notes on the Secretariat General of Endowments, and the extent of compliance with the applicable regulations and laws through a team of independent auditors.



6.2.2 Financial Controller (the Ministry of Finance):

It is a prior control carried out by the financial controllers of the Secretariat in order to review the financial payment orders, journal vouchers and the extent of their consistency with the regulations issued by the Ministry of Finance and approve their payment. It is also a subsequent control made by the representatives of the Ministry of Finance to follow up the implementation of the governmental budget items.

6.2.3 Controller of the Employment Affairs (the Civil Service Commission):

The assignment of such controller is to supervise the application and interpretation of the laws and regulations related to employment and personnel affairs, and monitor their application in the light of the Civil Service Law. The controller shall also follow up the application of the laws and regulations related to employment in order to verify their proper application, study the problems of implementation and prepare the recommendations on the procedures necessary to remedy them.

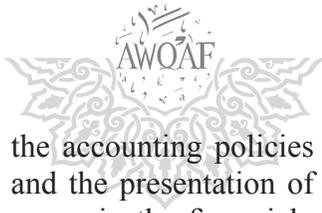
6.2.4 Legislative Control (the National Assembly):

As the National Assembly (the Parliament) practices its role of monitoring governmental organizations by auditing the expenditures of their budgets and collection of their returns in addition to the approval of the annual budget of the Secretariat. The control of the national Assembly is carried out by addressing the questions and inquiries referred by the National Assembly members to the governmental bodies. Such questions serve as an indirect control on the organization which enhances its compliance with the laws and regulations in order to avoid any commitment of violations, taking notes or exposure to the accountability of the control and parliamentary bodies.

6.2.5 External Auditor:

The Secretariat General of Endowments has been committed, since its establishment, to appoint an external auditor of accounts by outsourcing an international external auditor in order to audit and inspect the financial statements and accounting records at the end of the fiscal year in accordance with the approved accounting policies. The external auditor also evaluates

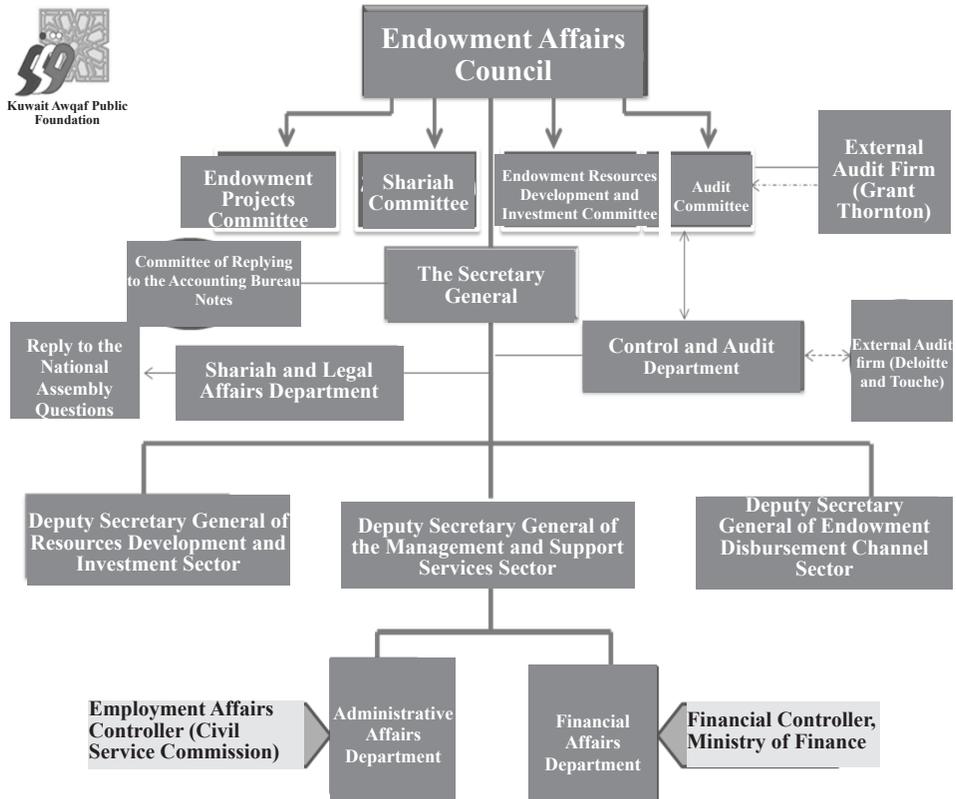




the accounting policies used in the Secretariat General of Endowments and the presentation of the financial statements and detect any material errors in the financial statements or the accounting records through its independent report which is provided to the Audit Committee in order to discuss it and give the technical opinion and recommendations concerning it to the Council of Endowment Affairs for approval.

6.3 Experience of the Audit and Control Department:

The Audit and Control Department is an independent department through its professional affiliation to the Audit Committee. It submits its reports and business outcomes after presenting them to the Secretary General and the CEO in accordance with the following hierarchy:

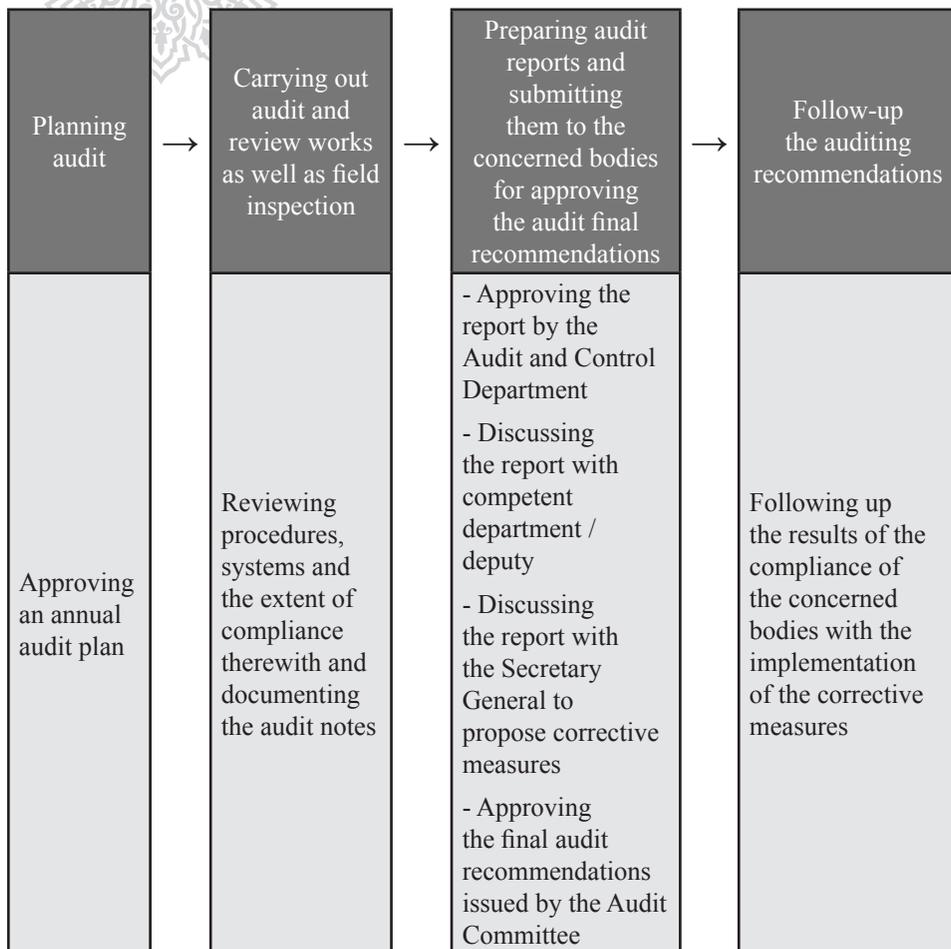


Due to the limited professional expertise of the Control and Audit Department and the lack of employees specialized in this field, an international audit firm has been outsourced in order to provide professional consultancies related to the internal audit assignments, develop the management business and provide scientific training to employees. The Control and Audit Department complies, in its practice of its business and competences, with the standards of objectivity and independence. Those controls include keeping all auditing works away from the influence of the executive management including recommendations and procedures. To ensure the required and necessary independence of the Control and Audit Department to achieve its objectives, its staff shall not participate in any activities or works conflicting with the interests of the Secretariat or affecting their ability to assume their duties and liabilities.

In accordance with the international standards and good governance practices, the Control and Audit Department developed the policies and works of the internal audit by preparing regulations for internal audit. It aims at defining the objective of internal audit, the role and assignments of Control and Audit, its authority and liability, and the code of professional conduct of the audit profession which is approved by the Audit Committee and distributed to the personnel of the Control and Audit Department and all units, departments, and sectors of the Secretariat General of Endowments.

6.3.1 Control and Audit Businesses:

The audit business starts by implementing the audit program through notifying the organizations to be audited, related departments, deputy secretary general of the related sector and the Secretary General that the audit program shall be initiated according to the approved plan at least five days before starting the audit program. Therefore, the Control and Audit Department holds a kick-off meeting with the department to be audited in order to get acquainted with the audit team and the program objectives and agree to the means of communication when requesting data and information and also identify a liaison officer. The works of the Control and Audit Department are divided into four main assignments (planning audit, applying audit works, preparing audit reports, and following up audit works) which are presented in the following table:



6.3.2 Planning Audit:

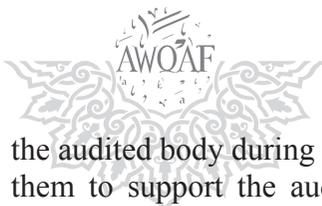
The Control and Audit Department adopts the approach of risk assessment in preparing the annual and strategic action plan of the internal audit, identifying its programs by analyzing the strategic risks, identifying such risks, assessing their levels and possibility, identifying the control rules, and prioritizing the units which have high risks. In addition, the internal audit plan covers a specific period which is usually one fiscal year as such plan is presented to the Audit Committee for approval after taking notes from the Planning Committee three months before the new fiscal year. Then, such plan is submitted to the Secretary General for approval.

6.3.3 Applying Audit Works:

The audit works are carried out in accordance with specific periods for each program according to the approved procedures. Such audit works are evaluated by the percentage of completion on the final audit report. In case the concerned body does not cooperate with the auditors (for example, in setting the times of meetings, providing the required documents, or answering the submitted inquiries), this will delay the Department work and negatively affect the audit program. The following table illustrates the phases, periods, and the percentages of completions for each period in detail:

1 st Phase	2 nd Phase	3 rd Phase	4 th Phase
15% of the Audit Report Completion	45% of the Audit Report Completion	25% of the Audit Report Completion	15% of the Audit Report Completion
Timeframe: 2 weeks	Timeframe: 5 weeks	Timeframe: 3 weeks	Timeframe: 2 weeks
<ul style="list-style-type: none"> - Identifying the action plan, the transactions to be reviewed, and the special audit procedures. - Preparing a list of the initial statements and documents. - Holding meetings with the concerned bodies. 	<ul style="list-style-type: none"> - Field audit works (inspecting, reviewing, assessing procedures, documenting procedures in the work papers, reviewing and approving them - Preparing the audit program file. 	<ul style="list-style-type: none"> - Issuing an initial report 	<ul style="list-style-type: none"> - Issuing a final report including the replies of the concerned bodies.

During the second phase which focuses on the field audit works, the auditor is entitled to review the transactions or programs in order to verify whether the results matches the set objectives and whether they are conducted as planned or not. If there is an inquiry filed by the employees, the auditor will document information and oral analyses concluded from



the audited body during the implementation of the field audit and approve them to support the audit work. It is necessary to use the statements, documents, or information Request Form approved by the competent auditor in writing (Annex 1) during the implementation of the field audit works and approve the form received from the audited body if the field audit works so required in order to complete the works and identify the delivery period.

In order for the Control and Audit Department to practice its assignments and implement its programs, powers have to be granted to it entitling it to optimally implement its assignments without restricting the scope of its work or program plan. Therefore, the Department shall be entitled to review and audit all records, books, and documents of all departments and units in the Secretariat or the affiliated bodies within the framework of the annual approved internal audit plan or as appropriate as the Department may deem fit. The Form of (the Documents Reviewed by the Control and Audit Department) shall be used to register all reviewed files (Annex No.2).

To realize the efficiency of the audit works, the Department shall be entitled to have access to any required information or documents, including the minutes and decisions of any standing or temporary internal committees which are related to the strategic, operational, and organizational objectives in the Secretariat.

6.3.4 Preparing and Issuing the Audit Reports:

This phase includes an important component which is the issuance of the reports of the audit programs on notes, replies of audited departments, recommendations of the Secretary General on the corrective measures and the required periods to follow up their implementation. The notes are classified in the report in accordance with their significance and risk as follows:

Significance of the Notes	
High	They are related to the strategic objectives of the Secretariat when the main objective has not been achieved partially or entirely.
Medium	They constitute a serious weakness in the control rules which may result in lack of achieving the objectives of the processes.
Low	They constitute secondary weaknesses in the internal control system of the Secretariat which may slightly affect the objective of the process.

Risk-based Notes / versus Opportunity-Based Notes	
Risk	The potential risk is a potential source of damage or a potential case of causing a loss. Loss may be any negative consequences including financial or similar consequences.
Opportunity	Wasting an opportunity to achieve a maximum benefit, improve results or achieve success in important aspects or failure to achieve a potential positive result such as maximizing performance results, returns, and profits, etc.

The final audit reports are submitted to the Audit Committee for Approval after they are discussed with the executive management of the Secretariat General of Endowments (the audited bodies – the Secretary General). Then, they shall be approved with the final recommendations of the Audit Committee to manage the notes. They are considered as binding to the competent departments as of the date of notifying them according to the following types:



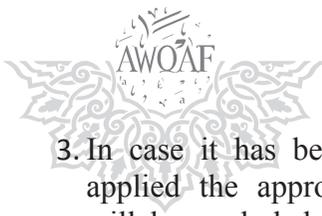
No.	Report Type	Submittal		Report Description
		Original	Copy	
First Type: Audit Reports according to the Annual Audit Plan				
1	First draft of the Audit Report	The competent department	The competent deputy	The draft of the detailed report which includes the notes, their effect, and recommendations to remedy them.
2	Final draft of the Audit Report	The Secretary General	The competent + department The competent deputy	The detailed report which includes the notes, their effect, recommendations to remedy them, actions to be taken to avoid their occurrence again, and the opinion of the competent department.
3	Final Audit Report	The Audit Committee	The Secretary General	The detailed report which includes the notes, their effect, recommendations to remedy them, actions to be taken to avoid their occurrence again, the opinion of the Secretary General, and the corrective procedures proposed to remedy the notes.
4	Emergent reports or obstacles	The Secretary General	—	As appropriate, immediate reports are prepared on any material errors, grave and non-grave violations, breaching laws and regulations, and circumvention where their remedy shall be urgent.
Second Type: Reports of Following-up the Audit Processes				
1	An initial report of following up the final recommendations	The Secretary General	The competent deputy + the competent department	A report of the results of implementing the final recommendations which includes: the partially implemented recommendations and non-implemented recommendations after three months of their issuance
2	A final report of implementing the final recommendations	The Audit Committee	The Secretary General + The competent deputy	A report of the results of implementing the final recommendations which includes: the partially implemented recommendations and non-implemented recommendations after three months of the follow-up of the Secretary General.
3	Results of Following-up the Annual Audit Processes (Statistical)	The Audit Committee	—	An annual report of the partially implemented and non-implemented notes of all executed audit programs.

No.	Report Type	Submittal		Report Description
		Original	Copy	
Third Type: Reports of Special Audit Assignments				
1	Emergency reports or obstacles	Head of the Audit Committee or according to the assignment	—	A report on unplanned emergency works based on the assignment of the Audit Committee or its head.
Fourth Type: Administrative Reports				
1	Report of Completion by the Control and Audit Department	The Planning Committee	The Audit Committee	A periodical report of the completion of the activities and plans implemented by the Control and Audit Department according to the approved annual plan.

6.3.5 Follow-up of the Audit Works:

The work of the Control and Audit Department does not stop after issuing the final audit report. The Control and Audit Department conducts actions of following up the implementation of the notes of the audit programs, based on the recommendations approved with respect to the competent department. The Control and Audit Department also verifies the application of such notes according to the agreed-upon timeframes which were concluded through discussing the final report and approving it by the Audit Committee. Practical reality demonstrates that such follow-up is conducted by following the steps hereinafter:

1. Verify the application of the approved recommendations by the competent department, as approved by the Audit Committee. This verification is conducted periodically by notifying the competent department (after three months or according to the period agreed upon when discussing the report with the Audit Committee).
2. Receive the replies of the competent department to the inquiry referred by the Control and Audit Department whether such recommendations are applied or not, provided that all replies are documented and supported with documents indicating their implementation. Otherwise, the auditor shall directly check with the competent department to verify its implementation of the recommendations which do not have any support documents.



3. In case it has been verified that the competent department has applied the approved recommendations, such recommendations will be excluded from the schedule of recommendations related to this department. This verification will be based on the support documents, field follow-up of the auditor in charge of the program, review of the Head of the Department of the Transaction Audit and Follow-up, the controller of the Control and Audit Department, and the approval of the Manager of the Control and Audit Department.
4. A schedule of the results of following up the final recommendations shall be prepared in order to list the unimplemented and partially implemented recommendations after checking them with the Secretary General. Then, such recommendations shall be submitted to the Audit Committee after they have been reviewed to take the proper decision on them.
5. An annual report approved by the Director of the Control and Audit Department shall be submitted to the Secretary General and the Audit Committee. This report shall include the audit processes, their results, and the achieved recommendations.

VII. Benefits of Control:

After reviewing the fields of internal control and the axes of external control, it is expected that the application of them will result in many benefits, including:

Contribution to developing the performance and maintenance of the endowment organization and provision of standardization and periodicity in the submitted reports such as evaluating the endowment organization assets triennially, for example, by a specialized technical body, illustrating the appropriateness of the assets prices compared to the dominant prices in the market (Al Umar: 1434 AH) or through an annual report on the performance of the endowment organization compared to other similar organizations.

The control benefits also include submitting the annual financial reports to the control bodies regularly on the part of the endowment organization in order to verify its good governance and the extent of its compliance with

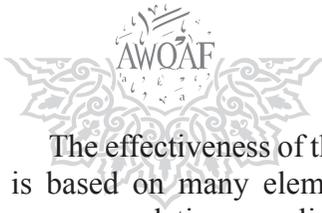
the requirements of such control bodies. It also stimulates the endowment organization to improve its performance and avoid the control notes.

In addition, the control benefits include **raising** the transparency level in the endowment organization, providing an effective system for disseminating information, and assisting the executive management to take the appropriate decision properly and rapidly on the priorities of the activities which have to be emphasized in terms of resources or initiating new activities to enable the endowment organization to achieve its objectives. They also contribute to get the endowment organization acquainted with the relevant risks and this results in the rationalization of expenses or reduction of the costs of the endowment organization by identifying the channels of expenditure compared to performance.

VIII. Conclusion:

As an attempt to develop the endowment organization in the modern age and keep up with the recent tendencies of management, the types of control have to be enhanced in the endowment organizations. Such control is enhanced by applying the rules of governance in the endowment organization such as increasing transparency, deepening financial control, and independence of the members of the boards of directors and committees and their specializations.

The study addressed the concept of “the governance of endowment organization”, its objectives, standards, and the characteristics of the endowment organization. The study also analyzed the internal control of the endowment organization works in terms of its concept, types (i.e. prior control and subsequent control), important components, fields (including the financial, administrative, and Shariah components), the elements of the success of the internal control in the endowment organization by providing administrative investigation systems, establishing independent units for internal and Shariah control, risk management, and an Audit Committee supporting the works of the internal control. In addition, the concept of external control was illustrated in addition to its types such as Shariah control, governmental control, control boards, specialized technical control, control made by auditors, popular control, non-governmental control, and judicial and legal control.



The effectiveness of the external control in the endowment organization is based on many elements, including the top management support of recommendations, application of the changes recommended by the various control bodies, follow-up of control notes, introduction of changes to the business methods, and provision of basic information to evaluate whether such control notes are implemented or not.

The actual experience of the control and the external and internal audit in the Secretariat General of Endowments in the State of Kuwait necessitates existence of a Department of Control and Internal Audit. In the light of the practical experience of the Secretariat, it is clear that the development of the internal and external audit function and the procedures of the internal control are up to an appropriate level of the best practices and good governance rules. This includes forming an Audit Committee, and developing internal audit regulations and a guide of policies and procedures, and a job description of all organizational units in the Secretariat. This provides the Secretariat with a sound control environment. However, the greatest challenge is the active endeavor to complete compliance with the best procedures and practices.

To sum up the components of the external audit of the endowment organization, we can perceive that the endowment organization starts from the board of endowers (the general assembly of the beneficiaries of endowments or the persons affected by the endowment actions) followed by the board of superintendents (the board of directors) which is elected by the board of endowers for a specific term and has certain powers. Then, there is an independent professional management, such as the CEO or the General Manager of the endowment organization if the endowment size is proper. In addition, there is a Shariah Committee or a Shariah advisor. It is necessary to assert the commitment of the organization to applying the transparency principle through the published financial and administrative reports and the existence of independent external auditing organizations.

By conducting control on the performance of the various departments in the endowment organization, we can detect whether the performance indicators are practical and real or not and how to achieve them. We can also get acquainted with the successful practices in this field which

can be generalized on other departments in the endowment organization or other organizations. The contributions of such control include the possibility of evaluating the performance of the executive management and improving its performance before the external evaluation is carried out by the control bodies.



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Annex (1)

Data / Document Request Form No. (/ 2012)

Day: _____ Date: _____ Department / Program: _____

Name of Auditor(s): _____

Please, provide us with the following data / documents / information / inquiries, for the purposes of auditing the aforementioned program:

.....
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.....
.....

Auditor's Signature: _____ Name of the Employee / Liaison Officer: _____

Annex (2)

Department: _____

Date _____

Documents Reviewed by the Control and Audit Department

Serial No.	Document Title / No.	Auditor's Name	Auditor's Signature	Notes

I received the files / the documents. Accordingly, the Auditor's responsibility has been acquitted.

Employee in charge _____

Signature of the Employee in charge _____

Date _____



Researches



Harmonization between Endowment Governance and Purposes of the Endowers

Systems of Protecting the Rights of Stakeholders (Endowers and Beneficiaries of Endowments) in the Management and Follow-up of Endowment Affairs and their Powers

Dr. Muhammad Ramadan

Former Advisor at the Egyptian Council of State

Introduction:

Endowment is an Islamic ritual and a prophetic tradition which has been applied by millions of Muslims since the era of the Messenger of Allah (peace be upon him) to date in order to be closer to Allah.

In this context, endowment has been ranked a prominent position in the Islamic history. In many historical periods, it was effective in the fields of development and the areas of charity. It is more effective at the times of crises and distresses and when the development role of the State regresses

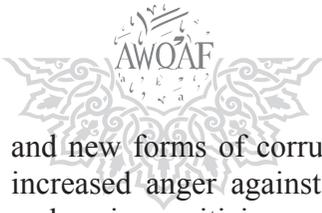


and the State fails to provide welfare services for the impoverished classes of people.

The endowment progress has not been on the same pace. It witnessed ups and downs, ebb and flow, and activity and inactivity. Anyway, it plays a role in the developmental and charity work, whether it is active, ambitious, and effective or inactive, fragile, and ineffective.

At times of its activity and blazing, the Islamic endowment provided leading and creative models which inspired active and ambitious countries to adopt distinguished endowment systems derived from this endowment. In addition, such endowment has been provided with modern management mechanisms and released from stereotypes, patterns, and mechanisms restricting its launch. While new endowment institutions emerged, proved their great effectiveness, provided successful examples in various axes, including their objectives, organization, the value of funds endowed for them, returns, managements ... etc. other types of charitable organization joined hands with the endowment institutions to constitute an important part of the civil society system. While these organization gained impetus, the role of Islamic endowment regressed for various causes. Some of these causes are attributed and related to a horrible orientation of exaggerated and unjust defamation against some systems and institutions with a religious nature, raising doubts concerning their effectiveness, downplaying their advantages, and exaggerating concerning their disadvantages. Other causes are attributed to the system stagnancy, its lack of adaptation to variables, positive interaction with them, and development of mechanisms, tools, and systems in the light of the contemporary scientific facts.

The most prominent related example is the role of the state (the ruler) in managing endowments, compared to the non-governmental role. During the periods when endowment suffered from the corruption of endowment superintendents, their repugnant infringements against endowment assets, mismanagement of such endowment assets, ignorance of the rights of the beneficiaries of endowment, and their breach of the conditions of the endowers, there were increased and urgent requests of intervention by the State to protect endowment against manipulation. When the State intervenes and manages endowments, bureaucracy obstructs its release,



and new forms of corruption prevail. This results in more serious evils, increased anger against the governmental management of endowment, and various criticisms of “the State takeover” of the society rights, and increased claims to restore them to non-governmental management. This opinion was expressed by Dr. Abdur Rahman Al Jerioui, Secretary General of the Endowments of Prince Salman Bin Abdul Aziz University. He justified his opinion on the failure of the governmental management in the field of economic activities without innovating new patterns with creative mechanisms achieving advantages for both non-governmental and governmental management of endowment and avoiding the disadvantages of each.

The increased problems of Islamic endowment and the regression of its role in some Islamic countries resulted in abolishing non-governmental endowment. Moreover, many stakeholders in charitable and voluntary work resorted to the modern Western patterns such as charitable organizations, committees, and institutions to be contemporary alternatives of endowment. However, the great endowment renaissance released by persons concerned with their religion and who work to maintain and activate its institutions revived the endowment culture, revealed its bright face and removed the false masks which prevented knowing its reality and the informed recognition of its nature. Thanks to Allah and His guidance, endowment has recovered its community presence and its position in the hearts and minds of Muslims. Without fear of mistake or exaggeration, we can say that the last two decades are the decades of the return of endowment to Muslims and the recovery of its position in their hearts.

Considered a great mistake, endowment should not retain the same reasons and conditions which resulted in its weakness, diminished role, and failure to achieve its objectives. Moreover, the endowment system has to be modernized in all areas in order to rehabilitate the endowment institution to provide its message and play its expected roles. According to Dr. Muhammad Al Ka’ar, the Rector of the Islamic University in Madinah, “Endowment will not achieve its objectives except in the light of informed administration, strong bases, and controlled frameworks which are based on the invariables and consider the civilization variables to achieve the intended balance in endowment management and tackle its problems”.



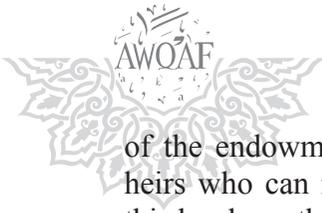
In this context, the selection of the Seminar topic “Endowment Governance” is an excellent selection. This selection indicates the closer look of the endowment needs to recover its role and position through providing it with its means of progress and development instruments and modernizing its system. We can say, without fear of mistake or exaggeration, that the current decade and the following decades are decades of developing and modernizing the endowment system, while the previous decades were the decades of endowment renaissance.

The importance of studying “Endowment Governance” is attributed to its role in avoiding a phenomenon referred to by Dr. Reham Khafaji and Abdullah Erfan in their research titled “Revival of the Endowment System in Egypt ... A Review of Global Examples”. It is the phenomenon of focusing on studying and discussing the endowment old and contemporary laws and legislations, while paying a limited attention to the other aspects such as the relationship between endowment and the development issues (P 5).

The First Endowment Regulatory Forum, held in Riyadh, asserted the importance of endowment governance and accounting and financial rules to manage such endowments.

The shocking facts quoted by the Board Chairman of the Association of “Endowment Beneficiaries in Egypt”, Ahmed Al Jalaby, are sufficient to indicate the utmost importance of this research aspect. These facts include:

- A. 60% of the Egyptian people (i.e. about 55 million citizens) have shares of inheritance in the Egyptian endowments.
- B. There are 36,000 endowments in Egypt, out of which 11,000 are non-governmental endowments and 25,000 are charitable endowments.
- C. The return of investing endowment assets assumed by the Ministry of Endowments is only (1%), which is distributed as follow:
 - 10% as administrative expenses for the Endowments Authority.
 - 10% for the Ministry of Endowments and Islamic Affairs.
 - 5% for maintenance and rehabilitation.
 - 75% is deposited in special funds at the Central Bank in the name



of the endowment heirs. Those funds are not reviewed by the heirs who can neither access them nor inquire about them and this has been the case since 1948.

(Al Ahram Al Arabi, 15 March 2014).

Governance system has been initiated at companies and banks in order to overcome the gaps revealed by financial disasters and economic crises. Due to the various benefits of this system, it has been applied to the civil society organizations and it is on the way to include the public sector and the governmental work. So, it is natural that endowment attempts to apply such governance in order to benefit from its mechanisms and systems to achieve the good governance of the endowment institution especially that some Islamic banks and financial institutions applied it. Also, some researchers saw that this system has Shariah and ethical bases and grounds higher than legal liability. Such liability includes the professional performance of business; especially as Islam allocated a great reward for people perfecting their work, innovating in it, and attempting to achieve the best results (Dr. Nora Ahmed Mustafa: Behavioral and Ethical Dimension of Governance Principles.. An Islamic Vision, <http://www.fgh.islammennage.com>).

Despite the relative modernity of addressing the topic of endowment institution governance, leading researchers and persons concerned with endowment early realized the importance of governance and figured out a vision containing the dimensions of such governance. In addition, this important topic has been an axis of intellectual and consultancy efforts in some forums and conferences. Here are some of the important intellectual studies and forums:

1. **Dr. Ezz Ad-Din Fikry Shehab:** Governance of Endowment Institutions, a research submitted to the First International Seminar of Islamic Finance in the Faculty of Commerce, Al Azhar University, on 2-3 Jumada II 1433 AH, corresponding to 13-14 April 2012 AD.
2. **Reham Khafaji and Abdullah Erfan:** Endowment System in Egypt.. A Review of the Global Examples, the American University in Cairo, Gerhart Center of Philanthropy and Civic Engagement.
3. **Mr. Hussein Abd Al Muttalib Al Asraj:** Endowment Funds Governance between Theory and Practice.



4. **Dr. Nora Ahmed Mustafa:** Behavioral and Ethical Dimension of Governance Principles.. An Islamic Vision
5. **Razzaq Al Gherawi:** Islamic Endowment Management According to Contemporary Corporate Governance and Responsibility Accounting.
6. **Dr. Abdul-Wahhab Bin Ibrahim Abu Sulaiman:** Endowment.. Its Concept and Purposes, a research submitted to the Endowment Libraries Seminar held in Madinah, 1420 AH.
7. **Dr. Muhammad Tariq Yusuf:** A set of articles titled Governance or Revolution.
8. **Abdul Bari Meshal:** Challenges and Obstacles of Islamic Financial Institutions Governance, a research submitted to the Ninth Conference of Shariah Boards organized by the Accounting and Auditing Organization for Islamic Financial Institutions, May 2010.
9. **Muhammad Masoud Al Jarf:** Endowment Management on Economic Bases, Umm Al-Qura University.
10. **Hussein Abd Al Muttalib Al Asraj:** Good Governance of the Islamic Endowment Institution.
11. **Abdul Qader Bukroid:** The Role of Governance Principles (Disclosure and Transparency) in Improving the Performance of Endowment Funds, a research submitted to the Eighth International Conference on the Role of Governance in Activating the Performance of Economic Institutions, organized by Benbouali Hassiba University of Chlef, Algeria.
12. **Dr. Raghib Al Sirjani:** Endowment and Shariah Purposes
13. **Dr. Aladdin Hussein Rahhal and Dr. Ahmed Muhammad Al Sa'd:** Endowment and Maintaining Shariah Purposes.
14. **Entisar Abdul Jabbar Mustafa Al Yusuf:** Shariah Purposes of Islamic Endowments, Master Thesis, College of Postgraduate Studies at the European University, August 2007.
15. The researches submitted to the Conference of Governance and its Role in Activating the Algerian Endowment Institutions to Achieve



Sustainable Development and especially the research on the same title in the Conference which was submitted by Dr. Saleh Salehi and Nawal Bin Emarah, and the research submitted by Hakima Bu Salama.

16. Researches and studies related to this research topic which are included in the Islamic Economics & Finance Encyclopedia. They include the researches of the Second International Forum of the Islamic Finance Industry which are titled: Mechanisms of Rationalizing the Islamic Finance Industry, 8-9 December 2013, especially the research of both Dr. Hawwari Mei'raj and Hadidi Adam.

It is my pleasure that the Secretariat General of Endowments in the State of Kuwait allows me to contribute, even with a little effort, to the second phase of the development of the endowment institution in its Seminar on "Endowment Governance". It also gave me various opportunities in the context of the first phase, which aimed to revive the endowment tradition.

Due to the predominance of the administrative, regulatory, and legal nature of the research topic, it will adhere to an inductive and analytical approach. This approach will focus on studying novelties while making passing references to other aspects considerably studied and researched in the previous stages by the best of the nation scholars especially Shariah aspects which have been a rich field for former and later jurists. The research depended, concerning Shariah aspects, on a summary of independent reasoning concluded by modern conferences and studies and it avoided addressing topics which were considerably addressed in previous studies.

I will present the research paper identified by the organizing body in Section 1 which will highlight governance concepts, theoretical frameworks, and importance for the endowment institution and Section 2 which will address the balance between endowment governance and the purposes of the endowers as well as the systems of protecting the rights of stakeholders in managing and following up endowment affairs and their authorities.

I supplicate Allah to accept this deed for the sake of Him alone and to make it beneficial for Islam and Muslims.

I hope the satisfaction of Allah shall be our intention ... He is the best Guiding and Helpful



Section 1: Theoretical Framework of Governance and its Importance for Endowment

(1) The Meaning of Governance:

There are various definitions of governance. Among those definitions, we adopt the definition of the Organization for Economic Co-operation and Development that governance is a set of systems by which companies are administered and managed. It indicates the rights and responsibilities of all concerned parties, including the board of directors, general assembly, shareholders, executive management, and all stakeholders concerning the company business. It also identifies decision-making rules related to the company affairs.

“Al hawkama” is the Arabic translation of governance which was adopted by the Academy of Arabic Language, among other suggested terms, in 2002. (Refer to the aforementioned research of Dr. Ezz Ad-Din Fikry Tohami). However “Governance” is the term used in companies, civil society organizations, and governmental organizations. Financial institutions (banks) add a new term which is “Compliance”, i.e. commitment to laws, legislations, code of related conduct, and good practice standards (Financial and Banking Studies Magazine, 21st year, Volume No. 21, Issue No. 3, September 2003).

We assert using both terms in the meaning ascribed to each of them in the topics related to endowment, but we add to them commitment to Shariah provisions concerning the definition of “Governance” as these rules are considered as a legal and ethical framework for governance. Such commitment is also applied to “Compliance”, as compliance with Shariah rules and Allah’s provisions is a prioritized rule which endowment shall adopt and act accordingly.

Contrary to the foregoing, some scholars see that “Al Hisbah”, as defined by the Islamic Shariah, provides the functions of governance. Therefore, it is considered as a Shariah alternative of governance (Dr. Nora Ahmed Moustafa, Behavioral and Ethical Dimension of Governance Principles, Ibid).

However, Razzaq Al Gherawi sees that “the Board of Grievances” plays this role based on the assignments of the board of grievances stated by “Al Mawirdi” (P 17-80): Supervise endowments in terms of the execution



of endowment conditions, building ruined endowments, and holding their superintendents accountable (Management of Islamic Endowment and Execution of Corporate Governance, Ibid).

(2) Objectives of Endowment Governance:

The general objective of governance is the realization of good management including all human and material elements. Therefore, the main objective of compliance and governance of endowment institutions is the realization of good management, taking into consideration the note by Dr. Muhammad Mahmoud Al Ajloni that: Governance is related to ethics rather than the law (Good Governance and Compliance in Islamic Banks, Financial and Banking Studies Magazine, Ibid, P 19).

In the context of this general objective where endowment interact with all private and public institutions and organizations, compliance and governance have other objectives important for endowment, such as:

1. Verification of the commitment by endowment (endowment administration) to Shariah provisions, applicable laws and regulations, standards of conduct, Islamic morals, and all endowment controls.
2. Maintaining endowment, inspiring confidence in it, and creating a good conceptual image of it in the society.
3. Protecting endowment assets and properties as well as the rights of the beneficiaries of endowment and stakeholders
4. Supporting the efforts exerted to achieve balance between economic and social objectives and assisting towards connecting the interests of the endowment institution with the interests of individuals and the society in general (Refer to: Islamic Endowment Management According to Contemporary Corporate Governance and Responsibility Accounting, Ibid).
5. Protecting endowment from risks related to mismanagement.
6. Effective judicial control. The Second Endowment Regulatory Forum held in Riyadh, KSA in 1435 AH recommended the establishment of specialized courts or judicial panels for endowments to facilitate their works and procedures (the Fifth Recommendation).

7. Ensuring effective guidance and control of endowment superintendents to rationalize work and accountability.
8. Achieving transparency and justice to limit the abuse of power.
9. Improving the performance levels of endowment projects.
10. Verifying that the endowment funds are spent effectively and efficiently.

(3) Importance of Endowment Governance:

1. Addressing the flaws of endowment management which were asserted by the actual state of affairs and referred to by many researches. These researches include the research of both Khafaj and Erfan as they summarized their diagnosis of the case of Islamic endowment as it suffers from “the problems related to the ambiguity of the amount of endowment assets” and their details related to their places, methods of management, returns, investment policies, dividend distribution policies, development, maintenance, and the amount of the invested capitals. In addition, questions are raised concerning the bodies benefiting from endowments, their activities, and the amount of the returns on endowment investments, the nature of accounting and transparency and their procedures. This ambiguity resulted in mismanagement, enormous corruption in the governance of the current endowments, and “suspension of the property holders to establish new endowments for these and other reasons” (Ibid). These researches also include the research of “Hidaiya Al Hassan” (The Islamic University in Malaysia), which referred to some studies conducted on Malaysian and Indonesian endowment institutions during 1999, 2004, and 2011. These studies listed some flaws in many endowment institutions, including:

- Lack of accurate documentation of endowment assets and classification of their types
- Irregular management of the endowment assets
- Lack of an accounting system to record financial transactions and overlap between endowment accounts and Zakat.
- Lack of internal control.



- Contradiction and delay of financial reports.
- Disparity on the level of disclosure.
- Low level of transparency.
- Lack of annual non-financial information.
- Remarkable disparity between most practices and procedures applied in the endowment institutions.
- Lack of the standards of endowment institutions.

In his research on “Good Governance of the Islamic Endowment Institution”, (Ibid), Mr. Hussein Abdul Muttalib Al Asraj added the following to the manifestations of the administrative and regulatory flaws in the endowment institutions:

- Insufficiency of transparency mechanisms.
- Prevalence of corruption and lack of experience of many endowment superintendents.
- Lack of administrative renewal.
- Assignment of the role of control of the endowment institutions to the judiciary which lacks experience and specialization.

Mr. Othman Sulaiman Al Essa added the following:

- Improvisation
- Lack of administrative efficiency.
- Inability to adapt to the surrounding variables.

2. Inspiring confidence in both the endowers and beneficiaries of endowments on the ground that dealing according to the standards of justice, transparency, and integrity and building the bridges of confidence in the relationship between the endowment and stakeholders ensure endowment sustainability, development, and prosperity. The best evidence of that is the popular movement pressuring the Parliament in Egypt which resulted in abolishing non-governmental endowment because it lacks good governance.

3. Increasing the value of the endowed capitals (According to the A. F. N. Malaysian Magazine, the value of the endowed capitals exceeds one trillion dollars) and diversifying the forms and types of endowment institutions such as endowment companies (Muhammad Bin Ahmed Al Zamil: Endowment Companies and their Role in Developing Endowment Properties, a research in the First Endowment Forum in Riyadh, 1435 AH).
4. Management of many endowments by the State (especially charitable or public endowments according to term used in the Moroccan Law). Therefore, such management suffers from the manifestations of mismanagement, lack of transparency, and forms of corruption. Endowment can't be rescued from the disadvantages of this administrative type except through governance mechanisms.
5. Dependence of the private sector institutions on profitability as a standard to evaluate management efficiency, while profitability is not considered as a valid standard for non-profit institutions including endowment. Therefore, standards and mechanisms to evaluate whether the endowment management is efficient and achieves its objectives have to be introduced.

(4) Fields of Endowment Governance:

Governance fields extend to include the key elements in the endowment institution. A wise management is not achieved except through a set of elements forming the endowment system. So, overlooking any of these elements is necessarily reflected on others. Consequently, management loses its way at the middle of it.

The elements to be covered by governance are:

1. Endowed capitals and properties (real estates and movables) by counting and recording them. Endowment Regulatory Forum held in Riyadh on 4 - 5 Jumada II 1433 AH, corresponding to 4 - 5 May 2012 recommended that the Ministry of Islamic Affairs, Endowments, Da'wah, and Guidance has to disclose the capitals of endowments supervised by it and state its disbursement channels to dispel fears and document the relationship between the Ministry and the endowers.



2. Direct or indirect investment of endowment capitals by stating its fields, contracts, returns, problems, and resources.
3. Shariah disbursement channels according to the conditions of the endower.
4. Distribution of endowment returns to the beneficiaries, administrative expenses and other expenses deducted from the endowment returns.
5. Endowment accounts and financial audit of its returns and expenses.
6. Notes of the bodies controlling endowment and their reports in addition to the notes of the endower and beneficiaries of endowment and the actions taken concerning such notes.
7. Financial and accounting reports.
8. Cases and legal problems in which endowment is involved.

(5) Means of Endowment Governance:

Governance has various means which roles integrate to achieve the good governance of endowment. Each of these means attempts to achieve a certain objective with the ultimate goal of the integration of the components of the governance system.

We refer to the most important means hereinafter:

1. Laws, regulations, policies, and legalized actions regulating work in endowment and ensuring to achieve the following:
 - A. Identifying the bodies managing endowment, competencies and powers of each of them, and rules governing work in them, legal frameworks to follow up their work and holding them accountable for any flaws in such endowment.
 - B. The bodies of financial, administrative, and technical control and follow-up, competencies of each and the powers assigned to each in cases of error and deviation.
 - C. Reporting system adopted by the endowment administration, their dates, and types of information and data to be included in such reports to achieve the highest degrees of transparency. In addition, bodies and individuals to be provided with copies of such reports have to be stated.



- D. Mechanisms of objection to data and information contained in the endowment administration reports, systems of reviewing such objections, and policies of providing stakeholders with data and information related to endowment.
 - E. Policies of endowment capital investment, its actions, follow-up mechanisms, related decision making and holding its results into accountability.
 - F. Policies to be followed in case of conflict of interests.
 - G. Rules and systems of distributing endowment returns on various disbursement channels, Shariah and legal bases of such rules, dates of delivery of shares to beneficiaries, the bodies assigned to conduct such distribution, systems and mechanisms of grievance against such distributions, and the bodies responsible for deciding on such grievances.
 - H. Policies of employment and paying rewards and financial benefits, focusing on the rules governing the payment of rewards and financial and in-kind benefits to the members of Shariah Committee.
 - I. Rules and systems of disclosure with compliance to the highest degrees of transparency in all endowment fields.
2. A balanced organizational structure commensurate with endowment size and purposes, provided that such structure reflects the modern administrative and organizational thought focusing on the institutional management of endowment. The recommendations of the First Endowment Regulatory Forum held in Riyadh in Jumada II 1433 AH / May 2012 AF include: paying attention to the endowment institutional structure, enhancing institutional superintendence, and selecting and training efficient endowment superintendents.
3. Financial and accounting reports which enable endowment stakeholders to follow up the performance of the bodies in charge of management and the expenditure of endowment returns and identifying the levels of their efficiency. The effectiveness of such performance requires a strong accounting structure.



4. Making room for the participation of the endowers or their heirs, some specific beneficiaries and external parties in the committees and boards participating in the endowment management as in the report on “Governance in Al Rajhi Endowment” submitted to the Second Endowment Forum in Riyadh. The report concluded that the endowment system requires the participation of independent members outside the endowment field in boards and committees.
5. An effective system for reporting, accountability, internal control, and external audit.
6. An effective judicial control (the Fifth Directive of the Recommendations of the Second Endowment Regulatory Forum held in Riyadh, KSA in 1435 AH.: the vision of establishing courts or circuits of jurisdiction for endowments to facilitate their works and actions.)
7. An integrated document including the ethical standards to be adopted by endowment.

(6) Challenges of Endowment Governance:

These challenges are attributed to the following factors:

- A. The small size of many endowment institutions and lack of their resources. Consequently, developing the types of endowment management and making them subject to governance requirements increase their financial burdens. This affects the achievement of endowment objectives. Moreover, governance seems as a wide dress worn by a slim body!

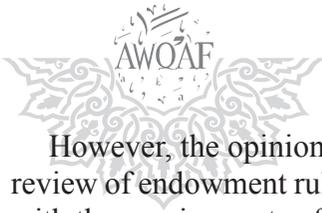
Anyway, and for the purposes of governance objectives and other objectives aiming to develop endowment, promote its management level, and maximize its return in a legal and Shariah framework, we suggest that the merger of endowments with similar objectives and linking all endowment institutions working in a certain geographical area are a subject of research in a future forum Allah willing. (In their research, both Reham Kafaji and Abdullah Erfan see that endowment efforts should be integrated so as to be a main source of financing several social services. However, such integration doesn't solve the aroused problem).



B. The important parties of governance are: the endower and the beneficiaries of endowment as they are the stakeholders of endowment. The governance systems assign important roles to both parties to achieve good governance for the endowment institution. It may be difficult to depend on both the endower and beneficiaries of endowment and assign certain roles to each of them concerning governance, as the term of endowment may be prolonged and various generations may succeed, and after the death of the endower, his / her successors lose contact with the endowment and their follow-up of its affairs. They may also abstain from playing any role related to such endowment, especially if they do not have any interest in it. The beneficiaries of endowment may be unidentified persons such as poor people, patients ... etc. Consequently, there are no certain persons who have a direct interest in endowment (beneficiaries of endowment).

C. Endowment is subject to Shariah rules and provisions resulting from juristic independent reasoning affected by the conditions of time, place, prevailing legal and administrative patterns, and endowment size and purposes in their times. Certainly, there is an urgent need for a contemporary review of such rules and provisions in the light of various variables resulting from great developments. Such variables have been related to the endowment size, types, purposes, methods of management, means, and mechanisms.

The majority of people may agree to the necessity of modernizing the endowment institution to be abreast to or even ahead of other institutions. In addition, Islamic endowment institutions have to compete with their counterparts in non-Muslim societies which have characteristics which enabled them to achieve leadership. Mr. Othman Sulaiman Al Essa summarized these characteristics as follows: institutionalism, competitiveness, and existence of institutions in charge of the endowment affairs. Endowments in the USA have wide relationships with companies of experiences in various fields. Endowments there observe specializations and the legal environment and they have a mechanism for dispute resolution between endowment and any other parties.



However, the opinion may differ concerning the outputs of the modern review of endowment rules and provisions so that they are more consistent with the requirements of endowment good governance in accordance with modern concepts and mechanisms.

We present the most important topics to be discussed hereinafter:

I. Compliance with the Conditions of the Endower:

The endower may set a condition or a set of conditions for his / her endowment which may be inconsistent with the governance systems. Therefore, this requires independent reasoning to harmonize between the requirements of both of them in the light of various juristic independent reasoning on the level and degree of adhering to the conditions of the endower at the following levels:

An opinion: This opinion necessitates compliance with the conditions of the endower and puts them in the position of Shariah provisions in terms of obligation and compliance with them. This is grounded by the Prophetic Hadith narrated by Abu Huraira, May Allah be pleased with him, that the Messenger of Allah (peace be upon him) said: “Muslims must comply with their conditions”. So, such endower kept and endowed his / her properties for the sake of Allah, the Almighty, on such conditions only. This opinion was also given by Imam “Al Ezz Bin Abdusalam” in his Fatwa published in the Encyclopedia of Former Jurists, under number (1750), dated 9 June 2011 where he stated that: If an endower provides an endowment for a certain disbursement channel, it shall not be dedicated for other disbursement channels and if properties were dedicated for a mosque, they shall not be dedicated for any other purpose. This opinion was adopted by the Third International Conference on Islamic Endowments held in Madinah on January 2010, which requires respect and compliance with the conditions of endowers.

Another opinion: This opinion is more tolerant concerning dealing with the conditions of endowers in the following fields:

- Identifying the significance of the juristic rule “The endower’s condition is as binding as the Legislator’s provision” in accordance with the vision of Bin Taimiyah in his saying “Jurists who said that the endower’s condition is as binding as the Legislator’s provision”



meant that such conditions serve as Shariah provisions in terms of the significance of the endower's intention and not the obligation to comply with them. This means that the intention of endower is inferred from his / her conditions and the intention of the Legislator is inferred from the words thereof". Moreover, Sheikh Al-Islam, Ibn Taimiyah went beyond that as he described any person believing that the endower's condition serves as the Legislator's provision in terms of obligation of compliance therewith as a disbeliever when he said: "Considering the endower's provisions or any other provisions as the Legislator's provisions is considered as unbelief by the consensus of Muslims, as no person is obeyed in relation to all orders except for Allah's Messenger (peace by upon him)".

- Setting controls for the conditions to be adopted. They include:

The endower's condition is similar to the Legislator's provision in terms of understanding and significance, while they are different in the extent of the compliance, as such compliance is conditioned by a set of requirements, such as:

- A. Abstention from violating Allah's Book and the Prophet's Sunnah: so, if such conditions violate them, they will be invalid in accordance with the Prophetic Tradition "What about some people who impose conditions which are not present in Allah's Book? Whoever imposes conditions which are not in Allah's Book, his conditions will be invalid". This Prophetic Tradition invalidates any obligation of endower's conditions ungrounded in Allah's Book.
- B. Identify cases in which the conditions of the endower may be violated: e.g. if compliance with the endower's condition is against the interest of such endowment or its beneficiaries, compliance with such conditions undermines the endower's intention. Violation of such conditions may be required in case of a more preponderant interest. Moreover, some jurists see that it is permissible to overlook any conditions inconsistent with the economic developments and the social circumstances.



Some legal systems adopted this orientation. Such systems included the Endowment Law No. 4 of 2011 in Sharjah (Articles 14 and 17). Clause 2 of Article 17 provides that “The Secretariat (Endowment Secretariat) may, in relation to its supervised endowments, apply for the Court permission to conduct change to disbursement channels, conditions and substitution”.

Similarly, the Egyptian Court of Cassation ruled that “Vesting the Minister of Endowments with the right to change the disbursement channel of a charitable endowment in a manner considered by him better to achieve the meaning of drawing closer to Allah Almighty, Article 1 of the Law No. 247 of 1953, as amended by Law No. 30 of 1957, means to exclude this case from the Rule “Endowment shall be obligatory after the death of the endower”.

One of the requirements of applying governance which aims at the good governance of endowment is the non-compliance of any condition inconsistent with the governance requirements, based on Shariah grounds of the second opinion.

II. Endowment superintendence

The traditional superintendence system is outdated. This system often assigns endowment management to a person governing it according to his vision, experience, and interests without any control except for a judiciary system lacking the practical experience in many vital issues, even it sticks to the application of Shariah rules.

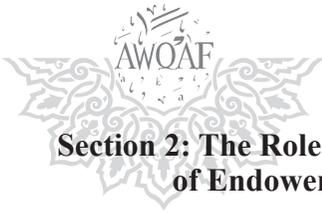
This management pattern inherited from previous ages has become a part of the heritage set forth in endowment instruments. This pattern will restrict and obstruct the management of change and modernization, if the endower’s condition, which results in maintaining such outdated pattern, is adopted especially that it is inconsistent with the governance theory, as this results in a management lacking good governance because of its failure to meet the requirements of such good governance.

The pressing question here is: Could the endower’s condition related to endowment management be superseded in case of its inconsistency with the rules, principles, and systems of good governance based on the interest of such endowment with the aim to meet the implicit will of such endower which, in turn, is consistent with the interest of such endowment and its beneficiaries? Do we follow the traditional orientation which

makes the recommended endowment superintendent as a custodian as long as he neither commits a violation nor has a blemish which does not meet endowment superintendence? The adopted endowment legislations in some Islamic countries assign endowment superintendence, especially charitable endowment, to governments. An example is provided in Article 2 of the Moroccan Endowment Law issued on 23 February 2010, which states that “The consideration of endowment affairs shall be assigned to Our Majesty in our capacity as the Commander of the Faithful. Our Minister of Endowments and Islamic Affairs shall assume this assignment under our direct authority in accordance with the provisions of this Code and the Regulations thereof”.

I do not think that this question requires an answer in the light of the Islamic orientations that make wisdom as the goal of the believer and obligates such believer to attempt to find it. In addition, if an endower adopts an orientation within the limits of his / her culture, vision, and information and such orientation turns out to be invalid, it will not be accepted religiously, ethically, and practically to keep on compliance therewith. In this regard we adopt the opinion of Imam. Ibn Al Qayyim in his saying “The base and structure of Shariah are based on wisdom and the realization of the interests of people in this life and the Hereafter. Shariah is entirely just and wise. Any transformation from justice to injustice, from mercy to lack of mercy, from interest to evil, and from wisdom to futility does not belong to Shariah, even if it is inserted in Shariah through interpretation” (Ei’lam Al Mouaqe’ in 3/3).

The invitation of Dr. Muhammad Bu Jalal for the institutionalization of endowment management may serve as an implicit support for the previous orientation on the ground that institutionalization is sustainable unlike individuals who pass away at the end of their lives. Moreover, the current age is the age of institutions (The Necessity of Modernizing Endowment Institutions to Serve the Purposes of Economic Development, a research submitted to the 3rd International Conference on Islamic Economics held in Umm Al-Qura University in Muharram 1424 AH / March 2003 AD).



Section 2: The Role of Governance in the Protection of the Rights of Endowers and Beneficiaries of Endowment

This Section addresses a vision for two important topics constituting an important axis of endowment governance, which are:

- I. Harmonization between Endowment Governance and the Purposes of the Endowers.**
- II. Systems of Protecting the Rights of Stakeholders (Endowers and Beneficiaries of Endowments) in the Management and Follow-up of Endowment Affairs and their Powers.**

The vision we provide in this Section addresses questions more than solutions and perceptions. It also addresses issues and provides an opportunity for the independent reasoning of topics which was not subject of discussion and scientific research for a long time, due to the satisfaction with traditional theses and visions which reformulate what has been skillfully provided by the pious predecessors, may Allah give them the best reward.

Subdivision 1: Harmonization between Endowment Governance and Purposes of the Endowers

Endowment compliance and governance require full commitment to the provisions of the Islamic Shariah including the regulations of endowment affairs such as Shariah purposes, endowment purposes, and compliance with the conditions of the endower in addition to compliance with laws and regulations issued by the State and its various authorities in a context of an effective control able to prematurely detect errors, conduct accountability and correct them.

The purposes sought by endowment and governance fall under three categories:

- I. Shariah General Purposes**
- II. Endowment General Purposes**
- III. Endower's Intentions**

This three-dimension chain is overlapped, correlated, and gradual. So, the lowest purposes do not have to be inconsistent with the highest purposes. In case of inconsistency, the highest purposes will prevail



according to the principle of the gradation of legal rules. We will present the intended meaning of these purposes and how to harmonize between them and governance.

I. General Purposes in the Islamic Shariah:

The purposes are the goals and objectives set by the Legislator for each provision in order to achieve the interests of people in the life and the Hereafter. (Dr. Alaa Hussein Rahhal and Dr. Ahmed Muhammad: Endowment and Maintaining Shariah Purposes).

It is likely that the former jurists did not use the term “purposes” and they expressed it using the term “interest”. Imam. Al Ghazali was the first jurist referring to this term. Such interest includes the five necessities (maintaining religion, the self, mind, offspring, and properties). In addition to the necessary purposes or interests, there are lower interests which are needed interests and improvement interests.

So, the interests decided by Shariah are variable. Necessary interests take precedence over improvement needs, needful interests take precedence over improvement interests, and the interests related to the needs of the nation will take precedence over the interests related to needs of individuals in case of inconsistency” (This clause was referred to by Dr. Muhammad Badr Ad-Din in his thesis: Priorities in the Islamic Shariah Purposes, quoting from Dr. Yusuf Al Qaradawi, P 34).

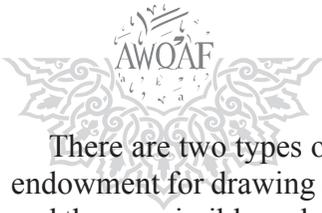
It is important, as emphasized by Dr. Al Qaradawi, to distinguish between the fixed purposes and the changing means. The former are as hard as iron and the latter are as flexible as silk. (Dr. Muhammad Badr Ad-Din, Ibid, P 31).

II. Endowment General Purposes:

Endowment has various purposes. Some purposes are general by providing a sustainable income to achieve a purpose consistent with Shariah provisions.

Jurists disagreed on identifying the Shariah purpose of endowment. Is it drawing closer to Allah and giving alms? Is it a gift or present? Or is it drawing closer to Allah and gift together? (Dr. Abdul Wahhab Bin Ibrahim Abu Sulaiman, Endowment.. Its Concept and Purposes, a research submitted to the Endowment Libraries Seminar held in Madinah, 1420 AH).





There are two types of endowments in terms of objective and purpose: endowment for drawing closer to Allah such as endowment of good deeds, and the permissible endowment such as endowment for rich people (Intisar Abdel Jaber Mustafa: Legislative Purposes of Islamic Endowments, a master thesis from the University of Jordan, P 18).

III. Endowment Special Purposes:

They are the purposes identified by the endower for his / her endowment whether it is a charitable, family, or combined endowment.

According to most jurists, endowment is not an act of worship with unreasonable meaning. Its meaning is reasonable in accordance with the rule set by jurists concerning Shariah purposes. It indicates that the default concept concerning provisions is their reasonableness rather than mere worshipping. On the other hand, the default principle concerning accountable persons is worshipping without the consideration of meanings (Dr. Abdul Wahhab Bin Ibrahim Abu Sulaiman, Ibid).

Accordingly, endowment purposes identified by the endower are subject to the measures and standards of the mind. Such mind shall evaluate these purposes in accordance with Shariah, necessity requirements, and achieving the most preponderant interests according to time and place conditions while taking into consideration the necessary, needful, and later the improvement needs. This was asserted by Imam Al Qarafi in his saying “According to Shariah, only alms including pure and preponderant interests are valid” (Al Qarafi, Al Zakhira, 6/302, quoted in the research of Dr. Ragheb Al Sirjani: Endowment and Shariah Purposes, Ibid).

On the other hand, the cornerstones of Islam are individual and collective obligations. Both of them have to be carried out with the individual obligations taking precedence over collective obligations. Some specialists see that most endowments currently assume collective obligations and they invite for striking a balance between them and other acts of worship. (Abdur Rahman Bin Jamil Bin Abdur Rahman Qassas: Shariah Purposes and Interest-based Dimensions in the Light of the Noble Quran and Prophetic Traditions).

Accordingly, governance requires not only adherence to the endower’s conditions in terms of the purposes of his / her endowment, but also they

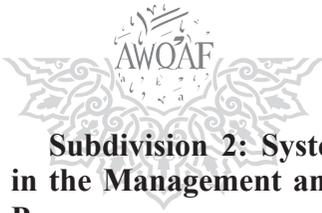


have to be adopted in the light of the major provisions of the Islamic Shariah purposes and the mandatory prioritization of individual obligations over collective obligations.

So, endowment is an Islamic ritual governed by the all-comprehensive rules of this great Shariah which makes its conditions binding in a context of a more inclusive system. This inclusive system necessitates giving preference to the interest of endowment, its beneficiaries or the society to any other interest set forth in the endowment conditions. “So, through understanding Shariah purposes, the endower’s conditions can be controlled, so that they will remain governed by such purposes” (Dr. Alaa Hussein Rahhal and Dr. Ahmed Muhammad: Endowment and Maintaining Shariah purposes, Ibid). Dr. Saeed Bin Saleh Al Raqib asserts the priorities decided in the Islamic jurisprudence concerning the aforementioned perspective in his statement that “The minimum necessities have to be met so that the religious and living affairs of people go well. If necessities are met, the priority of action will come to meeting needs. The lack of needs results in annoyance, awkwardness, and distress. The continuous lack and imbalance of such needs will damage necessities themselves. Hence, maintaining necessities requires maintaining needs. After meeting necessities and needs, we come to each interest and benefit lower than the limit of necessity or need”.

It is not accepted to let an individual (endowment superintendent or any other person) to act at his discretion in this regard. On the contrary, endowment governance system has to assign an entity which is tainted by neutrality and Shariah knowledge to give a juristic opinion concerning the extent of the need to adopt new endowment purposes in order to meet more urgent needs while giving priority to necessities over improvements and an individual obligation instead of a collective obligation carried out by some people.

Accordingly, we can harmonize between endowment governance and the endowers’ real intentions which take into account the change in the needs of people. So, endowment returns will be spent on disbursement channels nearer to the will of the endower if such endower had been alive.



Subdivision 2: Systems of Protecting the Rights of Stakeholders in the Management and Follow-up of Endowment Affairs and their Powers

The current endowment systems do not include any provision which protects endowment stakeholders, except for the right of the endower to change the conditions of his / her endowment, including endowment superintendence. Any damaged party (endower's heirs or beneficiaries of endowment) has to resort to judiciary in order to correct an apparent error, recover a lost right, or rationalize wrong courses of action. This is carried out under an endowment administration assuming an exclusive authority without any entitlements on it with regard to disclosure, transparency, and other means helping to detect errors and identify disadvantages and hence this shall lead to relevant accountability and overcoming them.

On the contrary, in an effective governance system, more developed and influential systems are innovated. Such systems ensure the protection of the rights of stakeholders, endowers and their heirs, beneficiaries of endowment, and the society with regard to the management and follow-up of endowment affairs. Powers are assigned to such stakeholders in this regard. We will provide the features of such systems after defining the rights of both the endower and beneficiaries of endowment.

I. The Rights of the Endower and the Beneficiaries of Endowment:

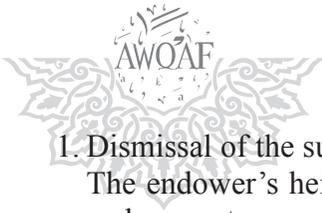
1. The eligibility of the individual or board assuming endowment management for such management: such eligibility includes, as a priority, efficiency, i.e. the ability to manage such endowment with a high degree of quality in accordance with the endowment size and type and the financial, administrative, and technical actions required by its good management.
2. Good governance through a system of an institutional nature where roles, responsibilities, and powers or authorities are accurately identified in a manner which leads to controlling such responsibility.
3. Effective systems including rules of a general and impartial nature to regulate endowment issues, provided that such rules shall be marked by modernity and compliance with the systems applicable in contemporary organizations.



4. An organizational structure of the endowment, provided that it is proportional with the endowment size and the nature of works conducted by it through the identification of responsibilities and powers.
5. A system for the internal and external control according to the endowment size and the extent of the extension of its works.
6. An accurate and effective system of information flow on endowment and all its affairs and a system for accounts, balances, and reports and providing the endower, his / her heirs, and the beneficiaries with copies thereof while maintaining the highest degree of transparency.
7. Providing the endower (or his / her heirs) and the beneficiaries of endowment with copies of the notes of the control bodies of endowment and studying his / her comments on them.
8. A system for the actions to be taken in case of the conflict of interest and providing the endower (or his / her heirs), the beneficiaries of endowment and the concerned bodies with the cases of the conflict of interest and the actions taken concerning them.
9. A system to invest the endowment capitals in the investment avenues which are permissible according to Shariah, provided that such system is rational, and it balances between the returns and the volume of risk, and submits reports on them as well as the concluded contracts while providing the endower (or his / her heirs) and the beneficiaries of endowment with copies of them.
10. A system to distribute the endowment returns in accordance with Shariah rules.
11. Systems ensuring to have access to Shariah judgment on the topics and problems aroused by work and compliance with such judgments.

II. Means of Protecting the Aforementioned Rights:

Governance systems provide legal means to enable the endower and the beneficiaries of endowments to follow up endowment affairs. Some of such means are allocated for the endower alone and some of them are for both the endower, or his / her heirs, and the beneficiaries of endowment. Hereinafter, we shall present the most important means:



1. Dismissal of the superintendent: it is a right vested for the endower. The endower's heirs (after his / her death) and the beneficiaries of endowment may request to dismiss the endowment superintendent and substitute such superintendent with another person. This may be conducted through resorting to the competent legal body in cases of failure, deviation, low level of efficiency, and failure to meet his assigned obligations via the designated legal means within the prescribed deadline.

Many laws focus on the eligibility of endowment management and the verification of the provision of such eligibility at both religion and real life levels. Some of these systems, such as the Iraqi Law, verify the eligibility of the endowment superintendent before assuming superintendence and the sustainability of such eligibility via an exam conducted by the Scientific Council on the issues related to endowment, including management, accountability, and Shariah issues (Dr. Ziad Khalid, General Supervisor of "Atharohom" Endowment Website).

2. Participation in the committees formed by endowment through an institutional system of endowment management which does not adopt individuality but it allows the endower, some heirs, and beneficiaries of endowment to participate in management. Such participation is effected through the organizations with a consultancy nature and it is assumed by enthusiast personnel able to enrich work, as they have a direct interest in promoting endowment management and reaching the highest degrees of efficiency.
3. Providing channels to ensure information flow concerning endowment affairs for the endower and his / her heirs (after his / her death) and the beneficiaries of endowment and making everybody acquainted with the proper information, through publishing in case of high-profile endowments which bear such financial costs.

The endower (or his / her heirs) and the identified beneficiaries of endowment have to be provided with reports and information sources which make them acquainted with all endowment affairs and it is necessary to disclose anything related to such endowment, especially the following:

- A. The extent of compliance with Shariah rules and provisions and providing copies of Shariah Supervisory Board reports.
- B. The cases of conflict of interest and the actions taken concerning them
- C. The summary of the endowment financial and accounting reports and copies of reports of the internal control and the outsourced auditor.
- D. The notes of endowment control bodies.
- E. The rewards paid to endowment superintendent, board of superintendents, and other bodies participating in management, especially Shariah Supervisory Board, and the reasons for differences in value compared to the previous years.
- F. Endowment investments, returns, and the relevant challenges.
- G. Distribution of the endowment returns to achieve the endower's purposes and realize equality when dealing the endowment beneficiaries.
- H. A future vision for the endowment plans and developmental programs.

Through these information, the endower and his / her heirs (after his / her death) and the beneficiaries of endowment shall be able to be informed with the endowment affairs and participate in its management in various forms. Meanwhile, they can provide suggestions and directives, address questions, request clarifications and inquiries, challenge decisions and actions, and urge the internal and external control bodies including the police and judiciary to take actions in the cases requiring that.

- 4. Awareness of the investment decisions concerning endowment capitals, reviewing and auditing them and verifying that specialized human cadres are provided to act according to the scientific rules of investment, based on an integrated vision which considers endowment objectives, systems, and community role as well as the rights of the endower, his / her heirs (after his / her death) and the beneficiaries of endowment.



The governance system has to include rules of institutional nature for the purpose of:

Taking and evaluating investment decisions and working towards participation in the committees studying the investment opportunities to select the best of them and follow up investment through efficient and experienced persons from the beneficiaries of endowment and the heirs of the endower or any other persons who are neither board members of the endowment superintendence council or superintendents (The system followed in “Al Rajhi Endowment” in the KSA; this system has been set forth in a paper titled: The Experience of the Endowments of Sheikh Muhammad Bin Abdul Aziz Al Rajhi in the Second Endowment Regulatory Forum in Riyadh 1435 AH / 2013 AD).

The endower or his / her heirs and the identified beneficiaries of endowment are entitled to review the documents of the endowment capital investment. The endowment superintendent has to provide them with an annual report on such investments. In addition, they are entitled to express opinions, and notes on such report, urge the control bodies to correct errors and rectify the course of investment, and resort to the judiciary if the requirements of the criminal and civil responsibility are provided.

5. Review of the reports prepared by the endowment administration on the methods of managing the endowment revenues in accordance with Shariah controls and the endower’s requirements, through which the following are conducted:
 - A. Setting aside maintenance costs.
 - B. Setting aside an appropriation according to the systems followed in business enterprises.
 - C. Paying the financial obligations of the endowment.
 - D. Distributing the remaining amount to the beneficiaries of endowment in accordance with Shariah rules while observing commitment to equality, non-discrimination, and setting the date of disbursement and commitment to it.
6. Verification of counting, recording, and maintaining endowment capitals, facing any transgression on them, ensuring their

independence and providing the endower (or his / her heirs) and the identified beneficiaries of endowment with an annual inventory statement. Such inventory statement will include a detailed statement of the endowment properties, disposed or waived properties and relevant reasons, and the use of money received by such endowment in return of the disposal of such property. The endower (or his / her heirs) and the identified beneficiaries of endowment are entitled to request for information, notify the control bodies in cases of violation, and resort to the judiciary system if the requirements of the criminal and / or civil liability are provided.

7. Reviewing the cases of the conflict of interest and the actions taken concerning them and prematurely disclosing them, reporting to the endowment competent bodies and control bodies concerning such cases, providing proposals for dealing with them, excluding the related party from the decision-making circle in such case, including a statement of the case of the conflict of interest and the actions taken concerning them in the endowment annual report, and providing the endower or his / her heirs (after his / her death) and the identified beneficiaries of endowment with such report and they are solely or collectively entitled to urge the control bodies to take actions in cases of the violation of this commitment and resort to the judiciary system.

Conclusion

Endowment jurisprudence prospered with the support of intelligent minds which could, by Allah's guidance and thanks to Him, translate Shariah provisions into applicable systems, as such systems are consistent with their age requirements and needs of their societies. Those great jurists left to us an elevated heritage as if they urge their grandsons to adapt it to their age requirements, integrate it with contemporary sciences developments, and bridge any gap between it and the requirements of developing their societies. In addition, our adherence to the principles and constants should not distract us from the continuous research towards developing means, systems, and mechanisms, so that the Islamic endowment shall be really able to be valid for any time or place. Wisdom is the goal and right of the



believer. So, the ultimate wisdom is to correct the unreal mental image of the endowment system in the minds of many people. This will not be achieved without the diligent and courageous research which overlooks the theory of reproduction and recycle of the scientific material and addresses new topics based on the sciences and developments of this age, including the theories of “Compliance” and “Governance”.

At the end of this brainstorming research, I suggest that “the Secretariat General of Endowments” in Kuwait forms a work team setting a model of “Endowment Governance” to be the focus of discussion in the coming seminar.

May Allah Guide us to the Right Way

Researches



Legal, Organizational and Regulatory Development of the Structure of the Endowment Organization

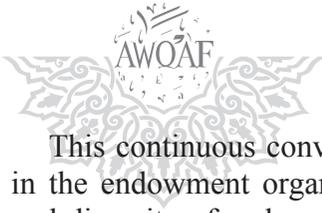
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A long time ago, endowment has been known with its independent reasoning nature. So, its juristic provisions and practical applications reflect a significant interaction between the endower's intention and the community needs. No doubt that this positive interaction between charitable persons and the community components made endowment the closest system to individuals and organizations. Moreover, this positive interaction made it the resort of the vulnerable groups as it protects them against poverty, disease, and marginalization. Endowment is also the goal of the students of knowledge as it pays significant attention to them. Students of knowledge seek for economic stability and the diversification of endowment capitals allows it to respond to the needs of individuals and organizations.





This continuous convergence with the society contributed to the trust in the endowment organization, increase of the number of endowers⁽¹⁾, and diversity of endowment fields. On the other hand, the role of jurists increased in addressing the minutest endowment provisions which most achieve endowment purposes. In addition, the liability of the organizations supervising and managing endowment multiplied.

However, the nature of the endowment management in the light of a unilateral legal system applied in the past as represented in the juristic provisions has not constituted a problem. Yet, the codification of the endowment provisions in the light of the modern State has led to the emergence of the problem of the nature of the organization supervising such management and its regulatory form. It also made the requirement of updating endowment laws so as to keep up with the State legal system to a realistic prerequisite supported by the nature of independent reasoning established in the endowment provisions.

It is not exaggeration to say that the endowment noble mission makes it urgently necessary to carry out the said update especially that the supposed interaction between the endowment and the beneficiaries of endowment will not be on the right way unless this system is provided with the most effective management and control mechanisms ensuring community confidence and contributing to the diversification of the endowment activities and fields.

Hence, a researcher may inquire about the legal and regulatory requirements which fulfill the said interaction and ensure the effectiveness of this system among the various organizations. In other words, what is the reason for such necessary update? Is the issue related to the outdatedness of the endowment provisions which may entail the severance of any relationship with the past? Or is it a necessary change enduring sustainability, recognizing the originality of the endowment

(1) Some researchers see, and they are right, that endowment provides a sustainable exemplary model of more benevolence. Endowment leads to the existence of a new endower and so on. Refer to Reham Khafaji and Abdullah Erfan “Revival of the Endowment System in Egypt... Review of the Global Examples”, Gerhart Center of Philanthropy and Civil Engagement, the American University in Cairo, P 3.

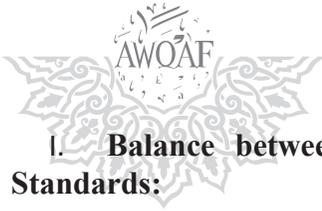
system, and seeking for the means of strengthening and highlighting its role? If the update shall be made, what is its approach? And on what bases? for what purposes?

Section 1: Requirements of Developing Endowment Laws

Adopting the saying that it is necessary to develop the structure of any organization may implicitly include an intention to reform the current system which has not kept up with the emergent needs. It may also express an ambition to promote such system in a manner balancing the available capabilities and expected objectives. So, development in this sense attempts to reposition the organization taking into consideration the general and special environment of the concerned system.

If we are requested to apply that to the endowment system, we can from the outset declare its readiness for development theoretically and practically. This opinion is supported by the independent reasoning of the endowment provisions to which our jurists paid their significant attention. This resulted in the openness of endowment to all forms; a matter which increases the numbers of endowers and diversifies the endowment fields. This has been only restricted by observing these forms and their consistency with the special nature of endowment and non-violation of them.

Reference to the endowment history explicitly highlights the diversity of the contributions of this system to the Islamic history. This qualified it to be an important economic resource which enriched the Islamic civilization and enabled it to rank a high position among nations. While the subsequent generations have been proud of this heritage, their responsibility is maximized to resume the same march. It is not useful to stop completing these great achievements, but it is necessary to link the endowment organization to real affairs of the society, develop its provisions in Shariah, theoretical and legal terms and attempt to achieve the openness of its types and fields to more useful forms while ensuring the sustainability of the recurring charity on another hand.



I. Balance between Endowment Objectives and Governance Standards:

Governance is an important concept which has become common to the extent that it is employed in most general and academic fields. Due to the remarkable weight of governance, it could become an ingredient of the political and economic discourse associated with reform. So, despite disagreement on its definition, history, and standards⁽¹⁾; its general goal is a point of agreement. This goal aims at avoiding or remedying a certain flaw, as the case may be, which taints or is expected to affect the normal function of an organization connected to the society. So, governance in this sense is considered as a mechanism of the good management of resources and a method of wise management aiming to achieve balance in various fields. So, governance is certainly a main target for all organizations aiming to seriously build their structures, a fertile field for independent reasoning and consideration of privacy, and an outlet for planning which is based on the realistic and objective evaluation of the concerned organizations.

It is no doubt that governance standards differ according to the variation of the political, economic, and social environment; as its estimates are based on the special status of some countries. Therefore, governance standards in the North African countries differ - for example - from the governance standards adopted in the western countries⁽²⁾. In addition, governance standards in the public departments are not necessarily similar to the standards in the civil society organizations. Accordingly, we are entitled to set standards for the endowment governance, based on its specialties and purposes and while observing the internal logic of governance in general.

(1) See Ashraqi, Abdul Aziz: Good Governance (International, National, and Collective) and the Prerequisites of Current Management, Edition No. 1, An Najah Al Jadida Printing House, Casablanca, 2009, P 27 et seq. and P 54 et seq.

(2) The International Bank and the Organization for Economic Co-operation and Development (OECD) set some governance standards as follows (Adoption of the State of right and law, management of the public sector, harnessing corruption and reduction of military expenses). In addition, special standards have been set for the African countries, including: (accountability, guarantee of political stability, effectiveness of the government, quality of economic regulation, rule of law and adoption of equality, insurance and equal opportunities, and control of corruption). In addition, there are standards related to the UNDP as well as the EU standards. Refer to Ibid, P 56 and 57. However, governance standards in both sets include (democracy, security, respect of human rights, respect of law, control and accountability, and partnership).

1. Adoption of Governance Standards in Developing Endowment Laws:

Any desire to remedy a certain legal system must have knowledge grounds evoking the spirit and essence of this system and demonstrating its values and deep dimensions. No doubt, formulating logical introductions built on satisfactory bases has to balance between strengths, points of flaw and available capabilities in order to identify the hoped or expected objectives.

It is unanimously agreed upon that the endowment system - since its early outset - has been a method to achieve balance in the society and highlight the ethical dimensions of the Islamic Shariah. So, it is a system of social solidarity and relief of distresses. Its mission harbors feeling for the problems of others without obligation. Therefore, drawing colder to the Creator, Almighty, and the performance of such objective will not be achieved unless the endowment laws have adopted the following guidelines:

A. Observing its Special Nature ⁽¹⁾

Accordingly, any attempt for the legal reform of the endowment organization has to observe the specialties of this system. This is not done on the basis of fanaticism or exclusion, but it is based on avoiding the unaccepted simulation of systems which are different from endowment in terms of principles, provisions, and purposes. The necessity of observing this approach is supported by the prevalence of many concepts which achieved effectiveness in many fields and the persistent intention of many stakeholders of the endowment work (individuals or organizations) to provide the endowment system with the most recent management techniques. On the other hand, it is noted that some parties stick to the humanitarian dimensions of endowment. So, it is preferred to adopt legal

(1) The Preamble of the Moroccan Endowment Code issued under the Royal Decree No. 1.09.236 issued on 8 Rabie I 1431 AH corresponding to 23 February 2010 AD, and published in the Official Gazette, Issue No. 5847, dated on 1 Rajab 1431 AH corresponding to 14 June 2010 AD related to the Endowment Code stated that: "As our Majesty asserts the independence of endowment based on its pure Islamic nature, we preferred – through this Code - to maintain the specialty thereof ...".



requirements ensuring a sufficient area of privileges in a manner qualifying it to play the role played by it a long time ago. Accordingly, harmonization among these different situations means to adopt openness to all provisions contributing to the development of the endowment performance and output without excluding the particularity of this system absolutely ⁽¹⁾.

The difficulty obstructing application stems from the deep methodological question related to the extent of the ability to overcome the different references of the law and the Islamic jurisprudence with respect to endowment, without prejudice to the invariables of both systems. This is because the duality of the rules governing endowment contributed strongly to deepening the problem of harmonization between the juristic heritage and the legal system.

In order to overcome this difficulty and achieve the required development of the endowment legal provisions, we think that it is necessary to consider the following controls:

- Consider the juristic system within which the endowment provisions were issued and review these provisions to reflect the strength of their evidence and examine the extent of their responsiveness to the age requirements.
- Admit the multiplicity of the sources of the legal rule with respect to endowment instead of dependence on one source whether legal or juristic ⁽²⁾.

(1) Mr. Nasr Muhammad Aref said: "Most of these attempts to reform endowment caused the corruption of such endowment, as it was simply an attempt to reform an organization on bases, values and objectives different from its constituents, and most of them has not attempted to achieve reform in order to free endowment, drive it to achieve its objectives, and maintain it as an independent societal organization which constitutes in its essence a brilliant idea achieving balance between the State and the society, protecting the society against the State tyranny, and maintaining the Islamic civilization even if when the countries deteriorate or weaken". Refer to Nasr Muhammad Aref: The Organizational Administrative Building of Endowment System, Problems and Experiments of Reform, an article published in October Magazine, Issue 39, 10th year, Spring 1424 AH, 2003 on this link: <http://www.kalema.net/v1/?rpt=103&art>

(2) This will ensure openness to various legal rules serving and developing endowment without affecting its essence. It will also ensure openness to other juristic schools if they prove their effectiveness in a certain issue.

- Classify the provisions related to endowments in a modern form meeting the community needs while highlighting its special nature⁽¹⁾.
- Consider the rules of equity and justice in enacting the legal rules related to endowment⁽²⁾.
- Highlight the general invariables of endowment, including the maintenance and development of the endowment capital and adoption of appropriate legal rules which are consistent with the essence of the Islamic Shariah⁽³⁾.
- Observe the internal logic of the juristic provisions governing endowment and innovate a special technique to employ such rules based on maintaining them or some of their terms while explaining their significance or adopting their content in substantive or formal rules⁽⁴⁾.
- Enact flexible legal rules facilitating the missions of the organizations supervising endowment, instead of sticking to rules which application shall constitute an obstruction in terms of

(1) This is because of the complete separation between juristic and legal provisions and its effect on particularity as one of them is supported while there is an urgent need for integration between both structures.

(2) When the right of others is related to it.

(3) The maintenance and development of the endowment capitals are of the most important invariables governing the endowment system. Such maintenance and development stem from the special nature of the endowment capital, as it is a recurring charity of the uninterrupted good deeds. Therefore, the endowment management is associated with the actions taken to renovate, repair, and expand it and the legal actions ensuring defending and protecting it against any transgression in addition to fixing its legal and material status through keeping it. Therefore, the maintenance of the endowment capitals is one of the necessary purposes of the endowment organization. In addition, ensuring the benefit to the largest number of individuals and organizations from the various services of endowment requires a diligent search for the best forms guaranteeing its investment and development, within Shariah controls derived from its special reference.

(4) Refer to our compilation: The Moroccan Endowment Code, a Systematic Study of Fundamentals and Dimensions, Dar Al Aman, Rabat, 2014, P 102, et seq.



management and control⁽¹⁾.

B. Observing the Rules of Equity and Justice:

Although the endowment is an organization having social, economic, and cultural objectives and remarkable segments of the society benefit from it, this does not justify its entitlement to excessive privileges. But, the main point is to highlight the endowment specialties and consistency with the State legal system while completely observing the ethical dimension of the endowment system.

We only will present two cases of observing the rule of equity and justice which are as follows:

The first case: observing such rules for the endower

The second case: observing the same rules for persons rather than the endower.

For the first case, we exemplify it with the revocation of endowment for special reasons, as set forth in Article 37 of the Moroccan Endowment Code concerning the revocability of endowment in two cases:

- If the endowment is dedicated for a beneficiary who will be existent in the future but the endower revokes such endowment before the existence of such beneficiary.
- If the endower stipulates in the Endowment Contract to revoke

(1) This includes, for example, the difficulties resulting from the multiplicity of the financial estates for the endowment administration and the organizations controlling it. So, the unified financial estate of endowment is a proper orientation to overcome these difficulties, within controls, which shall not exclude the entire legitimate intention of the endower, but they consider the possibility of implementing it and its realization of the interest. This was set forth in Article 34 of the Moroccan Endowment Code: "The conditions of the endower shall be observed and met if they are legitimate and implementable. If the endowment is loaded with an illegitimate condition or a condition which could not be implemented, such endowment shall be valid and the condition shall be invalid, while considering the provisions of Clause 1 of the aforementioned Article 14".

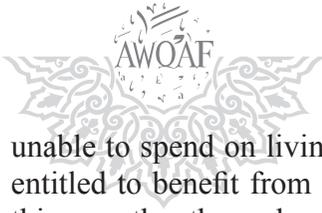
such endowment if the endower becomes poor ⁽¹⁾.

Based on this article, the Moroccan Legislator permitted the revocation, if the endowment is dedicated for beneficiary of such endowment, which will be existent in the future, such as endowment for a fetus, who has not been born yet or a charitable organization, which has not been established yet. We see that the reason of this permissibility of revocation is that such endowment shall not be due to the beneficiary of endowment unless such beneficiary is born alive, as the first example, or such charity organization is built, as the second example. So, the obligation of endowment here is not related to just the establishment, but to the achievement of the condition of joining such endowment capital to the financial estate of the beneficiary of endowment.

Needless to say that this provision does not affect the endowment, as its financial estate is not affected. So, it is fair to accept the revocation by such endower in an exceptional case having a realistic reason related to the financial and social status of such endower.

The second case permitting the revocation of endowment according to the aforementioned article is when the endower stipulates such revocation in the Endowment Contract if the endower becomes poor. This exception includes the real fairness and expresses the human dimension of this system. So, as long as such endower becomes poor to the extent that he becomes

(1) The Kuwaiti Endowment Draft Law adopted a different view in its Article (18) in which it determined the case of revocability based on the revocation of the endower of non-governmental endowment (which does not apply to charity or public endowment), based on the estimation of the administrative committee which has due jurisdiction referred to in Article 55 of the Draft Law. Accordingly, the said Article 18 provided that “The endower may not revoke the endowment except for the non-governmental endowment for a necessity estimated by the Committee”. The explanatory memorandum of this Article set forth that: “Article 18 adopted the aforementioned opinion concerning charitable endowment on the ground that it is a type of irrevocable alms and we must distance endowment away from the suspicions of manipulation. As for non-governmental endowment, the said Article adopted the opinion of Imam Abu Hanifa who sees that endowment is not binding except for endowments of mosques and the like, as well as the opinion of some jurists who permitted the revocation of endowment for sons and daughters and this is applied to the endowment for offspring. Accordingly, the referred to provision permitted the endower solely to revoke his / her non-governmental endowment based on the approval of the committee, if there are circumstances requiring that”. Refer to Iqbal Abdul-Aziz Al Motoua’: Kuwaiti Endowment Draft Law, P 71.



unable to spend on living and medication thereof, such endower shall be entitled to benefit from the capital kept thereby more than others. So, in this case the, the endower has not to be punished through the opinion of such endowment obligation. However, for the endowment interest and to face the cases of fraud, such as a person endows capital to evade creditors, this shall be stipulated in the endowment instrument. This is a substantive issue and the contrary can be proved by superintendence party of the endowment capital, which may dispute against the endower concerning whether this condition is provided or not.

As for the case in which we detect balance between the interest of the endower and third parties where the rules of equity and justice are observed, we exemplify it with the case in which the financial estate of the endower is burdened with debts consuming all his / her properties during endowment or before the acquisition of the endowment capital. So, if the status of the endower is not considered, the endowment shall be obligatory and no attention shall be paid to such emergency. Otherwise, the endower is considered and the opinion shall be consistent with the content of Article 10 of the Moroccan Endowment which sets forth that “If the debt consumes all properties of the endower during endowment or before the acquisition of the endowment capital, endowment shall be invalid unless the debtors permit it”.

According to these requirements, it is clear that the intention of the Legislator aims to protect the general guarantee of creditors, as the debtor may resort to endowment to evade the payment of his / her debts. So, endowment shall be considered invalid if the debt consumes all properties of the endower. This again demonstrates the supreme mission of endowment which is not based on causing harm to anybody.

On the other hand, in case of the good faith of the endower when his / her financial estate is burdened with debt during endowment and before acquisition for reasons beyond his / her control and guidance, this shall not be considered as a justification for the endowment obligation, on the ground that the endower’s capital has not yet been included in the endowment financial estate, but it is still in the endower’s financial estate while the right of others is related to such financial estate and it is more entitled to protection.

However, the Legislator took into consideration the intention of creditors when it allowed for the continuity of endowment in case of their permission which is considered as a waiver of their right in the capital of the endower debt ⁽¹⁾.

Finally, we would like to indicate that these provisions and other provisions are really considered as a balance between the interest of the endowment and the interest of third parties. This is undoubtedly considered as a proper application of the essence of governance, which is primarily based on equivalence and democracy and denies the imbalance between parties. This is also considered as a refutation of the opinion that the endowment reference entails it with more privileges.

(1) It is noted, however, that some juristic schools adopted a different opinion on this issue, such as the Hanbali School and some Shafi'i jurists as adopted by the Kuwaiti Endowment Draft Law in Article 5 thereof which stated that: "The endowment of a debtor burdened with a debt consuming the properties thereof shall be valid and the creditor shall be entitled to object to such action before the committee within three years as of the of his / her awareness thereof". The explanatory note of this Draft Law stated that the purpose of the creditor's objection is to reduce the negative effect of the loss of the general guarantee of creditors if the debtor burdened with such debt consuming the properties thereof resorts to endow such properties to evade the payment of the debts thereof". In addition, identifying the objection period to be three years as of the awareness of the creditor is considered as an application of Articles 310, 311, and 317 of the Civil Law: Refer to Iqbal Abdul-Aziz Al Motoua', Ibid, P 66.

Article 310 of the Kuwaiti Civil Law provided that: "1. Each creditor, whose debt is due and payable while the debtor thereof disposes in a manner harming such creditor, shall be entitled to request to abolish the enforcement of such disposal, if such disposal undermines the rights or increases the obligations of such debtor and results in insolvency or increase of insolvency thereof if the conditions provided for in the following Articles are realized". Article 311 of the same law provided that: 1. If the disposal of the debtor is against a compensation, abolishing the enforcement thereof on the creditor shall be stipulated by the fraud of the debtor while the beneficiary has been notified with such disposal. The fraud of the debtor shall be supposed if the creditor proves his / her awareness at the time of the disposal such debtor is insolvent or that such creditor had to know that. In addition, the awareness of the beneficiary of the disposal of such fraud on the part of the debtor is supposed. If the creditor proves awareness at the time of the disposal that such debtor is insolvent or that the creditor had to know the same and the disposal of the creditor is an act of donation, the abolishment of the enforcement thereof on the part of the creditor shall not require an act of fraud committed by the debtor or the good faith of the beneficiary of the disposal". In addition, Article 317 of the same law which is based on by the Kuwaiti Endowment Draft Law provided that: "1. The abolishment of disposal enforcement shall be dismissed by prescription after the expiry of three years as of the date of awareness by the creditor with the reason for non-enforcement of disposal on his / her part. Otherwise, it shall be dismissed after fifteen years as of the date of disposal."



C. Considering the Principle of Equality:

The philosophy of endowment based on the performance of good deeds and charity has to be reflected on its provisions. So, the balance between data and provisions is necessary to guarantee the supposed consistency between the parts and components of the law. It should be noted that based on some practices experienced by some Islamic countries, endowment is dedicated for males rather than females. This discrimination results in grudge in the relationship among the endower's sons and daughter. Meanwhile, it is supposed that the purpose of the endower is to strengthen the relationship among them and ensure decent life for them. The countries which abolished non-governmental endowment attributed such matter to the differentiation between males and females. Whether this justification is realistic or a pretext to get rid of the non-governmental endowment, the acceptance of such matter in a system based on expressing feelings towards others is considered a gap leading to a contradiction between the philosophy of endowment and its objectives on one hand and these provisions on the other hand ⁽¹⁾.

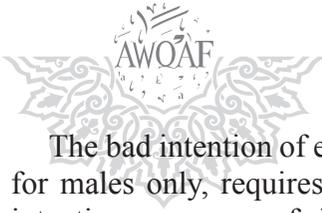
The problem is complicated due to the glorification of the endower's will and refraining from discussing it. We think this is an obstacle against applying the principle of equality between males and females. So, can the

(1) Al Bayyumi Ghanim mentioned the effect of the non-governmental endowment on family stability when he said "We again assert that the main objective of most entitlement conditions in the non-governmental endowment is keeping the family entity, maintaining its coherence, attempting to maintain its ethics and care for its traditions, supporting its position in its social environment, and diligently attempting to protect its fortunes against devolution to strangers or usurers due to any debts on some members of such family and the consequences of that such as mortgages or procedures of expropriation for the payment of such debts. Refer to Ibrahim Al Bayyumi Ghanim: Endowment and Politics in Egypt, Dar Al Shorouq, Edition 1, 1419 AH., 1998, P 350.

will of the endower be on equal footing with a binding provision? ⁽¹⁾

(1) The issue of “compliance with the words of the endower” has been a subject of disagreement among jurists. So, Jurist Al Sarqasti was asked if it is impermissible to transfer the returns of endowments kept for the people who recite the Holy Quran on the tombs of the endowers and other endowments kept for poor people while the rent of such endowments was used to buy a garment for such poor people in Al-Adha Day to a fortress with poor resources. He replied “The returns of the said endowments shall be only disbursed to the two channels of disbursements aforementioned as the endowment for them is valid. Allah, the Almighty, said “Then whoever changes the bequest after hearing it, the sin shall be on those who make the change”. Refer to Aba Al Abbas Ahmed Bin Yahia Al Wansharisi: *Al Mi’yar Al Mourrab Wa Al Jami’ Al Moghrrab An Fatawa Ahl Afriqiya Wa Al Andalus Wa Al Maghrib*, Publications of the Moroccan Ministry of Endowments and Islamic Affairs, Dar Al Gharb Al Islami, Beirut, 1401, 1981, 7/139. Jurist Al Sarqasti provided the same answer when he was asked whether it is permissible to give the Imam of a Mosque or a Muezzin (caller for prayer) from the endowment of such mosque while the disbursement channels thereof are identified for the building, mats, lighting fuel, and the mosque needs, he replied: “Endowment returns shall not be disbursed for any disbursement channel rather than those identified by the endower thereof, including the building, mats, and lighting fuel only, and whoever changes them, the sin shall be on those who make such change”. Refer to *Ibid* 7/126. This opinion is based on the saying of Allah’s Messengers (peace be upon him) “Muslims comply with their conditions”. Accordingly, the compliance with the endower’s condition is obligatory and this results in the multiplicity of endowment financial estates, as each endowment has its own financial estates independent from other endowment financial estates.

The other opinion on the extent of compliance with the words of the endower or applying the purpose thereof, we infer to it according to Maliki through the saying attributed to the jurist Abu Abdullah Al Ouri who attributed it to Ibn Al Qasim, Al Majshon, and Ibn Rushd: “The issue is a subject of disagreement in the past and nowadays and I see it is permissible for an endowment to benefit from the abundance of another endowment”. This was quoted from Ibn Al Qasim by Asbagh and Ibn Habib. This was also the opinion of Abdul Malik Bin Al Majshon and Asbagh. They saw that different endowments may benefit from each other according to the abundance of returns. Ibn Rushd also saw that it is impermissible through rehabilitating a mosque using the abundance of another mosque. This was the opinion of Andalusia jurists on the contrary of Al Qarawiyyin juristic school. This was also the opinion of Ibn Al Qasim. Permissibility is a more correct opinion and it is established by independent reasoning, as it is unacceptable to deprive the endower from getting the reward he / she attempts to have and expose such abundance to loss. Spending abundance for charity is more beneficial to the endower and increases the reward thereof. If we prevent that and buy assets with such abundance, we will find an endowment without a disbursement channel. Disbursement for good deeds overcomes that. On the other hand, depriving the endower from reward is not accepted, as it is useless except for giving alms for the beneficiaries of endowments according to the Prophetic Hadith which says: “When the son of Adam dies, his acts come to an end but three: Recurring charity ... etc.” So, if we prevent disbursement, we will obstruct the interest of such endowment, as the purchase of assets in return of abundance shall not be considered as charity. Charity aims to provide the needy people with benefits and here, the abundance is not useful for the needy people. As for the exposure of abundance to loss, we witnessed it frequently. If such abundance has been disbursed for the good deeds, the corrupt persons will not find anything to rob, or sell things unbeneficial or trivially beneficial for the endowment”. Refer to: *Ibid* 7/187, 188.



The bad intention of endowers, in case that the endowment is dedicated for males only, requires more consideration. Those endowers hide their intention as a means of circumvention on the rules of inheritance to deprive males, females, or some sons from their rights.

Therefore, Article 14 of the Moroccan Endowment Code stated that “in the case of endowment for the males of the endower’s offspring only or only for some sons, such endowment shall be considered as valid for all sons and daughters while the condition is invalid.”

Accordingly, we can say that the remedy addressed by the Legislator to such orientation which permits such discrimination is fair so as to justify the invalidity of the condition and the validity of the endowment ⁽¹⁾. So, in this regard we cannot here comply with the invalid words of the endower and we cannot invalidate the endowment entirely, as this deprives the beneficiaries of endowment from the benefits of endowment ⁽²⁾.

2. Openness to the Economic and Financial Approaches to Develop Endowment Laws:

The deep review of the endowment history and its various roles allows us to understand the internal logic governing this organization which ranges between its confirmation of specialty and proceeding with independent reasoning or, contemporarily, proceeding with the update of

(1) As the Royal Decree of the Moroccan Non-Governmental Endowment Dissolution issued on 24 Shawwal 1397 AH, 18 October 1977 AD permitted the differentiation between males and females.

(2) Some researchers said that the obligation to comply with the endower’s condition is the best evidence of the endowment illegality, as it is a method to circumvent the heritage rules by depriving the heirs from their heritage in the public endowment or preferring some heirs to other heirs in the non-governmental endowment. Refer to: Shoukry Bidair: L’organisation des biens dits «HABOUS» ou «WAKF» dans L’ISLAM. Librairie de droit et de jurisprudence. Paris (1924). p249. This is the same pretext of the advocates of the abolishment of the non-governmental endowment in many Arab countries. In this regard, a discussion was held in the Egyptian Parliament between its chairman at that time Saad Zaghoul and Abul Hamid Effendi who said. “I say boldly and frankly, there is no system to eliminate the damage to the beneficiaries except for the abolishment of the non-governmental endowments, as every day it is proved that it is an unjust system, and its objective has not been achieved”. The situation of Saad Zaghoul was to search alternatives to eliminate such damage and he saw that abolishment will not solve the problem. Refer to Ibrahim Al Bayyumi: Ibid, P 426.

laws. No doubt, meeting these two requirements enables the endowment organization to keep up with the movement of the various laws which does not allow to separate the areas of knowledge when it is important to be convergent.

With regard to the great expectations of the society from the endowment organization, its laws must be opened to the most effective management methods and the most recent development forms which achieve the targeted objectives. We see that openness to both economic and financial approaches is an effective method for the legal update of the endowment organization in a manner that does not set aside specialty, but it adheres to it in presenting the legal provisions and practical solutions.

A. The Role of Economic Approach in Developing Endowment Laws

The topic of the relationship between law and economy has been significantly applauded by legal specialists ⁽¹⁾, as the economic approach involves all fields, in addition to the strenuous desire to establish realistic developments which have not been legally regulated.

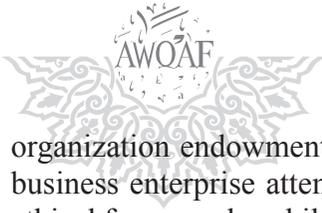
Away from highlighting that this is a current and effective orientation recognized in various laws, we indicate that this relationship between the endowment law ⁽²⁾ and the economy has been addressed a long time ago. A strong relationship has been established between jurisprudence and the societal needs, through rooting various forms of endowment investment.

So, it is necessary to keep on developing such endowment, allowing the endowment organization to get involved into important development fields which meet the society requirements and make the endowment recover its leading role. No doubt, this constitutes an urgent requirement as long as the

(1) Particularly refer to: -Mackaay (Ejan) et Rousseau (Stéfane): *Analyse économique du droit*, Dalloz, 2ème éd, 2008.

In addition, concerning the development of the relationship between the law and economy, refer to Mackaay (Ejan), *Remarques introductives: Revue de la recherche juridique, Droit prospectif* 2008- 5, N° spécial, *L'analyse économique du droit*, 2461 et s.

(2) Even if in the form of the Islamic jurisprudence provisions, on the ground that it is included in the general meaning of law, as they also control and regulate the behaviors of individuals within the society.



organization endowment is valid to be a basic structure of any emerging business enterprise attempting to achieve its objectives within Shariah ethical frameworks while linking the worldly life and the hereafter life”⁽¹⁾.

We think that the best method to achieve such objective is to deepen the strategic approach and plan of the endowment management. However, this has to go just beyond the choice of the endowment organizations of this management orientation to include the binding legal provision. We mean that the endowment laws have not to focus on putting burdens on the endowment administrator who manages the daily works, but an area has to be left to manage programs and projects. This imposes the adoption of the approaches of the economic analysis of the endowment investment, whether the issue is related to investment forms or mechanisms.

So, as there is an agreement to some extent on the necessity of the renewal or update of the investment forms so as to allow for employing the endowment capitals and include them in the wheel of development, based on their special nature which primarily depend on the necessity of hedging against risk management and diversifying the investment fields and areas. Including the requirements serving this strategy in the endowment laws is a required orientation.

The powers assigned to the endowment superintendent in the Moroccan laws, for example, only allowed him to manage the daily works and implement the instructions of the Central Administration. The reason for that resulted from the lack of legal separation between the capacities of the authorizing officer and the collector. This resulted in focusing on the soundness of the financial transactions instead of thinking on endowment development. In addition, the issuance of most decisions by the Central Administration contributed to the emergence of this status. No doubt, such centralization negatively affects innovation and the search for investment opportunities. Instead, delays and extreme restriction of powers have taken place which adversely effects the

(1) Al Salahat, Sami: Developing the Administrative Bases of the Endowment Organizations in the State of the United Arab Emirates, a research winning Al Owais Award for Studies and Scientific Innovation, 15th session, 1426 AH, 2005, P 10. Refer to the following link: <http://www.amaf.gov.ae/a>

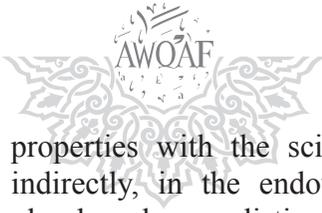
performance of staff in the endowment organization ⁽¹⁾.

It was insufficient to encourage superintendents towards economic thought due to their various concerns which prevent them from achieving this objective. So, the solution was to establish an organization in accordance with the Endowment Code. This organization is “the Local Financial Controller” (at the level of the endowment superintendence) and “the Central Financial Controller” (at the level of the Central Administration). This functional separation contributed to making the endowment superintendents a source of power by presenting proposals in the field of improving the endowment performance. On the other hand, other duties are assigned to the financial controller which shall be addressed in the second part of this research.

We can say that this separation is significantly consistent with the adoption of the economic analysis at the local level, as the full-time dedication of the superintendents for a management and development assignment and their awareness of the endowment capitals affiliated to their superintendence and the local needs allow for striking a balance between the cost and the social and environmental benefit of any project intended to be established. Financial analysis may be insufficient to achieve such purpose, as the financial cost of dedicating an agricultural land for building a school wastes an agricultural production and a financial return. However, the social benefit of the school is to teach students and bring up generations.

It is clear that the adoption of the economic approach in the endowment laws forms a mechanism to apply various procedures which proved their effectiveness in controlling the endowment capitals in order to facilitate maintaining them. This was indicated by counting the endowment

(1) It is clear that the decentralization of the administrative decision allows for achieving a set of objectives: the realistic diagnosis of the endowment management and the needs of the concerned region, adoption of realistic decisions which objectively identify the points of strengths and weaknesses, alleviation of the burdens on senior leaders, simplification of procedures and avoidance of the administrative complexity resulting from the mutual correspondence between the Central Administration and local management, creation of environments of creativity and cooperation among the local work teams and between them and their counterparts at the central level, and increasing the confidence of citizens in the endowment organization due to their feeling of its closeness to them and their needs.



properties with the scientific method. Including such count, even if indirectly, in the endowment laws contributes to setting a strategic plan based on realistic starting points. Such starting points allow for an economic analysis based on identifying the available capabilities and allowing for setting an applicable developmental concept. We exemplify this matter with the provision of Article 93 of the resolution of the Moroccan Minister of Endowments and Islamic Affairs No. 2685.13, issued on 45 Dhul Qadah 1434 AH, 19 September 2013 AD to enact the financial and accounting regulations of the public endowments ⁽¹⁾. The Law provided for the following: “The accounting of items and properties aims at calculating, documenting and registering all endowment properties and items, following up their movement, getting acquainted with the value and quantity thereof and controlling the use thereof. The concerned authorizing officer and concerned financial controller shall follow up endowment properties within the scope of superintendence. For this purpose, a sheet will be prepared for each property which will include the following data: A. the legal status of the property (title deed number, capital value, address.....). B. Property exploitation (the lease contract, its term, rental value, collected income, income to be collected, the actions taken to collect debts, maintenance, and repairs). C. Property repair and maintenance. In addition, at the beginning of each year, the inventory of public endowment properties shall be updated and a copy thereof shall be submitted to the authorizing officer and the Central Financial Controller”.

Although these provisions are related to properties accounting ⁽²⁾, they cannot be conducted without a scientific accurate counting of the endowment properties which shall exceed the numerical count to determine

(1) Article 2 of this Resolution stated that: “The financial and accounting regulations of the public endowments are: the set of rules regulating the processes of setting, approving, and implementing the public endowments budget, controlling the financial and accounting transactions thereof, accounting bookkeeping, and identifying the fields and duties of the persons in charge of the application thereof”.

(2) The Legislator could satisfy with the other types of accounting. But, the Legislator also took into consideration the accounting of capitals and properties, as Article 71 included: The public endowment accounting shall consist of (administrative accounting, budget accounting, properties and items accounting. In application of Article 146 of the Endowment Code, the accounting bookkeeping shall be conducted in accordance with an accounting procedures list identified by a resolution issued by the Minister of Endowments.

their economic value. This is considered as an introduction to any planning or developmental program ⁽¹⁾. In addition, the accurate knowledge of such properties serves to meet the general standards of governance in terms of transparency.

B. The Role of Financial Approach in Updating Endowment Laws:

Financial governance is based on a set of principles ensuring transparent management and facilitating good governance. Due to the specialty of endowment finance, it has some common points with the public finance while it differs from it in other points, whether in budgeting or financial control.

Developing the Laws of Endowment Budgeting:

The special nature of endowments does not prevent it from simulating the financial system of the State in some principles such as inclusiveness or generality which allows for the coverage of all service activities. So, expenses and revenues are detailed without the possibility of making a set-off between them or allocating an expense to revenue. In addition, the budget is divided into two sections: one for management and one for investment. Each section has its revenues and expenses which reflect the general financial status of the entire public endowments ⁽²⁾.

We can say that issuing special laws for the endowment budget allows for migrating from traditional management to modern financial management. In addition, these mechanisms enable to apply the logic of results in managing the endowment budget, instead of confinement to the logic of executive methods and procedures of financial appropriations. This is considered as an introduction to any developmental planning.

Here, we should refer to the current integration between the economic approach in managing the endowment capital and the financial approach

(1) Including the increase of rental value.

(2) Article (135) of the Moroccan Endowment Code provided that: "The annual public endowment budget shall consist of two parts. The first part shall be related to revenues and the second part is related to expenses. Each part of them shall consist of two sections; a section for management and a section for investment. In addition, the budget shall include special accounts related to certain endowment projects".



related to its budgeting. This is because the effective financial management shall not be confined to the limited concept of the numerical policy through which the budget is described, but it shall include the interaction between this accounting document and the strategic mission of the endowment management. Whether the issue is related to an annual budget or a budget of many years, the objectives have to be identified quantitatively and qualitatively and they shall be divided in timeframes taking into consideration the actual financial resources.

The purposes of accounting and financial regulations of endowment can be combined in the following points:

- Controlling the endowment capitals so as to allow for maintaining and developing them.
- Stating the estimated surplus allowing the endowment investment.
- Facilitating the process of financial control.
- Financial transparency as a basis for the good financial management⁽¹⁾.

Finally, we refer to the correlation between the accounting document and the objective provisions of endowment, as the application of one financial estate of endowment for example has to be explicitly reflected on the budget. Consequently, the single account or the treasury unit system shall be applied. This correlation allows for highlighting the specialty of endowment capital and refutes the idea of non-grounded simulation of the State public budget. Such specialty shall be judged from the perspective of Islamic jurisprudence and it shall be rooted it in a manner meeting the

(1) For more details, refer to Abdelsattar Abu Ghudda and Hussein Hussein Shehata: Juristic Provisions and Accounting Bases of Endowment, Publications of the secretariat General of Endowments, First Edition, Kuwait, 1998, P 210.

Shariah reference of the endowment organization ⁽¹⁾.

- Establishing Transparency in Controlling Endowment Capitals:

No doubt, updating the legal structures of the endowment organization requires enhancing the internal and external control of the endowment capitals, as this has a significant effect on increasing the confidence of endowers and guiding the mental image of the citizens to positively react with the endowment organization.

The necessity of updating the endowment financial control is supported by the old history of this control and their deeply-rooted presence in the practices of the endowment management in the light of the so-called “Superintendent’s Accounting”. Due to the modernity of the organizations assigned to perform the internal and external control of endowment, we appreciate this experience whatever their nomenclatures may be and we assert the necessity of considering it as a priority of the legal update of the endowment organization.

Internal control allows for preventing errors through the verification of the sound expenses at the level of observing the appropriations allocated in the budget and the approval of the draft contracts. It is a control of the extent of the legality of expenses at the financial level and the compliance

(1) Abu Muhammad Abdullah Al Abdousy was asked about combining Fes endowments as a whole and one thing. He, may Allah have mercy on him, replied that it is permissible to combine them as a whole and one thing without multiplicity. The benefits of this will be entirely combined and the needs of each mosque will be entirely met from these benefits. If some mosques have poor resources, the abundance of rich mosques will be used in such mosques as the case may be. Grand mosques will be prioritized and they shall be followed by mosques with a larger number of visitors. Perhaps a rich mosque is not visited by a large number of people and it does not have more needs, while a poor mosque may be visited by more people, so it has to receive more attention. So, all mosques shall depend on each other according to the needs of each respective mosque. Ibid, 7/331,332.



with some legal provisions related to the financial aspect ⁽¹⁾.

As for external control, it is undertaken by organizations independent from the endowment department and its tasks differ from the inspection function, as it aims at auditing, contributing to monitor the gaps of the endowment management and ensuring the provision of recommendations which improve the performance of endowment and develop its outputs.

Section 2: Requirements of Regulatory Development of the Endowment Organization

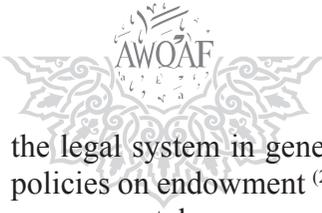
Any regulatory development of an organization has to constitute, in collaboration with the objective legal provisions of such organization, an integral part due to the structural correlation between the origin and the branch, between the general provisions and the applied provisions, and between all of that and the organizational structures. Therefore, it is necessary to collectively ensure a reasonable extent of interaction and integration among these components, in a manner allowing for talking about a consistent system which the structures do not have any contradiction.

(1) Article 158 of the Moroccan Endowment Code provided that: "The Council shall assume the control of public endowments finance, the consideration of the issues related thereto and providing opinion on them, and the proposal of all procedures aiming to manage them in accordance with the principles of transparency and good governance in a manner ensuring the protection of public endowment capitals, maintaining them, and the development of their incomes. For this purpose, the Council shall, in addition to the powers assigned thereto in accordance with other Articles in this Code, have the following powers: assuming, in accordance with our Majesty's order, all works of investigation concerning any issue related to managing the finance of public endowment and submitting the reports of their outcomes to our Majesty, preparing the draft annual budgets of the public endowments and the financial and accounting system related thereto and the accounting procedures and system of transactions, submitting them to the governmental authority in charge of endowments for approval, assuming annual audit of the status of the financial management of the public endowments and preparing an annual report on such audit results to be submitted to our Majesty and a copy thereof shall be sent to our Minister of Endowments and Islamic Affairs, expressing opinion and advice in the issues related to the public endowments management which are referred thereto by the governmental authority in charge of endowments, and submitting all proposals or recommendations aiming to improve the methods of public endowment management, maintain them, and develop their incomes.

1. Ensuring Balance between the Objective Provisions of Endowment and its Organizational structures:

The legal diagnosis of the gaps in the laws regulating the endowment organization is the most important stage which is an introduction for the renewal of the legal structure of this organization as it allows for searching for the material and functional methods which ensure overcoming obstructions in accordance with an integrated scientific and strategic vision. This diagnosis does not only search for the partial imperfections of such laws, but it monitors - at the outset - the main legal guidelines ensuring the revival and development of this system. This is because confinement to the partial amendments of laws within a methodology concerned with provisions rather than the collective approach prevents such laws from achieving their objective, which is the observance of the unity of the law philosophy in form and content. It is well-known that the lack of main guidelines and general references of any law may result in a deep rift between the thematic provisions (such as the provisions of endowment investment forms) and the organizational structures concerned with the actual application of such provisions.

The clear example we experience in the field of the administrative regulation of endowment in the various contemporary endowment legislations is the effect of the governmental policies on endowments whether positively or negatively. No doubt, the legislative process is inspired by the spirit of the prevailing political philosophy. So, the legal rule results from a political will. In this regard, it is sufficient to refer to the early beginning of the legal regulation of endowments in the modern state after the colonization of the Muslim countries and the following firm desire of restructuring the current organizations and adding other organizations and hence we could note this effect and its reflection on



the legal system in general ⁽¹⁾. Regardless of the disparate effect of these policies on endowment ⁽²⁾, the factors resulting in the transformation to the governmental management of the public endowments are almost the same in various Muslim countries.

(1) The effect of these policies on the endowment laws is clear in the method adopted by the colonial authorities with regard to endowment in the Islamic countries. The orientalist studies facilitating the colonial predominance of these countries had a significant effect on the conviction of the strength and rooting of the endowment system in a manner that may threaten the position of the modern State organizations targeted by such countries to be introduced in the Muslim countries.

For example, in Algeria, the French authorities acquired the Muslims' endowments. They issued a resolution on 08 September 1830 of affiliating the Islamic endowments to the State properties. This was applied until the Republic announced the separation of religion from the State in the famous law issued in 1905. So, the noose was tightened on the religious organizations more than before. The endowment lands were distributed to the French settlers. Nothing of the Islamic endowments remained in Algeria except in Mizab where an Ibadhi minority resides. Refer to Al Makki Al Nasser: *The Islamic Endowments in the Kingdom of Morocco*, printed by the Ministry of Endowments and Islamic Affairs in 1992 AD, page 135, Fares Masdour and Kamal Mansouri: *Algerian Endowments, An Overview of the Past and Present*, an article published in *Awqaf Magazine*, Volume No. 15, 8th Year, Dhul Qadah 1429 AH, November 2007, P 78 et seq.

In Tunisia, once the Bey signed the Convention of Al-Marsa, the French Administration distributed the public endowment lands in 1884. In 1898, a resolution was issued which obliges the Endowment Association to annually hand over to the Colonization Administration at least 2,000 hectares of endowment lands as of this year and onwards. During the period between 1884 and 1908, i.e. within 24 years, the French Administration in Tunisia acquired from the Endowment Association more than 37,000 hectares of the public endowment lands. Refer to Al Makki Al Nasser, *Ibid*, P 135, 136.

As for Egypt, "the effect of the political orientations in the 1946 Law was clear, as the voices of some endowment opponents were raised". They focused, in their approaches, on a modernized vision through which they attempted to simulate any development occurring in the western societies, while entitling the State to control the society with all its liabilities, even if this requires to eliminate the traditional organizations and activities, including endowment". For details, refer to Ibrahim Al Bayyumi Ghanim, *Ibid*, P 432.

(2) We exemplify that with the case of Morocco, in which the French Authority has been committed not to deal with its religious affairs, including endowments, to avoid the revolution of Moroccans against it. So, the first Article of the Convention of Protection dated 30 March 1912 in its original language, French, provided that:

Ce régime sauvegardera la situation religieuse, le respect et le prestige traditionnel du Sultan, l'exercice de la religion Musulmane et des organisations religieuses, notamment de celles des Habous».... Official Gazette, Issue 1, 1 November 1912.

The purpose of that is not to discuss and evaluate the management method which is more useful for endowments, but we aim, through this overview, to draw the attention to the deep transformation experienced by the endowment organization. This transformation did not stem from an objective evaluation of the community need and interest, but it was a translation of political choices and ideological orientations sometimes inconsistent with the endowment reference. Therefore, the complete consistency between the objective provisions of endowment and its regulatory provisions is reliable in the good governance of endowment.

It is agreed upon by various juristic schools that maintaining endowment is a significant mainstay of this system. It is a logical result of the essence of endowment which is the sustainability of the recurring charity. However, it is noted in some legislations that there is a lack of integration between the legal provision, which includes the objective rules to maintain endowment and which was not derived from the juristic heritage and the regulatory provision which reference is primarily quoted in modern management. So, some endowments of Muslim countries were robbed by the colonial authorities and some of them have been included within the public properties such as the Algerian endowments. Therefore, the laws issued after the independence of such countries had to be translated into a real orientation of searching for such endowments and the recovery thereof. However, the review of Article (3) of the Inter-Ministerial Decree dated 20 June 2011 on regulating the offices of the Central Administration in the Ministry of Religious Affairs and Endowments indicates that the Sub-directorate of Searching for Endowment Properties and Disputes consists of three offices, including the office of searching for the endowment properties and the registration thereof. As for the maintenance of endowment properties, it is made by an office affiliated to the Sub-directorate of Investing Endowment Properties. This leads us to easily detect the difficulty of this duty, especially with the lack of the number of employees assigned to assume this task ⁽¹⁾.

Once the Moroccan Endowment Code has been issued in 2010 in addition to all the regulations thereof, administrative regulations were set for the endowment superintendence in accordance with the Resolution

(1) Fares Masdour and Kamal Mansouri: Previous Article, P 85 and 86



of the Minister of Endowments and Islamic Affairs No. 1346.10, issued on 8 Jumada I 1431 AH, 23 April 2010 AD on the internal regulation of endowment superintendence and the Islamic Affairs Delegations, their number, and their jurisdiction, as amended ⁽¹⁾. This Resolution assigned certain powers and duties to each authority affiliated to superintendence (review the details below), whether in relation to organizational functions (endowment investment, endowment protection, management....) or support functions (human resources, accounting,).

- Endowment Properties Management Authority, which assumes the following:
 - Counting and controlling endowment properties.
 - Controlling endowments of small mosques, shrines, and non-governmental endowments.
 - Managing and exploiting endowments and developing their incomes.
 - Maintenance of the endowment properties.
- Investment and Maintenance of Endowment Properties Authority, which assumes the following:
 - Proposing plans and projects aiming to invest endowments and supervise their implementation.
 - Considering the applications for commutation, title transfer and other real estate transactions and giving opinions on them.
 - Conducting brokerages of commutations and implementing the decisions of liquidating the non-governmental endowments.
 - Building and repairing the social endowment organizations.
 - Registering and maintaining the endowment properties by all means.
- Financial Affairs Authority which is assigned with the following:

(1) In accordance with the Resolution of the Minister of Endowments and Islamic Affairs No. 95.13, issued on 19 Safar 1434 AH, 2 January 2013 AD amending Resolution No. 1346.10, issued on 8 Jumada I 1431 AH, 23 April 2010 AD of the internal regulation of endowment superintendence and the Islamic affairs delegations, their number, and their influence (Official Gazette, Issue No. 6153).

- Controlling the endowment properties incomes, counting their accounts and depositing them in the Ministry account.
- Auditing and controlling superintendence expenses and preparing orders of their disbursement.
- Preparing bank transfers and remittances.
- Developing the achieved monthly and annual budgets.
- Preparing the superintendence draft budget in coordination with other authorities affiliated to superintendence.
- Administrative and Legal Affairs Authority, to which the following have been assigned:
 - Managing the personnel affairs.
 - Providing proposals concerning the issues of administrative and legal nature.
 - Preparing draft contracts.
 - Following up disputes.
 - Equipping the superintendence with the required tools and equipment.
 - Maintenance of the administrative premises.

As the organizational structure of any organization is considered as a method to practice its powers and identify its duties, the good performance of its units depends on the extent of its balance with the law regulating the business field of such organization which is the endowment law in the subject of our study.

Accordingly, the limited role of the Investment and Maintaining Endowment Properties Authority is clear in the field of developing endowment capitals, proposing investment plans, and making the investment projects subject to prior feasibility studies. This Authority assumes the assignments of endowment properties registration and maintenance as well as the preparation of ownership documents. Despite the importance of such businesses, they are included within the daily management assignments, which cannot be combined with the strategic assignments of proposing projects which develop endowment and improve



its returns, especially that Article 145 of the Endowment Code provides for the following:

“Taking into consideration the provisions of the Royal Decree No. 1.03.193, Issued on 9 Shawwal 1424 AH, corresponding to 4 December 2003 AD concerning the powers and regulations of the Ministry of Endowment and Islamic Affairs, as amended, as well as the regulations thereof, the endowment superintendents, in their capacity as assistant authorizing officers⁽¹⁾, shall be, within the limits of the powers thereof, considered as personally responsible according to the provisions of this Code and the regulations thereof for compliance with the provisions of this Code and the regulations thereof. This Code and the regulations thereof are related to managing the public endowment capitals, maintaining them, and developing their incomes, especially, in relation to the legal actions taken concerning them or for the benefit thereof”.

In addition, maintaining endowment capitals is not only related to the actions of real estate registration, but it is also related to the investment of the important documentary inventory acquired by the endowment organizations with their various management forms and methods. So, with regard to the old history of the endowment properties and the significant care paid to them at the age of their prosperity, they benefited from the creativity of our old jurists and registrars, as the oldest endowments are documented in deeds which prove that they are endowed. In addition to the historical and cultural value of these documents, they are considered as a method to maintain the endowment rights against anyone alleging their ownership. This requires their review by following the scientific methods of archiving them and classifying them according to their nature, importance, and legal authenticity. This will be more urgent if we know that some endowment laws approved documents while the approval of which was recently a subject of judicial disagreement. So, Article 48 of the Endowment Code provided that: “Endowment may be proved by all means of evidences and the endowment transfer shall be considered as an evidence that the properties included in them are endowed until proven otherwise”.

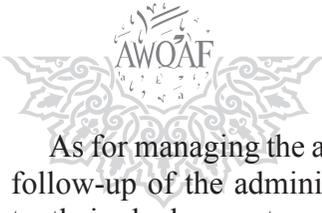
(1) The authorizing person is every person who has the capacity to prove the debts due to public endowments, liquidate them, and order to collect them or the assume the liability for their debts, liquidating them, and ordering to pay them.

Accordingly, keeping such documents in the endowment superintendence shelves and the lack of investing them to keep the endowment rights are considered as a failure not only to exert due efforts but it is a failure to perform the required duty itself, which is subject to legal liability. If we consider that in terms of the administrative unit assigned to assume this duty, we can say that it is difficult to apply the requirements of the legal provision due to the obstruction resulting from the regulatory provision.

What we mentioned concerning the previous authority applies to the competencies of the Administrative and Legal Affairs Authority in the endowment superintendence, as it is clearly noted that there is lack of separation between the functional and support assignments. So, while the legal affairs are considered as part of the functional assignments where the concerned authority defends the rights of endowments before various courts and takes the procedures towards such purpose, it also manages the administrative affairs although this assignment is considered one of the material and logistic support assignments necessary to manage other authorities. So, its purpose is to manage the personnel affairs, equip superintendence with the required tools and equipment, and maintain administrative premises.

No doubt, such combination of the two inconsistent assignments within the same administrative unit affects its performance and vision. Managing the legal affairs requires a special formation of the frameworks assigned to assume it and proper planning commensurate with the nature of the required work. The work can be divided according to the types of issues (real estate, civil, administrative,) in a manner allowing to conduct parallel studies, through which transgressions on endowments are monitored in terms of proposing solutions to limit and refer them to the persons in charge on the local and central levels ⁽¹⁾.

(1) The importance of the judiciary work is clear in the legislative process, as the quality of a legal provision is measured with its benefit from the judicial positive or negative independent reasoning. Many laws dependent on the extended interpretation or application of a provision by a court have been adopted. On the other hand, many legal provisions proved their failure and ambiguity through judicial provisions which were reasons for their amendment or enacting a new rule.



As for managing the administrative affairs, it includes, in addition to the follow-up of the administrative work of employees and paying attention to their deployment and distribution within the superintendence units, proposing actions to improve the output through developing abilities and efficiencies. No doubt, such assignment supports all units. Therefore, it is not related to an administrative assignment connected with endowment such as managing or investing the endowment properties or managing their financial affairs or disputes. However, it facilitates the performance of assignments on the part of such units on the material and human levels. Therefore, this shall result in generating the importance of the structural regulation based on the nature of assignment, specialization in identifying liabilities, and unifying the management vision in a manner which assists in managing the daily actions and developing proper action plans and strategies.

Accordingly, we can assert the coherence of the relationship between the objective provisions of endowment and the regulatory provisions. In addition, we can assert the necessity of commitment to the hierarchy of laws, as the regulatory provisions are essentially considered as details of the general content of the original legal provision. So, they are called sub-provisions ⁽¹⁾. Accordingly, the regulatory provision cannot be considered as a secondary dispensable provision, but it is considered as a basic means to apply the original provision, because many legal provisions remained inapplicable due to the lack of regulatory provisions ensuring their applications.

2. The Consideration of the Endowment Organization Regulation Structure of the Management Requirements:

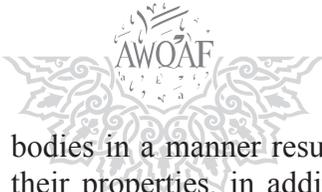
The endowment mission was significantly reflected on its provisions, as the religious and social dimensions have been considered in adopting them. Therefore, whatever the form of the organization assuming the endowment management, commitment to this mission imposes itself on any developmental planning and any law regulating the endowment, whether it is objective or regulatory. However, it is noted that many laws

(1) This was established by the constitutions of various countries when they identified the field of law as well as the regulatory field.

regulating the units of endowment management in the Arab countries lack objective standards, upon which the structures are set. So, after the independence of the Islamic countries and their taking control of their organizations, they assigned to governmental organizations with various names the duty of endowment management. In Morocco ⁽¹⁾ for example, in accordance with the 1976 restructure, 47 superintendence bodies of endowments and Islamic affairs have been established and they continued their work in the 1993 restructure. However, after the issue of the Royal Decree in 2003, these superintendence bodies were limited to 24 only. Meanwhile, the Islamic affairs were separated from endowments locally, as 16 regional delegations were established according to the number of the Kingdom regions and 68 district delegations according to the number of provinces and districts.

The merger of some superintendence bodies with others resulted in real problems concerning management, especially that such limitation was not based on a logic standard. It does not consider the Kingdom regions or administrative division. It does not consider the type of endowment capitals (agricultural superintendence and superintendence of leased buildings). It does not depend on the number of properties or incomes collected by the superintendence body. The most prominent problem is the extended geographical influence of some superintendence

(1) After the conclusion of the Convention of Protection with France in 2012, a Royal Decree has been issued on 8 Shaban 1331 AH, 13 July 1913 AD. It has identified the powers assigned to the Endowment Department. They were administrative central powers. However, they allowed for local management through the superintendents assuming management, maintenance, repair, and keeping endowments subject to their control in accordance with Shariah control and legal provisions. An endowment controller appointed by the Endowment Department from the Moroccan Muslims fully controls the actions of the superintendent. After the independence of Morocco in 1956, the Endowment Department, as of June 1961, has been named "the Ministry of General Endowments and Islamic Affairs". The old restructure continued until 1976 as the Royal Decree No. 1.75.300, dated 12 Rabi II 1396 AH, 12 April 1976 AD, was issued with regard to the regulation and powers of the Ministry of Endowments and Islamic Affairs, in its capacity as the governmental authority assigned to manage both sectors of endowments and Islamic affairs. This restructure continued for 17 years until the issuance of the Royal Decree No. 1.93.164 issued on 23 Jumada I, 1414 AH, 8 November 1993 AD regarding the powers and regulation of the Ministry of Endowments and Islamic Affairs and the Royal Decree no 1.03.193 issued in 9 Shawwal 1424 AH, 4 December 2003 AD.



bodies in a manner resulting in difficulty of management and control of their properties, in addition to the difficulty of consistency of this new division with the documents approved as evidence of endowments and the documents registered in the endowment superintendence body. Some of such documents are related to properties affiliated to a superintendence and other documents are related to another superintendence. This is applied to the flaw of managing some files of registering endowment real estates. The inconsistency of this restructure with the normal management of the endowment superintendence is asserted by the returning five out-of-service superintendence to the service after three years of getting them out of service ⁽¹⁾.

This example is not intended to assert the necessity of the increase of the number of units over a certain time. This is an unaccepted proposal unless in cases of need. The intention here is to identify the number of superintendence bodies with various sizes and priorities which are distributed all over the country. Regulating them requires setting models of organizational structures according to certain (geographical or qualitative....) standards and classification.

On the other hand, the organizational structure of any endowment organization is committed to the convergence between the administrative regulation and the social dimensions of endowment, rather than connecting it to the political transformations which resulted in increasing interest in the Islamic affairs. This allows for measuring the fields of intervention in a more reasonable and rational manner.

In the same context, it is noted that the establishment of the Internal Control Department on the central level in accordance with the Moroccan Endowment Code, which is represented by the Central Financial Controller of the public endowments and his assistants and locally by the

(1) The issue is related to the endowment superintendence of Tetouan, Al Kasr Al Kabir, Al Jadida, Taounate, and Kelaa des Sraghna

Local Financial Controllers ⁽¹⁾ was not associated with a structural change at the level of the Ministry of Endowments and Islamic Affairs and the endowment superintendence affiliated thereto, as this control department, despite its importance, does not have administrative units performing the duties assigned to it. This status results in imbalance, especially at the local level, between the authorizing officer department represented by the endowment superintendent and the control department, represented by the local controller, as while the endowment superintendence has administrative authorities as aforementioned, the Internal Control Department consists of individuals only.

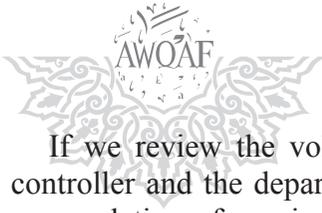
(1) Article 153 of the Moroccan Endowment Code provides that: “The control herein-referred in the aforementioned Article No. 152 shall be undertaken at the level of the Central Administration of the Ministry of Endowments and Islamic Affairs by a Central Financial Controller assisted by two assistant financial controllers. They will practice their assignments under the General Directorate of the Ministry of Endowments and Islamic Affairs. This control shall be practiced on the levels of endowment superintendence by local controllers under the authority of the Central Financial Controller. For this purpose, the Central Financial Controller, the assistants thereof, and the local controllers abovementioned shall practice the following:

- Verification of the provision of appropriations necessary to cover expenses and the validity of recording them in their sections in the annual budget of the public endowments
- Verification of the consistency of the procedures of making transactions with the provisions regulating them
- Verification of the authorized signatory on the proposals of commitment to expenses and the authorization of their disbursement
- Auditing the accounts to be controlled
- Notation on the proposals of commitment to expenses and the orders of disbursing them in the limits of the appropriations recorded in the annual special budget of the public endowment and exerting efforts to verify they are consistent with the applicable legislative and regulatory provisions

In addition, the local controllers shall be assigned with the following powers:

- Notation of the draft contracts of leasing the endowment properties before their conclusion after verification of their consistency with the provisions of the Code and the regulations thereof
- Participation in the brokerage committees and the request for proposals related to commutations
- Notation of all documents related to the operations of revenues collection of all types and auditing such operations and preparing monthly structural statements for them.

In addition to the aforementioned powers, the Central Financial Controller and the local controllers under the authority thereof shall prepare an annual report on the total activity thereof, which will be submitted to the Supreme Council of the Financial Control of Public Endowments and a copy thereof shall be sent to the endowment management for information”.



If we review the volume of responsibility assigned to the financial controller and the department entirely as well as the subsequent lack of accumulation of previous experiences to be taken as a model guide, in addition to the relation of most assignments to certain terms ⁽¹⁾, we will realize the extent of difficulties which will face the staff of this department and their possible effect on the proper application of the new provision.

Finally, we would like to indicate that the afore-mentioned regulatory development cannot be fruitful and achieve its results without the integration, in addition to the aforementioned, with the regulations issued by the endowment management departments to be applied centrally and locally. This is a logical result of the hierarchy governing the formal or official sources of the legal rule which components are consistent.

3. The Necessity of Consistency between Regulations and the Original Laws:

The hierarchical logic governing the relationships between laws and contributing to identifying responsibilities and facilitating management and control together cannot be ignored in the relationship between regulations and regulatory provisions on the one hand and the general legal provisions on the other hand. So, the law is a structure of components and any damage of one of them affects other components.

In order to preserve the consistency of this legal system, the regulations

(1) Such terms are contained for example in Article 59 of the Financial and Accounting Regulations, which provided that: "The concerned internal controller shall at inventory the month accounts, on the 8th day of the following month maximum, shall notify the authorizing officer of the incomes amount achieved in the ended month via a total certification of the incomes, which shall be supported with the required evidences, in order to issue an order of the settlement incomes in the statement of the month, in which the incomes are proved. The said order of incomes shall be issued by the concerned authorizing officer before the 15th day of the subsequent month. If an order of incomes is not issued, the said controller shall enclose a copy of the aforementioned certification of incomes according the endowment administration".

In addition to the term contained in Article 93 of the same resolution: "The financial controller shall at inventory of the account of each ended month notify the authorizing officer before the 10th day of the following month of a summarized status of the incomes and expenses and the status of the provided capitals at the endowment administration or the concerned superintendence and forms shall be identified for such statuses under a resolution of the Minister of Endowments".

Moreover, Article 91 of the resolution provided that: "The budget shall be settled by the financial controller after inventory of accounts on 31 December of the concerned year and maximum on 31 January of the following year.

have to detail the whole laws preceding them in the rank, while considering the general guidelines framing the field which is the subject of regulation. However, there is a question which is addressed concerning the size of such regulations. In clearer words, does their lower rank allow for including provisions more than the provision higher than them in the rank? Addressing this question is not only related to quantitative evaluation, but it is related to an issue considering the internal logic of legal hierarchy while allowing to separate its components.

We think that the solution of this problem is not to abide by the quantity, but rather to focus on the content ⁽¹⁾, where the room granted by the Legislator to the authority assuming legislation in the field of law and the authority assuming the regulatory provisions and regulations shall not be exceeded. It should be noted that this issue is not subject to the discretionary power granted to such authorities, but it is considered as a legal obligation, which may be enforced ⁽²⁾.

(1) While taking into consideration not to fill in legislative inflation.

(2) Chapter 71 of the Constitution of the Kingdom of Morocco issued in 2011 provided for the following requirements: “The law, in addition to the articles related thereto in other chapters of the Constitution, shall be explicitly concerned with the legislation in the following areas: the rights and liberties provided for in the preamble and other chapters of this Constitution, family and civil status regulation, health system principles and rules, audiovisual media and journalism of all types, general amnesty, nationality and status of foreigners, identifying crimes and penalties on them, judicial regulation, establishing new types of courts, civil procedures, criminal procedures, prison regulation, general regulation of the public service, the basic guarantees granted to the civil and military employees, regulation of security authorities and forces, municipalities regulation and the principles of identifying municipal areas, electoral regulation of municipalities, principles of constituencies division, taxation, tax basis and amount and methods of their collection, the legal system of currency issuance, the Central Bank regulation, customs regulation, civil and commercial obligations regulation, companies and cooperatives law, in-kind rights, (public, private, and collective) real estate property regulations, transportation regulation, business relationships, social security, work accidents, work injuries, bank regulation, insurance companies, solidarities, information technology and communications, reconstruction, rules of the environment management, protecting natural resources, sustainable development, water, forests and fishery regulation, identifying orientations and general regulation of the fields of educational and scientific research and professional training, establishing public organizations and each legal person of the general law persons, and nationalization and privatization regulation, in addition to the areas referred to in the previous clause: the validity of voting on setting a framework of the basic objectives of the State activity in the economic, social, environmental, and cultural areas”. Article 72 provided that “The regulatory field is concerned with the articles which are not included by the law”.



We exemplify this case with the provision of Article 4 of the Resolution of the Moroccan Minister of Endowments and Islamic Affairs No. 4139.12, issued on 5 Safar 1434 AH, 19 December 2012 AD concerning identifying the brokerage procedures, request for proposals, and direct agreement procedures, and how to regulate them in relation to the cash commutations of the endowment capitals ⁽¹⁾. This Article provided for the following requirements: “The cash commutations of the endowment capital shall be permissible if:

- The benefit of endowment capital significantly ceases or decreases.
- It reached a state where it shall be difficult to benefit from it.
- The incomes thereof do not cover the expenses of maintenance and keeping thereof.
- It is exposed to destruction or ramshackle.
- It is jointly owned.
- The endowment interest requires that”.

It is noted that these conditions are not absolutely included in the regulatory field, but they are included in the law field, as they are related to substantive provisions on which the legality of commutation “substitution” is based. In addition, the subject of this Resolution is to identify how to conduct commutation which cannot be accommodated by the original provision, i.e. the Endowment Code. This supports the opinion that the requirements provided for in Article 4 were contained in Article 106 of the preliminary draft and it is an original provision, which provided that: “The endowment capital may be sold in the following cases:

1. The benefit of the endowment capital significantly ceases or decreases.
2. It reached a state where it shall be difficult to benefit from it.
3. The benefit thereof does not cover the expenses thereof.
4. It is exposed to destruction or ruin.
5. It is required to be sold in order to be repaired or repair another

(1) Official Gazette, Edition 6161, 8 Shaban 1434 AH, 17 June 2013.

endowment (and this requirement is inconsistent with the principle of the unity of financial estate. Therefore, it has been deleted from Article 4 aforementioned).

6. It is a joint share, whether dividable or undividable.
7. In any other case for necessity or the apparent interest of the endowment”.

Finally, we would like to indicate that whatever the extent of the importance of the regulations with regard to detailing and clarification, more details shall not allow for adapting the instructions according to the new circumstances and the results of the management experience. Therefore, the concerned bodies have to estimate this necessity according to its extent of significance, without exaggeration of details which do not have any benefit. The law has been enacted for regulation rather than disabling the opportunities of innovation and creativity.

Conclusion

Addressing the development of the legal and organizational structure of endowment enabled us to monitor the various imbalances resulting from exceeding the functions and objectives of these mechanisms. It has been proved that observing the endowment philosophy and objectives cannot be limited to merely objective provisions of management, but it exceeds to the positive or negative effect on the performance and outputs of the endowment organization.

On the other hand, we concluded by asserting the correlation between such development and the mechanisms and standards of governance in its capacity as the most successful form of good management and transparent control. Such development will be subject to providing the endowment organization with the methods of its modernization without prejudice to the essence and objectives of endowment.

Researches



Compliance with the Endower's Conditions

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All praise is due to Allah, the Lord of the Worlds. Prayers and peace be upon our Prophet Muhammad, all his Family and Companions.

Endowment is a great act of worship which has a high status in Islam and remarkable benefit for people. Although legal texts in the domain of endowments are minimal, the generalized Shariah rules open up notable room for exerting mental efforts to reach legal judgments commensurate with the change of circumstances and times. Applied practices and views held by scholars throughout ages have created a deeply-rooted juristic heritage in this field.

One of the significant and oft-reiterated issues in our contemporary life is "the endower's conditions". It is considered as a basis for endowment governance. The valid endower's conditions govern the conducts and actions of the endowment superintendent and guardian with respect to



endowment expenses and all its affairs. These conditions are the basic reference document which should be observed. This is one of the basic principles related to the rulings on endowment.

By default, the legally acceptable endower's conditions are binding to endowment superintendents and guardians who shall not breach them. However, these conditions shall not be applied or carried out unless they have been legally valid and they realize the targeted interests. Otherwise, they shall not be considered.

This research has been developed as a result of a generous invitation by Awqaf Magazine issued Awqaf Foundation in the State of Kuwait to write on "Compliance with the Endower's Conditions" and participate in the Fourth International Seminar which shall discuss "Endowment Governance".

a. Significance of the Research

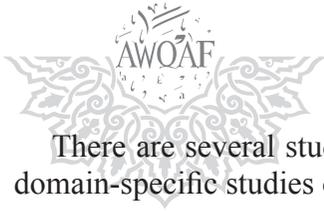
The significance of the issue is highlighted by the following:

- The need to study the rulings related to the endower's conditions and the endowment superintendent's actions and powers due to the ever-changing cases in our contemporary life
- The need to develop the principles of "Endowment Governance" and make use of the juristic heritage and contemporary views
- The need to evaluate contemporary practices in the field of endowment in the light of the provisions and principles of Islamic Shariah.

b. Research Objectives

- Manifesting the legal rulings, indications and regulations of the endower's conditions and the ruling on breaching them
- Pointing out the significance of identifying the rulings on the endower's conditions in the field of endowment governance
- Identifying the principles governing the endower and superintendent's conditions

c. Literature Review



There are several studies on the endower's conditions. Here are some domain-specific studies on the issue:

- Endower's Conditions and their Related Rulings, Dr. Ali Bin Abbas Al-Hakmi
- Endower's Conditions ... Status and some Related Rulings, Sheikh Sulaiman Bin Abdullah Al-Majid
- Breaching the Endower's Conditions: Problems and Solutions, Dr. Nasser Bin Abdullah Al-Maiman
- Breaching the Endower's Conditions: Problems and Solutions, Dr. An-Naji Lamin

These are good and brief researches. They added useful information to this issue, but they have not covered the governing principles and regulations of the topic. Besides, they have not referred to the interrelation with endowment governance.

d. Scientific Added Value in this Research

- Humble contribution to the juristic study of some vital issues related to the topic
- Striking a tie between the issues on endower's conditions and endowment governance
- Identifying some principles governing the endower's conditions and endowment superintendent

e. Research Methodology

The comparative juristic methodology shall be adopted in studying and analyzing the researched issues so that the following steps shall be followed:

- Envisaging the issue
- If the issue is agreed upon by scholars, it shall be documented.
- If it is a controversial issue, the points of differences shall be settled. Various views shall be presented and attributed to their supporters. Evidences of each view shall be manifested to be followed by

reviews, comparisons and reaching the most likely conclusion. The relevant resultant outcomes shall be also pointed out.

- Attributing verses to their location in the Quran, attributing Prophetic Traditions to their references, documenting the information based on the reliable sources and references and concluding the Research with the recognized appendixes.

f. Research Plan and Contents

The Research Plan is divided into an introduction, four chapters, a conclusion and appendixes as follows:

Introduction: Including the introductory paragraph, research title, its significance, objectives, literature review, scientific addition and the Research plan and contents.

Chapter 1: Definition of Compliance with the Endower's Conditions

Chapter 2: Legal Ruling on Endowment and the Poofs of its Legitimacy

Chapter 3: Ruling on Compliance with the Endower's Conditions

It includes five sections:

Section I: The Default Presumptions on the Endower's Conditions

Section II: Divisions of the Endower's Conditions

Section III: Connotations of the Endower's Conditions

Section IV: Rulings on Breaching and Changing the Endower's Conditions

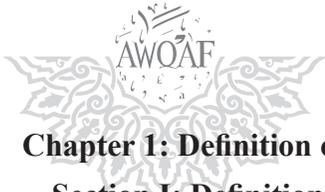
Section V: Regulations of Changing the Endower's Conditions

Chapter 4: Examples of the Principles Governing the Endower and Superintendent's Conditions

Conclusion: including findings and recommendations

I invoke Allah, the Almighty, to make this research sincerely acceptable for His sake, make it beneficial to Muslims to be an asset in developing Islamic endowments.

All praise is due to Allah, the Lord of the Worlds. Prayers and peace be upon our Prophet Muhammad, all his Family and Companions.



Chapter 1: Definition of Compliance with the Endower's Conditions

Section I: Definition of Compliance

Linguistically, “compliance” means to oblige someone to do something in Arabic. ⁽¹⁾

It also means to be entitled to do something. ⁽²⁾

Technical definition

The word “compliance” has been mentioned in the books of jurists who adopt various schools of jurisprudence. ⁽³⁾ Al-Hattab Al-Maliki defined it by saying “According to jurists, it means that a person shall oblige himself/herself to make a good deed either on an unconditional or conditional basis. It means a gift. Customarily, it may refer to a more specific connotation which entails committing oneself to make a good deed. It is the most well-known definition nowadays.” ⁽⁴⁾

Late scholars provided many similar definitions. ⁽⁵⁾ Late Sheikh Mustafa defined it as “A person’s legitimate entitlement to do or refrain from doing something for the interest of another person”. ⁽⁶⁾

This latter definition is the closest to the subject of the research.

Section II: Definition of the Endower's Conditions

Before defining the endower's conditions, it is noteworthy to define “endowment”. The endower is the basic person who makes this contract.

Linguistic definition of endowment:

In Arabic, endowment refers to allotment. ⁽⁷⁾

(1) See: Al-Misbah Al-Munir, page 211 and Al-Qamus Al-Muhit, page 1494

(2) Ibid.

(3) See: Al-Mabsut, 20 / 3, Ash-Sharh As-Saghir with Bulghat As-Salik, 2 / 665, Rawdat At-Talibin, 3 / 476 and Al-Mughni 7 / 71.

(4) Tahrir Al-Kalam Fi Maseil Al-Iltizam, page 68

(5) See: Adh-Dhimmah Wa Al-Haqq Wa Al-Iltizam, page 283, Sabab Al-Iltizam Wa Shariyyatuhu Fi Al-Fiqh Al-Islami by Dr. Jamal Ad-Din Muhammad Mahmoud, page 159

(6) Al-Madkhal Al-Fiqhi Al-Aam, 1 / 436 and 3 / 281

(7) See: Maqayis Al-Lugha, 6 / 135 and Lisan Al-Arab, 9 / 359

Technical definition of endowment:

Jurists have various definitions of endowment based on their different juristic schools and whether it is mandatory or not, whether seeking reward from Allah is one of its requirements, and the entity owning the property after endowing it. In addition, they disagree on the means of creating it and whether it is a contract or waiver.

Referring to the juristic books of the various schools of jurisprudence, we find that there are many definitions of endowment. They have different terms but in many cases they agree on the meaning. Here are the most important definitions adopted by the jurists of the Four Schools of Jurisprudence:

The Hanafi scholars defined as: “To keep a property in accordance with the dictations of the endower and give its return in alms as an act of good deeds”.⁽¹⁾

The Maliki scholars defined as: “To give the returns of something as long as it is existent and it is owned by the endower even if supposedly”.⁽²⁾

The Shafi' scholars defined as: “To keep a capital which may be benefited from while its property shall not be disposed by the endower or any other person. Such capital shall be spent on good deeds to make the worshipper closer to Allah”.⁽³⁾

The Hanbali scholars defined as: “To keep a capital and consecrate returns”.⁽⁴⁾

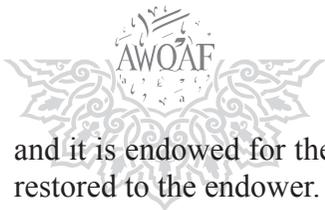
The capital here refers to the endowed property. Consecration means that it shall be neither sold nor gifted. Consecration of returns means the allocation of the benefits generated from the endowed property such as its harvest and fruits ... etc. for the designated body as a means of being closer to Allah. Therefore, the property is no longer owned by the endower

(1) See: Fath Al Qadir, 6 / 203 and Hashiat Ibn Abdin, 4 / 337

(2) See: Mawaheb Al Jalil, 6 / 18, Al Dardir's Al Sharh Al Kabir, 4 / 76

(3) See: Mughni Al Muhtaj, 3 / 522

(4) Al-Mughni by Ibn Qudamah, 8 / 184. In the original book, the author's words are “To keep the asset and consecrate returns”. The definition set forth in the above-text is better because it covers properties and benefits.



and it is endowed for the sake of Allah. It shall be neither sold, gifted nor restored to the endower.

The likeliest definition is that of the Hanbalis because it is restricted to the truth of endowment.

Definition of the Endower's Conditions

Endower's conditions refer to the prerequisites established by the endower when creating the endowment. They are similar to the conditions of contracts which entail that one of the contractors shall oblige the other with something including a benefit.

They include the conditions set forth by the endower in the Endowment Instrument with respect to its channels, operation, management and identification of the superintendent.

Chapter 2: Legal Ruling on Endowment and the Poofs of its Legitimacy

Section I: Ruling on Endowment

Endowment is a legitimately valid contract. This is the opinion adopted by the majority of predecessor scholars and their successors. ⁽¹⁾

Ibn Qudamah said: Most predecessor scholars and their successors are of the view that endowment is legitimately valid. ⁽²⁾

Jurists stated that it is desirable and advisable.

In Al-Fawaki Ad-Dawani, it is said: "Muslims hold various views on the ruling of endowment. The valid opinion in this respect advocates that it is permissible and even advisable because it is one of the best deeds which a Muslim performs to get closer to Allah. ⁽³⁾

In Al-Muhadhab, it is stated: "Endowment is an advisable deed carried

(1) See: Tabiyiin Al-Haqaiq, 3 / 325, Mawaheb Al Jalil, 6 / 18, Mughni Al Muhtaj, 3 / 522 and Al-Mughni, 6 / 3

(2) Al-Mughni, 6 / 3

(3) Al-Fawaki Ad-Dawani, 2 / 160



out to be closer to Allah.”⁽¹⁾

In Al-Mubdie, the author said: “Endowment is an advisable deed. Ahmad said: The person denying endowment in fact denies the tradition permitted by the Prophet (peace be upon him) and performed by his Companions.”⁽²⁾

Section II: Poofs of the Legitimacy of Endowment

Endowment is legitimate and it is a legally advisable good deed as previously set out. Poofs of its legitimacy include the following:

- 1- Abu Hurairah (may Allah be pleased with him) narrated that that the Messenger Muhammad (peace be upon him) said: “**When the son of Adam dies, his acts come to an end but three: recurring charity, a kind of knowledge from which people derive benefit, or a pious son who supplicates Allah for him.**”⁽³⁾

Explaining Sahih Muslim, An-Nawawi said: “Scholars said: This tradition means that the acts of the dead person come to an end upon his / her death. The renovation of reward ceases except in these three things because it was he / she who originated them. The son is his / her offspring, knowledge such as teaching others or writing books is his / her product and recurring charity is endowment.”⁽⁴⁾

2. Ibn Umar (may Allah be pleased with him) said: Umar Bin Al Khattab (may Allah be pleased with him) got a piece of land in Khaibar. Then, he came to the Prophet (peace be upon him) and said: I have got a piece of land better than which I have ever got. So what do you advise me regarding it? The Prophet said: If you wish, you can keep it as an endowment to be used for charitable purposes. So, Umar gave the land in charity i.e. as an endowment provided that the land would neither be sold, given as a present, nor bequeathed, (and its yield) would be used for poor people, kinsmen, in the cause of Allah, guests and wayfarers. In addition, its administrator could

(1) Al-Muhadhab, 2 / 322

(2) Al-Mubdie, 5 / 152

(3) Reported by Imam Muslim in his Sahih, Volume: Testament, Chapter: Good Rewards Reaching Man after his Death, 3 / 1255

(4) Explanation of Sahih Muslim by An-Nawawi, 11 / 85



benefit from that endowment in a reasonable and just manner, and he also could feed his friends without intending to trade in it. ^{(1) (2)}

An-Nawawi said: This tradition is a proof that endowment is legally valid by default and that it breaches the blemishes of the pre-Islamic period.⁽³⁾ Ibn Hajar also said: Umar's tradition is a basic proof that endowment is legitimately valid. ⁽⁴⁾

Commenting on Ibn Umar's previous tradition where Umar (may Allah be pleased with him) endowed his land at Khaibar, At-Tirmidhi said: This is the view adopted by the Muslim scholars including the Companions of the Prophet (peace be upon him) and other scholars. As far as we know, there is no controversy among early scholars with regard to the permissibility of endowing lands and the like. ⁽⁵⁾

All in all, endowment has been unanimously adopted by Muslim scholars.

Chapter III: Ruling on Compliance with the Endower's Conditions

Shariah has paid remarkable attention to the endower's conditions which must be observed and followed. Such conditions shall not be breached unless there is a proof indicating such act or there is a more likely interest.

Some scholars state that breaching the endower's conditions is one of the grave sins. ⁽⁶⁾

Such consideration and effectiveness stem from the default legitimacy of endowment. Endowment is transferred as a means of a good deed from the

(1) "without intending to trade in it" means that he would not possess any of its assets. See: Nayl Al-Awtar, 6 / 29

(2) Reported by Al-Bukhari in his Sahih, Volume: "Conditions", Chapter "Conditions of Endowment", No. 2737, 3 / 198, and Imam Muslim in his Sahih, Volume: "Testament", Chapter "Endowment", No. 1632, 3 / 1255 and the quoted wordings are Muslim's.

(3) Sharh Sahih Muslim by An-Nawawi, 11 / 86

(4) Fath Al-Bari, 5 / 402

(5) Sunan At-Tirmidhi, 3 / 53

(6) Ibn Hajar Al-Haitami said: Grave Sin No. Two Hundred and Thirty Three: Breaching the endower's conditions. My view that this is one of the grave sins is grounded even if other scholars have not clearly adopted such view. Breaching them leads to deceitful robbery of people's money which is a grave sin. Az-Zawajir An Iqtiraf Al-Kabair, Ibn Hajar Al-Haitami, 1 / 508



endower's possession to the ownership of another. It is not permissible to restore it to its original endower in case the condition is invalid, contrary to other contracts where the contracted item is restituted to its owner in case the condition is not fulfilled. Accordingly, the endower's conditions have such importance and consideration. They are considered just like the organizational structure of the endowment unless Shariah holds a contrary view. ⁽¹⁾

Acting mandatorily in accordance with the legitimately acceptable endower's conditions means that they are binding to the superintendents and endowment guardians who shall not breach them. Accordingly, jurists have figured out their famous rule with respect to endower's conditions: "The endower's condition is as binding as the Legislator's provision" ⁽²⁾ in terms of the necessary application thereof as well as the concept and connotation as shall be set out. However, none of the conditions shall be carried out unless they entail the obedience of Allah and realize the interest of the worshippers. Otherwise, such conditions shall be futile. ⁽³⁾

Section I: The Default Presumptions on the Endower's Conditions

Ibn Taymiyyah – may Allah have mercy on him – pointed out that endowment is one of the types of contracts where the provisions of transactions apply. ⁽⁴⁾

The most likely opinion in this respect indicates that the default ruling on contracts and conditions is their validity and permissibility. Therefore, the default ruling on endower's conditions is their validity and permissibility. ⁽⁵⁾

The following proofs support this view:

1. Allah, the Almighty, said: **“O you who believe! Fulfill (your) obligations.”** ⁽⁶⁾

(1) Lectures on Endowment by Abu Zahrah, page 155, free quotation

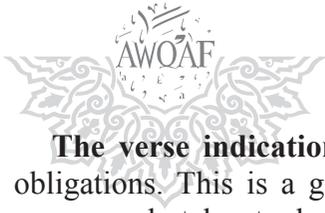
(2) See: Ibn Nujaim's *Al Ashbah Wa Al Naza'er*, page 195, Hashiat Ibn Abdin, 4 / 400 – 432

(3) See: *Iilam Al-Muwaqieen*, Ibn Al-Qayyim, 2 / 96

(4) See: *Majmu' Fatawa* by Ibn Taymiyyah, 29 / 5

(5) This view comes in line with the sayings of the majority of jurists. See: *Al-Mabsut* by As-Sarakhsi, 18 / 124, *Bulghat As-Salik Li Aqrab Al Masalik* by As-Sawi, 3 / 232, *Nihayat Al-Muhtaj* by Ar-Ramli, 8 / 377 and *Al-Insaf* by Al-Mirdawi, 4 / 430.

(6) Surat Al-Maidah, Verse 1



The verse indication: Allah commanded us to fulfill contracts and obligations. This is a general term which includes all matters which a person undertakes to do. Whereas fulfillment and observance of contracts are legitimate injunctions, it is deduced that contracts and conditions are legitimately valid by default. A valid contract has effects and it achieves its purposes. The ultimate purpose of a contract is its fulfillment. As long as the Legislator commanded to observe the purpose of the contract, this indicates that they are legitimately valid and permissible. ⁽¹⁾

2. Jabir Bin Abdullah (may Allah be pleased with him) said: While I was riding a (slow) and tired camel, the Prophet passed by and beat it and prayed for Allah's Blessings for it. The camel became so fast as it had never been before. The Prophet then said, "Sell it to me for one ounce (of gold)." I said, "No." He again said, "Sell it to me for one ounce (of gold)." I sold it and stipulated that I should ride it to my house. When we reached (Medina) I took that camel to the Prophet and he gave me its price. I returned home but he sent for me (and when I went to him) he said, "I will not take your camel. Take your camel as a gift for you." ⁽²⁾

The tradition indication: The Prophet (peace be upon him) approved the condition set by Jabir Bin Abdullah (may Allah be pleased with him) that his camel shall not be ridden to Madina. This indicates that sale and purchase are legitimately valid. ⁽³⁾

1. Abu Hurairah (may Allah be pleased with him) narrated that the Prophet (peace be upon him) said: Conciliation between Muslims is permissible except the conciliation which makes lawful unlawful and unlawful lawful. Muslims are on (i.e. stick to) their conditions except a condition which makes lawful unlawful and

(1) See: Majmu' Fatawa by Ibn Taymiyyah, 29 / 138

(2) Reported by Al-Bukhari in his Sahih, Volume: "Conditions", Chapter "When a Seller Stipulates to Ride an Animal to a Specific Place, it is Permissible", No. 2569, and Imam Muslim in his Sahih, Volume: "Sharecropping", Chapter "Selling of a Camel and Stipulating to Ride it as an Exception", No. 715

(3) See: Explanation of Sahih Muslim by An-Nawawi, 11 / 34

unlawful lawful. ⁽¹⁾

The tradition indication: The permissible conditions between contractors are binding to them. They are entitled to fulfill them. Illegitimate conditions are those which make lawful unlawful and unlawful lawful. ⁽²⁾

2. Ibn Umar (may Allah be pleased with him) said: Umar Bin Al Khattab (may Allah be pleased with him) got a piece of land in Khaibar. Then, he came to the Prophet (peace be upon him) and said: I have got a piece of land better than which I have ever got. So what do you advise me regarding it? The Prophet said: If you wish, you can keep it as an endowment to be used for charitable purposes. So, Umar gave the land in charity i.e. as an endowment provided that the land would neither be sold, given as a present, nor bequeathed, (and its yield) would be used for poor people, kinsmen, in the cause of Allah, guests and wayfarers. In addition, its administrator could benefit from that endowment in a reasonable and just manner, and he also could feed his friends without intending to trade in it. ⁽³⁾

The tradition indication: Umar (may Allah be pleased with him) set out some conditions with respect to his endowment such as the determination of the channels of distributing its revenues on the poor and the needy and allowance of its superintendent to benefit from it in accordance with the observed customs. This indicates that conditions on endowment are permissible and that they should be taken into consideration. ⁽⁴⁾

Section II: Divisions of the Endower's Conditions

The majority of jurists see that the endower's conditions are divided into valid and invalid conditions. Sheikh Al-Islam Ibn Taymiyyah "may Allah have mercy on him" said: Muslims unanimously agree that the endower's conditions are divided into valid and invalid conditions just like conditions in other contracts. ⁽⁵⁾

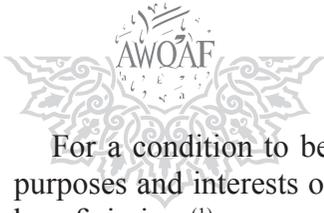
(1) Reported by Al-Bukhari in his Sahih in a disconnected chain of transmission in the emphatic form and his wordings are "Muslims are on (i.e. stick to) their conditions", Volume: "Lease", Chapter "Brokerage Fees", No. 3 / 92 and Abu Dawud in a connected chain of transmission, Volume: "Legal Judgments", Chapter "Conciliation", No. 3954

(2) See: Majmu' Fatawa by Ibn Taymiyyah, 29 / 147

(3) Ibid

(4) See: Al-Ikhtiyar by Al-Mawsili, 3 / 41 and the Unified Endowments by Al-Ghanim, page 93

(5) See: Majmu' Fatawa by Ibn Taymiyyah, 31 / 47, 98



For a condition to be valid, it shall be Shariah-compliant, realize the purposes and interests of endowment and the interests of the endowment beneficiaries. ⁽¹⁾

Examples of such valid conditions:

The endower shall set a condition that a part of its revenues shall be allocated for maintaining the endowment, the superintendent is fired in case he committed a material breach, or endowment shall be supervised by the wisest of the endower's offspring ... etc. ⁽²⁾

Such type of conditions shall be observed and carried out and they shall not be breached, because the endower eliminated the endowment possession by virtue of considerably valid conditions. Hence, they shall be observed and taken into consideration.

For a condition to be invalid, it shall not be Shariah-compliant and it shall not realize the purposes and interests of endowment and the interests of the endowment beneficiaries. ⁽³⁾

Examples of such invalid conditions:

The endower may set a condition that the superintendent of the endowment shall not be held into accountability even if he has shown dishonesty or mismanagement or the endower may set a condition that the revenues of the endowment shall be allocated for an illegitimate purpose... etc.

Such type of conditions shall not be observed or taken into consideration.

In accordance with their famous terminologies, some Hanafi jurists divide endower's conditions ⁽⁴⁾ into categories in accordance with the following ten conditions:

(1) See: Hashiat Ibn Abdin, 3 / 539, Hashiat Ad-Dusuki, 4 / 90, Al-Hawi Al-Kabir by Al-Mawardi, 14 / 261, and Al-Insaf by Al-Mirdawi, 7 / 25

(2) See: Al-Bahr Ar-Raiq by Ibn Nujaim, 5 / 249 and the Unified Endowments by Al-Ghanim, page 97

(3) See: Hashiat Ibn Abdin, 3 / 539, Hashiat Ad-Dusuki, 4 / 90, Al-Hawi Al-Kabir by Al-Mawardi, 14 / 261, and Al-Insaf by Al-Mirdawi, 7 / 25

(4) See: "The Rulings on Endowment" by Az-Zarqa, page 166 and "Rulings on Endowment in Islamic Shariah" by Al-Kibisi, 1 / 292

1. Increase and decrease: which refer to any change in the shares of the endowment beneficiaries whether by increase or decrease
2. Inclusion and exclusion: which refer to making some people who do not deserve to benefit from endowments as endowment beneficiaries on the contrary of exclusion.
3. Change and amendment: which refer to any amendment introduced to the endowment conditions. These are generalized terms compared to the preceding ones. Some scholars are of the view that these terms are synonymous to the preceding ones while others limit "change" to the conditions of being one of the channels of distribution and "amendment" to transforming the endowed property from a specific form to another.
4. Giving and deprivation: "Giving" refers to preferring some beneficiaries with regard to the revenues of endowment while "deprivation" is its contrary.
5. Substitution and replacement: which refer to changing the endowed property. This means that they are synonyms. Some scholars are of the view that "substitution" means the sale of the endowed property and purchasing another one instead, while "replacement" refers to taking the second property instead of the first one. In the light of this second meaning, both terms are collateral.

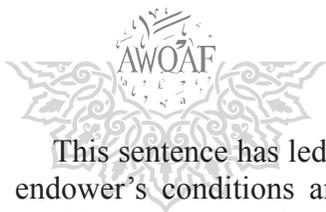
Having reviewed these conditions, it turns out that they are interrelated and synonymous. They are ultimately related to validity or invalidity, as the intended purpose here is the determination of validity or invalidity.

Section III: Connotations of the Endower's Conditions and the Considerable Sections thereof

Subdivision I: Connotations of the Endower's Conditions

Some jurists state that "The endower's condition is as binding as the Legislator's provision"⁽¹⁾ to stress the extreme care paid to the endower's terms and the connotations of their conditions.

(1) See: Ibn Nujaim's *Al Ashbah Wa Al Naza'er*, page 195, Hashiat Ibn Abdin, 4 / 400 – 432



This sentence has led to a controversy because it may indicate that the endower's conditions are similar to Shariah rulings. Such controversy could be summarized into two views:

First view: The endower's condition is as binding as the Legislator's provision in terms of adopting this ruling, acting in accordance with it, indication and connotation. This view is adopted by the majority of jurists.⁽¹⁾

Second view: The endower's condition is as binding as the Legislator's provision in terms of indication and connotation rather than adopting this ruling and acting in accordance with it. This view is adopted by some Hanafis, Hanbalis, Ibn Taymiyyah and Ibn Qayyim Al-Jawziyyah.⁽²⁾

Scholars adopting the first view supported it by arguing that the endower's terms are applied in accordance with their connotations and indications. As for acting in accordance with them, this is limited to the validity of the condition. Hence, the endower's condition is as binding as the Legislator's provision.⁽³⁾

Scholars adopting the second view supported it by arguing that the intention of the endower is deduced from his conditional terms just like deducing the Legislator's purposes from the related terms. As we know the Legislator's terms like generalization, specification, limitation, portioning and arrangement, the endowment is also known based on the endower's terms. As for generalization by making the terms of the endower or other contracting parties just like the Legislator's terms with regard to the obligatory adoption thereof, this is considered as disbelief. No human is obeyed in all his commands except for the Messenger of Allah.⁽⁴⁾

Contemplating the two views, it turns out that the difference between them is verbal.⁽⁵⁾ There is no controversy among both views. Scholars

(1) See: Hashiat Ibn Abidin, 4 / 365, Bulghat As-Salik by As-Sawi, 4 / 120, Al-Hawi by Al-Mawardi, 7 / 527, and Al-Insaf by Al-Mirdawi, 7 / 56

(2) See: Al-Bahr Ar-Raiq by Ibn Nujaim, 5 / 265, Majmu' Fatawa by Ibn Taymiyyah, 31 / 48, and Iilam Al-Muwaqieen by Ibn Qayyim Al-Jawziyyah, 4 / 320

(3) See: "The Rulings on Endowment" by Az-Zarqa, page 158 and "Rulings on Endowment in Islamic Shariah" by Al-Kibisi, 1 / 290

(4) Majmu' Al-Fatawa Ibn Taymiyyah, 31 / 47, 48

(5) See: Endower's Conditions by Al-Hakmi, page 36

adopting both views have details related to them. Jurists hold a unanimous agreement that the endowers' conditions are divided into valid and invalid ones. ⁽¹⁾ It is not acceptable to act in accordance with the invalid conditions. This indicates that conditions are acceptable as long as they are valid. Otherwise, they shall be rejected. The intentions of the endowers' terms are deduced from their wordings. Legal rulings applicable to the Legislator's provisions shall be applied to the endowers' terms with respect to generalization, specification, absolute and limited connotations, superseding and superseded indications ... etc.

Subdivision II: Considerable Sections of the Connotations of the Endower's Conditions

This is an important issue because it realizes the intention of the endower. Generally speaking, scholars hold two views on this issue:

First view: Some scholars are of the view that the Legislator's customary rulings, if any, shall be taken into consideration. People's terms, including the endower, are judged by the language and the Legislator's customary rulings. When generalized, the term shall be interpreted in the light of the legitimate truth first followed by customary traditions. ⁽²⁾

Second view: The used customs or the language of the speaker shall be taken into consideration regardless of any other language or customs. This view is adopted by the majority of scholars. They justified it by saying that people's talks when making contracts or compositions indicate their own intentions. The customs or language of the street shall not be taken as an evidence of their intentions.

This view is supported by another proof. Whereas the dominating language of a country expresses the intentions of its speakers and it is not permissible to utilize this language in interpreting the speech of a minority speaking another language, the terminologies and contracts of people are interpreted in their language or customary usage rather than the customs or language of the street.

(1) See: Al-Bahr Ar-Raiq, 5 / 265 and Majmu' Al-Fatawa Ibn Taymiyyah, 31 / 47, 48

(2) See: Al-Bahr Al-Muhit, Az-Zarkashi, 5 / 86

This issue is self-explanatory. Therefore, scholars used it as a base for understanding the terms of the Holy Quran and the Prophetic Traditions. They stated that the Legislator's terms shall be taken into consideration because they have the strongest connotations of the Legislator's purposes. In case there is no related term, the Arabic language shall be used because the Holy Quran has been revealed in it. Otherwise, the customs of the addressees shall be employed.

For example, in case a person allocated an endowment for poor people and the endower considers that the people who do not own a house similar to his / hers are poor, the superintendent of his / her endowment may give out some of the revenues of this endowment to such poor people even if the ceiling of poverty – pursuant to the Islamic Shariah – is not applicable on them. We have detected the intention of the endower from the traditional customs.

The same ruling applies when a person allocates an endowment to the students of knowledge. According to his / her usual term or custom, knowledge refers generally to all sciences which are of benefit to people in their life as well as the Hereafter. In such case, it shall be possible to give out a part of such endowment to the students of pure science which is of benefit to the nation although according to Shariah and the terms of jurists, knowledge refers to the sciences of the Holy Quran and Prophetic Traditions. ⁽¹⁾

Ibn Taymiyyah said: The likeliest view on this issue indicates that the term of the endower, swearer, intermediary, testator and contractor shall be interpreted in accordance with their habits in their speech and language whether such language conforms with pure Arabic, mixed Arabic or ungrammatical Arabic. This rule applies even if the language is not the Arabic language and whether it conforms with the language of the Legislator or not. Terms indicate the intentions of their speakers. We need to know the language of the Legislator because knowing such language, custom, tradition helps in knowing the Legislator's purposes. The same ruling applies to the speech of each nation and people. When they use a specific language in sale, rent, endowment, testament, vows ... etc., their

(1) See: Endower's Conditions, Sheikh Sulaiman Al-Majid, page 5

intention and its connotation are detected from their habit of speech as well as its correlated elements. ⁽¹⁾

Ibn Nujaim added: The speech of each contractor, swearer and endower is interpreted in accordance with their customs and language even if it contradicts with the language of the Arabs. ⁽²⁾

Section IV: Rulings on Breaching and Changing the Endower's Conditions

It has been established by jurists that the endower's conditions are taken into consideration and adopted as long as they are valid. ⁽³⁾ It is also established that the endower's conditions shall not be changed or violated to attain an interest similar to or even lower to the interest of the endower's conditions. ⁽⁴⁾ For example, when the endower stipulates the distribution of the revenues of his / her endowment to orphans, it shall not be permissible to change such condition so as to be distributed to the elderly. If it has been endowed to the endower's poor relatives, the condition shall not be changed to cover, for example, non-relative poor people.

However, some emergencies or updates may take place and they necessitate the change of some of the endower's conditions although they are legally valid. For example, when the endower stipulates that the endowment shall remain in a certain place but its value has deteriorated and its revenues are no longer sufficient to cover the beneficiaries, the superintendent may deem that it is rather better to sell the endowment and move to another place in order to increase its revenues and returns. Is such act of changing the condition valid?

Jurists hold different views on the ruling related to changing the endower's conditions in consideration of an interest which is more viable than the interest stipulated in the endower's conditions. For example, changing the endower's conditions may lead to increasing the endowment revenues in a manner which shall yield benefit to the endowment and the beneficiaries alike.

(1) Al-Fatawa Al-Kubra, 4 / 258

(2) Al-Bahr Ar-Raiq, 6 / 226

(3) See: Majmu' Fatawa by Ibn Taymiyyah, 31 / 253

(4) Ibid



There are two views on this controversial issue:

The first view: it is permissible to change the endower's conditions for a likelier interest. This view is adopted by the Hanafis, Malikis and some Hanbalis. It has been selected by Ibn Taymiyyah and Ibn Qayyim Al-Jawziyyah. ⁽¹⁾

The second view: it is not permissible to change the endower's conditions for a likelier interest. This view is adopted by the Shafi'is and Hanbali scholars. ⁽²⁾

Proofs of the first view:

Scholars adopting the first view supported it with several proofs such as:

First proof:

Analogy to the permissibility of the substitution and change of the endowment property when a preponderant interest emerges is supported by the following proofs:

1. The Prophet (peace be upon him) wanted to demolish the Holy Kaabah and introduce changes to it but he abandoned such act fearing that a severer disinterest may occur. ⁽³⁾ This indicates that it is permissible to replace and change the endowment property for a preponderant interest. Whereas it is permissible to replace the endowment property, replacement and change of its condition for a preponderant interest is likelier and more prioritized. ⁽⁴⁾
2. Analogy to the permissibility of selling the endowed asset in case its benefits are frozen: when the horse endowed for Jihad is no longer apt for such mission, it may be sold according to the unanimous agreement of scholars. ⁽⁵⁾

(1) See: Hashiat Ibn Abdin, 3 / 387, Sharh Mukhtasar Khalil by Al-Khurashi, 7 / 93, Al-Insaf by Al-Mirdawi, 7 / 53, Majmu' Fatawa by Ibn Taymiyyah, 31 / 253, Iilam Al-Muwaqieen by Ibn Qayyim Al-Jawziyyah, 3 / 292

(2) See: Al Muhazab by Al Shirazi, 2 / 328 and Al-Insaf by Al-Mirdawi, 7 / 53

(3) As in Sahih Al-Bukhari, 2 / 573, Book of Hajj, Chapter: Virtue of Mecca and Building it, No. 1507

(4) Majmu' Fatawa by Ibn Taymiyyah, 31 / 244

(5) See: Al-Mughni by Ibn Qudamah, 8 / 221 and Majmu' Fatawa by Ibn Taymiyyah, 31 / 267



- When the benefit generated from such horse is minimized, it has become permissible to sell and replace it for a preponderant interest. The same ruling applies to the endower's condition which is more prioritized.
3. Changing the endower's conditions to fulfill a preponderant interest realized the intention of the endower and the purposes of his / her endowment. The endower aims at realizing sustainability for the endowment and generating benefit for the beneficiaries. Adopting the endower's condition may eliminate such purpose. Changing such condition to a more prioritized condition shall fulfill the endower's purpose and guarantee sustainable benefit. This indicates that changing the endower's condition to fulfill a preponderant interest falls in line with the intention of the endower rather than being contradictory to it. ⁽¹⁾

Proofs of the second view:

Scholars adopting the second view supported it with several proofs such as:

First proof: Generalized proofs indicate that it is mandatory to act in accordance with the endower's condition in case such conditions are valid and do not infringe the interest of the endowment.

Counter-argument: Changing the endower's condition to fulfill a preponderant interest is in line with the endower's purpose rather than contradicting it.

Second proof: Ibn Umar (may Allah be pleased with him) said: Umar Bin Al Khattab (may Allah be pleased with him) got a piece of land in Khaibar. Then, he came to the Prophet (peace be upon him) and said: I have got a piece of land better than which I have ever got. So what do you advise me regarding it? The Prophet said: If you wish, you can keep it as an endowment to be used for charitable purposes. So, Umar gave the land in charity i.e. as an endowment provided that the land would neither be sold, given as a present, nor bequeathed, (and its yield) would be used for poor people, kinsmen, in the cause of Allah, guests and wayfarers. In addition, its

(1) See: The Unified Endowments by Al-Ghanim, page 108



administrator could benefit from that endowment in a reasonable and just manner, and he also could feed his friends without intending to trade in it. ⁽¹⁾

The Prophetic Tradition indicates that: The Prophet (peace be upon him) issued his order to refrain from introducing a change to the endowment asset by selling or the like. Whereas the endowment asset shall not be changed, refraining from changing its conditions is more prioritized.

Counter-argument: The prohibition set forth in the Prophetic Tradition to sell or dispose of the endowment could be interpreted to include the acts which invalidate the endowment asset. If such act falls in line with the interest of the endowment, it shall not be prohibited. The endower's condition is even more prioritized. ⁽²⁾

Preponderance:

Having reviewed the controversy on this issue, it turns out that the first view is more prioritized because it is supported by more powerful proofs while the proofs of the second view could be undermined. The first view indicates that it is permissible to change the endower's condition to fulfill a preponderant interest.

Section V: Regulations of Changing the Endower's Conditions

As long as it has been decided that it is permissible to change the endower's condition to fulfill a preponderant interest, regulations must be developed in order to control such change, so that the generalization of permissibility shall not lead to transgressing on endowments or demonstrating leniency in changing the endower's condition without a pressing interest especially with the change of circumstances and time.

Some researchers quoted several regulations such as:

First regulation: preponderance of the interest

Changing the endower's conditions is contrary to the default situation. Therefore, there must be a real and preponderant interest. If the interest is

(1) Reported by Al-Bukhari in his Sahih, Volume: "Conditions", Chapter "Conditions of Endowment", No. 2737, 3 / 198 and Imam Muslim in his Sahih, Volume: "Testament", Chapter "Endowment", No. 1632, 3 / 1255. The wordings are Muslim's.

(2) See: Majmu' Fatawa by Ibn Taymiyyah, 17 / 489

feigned or non-preponderant, it shall be null and void. On the contrary, if the interest is preponderant and it shall lead to realizing the endower's intention and purpose, the endower's conditions may be changed accordingly. ⁽¹⁾ It is stipulated, however, that such interest shall not lead to incurring a damage to the endowment or invalidating it.

Second regulation: changing the conditions shall be effected by the endowment supervisor:

Examples include the superintendent. Endowment superintendence is a special sort of supervision which entails the superintendent to manage it. The superintendent is trusted to manage the endowment in a manner which realizes interest and fulfills the conditions set by the endower.

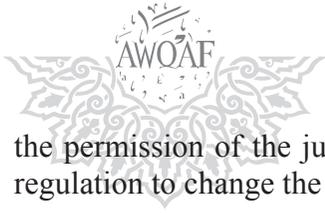
In case the superintendent has studied and investigated that changing the endower's condition shall lead to realizing a specific interest, he shall propose and refer such change to the judge or his duly assigned deputy in order to protect endowments from the inconsiderate acts of the superintendent.

This is one of the significant points which should be considered and studied when studying "Endowment Governance".

Third regulation: changing the endower's conditions shall be effected through the permission of the judge or his duly assigned deputy

The judge shall be entitled to assume the general supervision of endowment. He shall have the right to object to the superintendent and hold him accountable in case the latter has committed an improper act. This matter constitutes some sort of attention paid to endowments and control of the actions of superintendents. For more care and precaution,

(1) See: The Effect of Interest on Endowment by Ibn Bayyah, 12 / 151. This is asserted by the statement of Ibn Nujaim in Al-Bahr Ar-Raiq where he said: "To sum up, the endower's disposal of endowments is controlled by the interest. The endower does not have a free hand to do whatever he / she wants. In case the endower did something which violates his / her conditions, it shall not be valid unless there is a manifest interest." 5 / 245 Some Maliki scholars stated that any act in line with the interests of the endower could be identified as the act which shall attain the content and satisfaction of the endower when he / she reviews it. In such case, such act may be adopted.



the permission of the judge or his duly assigned deputy is required as a regulation to change the endower's conditions. ⁽¹⁾

Chapter 4: Examples of the Principles Governing the Endower and Superintendent's Conditions

In this part, I shall present an example of some endowment principles related to the endower and superintendent's conditions. I shall only state some materials set forth by Judge Ahmad Bin Abdullah A-Qari (died 1359 AH) ⁽²⁾ in his famous Code "Code of Legal Rulings". I would like also to point out the following issues:

1. These materials conform with the Hanbali School of Jurisprudence and they have been selected by the most knowledgeable scholars of this School. They still require a comparative juristic study.
2. The presentation of these materials aims at making use of them in formulating the principles of governance in endowment which are related to the endower and the superintendent's conditions.
3. These examples require an applied study so as to include contemporary updates.
4. I have deleted some materials and their numbers from the sequence.

Here are these principals:

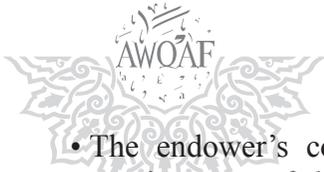
First: endower's conditions and deed

- In case the endower stipulates that his / her endowment shall not be sold while there is a justification for the sale, his / her condition is invalid.
- In case the endower stipulates that the superintendent shall have absolute power to do whatever he wants, his / her condition is invalid.
- The endower shall not be entitled to include the endowment non-beneficiaries whomever he / she likes or exclude whomever he / she likes.

(1) See: Kashaf Al-Qina'a by Al-Bahuti, 4 / 273

(2) See his biography in the introduction to his book "Code of Legal Rulings"

- Stipulation of changing a condition is invalid.
- Stipulation of refraining from making use of the endowment is invalid.
- The endower's condition that prayers should be established in the mosque in accordance with a specific school of jurisprudence is invalid.
- The endower's condition to refrain from renting the endowment and the determination of the rental period shall be observed. In case the endower stipulated that the endowment shall not be leased for more than a year, the excess rental period shall not be permissible. The endower's conditions to absolutely refrain from renting the endowment except in cases of necessity, distribute its revenues on the beneficiaries as per their respective entitlements, prioritize some beneficiaries at the account of others, list, arrange, equalize, prefer, exclude or include any beneficiary under whatever designation shall be observed regardless whether the endower stipulates such actions for himself / herself or his / her ensuing superintendent.
- In case the endower's condition has not identified certain matters, the recurrent habit, custom and equality shall be observed according to this order. This ruling shall apply in case the endowment owners are known. If they are not known, the endowment shall be considered as a generalized allocation where its beneficiaries are not identified.
- The endower's condition shall be observed in case he / she stipulated that whenever a girl gets married, she shall not be entitled to any right or that his wife shall get her entitlements from the endowment as long as she is single.
- The endower's condition shall be observed in case he / she stipulated that neither a dissolute, evil nor an innovator in religion shall be included in the beneficiaries.
- Conditions shall be observed as long as it has not led to breaching the legal purpose. It is not permissible to maintain some of these conditions although their purpose has been undermined.



- The endower's condition shall be observed with regard to the requirements of the superintendent and the means to agree on the selection of such superintendent.
- The endower's condition shall be observed with regard to constructing and maintaining the endowment.
- The Endowment Instrument shall be observed. Approval of its beneficiaries and their allotted shares shall be abolished by virtue of another instrument superseding the first one.
- The Endowment Instrument shall be observed. A judgment supported by its minutes shall abolish whatever contradicts with the Endowment Instrument.
- The Endowment Instrument shall be observed. A decision to give a beneficiary less than his / her entitlement shall be abolished. Such beneficiary shall have the right to claim for this entitlement whether he / she knows the endower's condition or not.

Second: managing the endowment:

- The form of endowment may be changed to realize an interest. For example, it is possible to transform houses into shops.
- An endowment may be constructed from the revenues of another endowment.
- In case the endowment has no revenues because it is not economically productive and it has become difficult to support its beneficiaries, the endowment shall be sold and its price shall be spent on another endowed property. This ruling applies in case such unproductive endowment could not be leased. If it could be leased, it shall be rented commensurate with its expenditures because there is no pressing need to sell it.

Third: the superintendent and his powers:

- The superintendent identified by the endower shall be assigned to take care of the endowment. In case the endower has not designated a superintendent or the designated superintendent died, the beneficiaries of the endowment shall take care of the endowment

each according to their respective share in the endowment and whether they are legally competent or unqualified.

- In case the endowment is indefinite such as endowment on a mosque or the poor, the ruler of the town where the endowment is located shall be assigned to take care of the endowment.
- In case endowment has been assigned to any judge, it shall be a generalized assignment whether such judge adopts the same juristic school of the endower or not.
- In case endowment has been assigned to any ruler while there are many rulers, the Sultan shall assign whomever he deems fit to take care of the endowment.
- In case there is no Imam or his deputy such as small villages and remote areas, when there is a dishonest Imam or a dishonest person has been assigned to take care of the endowment, the people of the mosque shall assign a superintendent to take care of the endowment and its interests. The same ruling applies to any other endowment where its beneficiaries shall be entitled to assign a superintendent to take care of it.
- The head of the village or area shall be entitled to supervise and manage the endowment in case it has been difficult for the competent person to assign a superintendent.
- In case the judge assigned a superintendent of an endowment, no other judge shall be entitled to abolish such assignment.
- In case two judges assigned two different superintendents of an endowment, the Sultan shall give priority to the more eligible person.
- The superintendent shall be entitled to maintain, construct, lease, cultivate his endowment, file lawsuits related to it, and collect its revenues such as the rental value, harvest or fruits. The superintendent shall also do his best to develop his endowment, distribute its revenues on the legally acceptable channels such as constructions, repair, giving out to the needy beneficiaries ... etc.



Fourth: the superintendent's rights:

- The superintendent may borrow money to support the endowment without the permission of the ruler in case there is a necessitating interest. For example, the superintendent may purchase goods on credit or in an unidentified cash for the endowment. The borrower shall not be obliged to pay back such money from his own money but it shall be settled from the revenues of the endowment.
- The superintendent may receive a reasonable salary even if he is not in need in case the endower has not identified a specific amount of money for the superintendent.
- The superintendent may receive wages in consideration of his work even if he is poor.
- The superintendent shall be entitled to receive wages as of the time of his superintendence.
- The superintendent shall be entitled to take all the money stipulated by the endower even if it exceeds the salaries of his counterparts. The endowment revenues shall be used in supporting its requirements such as the need for guardians and the like.
- The superintendent shall be entitled to receive the wages of his counterparts in case his salary is not identified or it has been determined but it exceeds the wages of his counterparts.
- The superintendent shall be entitled to make copies of the Endowment Instrument and get the fees of registering such instrument from the endowment capital.
- The superintendent shall be entitled to spend the surplus revenues and he is not to be held accountable for them.
- The superintendent may lease the endowment to his son at the value of the counterpart endowments.
- The superintendent shall be entitled to work in accordance with whatever he deems as the best interest of the endowment. In case matters are dubious, he shall be required to exert due reasoning to reach a judgment if he is a qualified scholar.

- The superintendent shall not be entitled to refrain from giving beneficiaries their shares in accordance with Shariah without a legitimate necessity.
- The superintendent shall not be entitled to sell endowments allocated for good deeds such as supporting the needy, mosques and bridges. Such sale is assigned to the judge in case he finds a justification for it.
- The stipulated superintendent shall not be entitled to appoint a superintendent or make a testament to another person to care for the endowment unless it has been stipulated for him to do so.
- None of the two superintendents shall be entitled to independently act without a predetermined condition.
- The superintendent shall not be entitled to sell the endowment capital and purchase the same for himself, his father, son ... etc.
- In case the superintendent hired another superintendent with a salary less than his counterparts, the employment contract shall be valid. The superintendent shall guarantee the customarily neglected decrease in case the beneficiary is a person other than him, because the superintendent manages the capital of others by maintaining it just like a delegated representative.

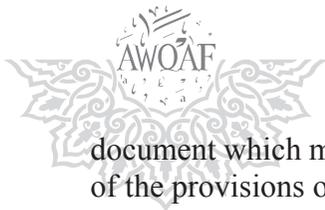
Conclusion

All praise is due to Allah alone, and prayers and peace be upon the Seal of Prophets

At the end of this research, I would like to present the most important findings and recommendations as follows:

First: findings

- One of the important issues which is ever-changing with the change of formulas and events in our contemporary era is “the endower's conditions”. The valid endower's conditions govern the endowment superintendent and supervisor with regard to its channels and all its affairs. These conditions are considered as the basic reference



document which must be adopted. This is one of the basic principles of the provisions of endowments.

- The default assumption with regard to the legitimately proper endower's conditions indicates that they are binding to the endowment superintendents and supervisors who shall not violate them. However, they shall not carry out or execute any of the conditions unless it has been valid and legal and it fulfills the targeted interest. Otherwise, such conditions shall be disregarded.
- Endowment is a type of contracts where the provisions of transactions apply. By default, contracts and related conditions are valid and permissible. Accordingly, the endower's conditions are legitimate and valid by default.
- The majority of jurists see that the endower's conditions are divided into valid and invalid conditions. For a condition to be valid, it shall be Shariah-compliant, realize the purposes and interests of endowment and the interests of the endowment beneficiaries. Such type of conditions shall be observed and carried out and they shall not be breached, because the endower eliminated the endowment possession by virtue of considerably valid conditions. Hence, they shall be observed and taken into consideration. For a condition to be invalid, it shall not be Shariah-compliant and it shall not realize the purposes and interests of endowment and the interests of the endowment beneficiaries. Such type of conditions shall not be observed or taken into consideration.
- It is mandatory to carry out the endower's valid conditions. The used customs or the language of the speaker shall be taken into consideration in this respect
- It has been established by jurists that the endower's conditions are taken into consideration and adopted as long as they are valid. The endower's conditions shall not be changed or violated to attain an interest similar to or even lower to the interest of the endower's conditions. However, some emergencies or updates may take place and they necessitate the change of some of the endower's conditions although they are legally valid. The likeliest view on this issue is

the permissibility of changing the endower's conditions to fulfill a preponderant interest. However, it is stipulated that regulations must be developed in order to control such change, so that the generalization of permissibility shall not lead to transgressing on endowments or demonstrating leniency in changing the endower's conditions without a pressing interest especially with the change of circumstances and time.

Second: recommendations:

- Theoretical and applied studies should be prepared on the issue of compliance with the endower's conditions.
- There is a need to develop the principles of "endowment governance" and make use of the juristic heritage and contemporary efforts.
- There is a need to assess contemporary practices in the field of endowments in the light of the provisions and principles of Islamic Shariah.
- Educational programs should be prepared in order to increase the awareness of the would-be endowers so that they shall set the proper conditions in the Endowment Instrument and avoid conditions which cause harm to the endowment or limit its benefits.

The above information is the part I managed to research in this large-scale topic which requires several future studies.

Finally, all praise is due to Allah, the Lord of the Worlds. Prayers and peace be upon the master of Messengers and upon all his Family and Companions.



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Articles



The Supreme Council of the Financial Control of Public Endowments in Morocco: Nature and Intervention Mechanisms

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The establishment of the Supreme Council of the Financial Control of Public Endowments in Morocco is considered as a prominent and distinguished event, which has a great significance in remarkably involving endowments in an ever-changing movement of transformation. This coincides with the reforms applied in the Kingdom of Morocco, as various sectors and other fields of economic and social activities experience projects of reform and development and programs of qualification and modernization.



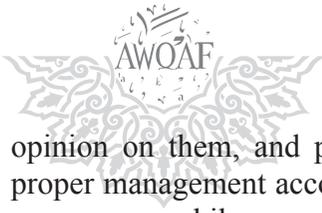
It should be noted that the interest in the endowment finance and the control of its proper management is not only adopted currently, but the Kingdom of Morocco proceeded with it in the beginnings of the last century. This was exactly during the period of the French Protectorate in Morocco, as a Supreme Council of Endowments has been established by the Sultan at that time ⁽¹⁾. The competencies of that Council were identified accordingly to generally control all activities of the endowment management, consider all public issues related to the proper management of endowment properties, audit the accounts of completed works, and consider all budgets, whether ordinary or supplementary as set by the Endowments Department ⁽²⁾.

Taking into consideration the necessity to support the endowment renaissance in the Kingdom, the intention to restore its leading role, revive the traditions of the predecessors with respect to the proper control of managing such funds, Royal Decree No. 1.09.236 was issued on 8 Rabi I 1431 AH corresponding to 23 February 2010 pertaining to the Endowment Code. Article 157 of this Code provides for establishing a supreme council to control the finance of the public endowments. The assignment of this council is materialized in controlling the finance of the public endowments, considering the issues related to them, giving

(1) Sultan. Moulay Yusuf issued a Sultanic Decree on 16 Jumada II 1332 AH corresponding to 12 May 1914, in which he ordered to establish a Supreme Council of Endowments chaired by the then Grand Vizier and co-chaired by the Minister of Justice, the Minister of Endowments, and some Muslim scholars and notables with the participation of the Secretary General of the Government, the Head of Endowments Control, and a representative of the Ministry of Finance. Any person qualified and efficient to give opinion and advice would participate in that Council. This Council actually met twice: the first time was in Dhul Hijja 1333 AH, 1915 AD. Some delegations attended that meeting from different places in the Kingdom. General Luti gave a speech in the meeting closing session. The second time was in Shawwal 1335 AH, 1917 AD. In addition to the Moroccan delegations, some persons attended the meeting from Tunisia and Algeria. Luti also attended to that meeting opening session and gave a very important speech in that event. In both meetings. Statements were presented, discussions were made, endowments budget and management were considered, and some useful proposals and notes were presented in relation to this topic.

For more details, refer to Al Makky Al Naseri: Islamic Endowments in the Kingdom of Morocco, Publications of the Ministry of Endowments and Islamic Affairs, 1992, P 33 et seq.

(2) Al Makky Al Naseri, P 34.



opinion on them, and proposing all procedures aiming to ensure their proper management according to the principles of transparency and good governance while ensuring the protection and maintenance of endowed capitals and developing their revenues.

However, such achievement arouses a legitimate question on the added value of this Council and the nature is of its role to achieve the proper management of the public endowed capitals and whether it has set proper and effective cornerstones and controls framing the field of managing such capitals.

To answer these questions, we have primarily to learn more about this Council and the general context of its establishment and identify its legal nature, competencies, and intervention mechanisms.

1. The General Context of Establishing the Supreme Council of the Financial Control of Public Endowments

The general context of establishing the Supreme Council the of Financial Control of Public Endowments by His Majesty King Mohammed VI, May Allah support him ⁽¹⁾, has some characteristics as follows:

The First Characteristic: This is a context of development and modernization. We can perceive some of its manifestations in updating the legislative framework related to endowments. The Moroccan legislator managed to include two legal structures in this legislative framework. The first structure is a legal system which established all provisions related to endowment and accurately identified the organization rules and the principles of controlling the endowed capitals. The second structure is a managing system which developed a systematic plan for the officials in charge of endowment affairs to properly manage and develop such capitals.

The Second Characteristic: This is a transition and transformation

(1) The Royal initiative to establish a supreme council to control the finance of the public endowment is considered as an application of the religious legitimacy provided for in the Kingdom Constitution pursuant to which the King may practice special powers and authorities including the field of endowments. This Royal initiative is meanwhile considered as a manifestation of completing new legislative structure of endowments, so that this field keeps pace with the inclusive transformations witnessed by the Kingdom and contributes to the projects of economic and social development.

context and its manifestations appear in the society and the State at various levels such as the transformations experienced by the institutional structure of the Moroccan State through the expansion of a number of institutions and advisory bodies in various fields ⁽¹⁾.

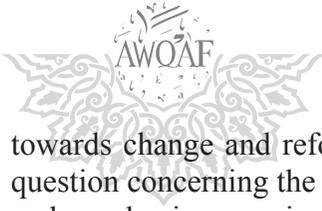
The Third Characteristic: This is a context of revision and reconsideration. This appears through the explicit Royal will to promote, develop, and regulate the endowments sector ⁽²⁾ according to a new perspective and modern rules, just like the achievements realized in the field of religious restructure.

The Fourth Characteristic: This is a context of actual support of the control, evaluation, and assessment culture in the endowment field, in order to link the endowment to its outcomes at the level of its management or development.

Accordingly, we can say that the Supreme Council of the Financial Control of Public Endowments is an important element in the public endowment system in Morocco. It constitutes a mainstay in the challenge

(1) Morocco has advisory bodies including all sectors. In the human rights field, it has the Advisory Council of Human Rights and the Institution of Mediator, the Council of Moroccan Community Abroad, and the Authority of Justice and Eliminating All Forms of Discrimination. In the cultural field, we find the Royal Institute of Amazigh Culture. On the level of managing the desert affair, we find the Advisory Council of the Desert Affairs. In the economic field, we find the Economic, Social, and Environmental Council. In the field of good governance and control of law, we find the Council of Competition, the Supreme Authority of Audiovisual Communication, and the National Authority of Integrity and anti-Bribe. In addition, we find the Supreme Council of Education, Training, and Scientific Research, the Advisory Council of Family and Childhood, and the Advisory Council of Youth and Public Work.

(2) This was asserted in the preamble of the Royal Decree, under which the Endowment Code was issued. Here is a part of this Royal Decree (..... And whereas we are aware of the importance of endowment, its pioneer role, as a national wealth and an actor in the economic and social development in the State; as we intend to legally and contemporarily frame it, so that it can cope up with the inclusive transformations experienced by the State and its particularity derived from the provisions of the Islamic Jurisprudence is considered, whereas we believe in the importance of legalizing the juristic provisions related thereto, in a manner averting variety of opinions and deference of interpretation of them, consolidating the, and achieving their consistency with the components of the Moroccan legislative system, and whereas we continue the process of updating the laws issued in the reign of His Majesty, our father, the Well-heeled, King Al Hassn II, May Allah have mercy on him, and in accordance with this approach, we have decided to issue a code of endowments...”



towards change and reform experienced by this sector. This arouses the question concerning the legal nature of this Council and the competencies and mechanisms assigned to it in accordance with the Royal Decree establishing it as well as the relationship between this Council and the Ministry of Endowments and Islamic Affairs which is subject to its control.

II. The Legal Nature of the Supreme Council of the Financial Control of Public Endowments:

It is axiomatic that a question is aroused concerning the legal nature of the Supreme Council of the Financial Control of Public Endowments established pursuant to the Royal Decree of the Endowment Code, whether it is an independent administrative authority or not, whether it has a decision-making or advisory nature, and the nature of recommendations or decisions taken by the Council Chairman.

The answers to these questions primarily require consulting the reference legal framework of the Council and supposing the differentiation between the type of decisions and legal and administrative actions taken by the Council Chairman in assuming his powers.

A. The Reference Legal Framework:

The regulatory structure framing the work of the Supreme Council of the Financial Control of Public Endowments is subject to a reference legal framework consisting primarily of two types of provisions:

1. The provisions of the Royal Decree of the Endowment Code, particularly the provisions of Article 157 thereof, pursuant to which this Council has been established, in addition to the provisions of Article 158 to 163 of the Endowment Code ⁽¹⁾ which identify the following:

A. The Council Duties:

In accordance with the provisions of Article 158 of the Code, the Supreme Council of the Financial Control of Public Endowments shall assume control of the finance of the public endowments, consider the issues related thereto, provide opinion on them, and propose all

(1) The Royal Decree No. 1.09.236 issued on 8 Rabi I 1431 AH corresponding to 23 February 2010 related to the Endowment Code and published in the Official Gazette, Issue No. 5847, dated 1 Rajab 1431 AH corresponding to 14 June 2010.

procedures aiming to ensure their proper management according to the principles of transparency and good governance while ensuring the protection of endowed public capitals, maintaining them, and developing their revenues.

B. The Council Members:

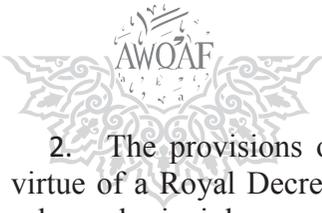
The Supreme Council of the Financial Control of Public Endowments includes a Chairman appointed by His Majesty, the King, in addition to:

- The Council Secretary General.
- A representative of the Supreme Juristic Council.
- A scholar of jurisprudence extensively familiar with the endowment affairs.
- A judge in the capacity of a Chamber Head in the Supreme Council of Audit.
- A legal counselor experienced in the endowment field.
- A chartered accountant registered in the Chartered Accountant Authority.
- Three experts well-known with their efficiency in the field of administrative and financial management.

In addition the Council Chairman may contract experts to perform certain duties.

C. The Council's Financial Regulation:

In accordance with Article 164 of the Endowment Code, the financial appropriations of the Council necessary for its workflow are recorded in the budget of the Ministry of Endowments and Islamic Affairs. The Council Chairman assumes the authority to manage the disbursement of these financial appropriations. In addition, the Ministry of Endowments and Islamic Affairs provides the Council, at its disposal, with all material means required.



2. The provisions of the Council internal regulations approved by virtue of a Royal Decree ⁽¹⁾ through which the legislator set out various rules and principles concerning the administrative and financial regulation of the Council. In addition, the legislator identified the competencies of the Council board of directors, committees, and General Assembly. It seems, according to the Council internal regulations, that the legislator depended on a new approach in forming the organizational structure of the Council, which is based on the following bases:

3. The First Base: Classification of Jobs and Duties:

This base accurately identifies the competencies and duties assigned to each committee of the Council ⁽²⁾ and its General Assembly ⁽³⁾, in addition to each division and administrative unit forming the Council board of directors. This enables the Council to carry out its duties and competencies in accordance with specific standards.

The Second Base: Setting a Standard Framework for the Council's Time-bound Duties:

This framework aims to set the standard rules applicable in relation to the consideration of the annual draft budget of the Public Endowments, which is submitted to the Council by the governmental authority in charge of the public endowments for approval, the reports of the financial controllers

(1) The Royal Decree No. 1.11.139 issued on 8 Ramadan 1432 AH corresponding to 09 August 2011 approving the Internal Regulations of the Supreme Council of the Financial Control of Public Endowments published in the Official Gazette, Edition No. No. 5982, dated 1 Dhul Qa'dah 1432 AH corresponding to 29 September 2011, P. 4784.

(2) The Council committees consist of permanent committees including:

The Financial Inspection and Audit Committee.

Shariah Advisory Committee.

Committee of Endowment Development and Management Methods Improvement.

Temporary committees include:

Committee of Developing Draft Financial, Accounting, and Reference Laws.

Investigation and Inspection Committee

In addition, the Council may form other permanent or temporary committees to consider certain issues.

(3) In accordance with Article 15 of the Internal Regulations, the Council General Assembly shall consist of all its members.

submitted by the Central Financial Controller of Endowments and the local financial controllers to decide thereon, the management account submitted by the governmental authority in charge of the endowments to the Council for approval. Moreover, this framework aims to conduct an annual inspection of the status of the financial management of the public endowments and prepare an annual report on it to be submitted to His Majesty, the King.

The Third Base: Enabling the Council to Access to Recruits the Human Resources Required for its Workflow:

On this base, the Ministry of Endowments and Islamic Affairs provides the Council, at its disposal, with all human resources enabling it to undertake its duties. The Council Chairman may, through making contracts for specified renewable terms, appoint specialized experts in any of the Council jobs to accomplish certain studies or prepare expert reports or consultancies in order to assist the Council departments to undertake their duties.

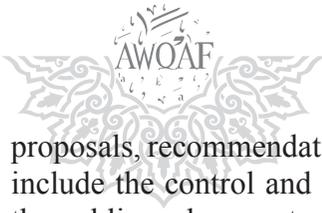
In addition, employees working in the public departments may be seconded to the Council to assist it undertake its duties according to the applicable laws.

Accordingly and based on a field preview of the organization status and its practical applications, we can say that the Supreme Council of the Financial Control of Public Endowments can't anyway be considered as an independent administrative authority for the following reasons:

The First Reason: The Incompatibility between the Concept of Administrative Authority and the Council Legal Nature:

The concept of independent administrative authority⁽¹⁾ is incompatible with the content of the reference legal framework organizing the Council business based on the mechanisms identified for it with the purpose of intervention to control the public endowments finance and provide related

(1) For more details on the concept of independent administrative authority, refer to Zakia Al Baqali Al Qasimi "Independent Administrative Authority, a Study of Legal Bases and Moroccan Applications", a thesis submitted to get the postgraduate diploma, General Law Department, Training and Research in Administration and Development Unit, University of Abdelmalek Essadi, College of Law, Tangier, Academic Year 2006 / 2007.



proposals, recommendations, and reports. Therefore, if the Council powers include the control and inspection of the financial management status of the public endowments through consideration and approval of the annual special draft budget, consideration and approval of the management account related to the execution of such budget, and study of the reports of the financial controllers to deciding thereon, the Council powers do not include the issuance of direct orders to the Ministry of Endowments and its external departments to adhere to the proposals, recommendations, studies, or reports. This is attributable to the fact that the uniqueness and particularity of any administrative authority include its right to assume direct execution. Such administrative authority may also carry out its decisions without having resort to litigation. This can't be practiced by the Supreme Council of the Financial Control of Public Endowments concerning the endowments administration so that the means of intervention on the part of the Council Chairman lack authority and it can't obligate the Endowments Administration to carry out any of its recommendations

The Second Reason: Establishment of the Council to be Affiliated to His Majesty, the King:

In accordance with Article 157 of the Endowment Code “A council shall be established and affiliated to us, which shall be called as the Supreme Council of the Financial Control of Public Endowments”. The Moroccan Judiciary decided in many judgments issued by its courts that the Royal Institution is not an administrative institution, as the King assumes his constitutional powers in his capacity as the Commander of the Faithful in accordance with the provisions of the Constitution. Accordingly, the Council may not be considered as an administrative authority.

The Third Reason: The Incomplete Independence of the Council from the Ministry of Endowments and Islamic Affairs:

The independence of the Council from the Ministry of Endowments and Islamic Affairs arouses organizational problems as the Supreme Council of the Financial Control of Public Endowments is not independent financially and administratively from the Ministry of Endowments and Islamic Affairs. This asserts that the Council is not an administrative authority. However, in the functional terms, it is independent from the

Ministry. Therefore, the relationship between them has to be understood in the context of the integration of the duties assigned to both institutions, not in the context of the affiliation of one of them to the other when assuming its duties. Our allegation is supported by the intention of the legislator that the Council is affiliated directly to his Majesty, the King, the submission of an annual report to his Majesty on the status of the financial management of the public endowed capitals, submission of annual recommendations and proposals to the King ⁽¹⁾, and the submitted opinion of his Majesty concerning the reports and issues related to its powers as an institution assisting to protect such capitals. The intended objective of the Council establishment is to complete the duties of the governmental authority in charge of endowments and support the role played by the Council within the scope of its assigned competencies.

Hence, we can say that the nature of the duties assumed by the Supreme Council of the Financial Control of Public Endowments makes it an institution of support, assistance, and keeping pace with the central and regional authorities of the Ministry of Endowments and Islamic Affairs. This is carried out in a context of integration and consistency governed by the independence of each body pursuant to the reference legal context governing the field of intervention of both the Supreme Council of the Financial Control of Public Endowments and the Ministry of Endowments and Islamic Affairs and explicitly identifying their respective business.

(1) The Chairman of the Supreme Council of the Financial Control of Public Endowments submits an annual report to the King on the results of the inspection process of the financial management status of the public endowments. This is conducted before the end of June on the year following the management year when the report is made. Such report includes the conclusions of the conducted inspection process enclosed with conclusions, notes, proposals, and recommendations approved by the Council General Assembly, which aim to protect the public endowment capitals and develop the methods of their management in order to maintain and develop them. The report includes also the total activities of the Council and its business prospects. Such report serves a “witness for the prosecution or witness for the defense” in terms of the works and efforts exerted by the Council. It is worthy to mention that none of such reports has been published in the Official Gazette. In this regard, we assert that it is necessary to distinguish between the annual report we have detailed and the special reports which may be prepared by the Investigation and Inspection Committee pursuant to Royal Decrees concerning certain and specified issue.



As for the decisions taken by the Chairman of the Supreme Council of the Financial Control of Public Endowments, it is necessary to distinguish between two types of decisions:

The First Type:

The decisions taken by the chairman in order to approve or disapprove the draft budget, management account, and reports of the financial controllers. These are decisions issued by an institution which is not an administrative authority in its organizational and functional concepts. This means that they do not have legal effects. Therefore, they are mere preliminary actions taken by the Council Chairman in the context of his control of the proper management of the public endowments finance.

The Second Type:

They are the decisions taken by the chairman concerning the internal management of the Council. They are taken by the Chairman in his capacity as an administrative authority. So, they are considered as administrative decisions.

III. The Mechanisms of Intervention on the Part of the Supreme Council of the Financial Control of Public Endowments

In accordance with the Endowment Code and the internal regulations of the Supreme Council of the Financial Control of Public Endowments, we find that this Council serves as an authority to control the financial management of the Public endowments (1), and an advisory board concerning Shariah and legal issues related to public endowments. It is also considered as a source of proposals for protecting and maintaining the endowed capitals (2).

1. The Council as an Authority to Control the Financial Management of the Public endowment

A. Consideration and Approval of the Annual Draft Budget of the Public Endowments

In accordance with Article 143 of the Code, the draft budget shall

be referred to the Council ⁽¹⁾ and it shall be attached with a presentation instrument, documents, and data indicating its contents, especially the documents related to the budget expenses and special accounts. In addition, a report including the outlines of the financial balance of the annual budget related to the public endowments, generated outcomes, future prospects, and the changes to revenues and expenses shall be attached.

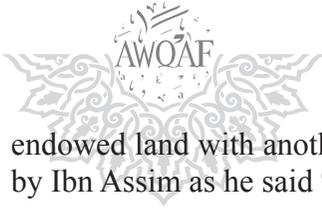
Once such draft is submitted to the Council, it shall be referred by the Council Chairman to the Financial Inspection and Audit Committee to conduct a comprehensive study. Meanwhile, the Chairman and the governmental authority shall set a schedule to consider and discuss the draft budget and consider the amendments proposed to be conducted on it. Then, the governmental authority in charge of the endowments shall provide a general presentation of the draft budget to the Inspection and Financial Audit Committee. A general discussion session shall be dedicated for such draft budget in the presence of the representative of the governmental authority in charge of endowments in order to answer any inquiries. Then, meetings shall be held for detailed discussions concerning all parts and sections of the budget, which may be amended according to a proposal submitted by the Financial Inspection and Audit Committee or the governmental authority in charge of endowments. Such proposed amendment shall be justified in order to consider such amendments and identify the approved amendments to present them to the Council General Assembly for approval.

B. Permission to Carry out Commutations:

The Commutation of endowed capitals may be in cash i.e. “to sell an endowment against an amount of money which is paid to buy a property constituting an endowment instead of the sold one ⁽²⁾”. Commutation may be in-kind. It is also called *Monaqala* which means to substitute an

(1) This draft budget has to be annually presented to the Council before the end of October. It has also to meet the requirements provided for in the Financial and Accounting Regulations of Public Endowments, especially the budgeting based on a program extended to three years for the entire resources and expenses of the endowment management.

(2) Muhammad Sulaiman Al Ashqar: *Majmou' Fi Al Monaqala Wa Istibdal bi Al Awqaf, Al Resala* Institution, Beirut, Edition 2, 2001, P 49



endowed land with another land to be an endowment ⁽¹⁾. This was asserted by Ibn Assim as he said ⁽²⁾:

Excluding capitals, any non-useful properties may be sold

Which price may be used to buy another one to be endowed

The general principle governing the commutation of endowed capitals is to achieve an explicit interest for the endowment. This drove the Moroccan legislator to exactly identify the authorities to permit commutation in accordance with the estimated value of the properties or movables to be commuted which are included in the public endowments. Article 64 of the Endowment Code provides that if the value of properties or movables exceeds MAD 10,000,000, they shall be subject to the Royal prior approval of His Majesty, the King.

Commutation of the same properties and movables shall be subject to the prior approval of the Supreme Council of the Financial Control of Public Endowments if the estimated value thereof ranges between MAD 5,000,000 and MAD 10,000,000.

Any commutation related to properties and movables which estimated value is less than MAD 5,000,000 and the commutation of movable properties with a specified value which is used for the benefit of the public endowments, whatever this value is, shall be subject to the prior approval

(1) Raghīb Al Sirjani: *Rawae' Al Awqaf Fi Al Hadara Al Islamiya*, P 39.

(2) Al Majmou' Al Kamel Lelmotoun, supervised by Maktabat Al Bohouth Wa Al Dirasat, Dar Al Fikr, Lebanon, Edition 1, 2001, P 529.

of the governmental authority in charge of endowments. ⁽¹⁾

It is noted that when the Moroccan legislator provided for the prior approval of the concerned authority as to the value of each property entails an effective protection of the endowed properties and averts infringements of the endowed properties which may result in various actions without taking into consideration the interest of endowments.

2. Inspection and Audit of the Public Endowments Finance

The inspection and audit of the public endowments finance depend on three bases: (1) consideration of reports of the financial controllers and deciding thereon (2), consideration of the management account related to execution and approval of the annual budget (3) and the annual inspection of the financial management of public endowments.

A. Consideration of the Reports of the Financial Controllers and Deciding thereon

In application of the provisions of Article 153 of the Code, each of the central financial auditor and the local controllers shall submit to the Council an annual report attached with a presentation memorandum on the outcome of their activity on the expired year.

(1) In accordance with the Endowment Code, the authorities to give prior approvals for commutation vary according to the actual value of a certain property. This contradicts with the Royal Decree issued on 13 January 1918 on the control of successive-beneficiaries endowments, as amended by the Royal Decree issued on 18 July 1920 which identified one authority to permit commutation irrespective of the value of the property. This authority is His Majesty, the King. In this regard, a resolution issued by the Supreme Council included that "On another hand, it is proven that the property, subject of dispute, is an endowed property, which may not be transferred or commuted, in accordance with the controls set by the Royal Decree regulating the endowed properties, which is a special law, and the Royal Decree issued on 13/01/1918 concerning the disposal of successive-beneficiaries endowments which provides that "Commutation of the endowed properties shall be conducted according to the requirements of the Royal Decree dated 20/07/1920 related to the commutation of the endowed capitals. The validity of such disposal shall require the provision of commutation application file which includes a permission by our Majesty for such approval in order to regulate all legal effects providing the legalization of the transfer of the endowed property". Failure to submit the commutation application concerning the approval by the State of Morocco represented by the King to transfer the endowed property without His Majesty's permission makes this disposal illegal due to the failure to observe the aforementioned legal requirements".

Decree, No. 292 issued on 08/05/2003 in the administrative file No. 1432/4/2/2002, an unpublished decree.



Once such reports are submitted to the Council, they shall be referred by the Chairman to the Permanent Financial Inspection and Audit Committee to consider them, prepare a special report on them, submit the committee proposal testifying to the proper actions taken by the controllers or provide recommendations in case of existence of flaws in the reports.

The results provided by the Financial Inspection and Audit Committee shall not be approved without the approval of the Council's General Assembly.

B. Consideration of the Management Account Related to Executing the Annual Budget and the Approval thereof:

In application of the provisions of Article 150 of the Code, the Council shall exert its efforts, through the Financial Inspection and Audit Committee, to consider and discuss the management account in coordination with the governmental authority in charge of endowments which shall provide a general presentation of this account. Then, a special report shall be prepared concerning the entire works related to such account and submitted to the Council's General Assembly for the approval of its execution.

C. The Annual Inspection of the Financial Management Status of Public Endowments:

In accordance with the provision of Article 158 of the Code, the Council Chairman shall set an annual program for conducting the inspection process. In this program, the bodies to be inspected, the inspection date, and the persons in charge of the bodies to be inspected for coordination therewith shall be identified.

This program will be referred by the Council Chairman to the governmental authority in charge of endowments to conduct the inspection even at times other than the agreed schedule but with the approval of the Council Chairman.

Meanwhile, the Council Chairman may appoint a work team from the Council members to conduct inspection in a time other than the specified schedule based on the request of the authority in charge of endowments.

At the end of each inspection, such work team shall prepare a report of their work, the approved documents, the meetings held, conclusions, and

proposals. Later, this report shall be submitted to the Council Chairman who shall refer it to the Permanent Financial Inspection and Audit Committee to develop a report in this regard to be presented to the General Assembly for approval.

At the end of each year, the Permanent Financial Inspection and Audit Committee shall submit a report on the conclusion of the annual inspection and the Council entire activity and work prospects to the Council Chairman who, in turn, shall submit it to His Majesty, the King and send a copy thereof to the governmental authority in charge of endowments for reference.

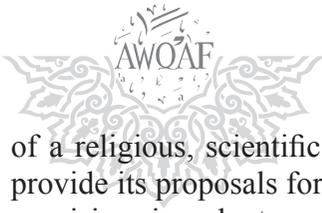
2. The Supreme Council of the Financial Control of Public Endowments as an Advisory Body and a Source of Proposals

A. The Supreme Council of the Financial Control of Public Endowments as an Advisory Body:

In accordance with Article 6 of the internal regulations of the Supreme Council of the Financial Control of Public Endowments, the Council shall consider Shariah and legal advice requests provided by the governmental authority in charge of endowments. Such requests are related to endowment issues and methods to manage, maintain, and develop endowment. This assignment is entrusted to a permanent committee in the Council which is Shariah Advisory Committee.

B. The Supreme Council of the Financial Control of Public Endowments as a Source of Proposals:

The Supreme Council of the Financial Control of Public Endowments is also considered as a source of proposals through the provision of proposals or recommendations aiming to improve the methods of managing public endowments, maintaining them, and developing their revenues. In addition, it gives opinion concerning the decision related to specifying endowment bonds and how to issue and subscribe in them. This also includes how to collect cash and in-kind donations to establish endowment projects



of a religious, scientific, or social nature ⁽¹⁾. Moreover, the Council may provide its proposals for amending the reference financial and accounting provisions in order to update and review, and present such proposals to the governmental authority in charge of endowments for approval.

Conclusion

At the end of this paper, we have to assert that the Supreme Council of the Financial Control of Public Endowments is not an administrative authority and that it differs from other institutions. It is a national institution supporting the work of the central and regional departments of the Ministry of Endowments and Islamic Affairs.

Anyway, I think that the benefit and necessity of establishing the Supreme Council of the Financial Control of Public Endowments are not debatable. It has been established on due time as a mainstay to activate the public endowments system in the field of controlling the financial management of endowed capitals. This shall be subject to a stricter methodology by following the comprehensive planning approach. In this method, the roles of all internal and external control bodies are integrated. They cooperate and adopt the principle of trust. They also reveal the points of flaws to overcome them. This leads us to say that the Council work in the field of controlling the financial management of endowed capitals is a positive endeavor. In the future, this institution should have financial and administrative independence from the investigated institution in order to properly develop its work.

(1) The Moroccan legislator selected the financial field as a new field for investing endowment capitals in addition to other forms such as agricultural and non-agricultural rent. This also includes selling quarries materials, yields, tress products, and commutation, in order to develop capitals and achieve the best financial exploitation of public endowments. The Moroccan legislator preferred bonds as the best instruments available in this field as the legislator called them "Endowment Bonds". In accordance with Article 104 of the Code, the revenues of such bonds shall be allocated for establishing endowment projects of a religious, scientific, or social nature. In addition specifying the forms of endowment bonds, how to issue and subscribe in them, and how to collect donations shall be conducted through a decision taken by the governmental authority in charge of endowments after consulting the Supreme Council of the Financial Control of Public Endowments.

Book Review

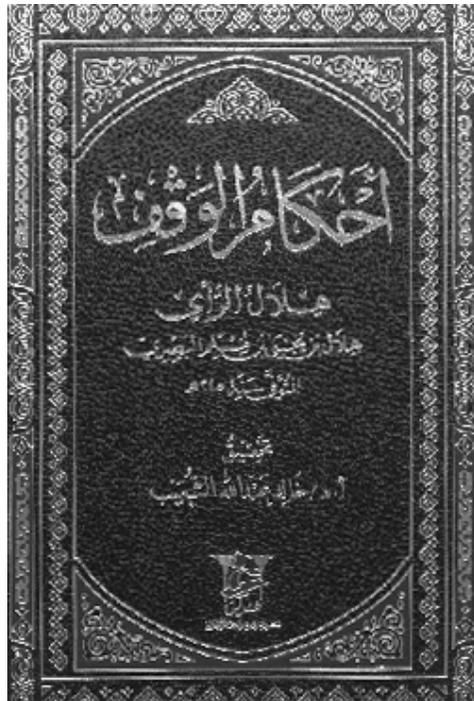


Rulings on Endowment

Author: Hilal Ar-Rai
Hilal Bin Yahya Bin Muslim Al-
Basri
Died on 245 AH

Verified by: Professor Doctor
Khalid Abdullah Ash-Shuaib

Reviewed by: Lubna Salihin





Allah, Almighty and Exalted be He, has graced the Muslim Nation with a noble and tolerant Shariah. Its rulings are simple and they refine and elevate the human soul so that benefits shall be harvested in this world as well as the Hereafter. Acts of worship and transactions have been legislated for such purposes.

One of the most beneficial legal contracts is the Endowment Contract. It is a running charity which reward is incessant even after all man's deeds come to an end by death. Due to the significance of this Contract, Muslim scholars have written down significant books so that the scholar and learner alike shall make use of them.

One of these books is the "**Rulings on Endowment**" by Hilal Ar-Rai. It is the first book written on the Endowment Contract as far as we know. It is considered as one of the significant books and trustworthy references in this field. The Hanafi jurists relied on the "**Rulings on Endowment**" especially when pointing out its various provisions. Hilal Ar-Rai extensively elaborated these rulings, covered all issued related to endowment and even assumed cases which have not really happened and pointed out their relevant juristic views.

This book has been published on 1355 AH by the Printing House of the Ottoman Encyclopedia in Hyderabad, India. This edition has been lost and it has not been published in the Arab oriental countries in spite of its importance.

Therefore, Professor Doctor Khalid Abdullah Ash-Shuaib decided to republish this book. He brought two manuscripts from Al-Azhar Ash-Sharif Library, compared them to the Indian edition, attributed the Prophetic traditions and quotations to their sources and provided a biography of the jurists whose names have been set out in the book due to their fame. He commented on some topics and referred to the controversy between juristic schools of thought with regard to the main issues of endowment. He also provided headings for the juristic issues mentioned in the book.

Doctor Ash-Shuaib provided a biography of the book author. He is Hilal Bin Yahya Bin Muslim Al-Basri, a.k.a. Hilal Ar-Rai due to his wide knowledge and deeply-rooted understanding. He has learnt at the hands

of Abu Yusuf, Zufar and Yusuf Ibn Khalid As-Samti Al-Basri. These three scholars are the students of Imam Abu Hanifah.

This 604-page valuable book discusses the rulings of endowment on a question and answer basis. This approach allows the author to elaborate on the issue, provide analysis, point out differences and assume cases which have not really happened. It is an approach which requires a superb jurist especially that most rulings of endowment are reached by exerting mental efforts to figure out the judgment.

The author discussed the rulings of endowment and elaborated its main topics through several chapters as follows:

Chapter: Terms of making an endowment

Chapter: If a man turns his house into a mosque, shop, graveyard or the like

Chapter: When a man endows a house for specific people to live therein while he does not provide a condition as to who shall take care of it and he does not mention the resources of its maintenance

Chapter: When a man endows a plot of land on another man but he does not mention the resources of supporting it

Chapter: When a man endows a plot of land or a house for specific people and a part of the house building or the palm trees falls on something and how they are maintained

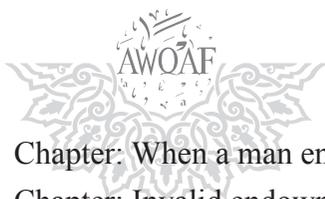
Chapter: When a man just endows something on his son

Chapter: When a man endows a plot of land on his son and then he begets others before or after harvesting the crops

Chapter: When a man endows on his son and offspring with regard to the means of dividing crops among them

Chapter: When a man endows a plot of land on his son while still he has not such son

Chapter: When a man endows a plot of land on his poor relatives, poor people knowledgeable to his son and his poor offspring, who shall be given?



Chapter: When a man endows a plot of land on himself

Chapter: Invalid endowment

Chapter: When a man endows a plot of land on himself provided that he shall have the right to sell it

Chapter: Guardianship in endowment

Chapter: Providing testimonies on endowment and how to provide testimony on the endowed land

Chapter: Common endowment and the difference between common endowment and common gift

Chapter: Providing testimonies on the endowment which is related to the witness or his / her guardian

Chapter: Sick person's endowment and endowment in case of death illness

Chapter: When a man endows a plot of land on the poor and one of his sons or relatives became needy, shall be they given from it?

Chapter: When a man purchases a plot of land via an invalid sale contract and he endows it before taking it over

Chapter: When a man endows a plot of land on a group of people but they refuse such endowment or some accept it while others do not

Chapter: When a man makes his land an endowed charity on the nearest of kin

Chapter: When a man endows a plot of land on his nearest of kin starting with the nearest to the endower who shall be given the crops followed by the next person in kinship

Chapter: When a man endows a plot of land on a specific family or a certain group of people belonging to a certain family

Chapter: When a man endows a plot of land on his freed slaves

Chapter: When a man endows a plot of land on his poor neighbors

Chapter: Leasing an endowed property

Chapter: Endowed land given in a transaction or crop-sharing agreement

Chapter: Usurping an endowed property



- Chapter: When a man endows something on his nearest of kin starting with the nearest to the endower
- Chapter: When a man endows a plot of land on his poor nearest of kin starting with the nearest to the endower who shall be given the crops followed by the next person in kinship
- Chapter: When a man endows a plot of land on his poor nearest of kin starting with the nearest to the endower
- Chapter: When a man endows a plot of land on his poor nearest of kin while he has needy relatives who, in turn, have rich relatives
- Chapter: When a man certifies that the land in his possession is an endowed charity
- Chapter: When a man endows a plot of land on his relatives and another came and said: I am one of your relatives. What shall the endower be liable to do? How to divide the harvested crops of endowment on the relatives?
- Chapter: When a man endows a plot of land on his poor nearest of kin and another came proving his kinship and poverty
- Chapter: When a man endows a plot of land containing an existing fruit tree or palm tree
- Chapter: When a man endows a plot of land provided that he shall give its crops to whomever he wills
- Chapter: When a man says: my land is an endowed charity provided that I shall give its crops to whomever I decide
- Chapter: When a man says: my land is an endowed charity provided that so and so shall give its crops to whomever he decides
- Chapter: When a man says: my land is an endowed charity on a specific family, provided that I shall give its crops to whomever I decide from them
- Chapter: When a man says: my land is an endowed charity on a specific family, provided that I may prefer some of them to others



The author concluded with the annexes which include the following:

- Annex of Noble Quranic Verses
- Annex of Prophetic Traditions and Quotations
- Annex of Biographies
- Annex of References of Verification
- A Table of Contents

After reviewing this valuable book, we would like to point out that the importance of knowing the objectives and purposes of Islamic Shariah is manifested by knowing some bases which include, but they shall not be limited to, pinpointing the wisdom, rulings, targets, partial and total objectives of legislation in all fields as well as the various cornerstones and constituents of Shariah. Other bases cover the presentation of comprehensive rulings and instructions of Shariah and the clarification of the objectives of Islamic advocacy which aims at realizing the interests of worshippers, diverting evils from them, guiding them to understand religious texts and properly interpret them when applying them in the real life and deducing rulings from these texts to realize the interests of worshippers in this life as well as the Hereafter.

While our predecessor scholars have exerted their best efforts to introduce the Islamic religion and manifest the legal rulings, it is a duty on us to disseminate these efforts so that the Islamic nation shall make use of them.

“Rulings on Endowment” by Hilal Ar-Rai in its new form best supports generally all researchers of Islamic jurisprudence and specifically endowment-related rulings. Its author has sufficiently elaborated the rulings of endowment, almost stated all issues related to endowment and even assumed cases which have not really happened and pointed out their relevant juristic rulings.

Finally, shedding light on these valuable compilations is considered just like established contributions which provide benefit to both the scholar and student alike.

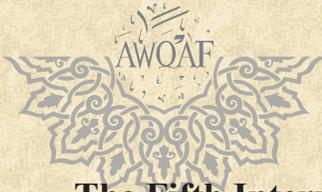
News & Coverages



Mohammed Abdullah Al-Jalahma **Secretary General of Awqaf Public Foundation**



The Emiri Decree appointing Mr. Mohammed Al-Jalahma as the Secretary General of Awqaf Public Foundation is now published. On this occasion, the editorial board of “Awqaf” Magazine extends its warm congratulations to him given the invaluable confidence bestowed to him by His Highness the Amir Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, (May Allah protect him) and being elected to this new position. We invoke Almighty Allah to grant him support and success to be able to carry out the functions assigned to him.



The Fifth International Seminar of Awqaf Magazine

Under Auspices of
Former Australian Foreign Minister
The Hon Bob Carr
Kuwait Awqaf Public Foundation
In Cooperation with Awqaf Australia
and Islamic Development Bank in Jeddah
Present
Fifth International Seminar of Awqaf Journal
**Development of Awqaf
In Non-Muslim Countries**
23-24 April 2016



تحت رعاية وزير الخارجية الأسترالية السابق
السيد بوب كار
تقيم الأمانة العامة للوقفاف بحولة الكويت
بالتعاون مع مؤسسة أوقاف أستراليا
والبنك الإسلامي للتنمية بجدة
الندوة الدولية الخامسة لمجلة أوقاف
**تنمية الأوقاف
في البلاد غير الإسلامية**
24-24 أبريل 2016م / 17-16 رجب 1437هـ



Awqaf Foundation has organized the Fifth International Seminar of Awqaf Magazine in Sydney, Australia. The title of the Seminar was “The Development of Endowments in Non-Islamic Countries”. The Seminar has been sponsored by the former Australian Foreign Minister Mr. Bob Carr in collaboration with the Islamic Development Bank which is the strategic partner of the Foundation and the Australian Awqaf Organization.

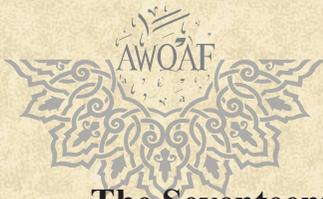
The Fifth International Seminar of Awqaf Magazine is held as one of the activities organized within the scope of the file of the State coordinating the efforts of the Islamic countries in the field of endowment which has been awarded to the State of Kuwait as represented by Awqaf Foundation in accordance with the Resolution of the Conference of the Ministers of Awqaf and Islamic Affairs held in the Indonesian Capital Jakarta in October 1997. In addition, the event is included within the activities of Awqaf Foundation participating in the ceremony of the State of Kuwait as a capital of Islamic culture on 2016.

The Fifth International Seminar of Awqaf Magazine has been inaugurated by the representative of the ceremony sponsor Mr. Tallal Yasin. The Seminar covered five main issues such as disseminating the culture of endowment in non-Islamic countries, activating the developmental partnership of the endowment institutions, and investing the human resources towards development while adopting a modern vision. The delegation of Awqaf Foundation has been chaired by Mrs. Iman Muhammad Al-Humaidan, Deputy of the Secretary General for Management and Support Services and Chairman of the Preparatory Committee.

A number of researchers from the different countries of the world such as Qatar, KSA, France, Malaysia and Australia participated in the Seminar.

Awqaf Magazine is one of the most significant projects of the coordinating State. It is a biannual, scientific peer-reviewed magazine which focuses on endowment affairs and charitable work. Its first edition has been issued on 2001 and it has been released throughout the last fifteen years. So far, the number of releases amounted to 30. The magazine is issued in three languages: Arabic, English and French.

Through the Grace of Allah, the Fifth International Seminar of Awqaf Magazine has achieved several objectives such as interacting with the largest number possible of researchers and stakeholders in the field of endowment, educating them with the most recent updates and issues related to endowment and covering new scientific and academic topics with respect to endowment. These targets have been realized by holding these seminars and the specialized researches published by the Magazine in the field of endowment and charitable work.



The Seventeenth Project of the Efforts of the State Coordinating Awqaf File in the Islamic World

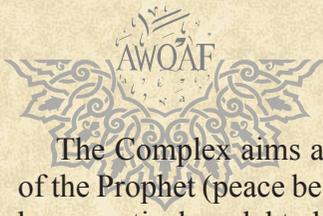
The Information and Documentation Department of Awqaf Foundation shall launch the Seventeenth Project adopted by the State of Kuwait as represented by Awqaf Foundation. Kuwait adopts this project in its capacity as the State coordinating the efforts of the Islamic countries in the field of endowment in accordance with the Resolution of the Conference of the Ministers of Awqaf and Islamic Affairs held in the Indonesian Capital Jakarta in October 1997. The project is related to “The Verification of Endowment-related Manuscripts”. The project focuses on the historical endowment-related manuscripts regardless of their place and time. The project team members shall study the endowment-related manuscripts in terms of their form by identifying the authenticity of the document and verifying the types of fonts, inks, seals and signatures used and affixed on them. They shall also study their contents including the established events and facts such as the number or capacity of witnesses, the instruments relatedness to prominent figures, their large financial value, rare channels of distribution and the diversification of endowments therein.

The project aims at providing new research materials for researchers who may find it difficult to deal with the manuscript without verifying it. It sheds light on the outstanding endowments which represent a special significance in various places and eras. The project contributes to enriching the Arab and Islamic library with the various specializations such as historical, social and economic manuscripts and information. The project shall be of benefit to historians, researchers, employees and stakeholders in the field of endowment and charitable work, libraries and centers of historical studies.

Project of the Complex of the Prophet's Biography



Awqaf Foundation in the State of Kuwait is working towards the construction of the Complex of the Prophet's Biography at Abdullah Al-Mubarak area, west of Musharraf on a total building area of seventy thousand meters. Through this Complex, the Foundation aims at presenting the Prophet's Biography in a new and innovative manner resembling the international museums but in a different style. The Complex targets to be a scientific minaret and landmark which presents the biography of the Prophet (peace be upon him) by adopting a different approach and new direction while using modern techniques and sophisticated technologies. The Complex shall follow an applied, technical, easy-to-use and attractive manner which introduces the Prophet (peace be upon him) "as if you see him". The Complex shall be constructed as a breathtaking, vital and interesting landmark which takes the visitor to halls and pathways where the 63-year life span of the Prophet (peace be upon him) shall be explained. Though short in time, the visit is full of benevolence, mercy, goodness and model-seeking.



The Complex aims at manifesting the cultural aspects of the character of the Prophet (peace be upon him) and his sublime mission so that he shall be a practical model to be followed. It also targets at educating the society, introducing the character of the Prophet (peace be upon him), nurturing the love of following him and taking him as a model and corroborating the spiritual, religious and moral values through a modern style which utilizes sophisticated technologies and attracts visitors.

The origin of this project dates back to several years ago where extraordinary efforts have been exerted on the levels of planning, studying and preparation. These are not normal events. It is the biography of the greatest character known all over nations and the life of a Prophet who was the last person to receive a heavenly message.

The project is considered as an intellectual museum which embodies the meanings and events in pictures and scenes which make the visitor of this landmark live the event as a tangible reality as if seen by the naked eye. The visitor shall feel, imagine and figure out all such meanings and events by using the state-of-the-art technologies. The events of the Prophet's biography are presented and interlinked in halls and pathways where time is interwoven with the event and place. The visitor uses his / her senses of watching, imagining and feeling such events in his / her heart of hearts. The visitor shall navigate through the events as if he / she had been a part of them or even participated in such events. Therefore, the visitor is affected by them and his / her heart is preoccupied with such events and wisdom. Hence, they are reflected in his / her behavior and taking this noble Prophet (peace be upon him) as a model to be followed. In addition, the visitor shall harbor loyalty and belongingness to this great unparalleled personality in the history of humanity.

It is expected that the preliminary phase of initiating the Project shall commence at the end of September 2016. The ceremony of laying down the corner stone shall be prepared during October / November 2016, if Allah so wills.

We invoke Allah to grant us guidance to complete this Project which is the mission of the whole nation and its cherished target.

Allah is Supporter of Guidance





AWQAF Journal Waqf

In recognition of the Waqf thought and philosophy in establishing the social projects and extending services in the framework of sustainable and self-supported system, KAPF established AWQAF Journal Waqf. Therefore, this periodical publication will not rely on the sales revenue of its issues; rather it seeks to realize the aims and objectives for which it was created. It will endeavour to provide the Journal free of charge to all those who are interested in Waqf as well as researchers, research centers and organizations related to Waqf.

On the other hand, KAPF will continue to develop the financing of AWQAF Journal Waqf through inviting contributions, whether in the form of subscriptions, deductions or any amounts for the account of the journal in an attempt towards supporting the journal and enabling it to assume a share of the society burdens in extending vital developmental services.

Deed Purposes:

- Contributing to upgrading Waqf research effort so that the journal ranks with the prestigious refereed periodical journals.
- Emphasizing the typical dimension of Waqf, together with identifying its characteristics and the role entrusted to it.
- Addressing the related issues in a methodology that links vision to the reality and therefore encourage thought in practical findings.
- Linking the topics of Waqf to its concerns in the entire Islamic world.
- Delivering the largest number of issues of AWQAF Journal maximum audience of researches, universities and research centers free of charge.
- Encouraging efficient experts to consider specializing in Waqf related issues.
- Establishing a network for all those interested in Islamic and particularly Waqf thought, and facilitating communications and interaction among them.

AWQAF Journal Superintendent:

- KAPF is the Superintendent of AWQAF Journal Waqf.
- KAPF strives to develop AWQAF Journal Waqf and invites contributions to participate in it.
- KAPF monitors the periodical journal works and entrusts specialist scientific experts with operating its affairs in line with the strategy to promoting the Waqf sector and as per the standards applicable for refereed journals.