

Article

Towards Shari'ah Compliant Waqf Bank

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Abstract: Bridging widening socioeconomic gaps calls for a paradigm shift and the use of effective strategies such as Waqf banks to develop and provide basic services and such as education, shelter, employment opportunities and social amenities to the poor, while reducing the state's burden and working to constructively address the reasons for the gap. Waqf banks are set-up through the use of cash waqfs and would operate multiple waqf funds alongside an assortment of financial instruments. Their earnings however are issued as low-cost credits to the poor, economically disadvantaged and the underprivileged regardless of their financial status, instead of focusing exclusively on generating shareholder profits. This would significantly aid the economy in steady, sustainable growth; effectively raising the lower bar on per capita income and lifting untold multitudes out of poverty. This study explores how interest-free and affordable loans can be provided to the poor or lower income demographics, while further discussing bank structures such as Shari'ah compliance, services rendering, investment and waqf distribution. This study shows that there is a need for Shari'ah compliant waqf banks which in addition to providing services for beneficiaries, would also effectively manage investment and waqf funds that contribute to overall national development and economic growth. This inquiry would be of high relevance to experts, financial managers, regulators and policy makers in the fields of waqf, banking and finance.

Keywords: Waqf bank; Cash Waqf; Waqf management; Islamic Endowment.

1. Introduction

In spite of the extensive bank networks and systems today, poverty still persists. More than 500 million continue to live in urban slums with close to one billion people in persistent hunger in all of the regions of the Muslim world (Ahmed, 2004, p.150). Banks did only a little to bridge the global socio-economic and technological gap; their micro-financing of privileged segments is set for profit making at the expense of poor and languishing (Abu Zahrah, 1971, pp. 156-167). Developed countries are doing a shady job of development in developing countries; and, when countries in the third world are largely funded by non-governmental organizations, world banks and international monetary funds that make most of them incur unfathomable amounts of debts, causing more damage to already prevailing conditions of poverty in those countries (Ahmed, 2004, p.150).

The Qur'an calls for equitable distribution of wealth and resources. Poverty should be eradicated as showcased in the many dictated injunctions of voluntary transfers of fund and property from rich to poor. This highlights the Muslims' responsibility towards poverty alleviation, support and integration of underprivileged into economic and financial empowerment (Young, 2010, pp. 201–223). Justice, compassion and solidarity towards toward the poor eases their socio-economic empowerment in the community. The state, community and individuals should work together to alleviate poverty and help those without food or health care (Dawwabah, 2005, pp. 48-75). The Qur'an (59:7) acknowledges economic disparities among rich and poor, however, sets the vision and measures to alleviate it. The Qur'an for instance encourages Muslims to strive towards spiritual and economic empowerment and promotes acquisition of wealth. Dependence on others is a form of self-caused demise (Renneboog et al, 2008, pp. 1723-1742). The idea is that every individual, through hard work, diligence and transparency, should pursue a line of wealth search with only a few limitations on how to look for wealth.

According to the Qur'an, resources should be explored (Buttle, 2007, pp.1076–1088), used and disposed consistently with justice. Both the government and society share the responsibility of protecting and providing for the poor through moderate consumption on their part and leaving portion for those under-privileged in an effort to counter unequal distribution of wealth. The shared responsibility of the state and the public seeks to ensure effective distribution of wealth. The duty of economic development incumbent on the state demands distribution of wealth in accordance with the stipulations of Shari'ah laws (Siddiqi, 2004, p.81). The state should initiate programs that support the poor and empower people by way of provision of sustainable employment opportunities. It needs to balance out the rights of the poor to treasury allocation without neglecting the remaining population; others owed a spiritual and ethical duty of care (Hassan & Shahid M., 2010, pp.309-328). Morally speaking, there is a close relationship between the individual and community in the Islamic society (Grodach, 2011, pp. 300 - 309). Still, a similar relationship exists between the economic and spiritual empowerment and development.

In economic transactions, one should be righteous and uphold to the principles of fairness while keeping away from fraud and unlawful betting. God created resources in abundance (Dunya, 2002, pp. 57- 82). The Qur'an holds high regard for those who sacrifice their wealth for the poor by way of charity (*sadaqat*) or *awqaf* (Zaman, 1999, pp. 1- 8). It is mandatory to give zakat and recommended charities (*sadaqat*) to those in need or less privileged (Magda, 2009, pp. 17-27). Those go in conjunction with cooperating with one another. Individual obligations towards others are reinforced when there is freedom to act in total disregard of self-interest of material wealth and personal well-being (Zaman, 1999, pp 1-8). In the quest to disregard self-interest, the Islamic law appreciates if those are used in the provision to the economic and spiritual advantage of less privileged people.

Spirituality cuts across both striving to sustain the self in the best way possible and also ensuring that poor neighbors are supported to attain self-sustenance. This is essential for socio-economic development since the individuals providing help to neighbors is not by any means expected to look forward for reward or appreciation for what they do (Klugman, 2009, p. 13 -46). Philanthropy echoes sense of responsibility and makes one consume that which is adequate for her and not waste resources when others may be hungry. The resources God created should not be exhausted excessively by some at the expense of others who do not have them (Kahf, 1998, pp. 2 - 4). When hard work, labor indulgence and investments are combined with the Muslim principle of altruism, then the poor will not be exploited by those with illicit and malicious intentions of domination and economic exploitation (Kahf, 2008, pp. 2-4). On the contrary, the poor will be increasingly exposed to opportunities of development, whether spiritual or socio-economic, and will hence have fair chances of growth and empowerment.

Waqf is a Muslim religious endowment set fundamentally to freeze the proprietorship of assets as is the case of a voluntary and irrevocable dedication of one's wealth or a portion of it - in cash or kind (such as a house or a garden), and its disbursement for Shari'ah compliant projects such as mosques or religious schools. Waqf helps eradicate poverty while ensuring sustainable support of the poor (Mishra, 2006, pp. 1538- 1545). The sustainable nature of waqf finds support in the Qur'an, Sunnah and Islamic law. Prophet Muhammad is reported to have said that deeds of individuals end upon death except those dedicated as *sadaqa* (charity), beneficial knowledge or pious children (Morduch, 2002, pp. 583-604). Waqf is however, characterized with principles like inalienability of the rights of the poor, permanent endurance, and potential to generate income. However, there is a need to gear waqf towards making income generation and re-generation. More light should be shed on this issue, which can be fulfilled in many different ways (Haji Mohammad, 2015, pp. 37-73).

It follows that responsible resources management proves the care of Muslims not only about their present generation but also of the posterity (Dreher A., 2006, pp. 769-788). Prophet Muhammad established what is known as *habs* (endowment) which is economically self-reliant, charitable and sustainable. Unlike other Islamic institutions such as *sadaqa* and *kaffarah*, waqf remains perpetually charitable (Obaidullah, 2007, p. 3) because it is not to be subjected to revocation or transfer. It can also generate its own income and fund charitable activities of the poor and underprivileged. Waqf institution can be presented in different ways, including cash and real estate (Barizah et.al., 2005, pp. 804-822).

Earlier literature on the financial dimensions of waqf institutions have largely focused on the manner in which the religious nature of waqf resulted in successful financial development of waqf properties and related initiated investments are initiated (Siddiqi, 2004, p.81). In the 19th Century and after, many political conflicts in the Islamic nations caused serious deterrence of waqf. Cash waqf was not very predominant and the real estate waqf took all the limelight (Barizah et.al., 2005, pp. 804-822). Issues of profit-making properties remain generally lacking. Only a few have delved into issues of funding of waqf institutions, portraying it as a lending and benevolent institution. Most characterizes waqf as an institution set to counter the influence of the conventional financial institutions but which had inadequate assets to enable it to overcome the challenges that it was due to face (Amin et. al., 2003, pp. 59-82). There exist however many ways to address such an information deficit; one consists of developing the original waqf practice of socio-economic empowerment by way of improving wealth creation to the maximum (Mohammad, 2011, p. 381). This, in essence, ensures that Waqf funds or other funds collected by the bank are used to obtaining additional property and funds and used again for favorable micro-financing programs to those less privileged who cannot afford the bank charges on financial lending.

2. Waqf Institutions and Social Banks

Institution of waqf institutions can be described as a profit making charity organizations with great potential power of community empowerment and nation building. They may at once appear as privately owned finance institutions, social banking institutions, income-generating institutions as Ahmed (2007, p.150) noted, institutions interested in charity activities and re-distribution of wealth. They carry various objectives and have their own challenges, such as being under-financed or being annihilated quickly because of the unfavorable conditions of poverty without financial aid from other organizations (Arnawut, 2005, pp. 3-20). Social banks on the other hand represent non-profit organizations dedicated to the socio-economic welfare. Islamic social banks seek to alleviate poverty while further contributing to the community's economic development and upbringing the micro-finance institutions against poverty (Ammar, 2006, pp. 11 -19).

In the Muslim world, increased attention is given to poverty alleviation. There are also ongoing evaluation of the contributions and effects of waqf on the sustainability of socio-economic development. However, the challenge remains on how to tackle systematic eradication of poverty. This requires investment in all possible anti-poverty financial measures, and more importantly the establishment of waqf bank, with characteristics that are acceptable to the culture and religious affiliations of the community alongside checking the ways according to which waqf would achieve its goals effectively (Cizakca, 2004, pp. 40 -59). Unlike conventional banks and indigenous waqf financial institutions however, waqf institutions offer a different financial structure, which amalgamates and also consolidates the properties of both institutions and sets them in a one single package (Vakulabharanam, 2005, pp. 971-997). This is to be held in the best interests of all parties in the Muslim community; whether un-bankable or more privileged, which as Haji Mohammad (2015, pp. 37 – 73) noted, renders it in the best interest of the poor.

The income generating activities according to the current financial model largely target wealthy and privileged and cannot embrace the micro-financing models in countries like Yemen, Bangladesh, and England inter alia (Ammar, 2006, pp. 11 -19). The model of finance applied in those countries tends to be more conventional and the few waqf social financial institutions that exists major on profit making initiatives to finance their charitable activities. In countries like Bangladesh, only have a part of the bank that deals with Waqf (Young, 2010, pp. 201–223). Still, that part does not use the gained funds to supply waqf-based charitable activities; on the opposite, it provides the bank with financial funding, which fails to extend financial help to the poor, and as profit making institution, it is only concerned with profit maximization, however, in the name of a social Waqf institution, as is the case of the Islamic Social Bank in Bangladesh or the Vatif Bank in Turkey (Zarqa, 1994, pp. 55-62).

Unlike conventional banks, which issue charges on overdrafts and earn profits from lenders, Islamic social banks run according to waqf regulations (Bennett, 1998, pp.99-117). Conventional banks operate in a similar way to the Islamic banks and this may be a very reliable source of income

for the waqf community. There is however, a question of viability of such an institution as the indigenous waqf financing institutions are based on pure charity or organizations with no prospect of making profits. Social banks can make profits out of the earnings of the services offered by the bank, which are set to finance social welfare activities or micro-finances. Waqf bank institutions are conducted according to waqf fundamental principles and values. They would resemble other financial institutions in need of funding, however, remain different from conventional banks. Their lending would be advantageous to individuals, parties and institutions, Muslims and others alike. They would also be different on many aspects of social banking systems (Abu Zahrah, 1971, pp. 156-167).

In spite of several inherent and fundamental distinctions, there exists, in England, for example, banks that masquerade as waqf institutions, with their own forms of operation through which they obtain and use funds to provide interest based loans to the poor and underprivileged that would otherwise lack collaterals and securities to make them eligible for loans. Their particular feature however, is that the parties providing funds must not be parties interested in achieving charitable objectives, but on the contrary, parties who are after a conventional means to an end (Zarqa, 1994, pp. 55-62). The probable notion is that the bank is generally any other conventional bank. The bank, in turn, uses their earnings from those financial relationships to finance their charitable activities; that is, provision of unsecured loans to the poor and unprivileged in the Muslim communities as is the case with the Charity Bank of England and the England's Industrial common ownership Finance. Their focus is on social banking and activities pertaining to the poor in a bid to bridge the large gap among rich and poor in the Muslim community. The very activities have been influenced by the Waqf incessant and persistent bid to alleviate the poverty in most of the Islamic countries.

However, in view of the inherent inter-connection of waqf with the Muslim belief, spirituality, morality and law, one would assume that waqf operations would only be appealing, smooth and effective, particularly in religious and faith-based contexts. Having said that, one should note that there exists still a gross disparity in the execution of waqf initiatives related in most to the fact that the effectiveness of waqf operations is largely connected with the development index and socio-economic levels, as it would be much easier for instance to implement waqf resolutions, applications or solutions in countries like the United Arab Emirates and Kuwait, and extremely difficult in India, Pakistan, or Iraq. In countries like Somalia for instance, economic disparity is predominant, especially with the ongoing political conflicts and instability, making it impossible to implement the initiatives of waqf financial institutions (Mohammad, 2011, pp. 250 -254).

3. The Issue of Cash Waqf

Waqf cash system is an implication of the acceptance of the waqf banks, which takes place once the cash system is acknowledged by the Muslim community (Arnawut, 2005, pp. 3-20). Waqf bank operates under the laws and rules of Islam whether pertaining to capital generation, management or definition of its owners. Cash waqf represents a controversial issue among Muslim scholars despite serving as one of the best modes of sustainable profit making. This reluctance is largely because cash waqf is not expressly stated in the Qur'an or other Islamic religious writing (Renneboog, 2008, pp.1723-1742). This concerns the acceptance or prohibition of cash waqf. This issue was left open for analogical interpretation, and therefore the legal ruling on it becomes, like many other legal issues, the result of personal Muslim interpretations (*ijtihad*). Some have accepted it viewing it as a movable property as the early Qur'anic notions were largely concerned with property than a medium of trade (Roodman & Morduch, 2009, pp. 583 - 604).

Many Muslim scholars opt for allowing of cash waqf viewing it as means of trade and comparable asset. Their argument is based on the recognition of both the Qur'an and hadith of moveable property. Few jurists however, recognized cash waqf as a means to procure a loan. Others recognize it in the light of their consideration of waqf. The Shafi'i school of law rejects cash waqf. The validity of the cash waqf, however, is still accepted, especially when it sustains and derives its own profits and is operated as a means to procure loans and establish investments. Many other schools

begun to recognize the validity of cash Waqf; those include the Hanafis and the Malikis who hold different justifications for recognizing cash waqf; like its ability to influence the establishment of investments. Contemporary jurists rule in favor of the admissibility and acceptance of cash waqf for its purposes in investments. They maintain permissibility of cash waqf in investments of bonds and banks. Some go further to recognize not only currencies, but also liquid assets pertaining to cash Waqf.

According to contemporary Muslim jurists, cash waqf has numerous advantages including the creation of more opportunities for socio-economic empowerment. It has a very high potential of constantly sustained income generation and regeneration (Arnawut, 2005, pp. 3-20). The investments initiated though cash waqf can be diversified and used in many opportunities, still it stands out as the most effective method for the a joint waqf creation (Barizah et.al., 2005, pp. 804-822). Its liquid nature also makes it beneficial in all sets of economic transactions. It is worth noting that the acceptance of the liquid assets, money of any currency or coins, be it of the old or of the current age, and in any other form that can be used for such transactions, are considered as avenues to increase the waqf earned income (Barizah et.al., 2005, pp. 804-822). This could have been the opposite scenario if the acceptance of cash waqf was only limited to paper money or specific currencies. Such a use, however, has limited extent and cannot be used for procurement of a bank loan for instance, for which, the only viable means of transaction would be the currency in any form of transaction to the use of liquid assets would only be beneficial in specific situations such as where the lendee needed the asset; where there is a mutual want.

Cash waqf has been proposed to be one of the most effective modes to annihilate poverty in the Muslim community (Grodach, 2011, pp. 300 - 309). However, this is subject to many limitations, including the deficiency of fund management of waqf. In addition, some of the generated funds might also be abused by waqf managers (*nuzzar*) for fraudulent uses, and hence facilitating the destruction of cash waqf institution. In many scenarios and as a practical example, the funds gained and those earned through waqf are not usually accounted for, therefore most parties usually use those for personal benefits instead of charity purposes (Zaman, 1999, pp 1- 8). The remedy for waqf abuse problems lies in the creation of waqf bank which would provide various services for income generation, and which again are used to procure services to the poor and needy. One must however keep in mind that the true essence of the creation of waqf is to facilitate the management of waqf funds and create chances of investments in various avenues (Buttle, 2007, pp.1076–1088).

4. Waqf Bank

Because of its special nature, the question that constantly arises relates to the subject of waqf category, whether governmental agency, non-governmental organization, development finance agency or regular cooperation (Arnawut, 2005, pp. 3-20). Many speak of the establishment of a conventional institution whose primary objective would be to provide favorable services for under-privileged or micro-financing of the poor in a bid to alleviate poverty (Bennett, 1998, pp.99-117). The fact remains that waqf banks operate with the objective of micro-financing, with a special interest in the poor of the community (Abu Zahrah, 1971, pp. 156-167). This may be conducted through various institutions, both private, non-governmental organizations and corporations.

The interesting question however, pertains to who really should own the waqf bank. This should not however, define the bank activities and transactions. The fundamental objective of waqf bank remains alleviation of poverty, which is, fulfilled though issuance of cheaper yet affordable loans to the poor (Dreher A., 2006, pp. 769-788) while investing in the community's moral and ethical development, thus ensuring maximum benefit for the poor and those who can barely afford the cost of living. In this quest, they also need to ensure that the whole community, both rich and poor, is not infringed upon in the process of services provision. Waqf banks owe the rich both a moral and spiritual responsibility of care, without disregarding their rights in the community (Renneboog, 2008, pp.1723-1742). When fulfilled, there would be no need to question the effectiveness of waqf bank. What usually happens is that the income generated through waqf bank related activities are usually

distributed among the under-privileged or recycled into the bank for services provision that would further help generate more income (Buttle, 2007, pp.1076–1088).

4.1. *Rationale for Waqf Bank*

Some argue that waqf bank may operate like any other conventional bank, especially when it fundamentally operates on cash waqf. According to the analogy of the allowance of cash waqf as per the dictates of many Muslim jurists, waqf banks become undistinguishable from the waqf bank, then the bank is safekeeping in Islamic law (Zaman, 1999, pp 1- 8). Others hold the opposite view against the establishment of waqf bank, when if however these are done away with and the Islamic laws were a bit reasonable then the validity of the cash Waqf could be extended to the waqf bank. In view of both basic functions of cash waqf, the philanthropic nature of services provision would be beneficial to the poor (Amin et. al., 2003, pp. 59-82) through its benevolence and investments initiation set for poverty alleviation, they then qualify to involve the bank into reconsideration despite the earlier opinions against its formation (Arnawut, 2005, pp. 3-20). With attention to the theories about cash waqf of the Muslims adhering to the Hanafi and Shafi'i schools of the law, particularly those pertaining to investment projects and funds management, the waqf bank may be accepted in those particular communities (Buttle, 2007, pp.1076–1088).

It should be noted however, that waqf bank may do well on many transactions and microfinancing activities needed by the Muslim communities such as renting of coins according to the Shafi'i view of *ijarah*. If the waqf bank is able to enforce such transactions, it then qualifies to be recognized as a valid bank under the Islamic law. For the bank to be admissible, both the positive Islamic views on the cash waqf and the major benefits that accrue to alleviate poverty need to be taken into consideration. Cizacka believes that the merger of cash waqf and the bank is in the best interest of the bank being recognized both for its actions and its use cash waqf (Cizakaa, 2004, pp. 40-59).

Waqf is used to save the capsizing capitalistic financial systems of the Islamic nations and communities and also unknown to the Islamic communities (Arnawut, 2005, pp. 3-20). When waqf banks use cash waqf, then the chances of success increase significantly. Still, the above situation in which the waqf bank is rejected and at the same time the cash waqf is accepted will be avoided since they will be seen and regarded as one. Another issue related to the acceptability of waqf banks is that it has a nature according to which deposits are issued and from those earnings the bank gains profits (Roodman & Morduch, 2009, pp. 583 - 604). This feature may be justified under the law by way of consideration of responsibility of waqf managers (*nuzzar*) for initiating and also facilitating waqf bank investments while carefully deciding on the potential investment and individuals who can use the funded money for capital. Funds managers should not only oversee the bank activities, but also diversify its options and seek investments out, and that which is not related to the banks activities at all, provided it is in the prospect of gaining capital (Vakulabharanam, 2005, pp. 971-997).

The bank is set to service cheap loans while generating income to create the loan structure appropriate for those less privileged at nominal interest rates (Siddiqi, 2004, p.81). At the onset of the bank formation, the founders may contribute towards the initial capital. Their capital however, does not belong to the bank. Once the bank earned sufficient profits to sustain itself, then the successive earnings would be used for the various community services. The bank is set to earn profits, which are used in the provision of cheap loans to the poor while developing the assets of the bank through demand fees (Roodman & Morduch, 2009, pp. 583 - 604) levied on the loans and any other means. The bank would be authorized to get capital and funds from the public since there is no provision that would prevent such kind of capital acquisition.

4.2. *Advantages of waqf Bank*

Should the bank operate according to the Shari'a, it would then be allowed, based on its fundamental nature and utility including its beneficiaries, interests inter alia (Mishra, 2006, pp. 1538-

1545). Essentially, the bank benefits beneficiaries and the waqf. It can earn large funds and assets, both liquid and otherwise, which may be used for many other functions (Abu Zahrah, 1971, pp. 156-167). Those can provide sufficient capital for waqf and progressive development of both the dormant and active assets of waqf. Similarly, they can be used to make waqf bank break become independent from other conventional banks and government subsidies, and can sustain itself independently (Buttle, 2007, pp.1076–1088). It can also generate new waqf assets while preventing current ones from annihilation or dissolution. Similarly, it may prevent cash waqf from misappropriation or misuse, as when the bank is put in place, then all the books of accounts are placed in check to gauge the accountability of waqf bank managers while ensuring that the waqf does not lose property, but only continues to gain from the agencies that are not known as waqf institutions. There is also the fact that in a country with federal laws like the United States of America, it can help facilitate a process in which waqf institutions go easily through state and federal regulations (Amin et. al., 2003, pp. 59-82).

It is interesting to note that through its funds, the bank would be able to fund diverse communities' socio-economic programs. The bank also has certain obligations towards its beneficiaries; this can only be viable if the bank generates some income. The beneficiaries can receive the bank services with their preferred conditions. In conjunction with other benefits, there will be a constant supply of liquid assets to the waqf. Those assets play a vital role in the reviving of dormant properties and in retaining the productive properties of waqf. When those are revived and maintained, then there would be a good prospect for increase in the funds supply that would in turn enable provisions for poor beneficiaries (Zaman, 1999, pp. 1- 8). At this stage, trustees have difficulty in their operations because waqf banks tend to have fixed assets, which can only be used to gain profits by way of cultivation. Those assets may be insufficient to funding new investments. Financing those development schemes may be extremely difficult as they are unsecured loans, which would not usually suffice as options in conventional banks. Those institutions that are almost failing can be re-financed through waqf bank, and, hence would have aided both the institutions and its beneficiaries (Amin et. al., 2003, pp. 59-82).

4.3. *Legal framework of waqf banks*

In current jurisdictions, there are various laws that regulate the formation and registration of companies, banks and financial institutions (Bennett, 1998, pp.99-117). Banks may be registered as companies under the company act, with its own legal personality, rights and obligations. Being its own legal personality, it would be considered separately from its directors and shareholders. In such capacity, it may hold land and other assets in its own name. The veil of incorporation and distinct personality can only be lifted in special circumstances (Zaman, 1999, pp 1- 8). Banks may also be registered as cooperative with legal personality status similar to that of a company. In such a case, its members would have limited liability for they will not be liable for any debts incurred by the business. The law does not stipulate a structure of how the cooperative of waqf banks be formed, and thus the laws need to be amended to fit this purpose. The bank is then registered and incorporated in accordance with the banking and company laws and regulations put in place by the central bank of the Islamic jurisdiction the bank has been informed (Dumith et. al., 2011, pp. 24 -28).

There are numerous legal statutes and sections that both define and regulate banks operations, including but not limited to, laws of Islamic banking, the Central Bank regulations, various conventional bank laws, and laws governing the cooperative and societies (Abu Zahrah, 1971, pp. 156-167). However, of most importance, are the Islamic Banking Laws since the waqf bank is established in the Muslim states and the rules pertaining to the finances of the losses. This legal framework would for instance involves licensing, duties, financial requirements control of these financial institutions of such banks, business restrictions and powers to supervise (Ammar, 2006, pp. 11 -19). They are however stricter in their issuance of licenses as they depend on two major conditions (Arnawut, 2005, pp.3 - 20), alienation of their performance from any activity found to be inconsistent

with the Islamic law and the mandatory prerequisite that the Articles of Association of bank formation must have the Shari'a Advisory Council which advises the bank on how to operate in accordance with the Islamic laws (waqf laws). The bank will generally be a new entity, and hence, the need to enact new laws that regulate this institution or amend the existing laws to conform with the requirements of the law, especially when the bank is created (Barizah et.al., 2005, pp. 804-822).

4.4. Structure and management of waqf bank

When formed, the institution will have the capacity to collect, distribute, recollect funds and manage charitable and non-charitable finances (Barizah et.al., 2005, pp. 804-822). Regardless of its entity as corporate or otherwise, the bank may operate through provision of services in a manner that generates profits to the bank obtained through capital contribution from the non-waqf members and profits generated through bank assets. The bank services will, in essence, originate from the dormant assets and property and will be offered to the public borrowing at minimal charges to the poor and welfare organizations (Dunya, 2002, pp. 57- 82). The bank structure may take different forms, depending on the type of jurisdiction, laws and what those laws and rules stipulate (Ammar, 2006, pp. 11 -19). It can also assume diverse forms depending on the form of ownership and capital contribution; it can be a sole waqf bank or cooperative entity on profit sharing between investors and waqf.

Speaking of the bank assets management, the balance sheet is the core aspect of bank assets management for it entails all of the assets, liabilities, and capital, whether from waqf deposits, members' donations or bank shareholders (Mishra, 2006, pp. 1538- 1545). Those factors in the balance sheet provide the overall picture about the bank even without a prima facie glance at the profit and loss account. To ensure that there is no falter in the waqf progress, the investment assets should be aligned with low-risk and very liquid objects to ensure immediate returns (Abu Zahrah, 1971, pp. 156-167). The nominal capital deposits should also be subjected to low risk and long-term objects to ensure that they are maintained in the bank as they represent more of a liability than asset.

The success of waqf banks is then gauged according to the achievements of waqf objectives rather than the generated capital amount, and the services and initiatives completed for the poor community, and how many benevolent loans have been issued as opposed to how many issued loans have been successfully regained by the waqf bank (Ammar, 2006, pp. 11 -19). To effectively achieve this, there is a need for a good funds management. Those funds include those donated to the waqf institution through charitable means, or those earned by the waqf bank's service charges or borrowed from other organizations. Those need to be managed in accordance with the Islamic laws and under diligent management in order to ensure that services provision to the poor communities is rather performed smoothly (Obaidullah, 2007, p 3).

However, there are exceptions, which would allow the bank to opt for conventional banking methods, especially those related to investing in short term and products that are highly liquid. The administration of this exception require managers to be careful in order to avoid operation beyond the financial ability of the waqf bank while ensuring that bank investments are those that are highly likely not only viable but also those operating within the requirements of the Islamic laws (Renneboog, 2008, pp. 1723-1742). Funds investment must adhere to the Shari'ah laws. Still, the laws and regulations pertaining to the given bank jurisdiction are of paramount importance; different Islamic jurisdictions have closely related regulations, but which have specific differences however minimal they might be. They must be adhered to (Siddiqi, 2004, p.81).

Waqf banks would usually have deposits and capital set aside for the services of the poor and for development activities in accordance with the wishes and commitments of both endowers and donors. In waqf, deposits can be used for the services provision and at the same time generate income through minimal charges administered on the loans that are at the disposal of poor and less privileged (Young, 2010, pp. 201-223). It accepts deposits from various sources and then invest them in diverse avenues and provision of disparate social services. Deposits, especially in situations of nominal deposits where these are bank liabilities (Abu Zahrah, 1971, pp. 156-167). The use of savings

and current accounts is a minimal risk but does not generate profit. Investment benefits on the share capital, which pertains to profit and loss sharing, can be used to generate profit returns. Those for example include features such as Transaction deposits, Investment accounts, special or otherwise (Zaman, 1999, pp 1- 8).

Transactions deposits are generally not used for the generation of business income, rather used to complete the short liquidity balancing in the balance sheet, and in essence, are not actively involved in the investments that generate income. They are therefore set for depositors' safekeeping, but cannot gain profits. Those are based on the Islamic principles of object deposit (*wadi'a*) and benevolent lending (*qard hasan*), which would allow the bank to give some provision for the depositors. Investment accounts are generally based the principle of unrestricted *mudarabah* (*mudaraba mutlaqah*). In such transactions, the waqf bank becomes the party with the freedom to oversee the investment activities and invest in any place of interest (Amin et. al., 2003, pp. 59-82). The bank may also accept those deposits merely based on the Islamic law of that particular jurisdiction. They must however, adhere to the Shari'ah laws and rules of Islamic banking, which require strict management of resources and capital of the waqf funding.

Waqf banks may opt to use those funds to establish and further enhance waqf properties development. Waqf activities are valid as long as they are viable and continue to serve their original purposes. The special investment funds, on the other hand, do not possess any significant distinction from the investment account and how it generates income (Bennett, 1998, pp.99-117). It may accept any investment opportunities as stated in the *mudaraba*, which must also be in accordance with the Shari'a laws. The particularly distinctive feature is the fact that such investments are issued to big investors who deposit funds for a particularly identified category or social purposes and activities. Those deposits are usually issued directly to the given objectives or purposes for which they have been originally issued. However, waqf funds can be used for urgent yet essential priorities, like funding major agricultural projects or development of urban settings (Amin et. al., 2003, pp. 59-82). They may assist the state to provide governmental services. Nonetheless, the bank should not act beyond its mandate and should ensure that its activities are generally for the good of the poor (Dreher A., 2006, pp. 769-788).

The sources for waqf bank capital are largely obtained from charity activities in the waqf systems such as zakat and *sadaqah* (Kuran, 2005, pp. 593 - 615). In many situations, it may initiate earned profits distribution to investors and other parties. Minimum charges can be levied on issued funds to cater for the bank expenses and to take care of unexpected currency depreciation. Such initiatives are prudent for short-term circumstances as they bring immediate returns. The investments from all sources shall then be invested in a manner consistent with the Shari'ah and the Muslim laws pertaining to that particular jurisdiction (Buttle, 2007, pp.1076–1088). Waqf often delves in business banking since there is a need for continuous bank success through lending activities and other income generating activities. With good fund management, the bank can be a success (Abu Zahrah, 1971, pp. 156-167). The Islamic laws rules and regulations encourage that the investment projects should not only be put in place to ensure a profitable return but they be inculcated to ensure maintenance and development of waqf property.

The Islamic law requires that an operation area decided by the waqf bank is permitted by the Islamic banking regulations and the Islamic laws in general. The bank needs to ensure that there is risk aversion and that there are adequate measures in place to offer the best capital protection; especially the nominal capital that is put for safekeeping, as they are usually more of a liability than an asset to the waqf bank (Klugman, 2009, pp. 13 - 46). To ensure this, waqf banks need to ensure that when dealing with the Islamic conventional banks in any form of transactions, they should always choose exclusively low to medium risk investments. High-risk investments are expressly discouraged in the waqf systems and institutions (Grodach, 2011, pp. 300 - 309).

Nevertheless, the effective revenues and funds management require the waqf bank to run a yearly assessment of its profit and loss account so as to ensure that there are no losses running in the bank, and in case there are, then there is a need to operate adequate measures to figure out the problem and consequently propose new ideas to end such a trend while making further profits. Funds distribution should be conducted in the manner prescribed by the directors and depositors of

the bank. Zakat, charities and waqf donations of the bank may be used in the provision of micro-financing services for poor communities. The bank can be used to develop waqf properties. This is usually not very easy since waqf bank and institution are usually charitable organizations. They are essentially set to service the unsecured loans; most of the poor people do not usually have securities needed for the loans in the conventional banks. Conventional banks do not issue loans to waqf banks as they are too much of a risk (Dumith et. al., 2011, pp. 24 -28). The bank also majors in the provision of micro-financing business and other micro-financing activities, which largely run on profit sharing and benevolent lending (*qard hasan*). For this lending, the issued deposits would be distributed among the poor and needy and set for the community welfare. They are generally issued as bank micro-credit activities (Abu Zahrah, 1971, pp. 156-167). The issued loans returns are also re-invested or re-issued to the needy and poor. Waqf microfinancing is usually used to procure cash waqf to facilitate trading with poor communities. A section of its profits would be granted to the needy, and in most cases, this goes to those who are below the poverty cut line (Roodman & Morduch, 2009, pp. 583 - 604).

5. Conclusion

Many are the good interests of beneficiaries in waqf bank including the mismanagement, misuse and misconduct of the waqf managers and administrators in addition to the idea that it makes profitable investment to grow the bank's income. The bank should solicit funds from the public, Islamic corporations, governments, Islamic banks, waqf capital, waqf reserves, zakat ministries and public charities. Waqf bank maintain its *raison d'être* of perpetuity for the poor and needy through provision of free interest yet affordable loans and services and full banking services. Waqf bank should be an independent statutory body, financially based on equity participation such as *mudaraba* or *musharaka*. Waqf capital and waqf reserves should be invested to protect its capital and generate more income. The bank should be Shari'ah- compliant, with its funds' investments be based on participants' equity. Its use of capital of charitable funds should be zakat and charities (*sadaqat*).

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