



WAQF – FUNDAMENTAL PRINCIPLES

1ST Edition

March 2020

Prepared by iWaqf

Introduction to the First Edition

iWaqf is leading the way in enabling individuals and organisations of all types and means to reinstate the practice of setting up and running a Waqf and thus fulfilling a largely overlooked and forgotten Prophetic legacy. By doing so, it is anticipated that, just as much of the growth and stability of the Muslim world over the period of a millennium or more was secured, to a large extent, by means of countless Waqf, set up by ordinary Muslims and non-Muslims, for the benefit of their family and society at large; so too can we now recreate this legacy and re-establish this profoundly just means by which to fund the most beneficial and valuable projects required by society at large and allow individuals to leave a lasting legacy.

This is a task which has never been more needed than today. For despite, the rise of the nation state (which in many ways signalled the end for much of the public Waqf that was present throughout the Muslim world), the welfare state, as well as the flourishing of charities; there remains a significant deficit and funding gap between what is needed and what is being provided for key services, facilities, charities and many niche activities and businesses.

Waqf – Fundamental Principles is a publication meant to summarise the key principles (“the Principles”) to which all Awqaf (plural of Waqf) should adhere to. Given the various differences of opinions between the schools of fiqh (jurisprudence) on the use of Waqf and their limitations, it can be difficult to apply consistent principles when dealing with this matter. This document is meant as a means by which to do so. The Principles are based on the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) standards, a series of standards agreed by leading independent Muslim scholars from around the world. The AAOIFI standards are widely used throughout the world when deciding whether a particular product is Shariah compliant or not.

The Principles are meant as a summary of the key rules and guidelines to which the Waqif (person setting up a Waqf) and the Trustees of a Waqf should always adhere. They are designed to be easy to read, understand and follow. For greater detail, the Waqif and the Trustees should refer to the Governing Document used to establish the Waqf in question. But where none exists or where such a document is either ambiguous or problematic in its application, the Waqif, Trustees and any Mufti/Shariah Board asked to adjudicate on the matter, are encouraged to ensure they apply the Principles in any decision making.

The Principles have been drafted in order to ensure that the Waqf as a vehicle for the investment of capital and the utilisation of income deriving from that capital, is not abused and fulfils the goals envisaged for this important institution. At the same time, if the idea of Waqf is to spread and be adopted not only by Muslims but amongst non-Muslims too, it must remain sufficiently flexible to meet current and emerging challenges. The need to strike this balance has been at the forefront of our considerations when drafting the Principles.

Finally, the Principles are deemed particularly important for jurisdictions where the concept of Waqf, as understood Islamically, is not legally recognised. In such jurisdictions, iWaqf is pioneering an approach which allows individuals and organisations to set up, maintain and allow Waqf to flourish, whilst avoiding the complex and often burdensome legal and tax implications of doing so. This is achieved by the Waqif setting up the Waqf for Islamic purposes only and acknowledging that the legal, beneficial and tax position remains unchanged. By doing so, we envisage that we will be able to

demonstrate to the relevant authorities, the long-term benefit of Waqf to individuals, families and society as a whole and as a result, in time, seek legal recognition of Waqf.

We welcome feedback on any aspect of the Principles and the support and guidance of all who wish to see Waqf once again flourish as we do.

For more information on Waqf, the role of iWaqf and the future we envisage, visit www.iwaqf.net

Rizwan Rashid

CEO - iWaqf

Waqf – Fundamental Principles

(First Edition)

The text of the 1st Edition of Waqf – Fundamental Principles is as follows:

1. Definitions

In these Principles, unless the context otherwise requires, the following words will have the definitions as indicated:

“Governing Document” – the written document setting out the terms by which the Waqf Fund is to be run. In certain circumstances the Waqif may establish a Waqf by word only. In such circumstances, the conditions stipulated in such verbal act are taken to be the terms of the Waqf.

“Income Beneficiaries” – the natural or legal persons or categories of persons chosen by the Waqif in the Governing Document to be eligible to receive a share of any Non-Waqf Capital; or Waqf Income derived from the Waqf Fund.

“Non-Waqf Capital” – capital sums added to the Waqf Fund without the intention of Waqf by the Waqif and which may be used by the Trustees for any purpose deemed in the best interests of the Waqf Fund, including distributions to Income Beneficiaries.

“Personal Representatives” – the Executors & Trustees of the Waqif’s estate on the Waqif’s death, where the Waqif left a Will or the Administrators where there was no Will.

“The Principles” – the entirety of this document, ‘Waqf – Fundamental Principles (1st Edition)’, setting out the key rules and guidelines that should be adhered to by all Waqf Funds.

“Time-Limit” – The time-limit stipulated by the Waqif as the end-point of the Waqf Fund.

“Time-Limited Waqf” – A Waqf established by the Waqif with a Time-Limit.

“Trustees” – the natural or legal persons chosen by the Waqif or through the methods allowed in the Governing Document, to act in a fiduciary capacity in the management of the Waqf Fund.

“Waqif” – the natural or legal person responsible for establishing the Waqf upon assets in their possession.

“Waqf” – literally, to stop. In Islamic law, Waqf is the act of an individual or organisation declaring that they hold certain assets, such that the assets in question are not to be sold, inherited, gifted or otherwise dealt with except to maintain, improve and produce a Waqf Income for chosen Income Beneficiaries.

“Waqf Capital” – the assets representing the original intention of the Waqf by the Waqif and all subsequent assets added to the Waqf Fund with the similar intention of Waqf and subject to the conditions of the Waqf Fund.

“Waqf Fund” – the collection of assets consisting of Waqf Capital, Non-Waqf Capital and Waqf Income, and which have rules and conditions for their maintenance and use, as defined by a Governing Document.

“Waqf Income” – the right to enjoy the use and advantages of the Waqf Capital of the Waqf Fund short of the Waqf Fund’s destruction, waste or depletion.

2. The Waqif

Where the Waqif is a natural person the declaration of Waqf shall be valid so long as the Waqif is adult, sane, having freely entered into the Waqf obligation and not having been legally barred from transacting in the assets in question. Where the Waqif is a legal person the declaration of Waqf shall be valid so long as taken by appropriately authorised and responsible persons and whilst not being legally barred from doing so.

3. The Waqif is the Legislator

- 3.1. The Waqif shall establish a Waqf by means of a Governing Document and declare that they hold certain of their assets on these terms. Thereafter, the Waqif may add additional assets to the Waqf Fund as appropriate. Such procedures should always be evidenced in writing to avoid any confusion or difficulty in ascertaining the wishes of the Waqif. The Waqif should also ensure that such steps, (such as an appropriately drafted Will), have been taken, so as to ensure the Waqf Fund continues after the death of the Waqif according to the terms of the Governing Document.
- 3.2. The rules set out by the Waqif in the Governing Document shall be binding on the Trustees of the Waqf Fund, so long as they are not in contravention to the Shariah or harmful to the interests of the Waqf Fund in general.
- 3.3. The Waqif may amend the terms of the Waqf Fund in writing or through their Will at any time, so long as they have specifically retained the ability to do so in the Governing Document.
- 3.4. The Waqif may, at any time, update their wishes for the utilisation of the Waqf Fund and the Trustees shall take into account any updated wishes accordingly.
- 3.5. The Waqif shall, at all times, adhere to the decision of the Trustees when made in accordance with the Governing Document.
- 3.6. The Waqif must not create a Waqf with the intention of depriving inheritors, avoiding zakat or for any other Islamically impermissible purpose or cause.

4. Benefitting from the Waqf Fund

- 4.1. A Waqf Fund may be utilised by the Waqif, the Waqif’s family, relatives, friends and other individuals or organisations as the Waqif shall choose.
- 4.2. The Waqif shall ensure that classes of Income Beneficiaries are chosen, such that the Trustees shall always be able to identify and benefit those within at least one of the named classes.

- 4.3. The default Income Beneficiaries in the absence of any chosen by the Waqif or where the Waqif's wishes are ambiguous, shall be such charitable cause(s) as is known or thought to be favoured by the Waqif, failing which, as chosen by the Trustees in their absolute discretion.
- 4.4. The fundamental purpose of Waqf is to ensure long-term sustainable provision to society and a means of benefit and guidance to mankind. The long-term nature of Waqf makes it the best means by which to provide for sadaqah jaariyah (continuing charity) on behalf of the Waqif. The Waqif and Trustees shall give due consideration to these ideals when making any decisions.

5. Waqf is permanent

Unless otherwise stated by the Waqif in the Governing Document, the Waqf Fund shall be perpetual. For a Time-Limited Waqf the ownership of the assets of the Waqf Fund shall return to the Waqif (or the inheritors of the Waqif's estate, if the Waqif has died) on the expiry of the Time-Limit.

6. Maintenance of Waqf Capital

- 6.1. The Trustees shall ensure that the Waqf Capital of the Waqf Fund is maintained and not sold or depleted by the gifting or inheritance of the assets to the Income Beneficiaries or others.
- 6.2. The Trustees may spend Non-Waqf Capital as they deem in the best interests of the Waqf Fund.
- 6.3. The maintenance of Waqf Capital shall take priority over the distribution of Income or Non-Waqf Capital to Income Beneficiaries.
- 6.4. Should there not be sufficient Non-Waqf Capital and Income for the proper maintenance of the Waqf Capital, then the Trustees shall seek to obtain assistance for the maintenance in a manner which is Islamically permissible. Failing which, the Trustees will take such steps as are in the best interests of the Waqf Fund by either selling the Waqf Capital in question and purchasing in its place alternative assets of a similar nature which are maintainable, or by transferring the assets of the Waqf Fund to those of another Waqf Fund with similar aims, which is properly able to provide for the maintenance of the Waqf Capital, whilst at all times taking into account the requirements and wishes of the Waqif and the conditions of the Waqf Fund as stated in the Governing Document.

7. Joining to other Waqf Funds

- 7.1. During the Waqif's lifetime, should the Trustees deem it appropriate, and having taken due regard of the Waqif's wishes, the interests of the Waqf Fund as a whole and the interests of the Income Beneficiaries, the Trustees may transfer some or all of the Waqf Fund to another suitably enacted Waqf Fund, provided they receive the Waqif's consent as evidenced in writing, so long as this is possible.
- 7.2. Following the Waqif's death, should the Trustees deem it appropriate, and having taken due regard of the Waqif's wishes, the interests of the Waqf Fund as a whole and the interests of the

Income Beneficiaries, the Trustees may transfer some or all of the Waqf Fund to another suitably enacted Waqf Fund, ensuring that such decision is evidenced in writing.

8. Inheritance

The assets comprising the Waqf Fund whether Waqf Capital, Non-Waqf Capital or Waqf Income shall not be inherited as a result of the death of the Waqif or anyone else. Instead, the Waqf Fund shall continue either indefinitely or until such Time-Limit as stipulated by the Waqif in the Governing Document of a Time-Limited Waqf.

9. Zakat

No zakat is payable on the assets comprising the Waqf Fund, by the Waqif or any other person.

10. Auditing & book-keeping

10.1. The Waqif (and the Waqif's Personal Representatives following the Waqif's death) shall ensure that the assets of the Waqf Fund have been appropriately separated and/or earmarked as Waqf from the Waqif's other personal assets, in order to ensure that there is no mixing or confusion between the two.

10.2. The Trustees (with the assistance of the Waqif or the Waqif's Personal Representatives, where necessary) shall keep a proper record of the Waqf Fund, showing, but not limited to, the current and historical level and value of Waqf Capital and Non-Waqf Capital, the purpose and amount of any expenditure incurred and the Waqf Income receipts, and payments made to Income Beneficiaries, alongside a copy of the Governing Document and any subsequent Letters of Wishes and related documents.

10.3. Such records shall be available for auditing purposes to the Waqif, the Waqif's Personal Representatives and all Trustees in a convenient format.

11. Trustee remuneration

A Trustee acting in a professional capacity is entitled to receive reasonable remuneration out of the Waqf Fund for any services that they provide to or on behalf of the Waqf Fund, provided no condition to the contrary has been set by the Waqif.

12. Decision-making & disagreements

Where the Trustees (including the Waqif who may or may not be one of the Trustees) cannot agree on a particular decision, they should seek to resolve the dispute in accordance with the terms of the Governing Document or failing which seek the opinion of a suitably qualified intermediary or Shariah advisory board.