

The Saudi waqf System Compared with the English Trust Law (Waqf Superintendence as a Model)

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Prepared by: Dr. Abdulaziz Ben Saadoun Abd Al-Moneim

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Waqf: It means that the asset is blocked from taking part in any commercial transaction, while its yields are devoted to charitable purposes. The Saudi legislator did not define the waqf in its singular form, but rather defined it with its various types: public, private and joint waqf. Similar terms for waqf are endowment - charitable trust - foundation. All of these are about donating and providing aid, and are based on properties being invested, so that the return could be spent on what was set up for it. The term charitable trust is the closest meaning to the waqf, and its elements are like the elements of the waqf in general. The Trust Law defines the Trust as: a means of managing such assets as money, investments, land and buildings on behalf of people. A Trust has three elements: Trustor; the person who appoints the Trust's property and determines how it will be used. The properties of the waqf are recorded in the document. Trustee; the person who manages the Trust. Beneficiary; the person who benefits from the Trust. Among the advantages of the Trust are: exemption from tax; acquiring legal force to register it with the Commission; high legal protection; ease of dismissing the negligent trustee or traitor through a decision of the board of trustees, without referring to the judiciary; having grants for the Trust; having financial support from the government; and expansion of charitable work. In Britain, there are 167,443 charitable institutions, and their revenues are seventy-four billion, four hundred and £twenty-nine million. This statistic was on September 1, 2017. The Trust is easy to be approved. The trustor can be the trustee of the Trust during his lifetime, and he cannot be the sole beneficiary of the trust. A trust can be created during life, and it is called a Trust during life, or it can be established after death, and it is called a custodial Trust.

The law also talked about waqf superintendence, defining it to be a legally established right for every waqf, which is sponsored and assumed by a hand that works to keep it what

is appropriate is to develop and fulfill its intended purpose, according to the conditions of the waqf that are legally recognized. As for superintendence in the Trust, the work of the trustee is like the work of the superintendent, and among the differences between them are: The authority of the superintendent is narrow, while the authority of the trustee is broad. The responsibility of the superintendent is limited to negligence. As for the trustee, negligence is included or not, unless this is by force majeure. The superintendent deserves a reward, while the trustee may not have this. The superintendent is dismissed by virtue of the judge's judgment, or by the waqif if he the latter is given this right, but the trustee is dismissed by a court ruling or a decision by the trustees. As for the expression of superintendence: there is no specific expression given to it in the Sharia, so what is indicated by it is acceptable. In a Trust, the trustor is the one who determines how the expression will be, and it is written in the document. The law sets a model for the document that must be adhered to.

Then the Trust Law talked about the types of superintendence over the waqf, which vary according to various considerations; including: principal or sub superintendence; relative general or relative special superintendence; absolute general or private absolute superintendence; natural or legal superintendence; individual or group superintendence; and supervisory or non-supervisory superintendence. As for the types of trust in a Trust, the Trust Law did not mention the types of trust. It indicated the difference between the elements of superintendence in Islamic jurisprudence and the system, which are four: the waqif; superintendent; expression; and the waqf asset. The elements of trust in the Trust are three: the trustor; trustees; and beneficiaries. The law compared them according to the following:

1. The basic principle in the waqf is that it shall be handed down in courts, while the Trust shall be registered in the Charity Commission to be accepted and have its legal form.

2. The waqf instrument does not have a specific form. As for the Trust, the benefactor shall fill a specific form, as one of the conditions for accepting its registration.

3. In case that the superintendent fails, then the beneficiary or the General Authority of Awqaf files a lawsuit, and then the judge decides to keep the superintendent, dismiss him, or fine him. As for the trust, the Charity Commission is the one who considers the trustees' failure, and it is entitled to dismiss them.

4. The superintendent is responsible for issues related to the waqf interest. In case that the beneficiaries believe that this matter does not serve the interest for the waqf, he shall submit it to the judge. As for the trust, the trustees, upon making any decision, shall

justify the reason for taking it in the meeting minutes, with their signature on it.

5. The pillars of superintendence of the waqf are four, while in the trust they are three, because they insert the waqf asset implicitly.

Then it talked about the rules of the superintendence in jurisprudence and Law, since the superintendent is either a normal or legal person. The conditions of the normal superintendent are six: to be Muslim; to be sane; to be adult; to be trustee; to be just; and to be efficient. As for the condition of the superintendent with the legal personality, it is to be legally recognized. The trustee controls in a Trust are five: age; legal capacity, competency, and not to be dismissed from guardianship of minors. The trustee shall have no actions contrary to the interest of the Trust. Then it compared both according to the following:

1. The superintendent of the waqf shall be: Sane, adult, trustee, just and able to dispose. This is the same in a Trust.

2. The superintendent shall be Muslim. This is not required in the trust, since the origin of the trust is a non-Muslim country.

Then it talked about the expiration of the superintendence in jurisprudence and Law. In co-superintendence, the Shariah and the regulator did not specify a number for the superintendents, rather they made it up to the waqif. In terms of the term of appointment for superintendents, the Shariah and the regulator did not specify a term for appointing the superintendent, rather they left that matter to the waqif or the founder. As for the reasons for the end of the superintendents' work, it determined whether the superintendent wants to leave the superintendence due to health conditions or otherwise; in case that the waqif and the superintendent agree to set a term for the superintendence; in case of the force majeure; the impossibility of the superintendent to bear his job at the superintendence; In case that the waqf asset has been closed; in case that the superintendent died; and in case that the superintendent falls sick with a disease that hinders him from the superintendence. As for the reasons for the superintendent dismissal; it determined whether the waqif stipulated the dismissal of the superintendent with or without cause. in case that the judge finds a reason that requires the superintendent to be dismissed. in case of debauchery, betrayal, total disability, interest, the death of the waqif who appointed him, insanity, failure to fulfill the waqif conditions, or embracing (Takfir) expiatory methodology.

As for the trust, the trust document determines the term of appointment, the mechanism for dismissal, etc., and in case it is not mentioned in the document, the trust institution shall comply with the relevant legal provisions. In the co-superintendence; the Trust does

not accept a single trustee. The trustees' term of appointment has only two conditions: The first condition is that the term of appointment is not mentioned in the document. The second condition is that the term is not specified, so they will continue until death, or until something happens raising their termination or dismissal. The reasons for termination or dismissal of the trustees are as follows: The Trust does not differentiate between cases of termination and dismissal, and terminates the trustee if he completes the term specified. In case that he submitted an exemption request. The reasons for dismissal include the case that the trustee is unable to work, in case a court ruling issued his dismissal, in case that the trustees agreed to dismiss him, and the trustor stipulated in the document that they are entitled to dismiss him. Then, it compared them in terms of the term of appointment, termination or dismissal, and indicated that the reasons for termination and dismissal are agreed in their entirety. However, the trust allowed the trustees to dismiss the trustee for an acceptable reason, and to make it - also - a prerogative of the charity commission. As for the superintendent, only the judge or the waqif are entitled to dismiss him, if stipulated by the waqif.

Consequently, it talked about the method the Superintendence board and the relevant regulations operate, and the method the Trust Council operates, and compared them. It also talked about the formal qualifications for selecting and evaluating the superintendence board members, their rewards and incentives, the condition of the waqif in the superintendence expression and methods of selecting the superintendents, governance rules in the Superintendence board, worker wages in the Superintendence board and the executive management, the Superintendence board functions and duties of controlling operating and maintenance costs for waqf investment, and comparing waqf and Trust in all that.