

## **Share Waqf (Corporate Waqf) in joint stock companies “Doctrinal Study”**

### **A publication issued by Saeef Foundation for the Development of Waqfs (10)**

**Prepared By: Mr. Muhammed bin Fahd Al-Ahmed**

The origin of the book is: A Research presented to complete the requirements for obtaining Master Degree in comparative jurisprudence. It is presented to the Higher Institute of Justice - Imam Mohammed Bin Saud Islamic University

This modern research tackles Fiqh rulings on Waqf shares in joint stock companies as being one of investment forms that attract capitals. Lots of people invest in funding joint-stock companies or buying shares due to the quality of investment and the non-complicated purchase and sale processes.

The research comprises of: the introduction and three chapters. The introduction contains a definition of Waqf in terms of linguistics and Sharia, legality, and admissibility of Waqf; then it defines shares in joint-stock companies, the purpose of it, the characteristics of this type of companies, and the legality of investing in those shares. The introduction ends with a definition of Share Waqf as it is a compound word.

The author has dedicated Chapter One of this book to view references from Sharia regarding Share Waqf and the relevant Fiqh aspects. For instance, Waqf on undivided property that is subject or not subject to division; rulings on property, endowed movables, and its substitution in case they are no longer bring in profit or not, but there might be a benefit of this. And what are the principles of Fiqh in event of selling or substituting Waqf?

Then the author starts discussing the legal characterization of Share Waqf. Are they considered as Waqf of undivided property or movable assets? Or it is categorized under Cash Waqf? The book researches Fiqh rulings and adduces evidences for each type of waqf and relevant discussions. According to Fiqh scholars, Share Waqf is classified under waqf of (undivided property/ movable assets). It also mentions this type of waqf in view of

modern Fiqh scholars; their agreement on the permissibility of Share Waqf regardless of their dispute on its classification. However, their disagreement does not affect its permissibility. All scientific references with the name of scholars have been cited.

Then the book moves to the next subject which is the conditions of Share Waqf making them as follows:

1. The shares shall be legally approved. It is not permissible to endow illegal shares or that invested in unlawful activities as well as the shares of mixed joint stock companies that recognized as illegal.

2. The number of shares shall be clearly determined as example saying: I endowed ten of my own shares in 'x' company. or: I have endowed half of my shares in so and so, or I have endowed the shares I own in X company.

3. The endowed shares shall belong to the endower or he is authorized to dispose of them. He is not entitled to endow the shares of minors or others without authorization.

4. The shares shall be valid for being endowed.

The author has stated the catch-all regulation for the endowed conditions applicable to shares and other, which is: What is valid to be sold is valid to be endowed.

The author has tackled the shareholder founder conditions, which are:

1. The endower shall have a legal capacity; the endowment of the insane or the child are invalid.

2. The endower shall be legally free.

3. The shall not be interdicted, since the Waqf is a donation; the interdicted is not entitled to donate for harming himself and his creditors.

4. The endower shall be designated, since the satisfaction condition is breached in case of coercion.

The author has completed the subject of Share Waqf conditions by listing the conditions of the beneficiary, which are:

1. The beneficiary shall be a charity. The author has discussed the ruling of the Waqf on the areas in which the meaning of

righteousness and good deed is not apparent, but rather on a permissible side, etc. He prevails over its permissibility.

2. The beneficiary shall be an endless area.

3. The Waqf shall not goes back to the endower; the author prevails over the validity of Self Waqf (endowment).

As for Chapter Two, the author has dedicated it to indicate the rulings related to the endowed shares, endowing which leads to Ten results:

1. Share Waqf for the purpose of investment. Investment means: Possessing an asset to get a return of it. This is the main purpose of Waqf in Islam. The proceeds of the endowed shares and their profits are spent in the Waqf spend channels. Then, he stated the criteria of that.

2. Share Waqf for the purpose of Speculation. Speculation means purchasing shares with the intention to resell them when their price increases and obtaining the price difference as a profit on the purchase capital. This objective contradicts the Waqf purpose which means that the asset is blocked from taking part in any commercial transaction, while its yields are devoted to charitable purposes. The author has indicated that the concept of Share Waqf for the purpose of speculation does not come into existence except in the form of: Cash Waqf through the method of using the endowed funds in the stock market and investing it in speculation. The author tended not to enter the Waqf in the so-called speculation, stating his viewpoint on that.

3. Trading of endowed shares, which means: selling and purchasing shares in the stock market.

There are five cases for trading of endowed shares, as follows:

A. With the intention to enter into partnership; this is permissible because the shares have not been endowed yet.

B. With the intention of short market speculation; the author is likely to prevent it.

C. With the intention of transferring the Waqf from its current form to another; these refer to the rulings on selling and replacing the Waqf. In the previous chapter, the author has previously stated that

D. the Waqf may be sold and replaced when its benefits are disrupted, and when it does not, but there is a preponderant interest in that, after applying the terms of sale and exchange.

E. Due to the loss of the company and its being close to near liquidation; this is due to the ruling on selling and replacement of the waqf and selling it when its benefits are no longer valid; this is permissible to preserve and maintain the waqf.

F. With the intention of benefiting from the increase in the market value of the stock, with the expectation of a decline in the market value - without reaching or below the nominal value - as a result of inflation in market prices, or as a result of some direct or indirect effects. In this case, the author prevailed over the impermissibility of trading endowed shares to preserve the legal meaning of suspending the endowed asset, and because that involves risking the waqf funds and speculating with it, although the existence of Waqf in such a situation does not harm it because the proceeds of these shares comes in the annual profit cycle.

4. Growth of endowed shares; this varies according to its form, its conditions in the jurists' views are explained as follows:

A. If it is a continuous increase, then it is considered a part of the waqf itself, such as the endowed camel ghee; as well as reforms and additions to the Waqf asset.

B. If it is separated and generated from the Waqf itself, then it is considered a part of the Waqf itself, like the endowed animal child, unless this growth is intended to benefit from it, then this is considered as the waqf proceeds, which are owed to the bodies related to Waqf, such as: The trees' fruit and the camel milk.

C. If the increase is not generated from the origin; like the house rent, then this is considered as the Waqf proceeds, which are owed to the beneficiaries' authorities.

Then the author explained the ruling of adding the waqf growth and its proceeds - owed for the beneficiaries to be as apart of waqf itself for its development and expansion. He detailed that and explained its conditions.

The author also explained the rulings on growth related to shares, according to the following:

A. Bonus shares, and he explained that they are in fact a division of shares, and not a distribution of free shares, as they are considered part of the waqf itself.

B. The profits distributed on the shares are considered from the waqf profits, which are due to the beneficiaries.

C. The increase in market value of the share is considered part of the waqf itself, which is a continuous growth.

5. Changing the activity of the Share Waqf into prohibited or mixed shares, which

have two forms:

A. Converting them into forbidden shares, and this makes the shares under the rule of a suspended waqf. Rather, these shares shall be taken out immediately and replaced with legitimate shares.

B. The endowed shares are transformed into mixed shares. These are due to the condition of the endower and his view or to the Superintendence of Waqf. If it is more likely to be prohibited, these endowed shares shall be replaced by permissible and legitimate shares.

6. Transferring Share Waqf to another Waqf asset other than securities or shares in another company; this has two cases:

A. If the company in which the endowed shares are lost or in debt; so, it cannot make proceeds in the short or medium term, or there has been a collapse of the financial market, and it is feared that it will soon be liquidated at a greater loss, which may be transferred because it's a ruined and broken waqf.

B. If the endowed shares with low proceeds compared to others, and the superintendent believes that other shares or other non-financial activities such as real estate and the like are more profitable and more active. This is due to the issue of the ruling on selling the endowment and replacing it when its benefits are not disrupted, but because of the emergence of a preponderant interest in that. The researcher has argued that this might be possible on his own conditions.

The author has discussed the issue of spending the value of the sold endowed waqf in different kind, for example, if the superintendent uses the value of the sold endowed waqf to buy a real estate. He has indicated that the majority sees it as forbidden, and being permissible is in the view of Hanbali school of thought. As for the issue of changing its appearance while maintaining its origin and gender, the majority sees it as permissible.

7. Endowed Shares upon liquidation of the company. Liquidation means: Terminating the company's operations, inventory of its assets, fulfillment of its rights and payment of its debts, as a prelude to the sharing and distribution of net funds by the partners. He has indicated that it depends on the waqf suspending and ruin, so that the waqf is replaced by another.

8. Mortgage of endowed shares, because the endowment fund is intended to be suspended and perpetuated, and the mortgage is a most likely place for selling the mortgaged asset, and the waqf is not permissible to sell, so it is not permissible to mortgage it at that time.

9. Zakat on endowed shares. The researcher mentioned the jurisprudential rules on this, then concluded the following:

A. There is no Zakat on endowed shares itself.

B. if Endowed Shares profits are for public bodies, then Zakat is not permissible for them because the condition of property stability is not met. If it is for certain people, then when they possess the yield and enter it in their possession, then it is recommended to pay Zakat after completing the other Zakat conditions since it became of their property, so it has the rules of the rest of their funds.

10. Investing the waqf by establishing a joint stock endowment company. He explained the permissibility of establishing joint-stock investment companies and making them Waqf for the sake of Allah, indicating their significance, and the distinction of that from other Waqf properties.

In Chapter Three, the author has explained some of the applications that indicated the Share Waqf after the conditions in these shares are conducted.