

# Research on Micro Takaful for B40 Shariah Compliant Micro Takaful for B40 Income Earner in Malaysia

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# INTRODUCTION

# INTRODUCTION

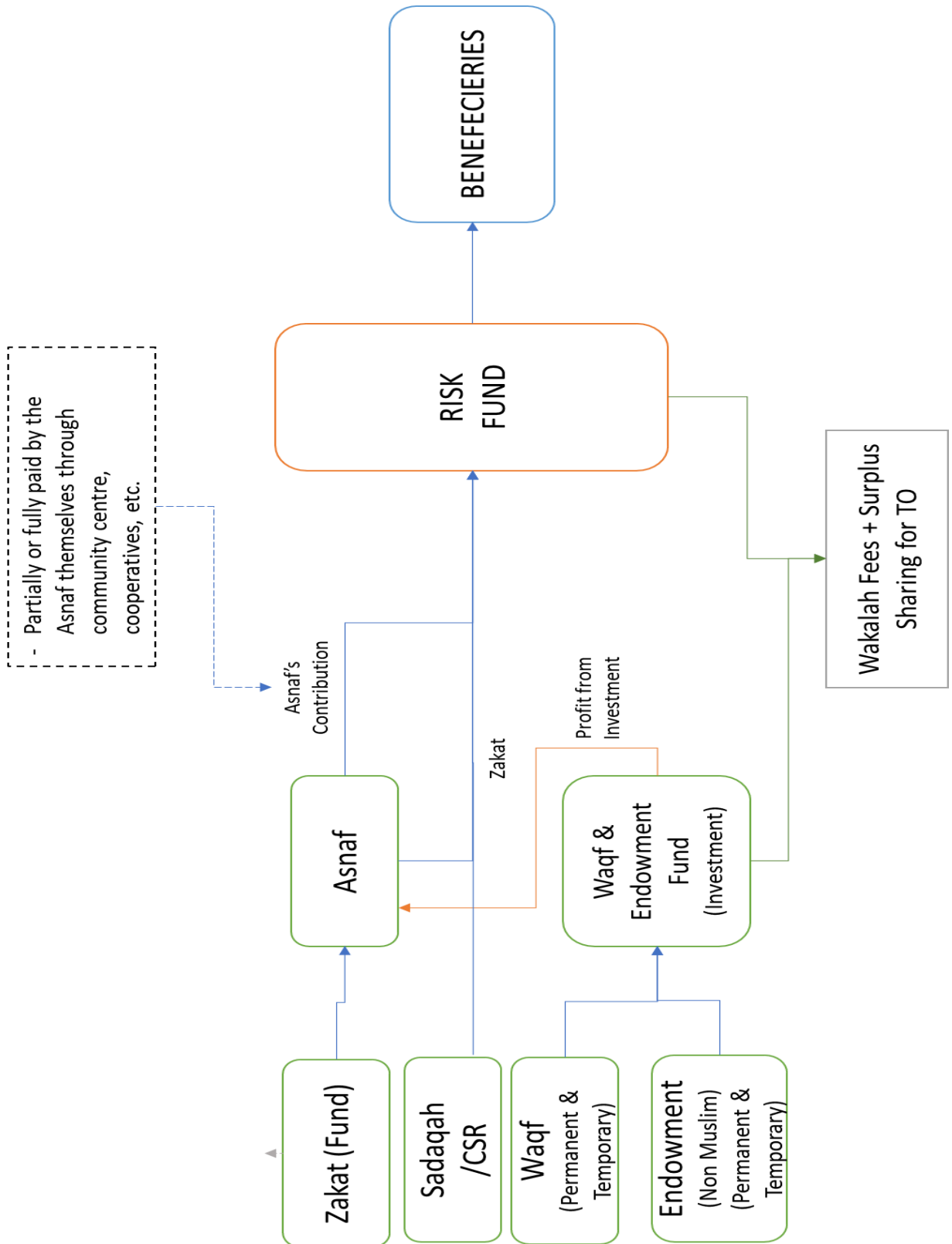
This research presents a hybrid model and highlighted issue to suit the B40 category in possessing a takaful protection for their own benefits. The coverage of health and wealth are needed, however, the main problem identified is their ability to consistently contribute towards the takaful protection. The hybrid model aims at exploring the possibility of using some possible sources such as zakat and waqf to cover either fully or partially the contributions of the participants from the B40 category. The model takes into accounts the fact that FWD has to deal with Pusat Zakat and the Religious Councils for the proposed model.

As for zakat, since it is regulated in Malaysia, the main source of zakat is Pusat Zakat (PPZ). In delineating the model, an overview of B40 category in Malaysia will be given. The model also addresses a few Shariah issues, namely the eligibility of the B40 category for zakat in view of three things: The Poverty Line Income (PLI), Poverty Multidimensional Index (PMI) and minimum wages as applied in Malaysia. The model is meant to conform to both PPZ terms and conditions for the eligibility of zakat as well as the government's special plans to ensure takaful/insurance coverage to all classes of society. A highlight about surrender value and surplus distribution is given at the end of this part.

As for the *Waqf*, the return on investment would be used to either cover directly the contributions of the B40 category or channel the returns directly to the risk fund. In so doing, the Shariah compliance of temporary and permanent cash *Waqf* would be established.

# FWD B40 MICRO TAKAFUL HYBRID MODEL

# FWD B40 MICRO TAKAFUL HYBRID MODEL



The background of the slide is a composite image. On the left, there is a close-up, slightly blurred view of a laptop keyboard, showing keys like 'U', 'I', 'O', 'P', 'J', 'K', 'L', 'N', 'M', and function keys. On the right, there is a smartphone screen displaying a calendar application with various dates and events listed. The entire background is overlaid with a semi-transparent orange rectangle that serves as a backdrop for the title text.

# SOURCES OF CONTRIBUTIONS

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The hybrid model has included various sources of contribution mainly from zakat and waqf. Further elaboration and explanation on how the two sources play its role in the model to ensure the B40 category are able to possess takaful protection and consistently afford to contribute.

It is important to highlight here that the proposed sources are independent from each other. In other words, one source can be applied without having to rely on the existence of another source. Therefore, it would be the best-case scenario if all sources could be implemented in one go. Otherwise, the model can commence with any single source or a combination of a few sources that are ready to be implemented.

## i. Zakat

Are B40s eligible to receive zakat?

Muslim jurists have unanimously agreed that zakat is not distributable to a rich person. *Ibn Qudamah* confirmed the consensus of scholars that zakat should only be distributed to the eight (8) categories mentioned in *surah al-Tawbah*:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ تَفْرِضُهُ مَنِ  
اللَّهُ وَاللَّهُ عَلِيمٌ حَكِيمٌ

*Alms are for the poor and the needy and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to truth); for those in bondage and in debt; in the cause of God; and for the wayfarer: (thus is it) ordained by God and God is full of knowledge and wisdom (al-Tawbah: 60).*

However, they have disagreed as to the base line of richness preventing a person to receive zakat. There are three main opinions about this issue:

- a. *First opinion*: The base line of richness is determined by **sufficiency**, even if the person has owned the minimum amount (*nisab*). This is the view of the *Malikis*, *Shafi's* and an opinion in the *Hanbali* school of jurisprudence. Imam Malik adopted a general criterion whereby he reiterated that there is no limit to identify a rich person and that the matter is entirely based on *Ijtihad* (personal legal reasoning).



## SOURCES OF CONTRIBUTIONS

Based on the discussion on B40 category above, the criterion of “sufficiency” is very much in line with the “need” criterion adopted by the Malaysian Government. Besides, in matters of public benefit, the ruler can resort to customary practices (*‘urf*) and general interest (*maslahah ‘ammah*) to act over people. The Islamic legal maxim reads:

التصرف على الرعية منوط بالمصلحة

“Acts of those with authority over people must take into account the interests of people.

The “need” criterion is identified by Muslim jurists as the legal cause (*illah*) among all the categories eligible for zakat except the collectors of zakat. Thus, the determination of the threshold adopts the same approach of determining a rich person, which should be left to Ijtihad to decide as Imam Malik held.

Since the criterion of “sufficiency” set by the jurists and the criterion of “need” set by the Malaysian government are the same, it can be deduced that the B40 category are eligible for zakat.

- b. *Second opinion*: The base line of richness is the ***nisab*** itself. Thus, whoever owns the *nisab* should be excluded from zakat recipients. This is the view of the Hanafis and one opinion in the Maliki school of Jurisprudence. *Imam al-Qurtubi* mentioned that *Abu Hanifah* stipulated two hundred (200) Dirham as the baseline of richness, which is the *nisab*.

In Malaysia, the 2020 *nisab* is **RM15,762.00**, which is far above the B40 category RM4,360 threshold. Based on this, the B40 category are eligible to zakat.

- c. *Third opinion*: whoever owns fifty (50) Dirham or its equivalent from Gold is not eligible for zakat even if he is needy (*muhtaj*), and this is the view of the *Hanbalis*. According to this view, only 50 Dirhams should be distributed to them unless he is indebted.

50 Dirhams in Malaysia is equivalent to 148.75 gram of silver, which cost RM367.41 as of February 2020. (1 gram of silver= RM2.47 as of Feb 2020).

## SOURCES OF CONTRIBUTIONS

Based on the above, the B40 maybe in possession of this amount, but it is far below the poverty line of household income, which is RM980. Although the approach that this research has adopted is not exclusively based on the poverty line, but it is clearly understood that those possessing only 367.41 are far below any threshold available. Thus, those owing only 50 Dirhams from the B40 category are eligible for zakat.

### The Status of Takaful Contribution Utilising Zakat Monies

The financial benefit in terms of financial compensation is realized upon any trigger events such as permanent disability, occurrence of critical illness or upon maturity as per agreed terms and conditions. Therefore, in case there is no occurrence of these events, the asnaf as takaful participants may or may not receive financial benefit, depending on what types of takaful plan being subscribed.

Since the zakat monies are channelled directly to the Takaful Fund managed by the Takaful Operator (TO), instead of being distributed to the asnaf, the flow of zakat monies is seen to bypass the asnaf. This kind of arrangement would trigger Shariah issue on the status of monies, whether the takaful contribution paid is by using the zakat monies or asnaf monies.

If the ownership of the money is not fully transferred to the asnaf prior to the payment of takaful contribution, then the monies remains status its quo i.e. zakat monies.

It is acknowledged that *zakat* monies shall be distributed to the beneficiaries, by which any failure to observe this ruling is against the Shariah principle. This matter has been carefully taken care in developing the structure.

The proposed solution to overcome the above issue is as follows: The *zakat* monies are not channelled straightaway to the Takaful Fund. In fact, the status *zakat* monies have been transformed into the *asnaf's* monies, prior to subsequent payment of the takaful contribution. In other words, the ownership of that monies has been firstly transferred from the *zakat* fund held by *bayt al-mal* to the *asnaf*. Though the contribution to the Takaful Fund is originated from the *zakat* fund, the ownership of the monies prior to the payment of the contribution has changed and they no longer deemed as *zakat* monies.

## SOURCES OF CONTRIBUTIONS

The above Shariah concern on the issue of *asnaf's* ownership on *zakat* monies is resolved by applying *wakalah* (agency) contract. Under the *wakalah*, the *asnaf* who agree to subscribe to the takaful scheme shall appoint the Takaful Operator (TO) or Zakat Operator (ZO) as their *wakil* (agent) to receive *zakat* monies on their behalf. The appointment of *wakil* can be made through appropriate documentation or record. The *asnaf* shall give upfront consent to the *wakil* to receive *zakat* monies that they may obtain in future from the *bait al-mal*. A dedicated deposit account or trust account in favour of the *asnaf* and managed by the *wakil* shall be established to receive monies from the *bait al-mal*. With this upfront consent, upon receipt of the *zakat* monies, the ownership of that monies is deemed to be transferred to the *asnaf*.

### Wakalah in Receiving Zakat Money

The salient feature of *wakalah* is that when a *wakil* enters into a transaction on behalf of the *muwakkil* (principal) i.e. the *asnaf*, the rights and responsibilities arising from the transaction shall be assumed by the *muwakkil*. Hence, in this case, once the *zakat* monies are received by the *wakil*, the rights and liabilities of the monies are transferred to the *muwakkil*. This is stated by the Policy Document of *Wakalah* Bank Negara Malaysia as follows:

*S 14.1 Where the agent enters into a transaction with a third party and discloses that he is acting on behalf of the principal –*

- a) the rights and responsibilities arising from that transaction (huquq al-`aqd) must be assumed by the principal; and*
- b) any intended effect of the transaction (hukm al-`aqd) entered into by the agent pursuant to the authorization shall be binding on the principal.*

In order to ensure the legitimacy of the takaful contribution, the *wakil* shall also obtain upfront consent and authorization from the *asnaf* to channel their monies as takaful contribution to Takaful Fund. In brief, the TO or ZO as *wakil* on behalf of the *asnaf* shall perform the following:

- 1) to receive *zakat* monies from *bait al-mal*;
- 2) to make takaful contribution to the Takaful Fund.

## SOURCES OF CONTRIBUTIONS

On another note, it may also be argued that the possession on that monies are still questionable since the *asnaf* do not have physical possession of the monies. This argument is not relevant since the *asnaf* through the *wakil* has taken possession of the *zakat* monies. It is important to note that it is not necessary that the *zakat* monies shall be physically received and possessed by the *asnaf*. Shariah acknowledges the concept of constructive possession (*qabd hukmi*) i.e. presumptive possession based on the right of the owner towards the asset. The AAOIFI (2010) in its Shariah Standard No.18 on Possession (*Qabd*) (3/3/3) states that:

ويتم القبض الحكمي في المنقول المعين والمنقول الموصوف في الذمة – بعد الطرق المتعارف عليها للتعين - بالتخلية بينه وبين تعيينه بإحد المستحق على وجه يتمكن به من تسلمه من غير مانع

*Constructive possession, in ascertained movables as well as in those established as a liability by description, takes place -after their ascertainment by means of one of the methods known for their ascertainment- by relinquishing (releasing) the thing for the person entitled to it enabling him to deliver it without any obstacle*

Though the *asnaf* do not hold the monies, the possession is constructively established once the monies deposited into the trust account. The possession takes place whenever the monies have been released (*takhliyyah*) to the *asnaf*, the *wakil* has full access to the trust account and the owners have assumed the ownership risk. This is in line with the AAOIFI (2010) in its Shariah standard no. No.18 on Possession (*Qabd*) (5/5/3) that regards a constructive possession is established upon depositing monies into an account as follows:

يعد من القبض الحكمي إيداع شخص مبلغا من المال في الحساب المصرفي للدائن بطلبه أو رضاه، سواء تم نقدا أم بحوالة مصرفية أم بشيك مضمون السداد من البنك المسحوب عليه، وتبرأ به ذمة المودع إذا كان مدينا بذلك المبلغ.

A deposit by a person of an amount in a bank account maintained for a debtor, upon his demand or with his consent, is deemed constructive possession irrespective of the deposit being by way of cash, by endorsement or by cheque drawn upon a bank with which an account is maintained, and the depositor is absolved of liability when he is indebted to the extent of such amount.

## SOURCES OF CONTRIBUTIONS

The paper also suggests written records or documentation to be issued as evidence that the *asnaf's* ownership monies are established, and the monies are constructively possessed. The evidence can be in the form of certificate, record or any acceptable documentation that can satisfy the ownership and constructive possession have taken place.

### ii. Waqf

Literally, the term *Waqf* (plural *awqāf*) and *ḥabs* (plural *aḥbās*), are *maṣdar* (verbal nouns, infinitives, in Arabic) and they both mean 'to stop', to prevent, to restrain for example *al-ḥabs wa al-man'*. Although the two terms, *Waqf* and *ḥabs*, carry the same meaning, different countries prefer different customary usage. For example, the term *Waqf* is used in the Middle East and Asia, while the term *ḥabs* is more commonly used in West Africa. (Mohsin, 2009 with alteration).

Legally, *Waqf* is defined as a gift of a corporeal property ('*ain*) for the benefit of either: the donor's family or someone else or something, **in perpetuity or temporarily**, as a charity promised and executed normally during the lifetime of the donor, which is not capable of transfer, gift, and transmission thereafter.

#### Permanent and temporary waqf

There are two possible types of *waqf* which are (i) perpetual and (ii) temporal. In temporary *Waqf*, adequate attention must also be given to the importance of temporality. In this regard, we note that all jurists, with no exception, approve the temporality of *Waqf* if it comes from the nature of the *Waqf* asset, for example the waqf of trees, horses and books etc. is accepted even thou naturally these assets will be no longer in existence in the future They did not consider this *Waqf* as non-perpetual on the claim that this is a *Waqf* for the lifetime of the asset itself. (Kahf, 2009)

There are two views regarding the temporary *Waqf*:

## SOURCES OF CONTRIBUTIONS

**First view:** *Ḥanafī*, *Shāfi‘ī* and *Ḥanbalī* schools of law are of the view that perpetuity is a condition for *Waqf* and a condition to make *Waqf* temporary make it void.

إِنَّ الْوَقْفَ إِزَالَةُ الْمَلِكِ لَا إِلَى حَدٍّ فَلَا يُحْتَمَلُ التَّوَقُّيْتُ كَالْإِعْتَاقِ، وَجَعَلَ الدَّارَ مَسْجِدًا.  
(الصنعاني، بدائع الصنائع، 14/144)

*Waqf* is defined as renunciation of ownership without restrictions, therefore it is not to constrain to a specific period such as a freed slave or making a house [temporarily] into a mosque.

**Second view:** *Mālikī* School is the only group of jurists who explicitly accept temporality in *Waqf* by virtue of the will of the founder. *Mālikīs*, however, do not accept temporality in a *Waqf* for a mosque and they say that even if a *wāqif* (founder) decreed that his/her *Waqf* for a mosque is temporal, the *Waqf* is considered perpetual and the temporality condition is nullified. It may be interesting to note that the *Mālikīs*, who rejected temporality in mosque's *Waqf*, accepted it if the founder is a lessee of a structure and he/she made his/her usufruct, owned by virtue of the lease contract into *Waqf* as a mosque.

However, it must be noted here that temporality in a *waqf* by a lessee is caused by the nature of the property not by the will of the founder. (Kahf, 1999). Temporal *waqf* is allowed by *Imām Aby Yūsuf* and *Mālikīs* and is recognized by the Egyptian law of *Waqf*.

*Ḥanbalī* in one view and *Imām Abu Yūsuf* recognized temporary *Waqf* and refused to accept its revocation by the donor. (Kahf, 1999).

Temporary *Waqf* is not permitted by the *Ḥanafī*, *Mālikī* and *Shāfi‘ī* school of laws. However, *Imām Abū Yūsuf* and *Mālikī* jurists, the practice of the later *Ḥanafī* scholars, *Ibn Taymiyyah* (*Ḥanbalī*), *Majma‘ al-Fiqh* and many contemporary scholars allow temporary *waqf*. This is in addition to the enactments of: Sudan, Egypt, Iraq, Syria, Iran, Turkey, India, Pakistan, Malaysia in some states (Selangor and Johor that include cash *Waqf* and contemporary *Waqf*), Indonesia, and Singapore.

## SOURCES OF CONTRIBUTIONS

Classical Statements in favour of Temporary *Waqf* are as follows:

قال الدسوقي: "ولا يشترط في صحة الوقف التأييد" (مجلة مجمع الفقه الإسلامي، 13/516)

*Al-Dusūkī Said: Waqf does not require perpetuity.*

قال أبو العباس ابن سريج: "يجوز الوقف المؤقت، لأنه لما جاز له أن يتقرب بكل ماله وبيعضه جاز له أن يتقرب به في كل الزمان وفي بعضه" (الماوردي، الحاوي، 7/521)

*Abū Al-‘Abbās Ibn Surayj said: Temporary Waqf is allowed, since it is allowed for him to give his wealth in whole or part, he should be allowed to make charity on perpetual or temporary basis.*

وقال الماوردي: "أجاز مالك أن يقف على أنه إن احتاج إليه باعه أو رجع فيه أو أخذ غلته. لقول الرسول صلى الله عليه وسلم: ((المسلمون عند شروطهم)) ولما روي عن علي رضي الله عنه في وقفه" (مجلة المجمع الفقه الإسلامي، 13/516)

*Al-Māwardī stated that Mālik allowed to make Waqf on the condition that if he needs it he is allowed to sell it or reclaim it back or benefit from its harvest based on the statement of the Prophet (pbuh) that says: (Muslims are bound by their conditions) and based on the narration on ‘Alī (May Allah Be Pleased with him) with regards to his waqf.*

وقال السرخسي: "... وَعِنْدَ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ يَجُوزُ الْوَقْفُ مُوقَّتًا وَمُؤَبَّدًا ; لِأَنَّ فِي هَذَا تَمْلِيكَ الْمَنَافِعِ، وَقَدْ جَازَ مُؤَبَّدًا، فَلَا يُجُوزُ مُوقَّتًا أَوْلَى. أَلَا تَرَى أَنَّ الْإِجَارَةَ تَجُوزُ مُوقَّتَةً وَلَا تَجُوزُ مُؤَبَّدَةً، ثُمَّ النَّأْيُ لَمَّا لَمْ يُبْطَلِ الْوَقْفُ، فَالْتَّوَقُّيْتُ أَوْلَى أَلَّا يُبْطَلَهَا"

*Al-Sarakhsī said: It is reported from Abū Yūsuf (may Allah have mercy on him) saying that Waqf can be donated on either temporary or perpetual basis because it is an ownership transfer of usufructs. Since it is allowed on a perpetual basis, it is, a fortiori, allowable on a temporary basis. Do you not see that lease is permissible on a temporary basis and it is not permissible on a perpetual basis? Moreover, since perpetuity does not invalidate the Waqf, temporary transfer of ownership would, a fortiori, also not invalidate it.*

## SOURCES OF CONTRIBUTIONS

AAOIFI standard No. 33, 3/1/4 on *Waqf* stated that in principle *Waqf* should be eternal. Nevertheless, temporary *Waqf* is also permissible when the donor desires to get back his property after a specific period.

"الأصل أن يكون الوقف مؤبداً ويجوز أن يكون مؤقتاً لمدة إذا نص الواقف على توقيته بحيث يرجع الموقوف بعدها إلى المالك."

In Indonesia according to Act No: 41/2004: "A *Wāqif* may legally act to separate/donate his belongings, to be benefited forever or for some period according to the need for worship and/or prosperity Islamically"

The Article 12 (3) of the act states that the movable *waqf* may be in the form of money, precious metal, Capital Certificate, vehicle, intellectual right, rental rights and other moveable assets which comply to the Islamic Teaching"

Perpetuity of the subject matter is not expressed in legal texts and is not held by consensus. It has restrictive effects on the development of *Waqf*, therefore, perpetuity should not be the core characteristic of *Waqf*. There is no reason for blocking its validity as *waqf* as long as it benefits the institution of *waqf* and *society*.

The prohibition of temporal *Waqf* could be considered as refusing the wishes of the founder of a temporary *Waqf*. Charity and 'ibādah [act of worship] will be achieved with temporary *Waqf* as it will have two benefits: the benefit of usufruct during this temporary period and the benefit to the *wāqif* as he may need his property in the future and above all this will encourage more people to do *Waqf* and support charitable organisations.



# SOURCES OF CONTRIBUTIONS

## Waqf and Endowment Fund

In order to ensure that the principal of waqf remains intact, it is further proposed for a “Waqf and Endowment Fund” to be established. The TO will act as *wakil* to manage the fund and consequently, *wakālah* fee can be charged by the TO to the fund. The profit from the investment can be used to assist the B40s in their Takaful contributions.

A wider pool of *waqf* contributors could be attracted by opening up the temporary *waqf* segment. Some individuals or organisations might have an access of fund for a period of time. Nevertheless, the said fund is needed for future planning. In such a case, they can contribute to the *Waqf* and Endowment Fund on temporary basis.

The term “Endowment” is proposed here to cater *waqf* liked contributions from non-Muslims. It is hoped that the participation from all segments of the society will bring a greater success to the programme.

### iii. Sadaqah / Corporate Social Responsibility (CSR)

Another source of contribution is through outright *ṣadaqah* from individuals and/or organisations. Contributions normally done through Corporate Social Responsibility (CSR) can easily fit into this model.

### iv. Asnaf Through Certain Channels

- a. mosques.
- b. Cooperative where the participants are its members
- c. Profession based organisations such as Lembaga Kemajuan Ikan Malaysia.
- d. Others

The contributions done through the above set-ups will bring along the sense of responsibility among the participants. The collection of contribution can also be done in a more systematic manner.



# POTENTIAL ISSUE: MUSLIMS AND NON-MUSLIMS AS BENEFICIARIES

## POTENTIAL ISSUE: MUSLIMS AND NON-MUSLIMS AS BENEFICIARIES

As mentioned above, the sources of contributions may come from *zakat*. The implication of that status is that the *zakat* monies that are mingled with other sources, which would be utilised for the benefit of non-Muslim *takaful* participants would trigger another Shariah issue. This question arises pursuant to the fact that the sources of the Takaful Fund, as established earlier, shall include *zakat* monies (along with other sources like *waqf* funds and participants' self-contributions). In the event where the participants make their claims upon the occurrence of calamity and such claims are approved, the pay-out will be made by the Takaful Operator, on its capacity as the manager to the Fund, from the Risk Fund. As the subscription to this product is not meant to be exclusive only to Muslim but also include non-Muslim instead, the question on the permissibility of the usage of the Takaful Fund, which is partially made of *zakat* monies, for the benefit of non-Muslim participants seems inevitable and requires an answer.

There are debates among jurists on the ruling of the distribution of *zakat* monies to Non-Muslims recipients, in which most jurists do not permit it. In Malaysian context, majority of states in Malaysia adopted fatwas that *zakat* monies shall only be distributed to Muslims. Given that this structure is proposed in Malaysia, this paper does not intend to discuss further the different juristic views on the matter.

These above issues can be resolved if it can be proven that the *asnaf* have received the *zakat* monies, (hence the ownership of the *asnaf* on the monies has been established) prior to any payment of *takaful* contribution to Takaful Fund.

In a nutshell, *zakat* monies are constructively possessed and owned by the *asnaf* once they are deposited into the *asnaf*' trust account. Subsequently, the ownership of the monies is relinquished by the *asnaf* through their wakil by channelling the monies into the Takaful fund as their *takaful* subscription.

It is important to establish here is the fact that the monies all *zakat* monies, together with *waqf* funds and self-contributed monies (if any) cease to become the participants (that includes *Asnaf*) personal money. Instead, they are regarded as 'Takaful Fund' which belong to the participants collectively (not

## POTENTIAL ISSUE: MUSLIMS AND NON-MUSLIMS AS BENEFICIARIES

tagged to each participant individually or proportionately). This Fund subsequently shall be managed by the Takaful Operator who assumes the fiduciary duty as entrusted to it by the participants.

This should also address the concern on the usage of *zakat* fund to make pay-out for the claimed made by non-Muslim participants; such pay-out is not to be made from a segmented source. Instead, it is to be made from the Takaful Fund where all the participants (Muslim and non-Muslims) subscribing to the fund reserve the same right out of it e.g. right to the coverage and right to the return of investment (where relevant).

# WAY FORWARD

# WAY FORWARD

It is asserted that Takaful B40 is viable through support from Waqf and Zakat Fund. Nonetheless, operationalising and mobilising these funds from their original pool with Majlis Agama Islam Negeri (MAINs), for the purpose of Takaful subscription, poses certain challenges. The challenges can be divided into two categories, i.e. external challenges (involving external party/ies) and internal challenges (not involving external party/ies). These challenges require FWD's attention and strategic approach.

## ▪ External Challenges and Strategic Approaches

As mentioned before, it is crucial to establish a Waqf Fund in which all the monies intended for waqf shall be placed in before it is mobilised or channelled to the Takaful Fund since among the basic tenets of waqf is preserving the waqf asset/mauquf itself. At this juncture, FWD and MAINs should initiate a discussion and reach an understanding regarding the status of *mutawalli* of the Waqf Fund. This is to determine whether FWD needs to obtain the status of *mutawalli* from various states (on the assumption that the money contributed for waqf shall come from various states) or it is sufficient to obtain the status *mutawalli* from one state, such as the Federal Territories (Wilayah Persekutuan) where the Takaful Fund shall reside.

The operation of the proposed waqf model, i.e. the temporary and permanent cash waqf is another matter to be discussed with MAINs.

To entice MAINs' interest to participate in this scheme, a discussion and an eventual understanding must be reached between FWD and MAINs on the added value(s) that this scheme may potentially bring to the latter. Typically, MAINs will receive funds/payment from the public in the form of zakat. By participating in this scheme, MAINs would receive a different stream of payment from the public other than zakat. This would diversify their portfolio, broaden coverage in the management of the public funds, as well as boost public confidence and strengthen their reputation in the eyes of the public. In addition, efforts to include *asnaf* in the takaful scheme is also in line with the general mandate of MAINs in assisting the poor and the needy.

These are among the values that FWD may take as the 'selling points' during the engagement with MAINs.

# WAY FORWARD

## Zakat Fund

FWD needs to explore a strategic partnership with zakat authorities to materialise the proposed takaful model. At this juncture, FWD may identify a few zakat authorities, i.e. Pusat Pungutan Zakat-Majlis Agama Islam Wilayah Persekutuan, Lembaga Zakat Negeri Kedah and Lembaga Zakat Selangor for discussion. To entice the zakat authorities, FWD needs to highlight the value proposition that it can bring to the zakat authorities and *asnaf* community. As a highly regulated institution, FWD may highlight that it shall always ensure a high level of professionalism, good governance, transparency and accountability that can be leveraged on. It should be emphasised that the noble objective of this collaboration is to enable protection for the *asnaf* group under a takaful scheme at a minimal cost, which is in line with the government agenda of financial inclusion. FWD may also highlight that this strategic collaboration will empower zakat by integrating it with takaful in the Islamic finance ecosystem, which enhances the wellbeing of *asnaf* community in an innovative and impactful manner.

The wakālah model, as proposed in the paper, is another matter to be discussed and agreed upon with the various Pusat Zakat.

## ▪ Internal Challenges and Strategic Approaches

### Waqf Fund

Internal challenges mainly revolve around the management of the Waqf Fund from FWD's end. Under the notion of 'preserving the waqf asset/*mauquf*', FWD needs to establish necessary internal control mechanisms proactively. These mechanisms shall include procedures related to the management of temporary cash waqf and, if relevant, the conversion from temporary to permanent waqf. As these two models may render different treatment on the fund in terms of their subscription, liquidity, replacement and so forth, it is important to establish clear procedures and guidelines for the sake of operation efficiency and clarity.

In addition, a clear guideline on the accounting treatment of the Waqf Fund must also be established. Since FWD shall ideally hold the funds on its capacity of *mutawalli*, of which its obligation is to properly book the Waqf Fund separately from the other funds before channelling it to the Takaful fund.

## WAY FORWARD

Also, it is inevitable for the waqf monies, held in the Waqf Fund, not to be left idle but to be invested instead. As such, a comprehensive guideline on investment activities and strategies is essential. This guideline shall specify, among others, the reasonable risk appetite in order to preserve the capital invested. To kick off, the AAOIFI Shariah Standard on cash waqf may serve as one of many references in addition to other existing investment guidelines.

### Zakat Fund

FWD needs to establish a dedicated trust account to receive the zakat fund from the respective zakat authority on behalf of the *asnaf*. Since the ownership of *asnaf* on the monies is paramount, proper control mechanism shall be developed, which may include proper documentation, accounting treatment and IT system as evidence that the ownership of the monies has been transferred to the identified *asnaf*. The mechanism is expected to record every detail and trail of transactions, i.e. from zakat authority to trust fund, and from the trust fund to takaful risk fund.

In case the zakat fund is released to the account while the *asnaf* is yet to be identified, the fund shall be treated on a trust basis and segregated from the amount owned by identified *asnaf*. In this regard, it is expected the accounting treatment and IT system are able to manage and segregate the fund accordingly.

With regard to the implementation of *wakalah* arrangement, the roles of FWD as *wakil* shall be clearly explained in the relevant documentation, e.g. product disclosure sheet and subscription form. The documentation shall be comprehensive to cover the main mandates as follows:

1. To receive monies on behalf of the *asnaf* takaful participants; and
2. To subsequently channel the monies on behalf of the takaful risk fund.

It is suggested that the acceptance and consent of the *asnaf* participants shall be sought upfront upon their signing of the takaful subscription form or by way of any other methods approved by the Shariah committee of FWD.

It is also worth to note that the placement may generate profit if the placement is made in commodity *murabahah* placement, in which the profit shall belong to the owners in principle. In this regard, additional consent shall be sought from the *asnaf* in case they are expected to waive their profit under the principle of *tanazul*.



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## Overview of B40 category in Malaysia

The following discussion aims at understanding the nature of the B40 category before discussing whether it is eligible for zakat. The B40 category refers to the bottom 40% of Malaysian households in terms of monthly income. The Ministry of Finance considers households with maximum income of RM4,360 as the threshold income for (B40) category. This is premised on the fact that an average household size is 4.1 people who receive their income from four main sources, namely paid employment (RM4382), self-employed (RM1088), Property and investment (RM897) and current transfer received (RM591). It is also stated that 5 out of 10 households received RM5,228 per month or less.

There are a few factors that determine the definition of B40 category. **One** is the household concept income that is defined as the income of the individual or a group living in one house and providing for the expenses. **Second** is the method to calculate the household income whereby the “median” and the “mean” methods are used. The “median” is the middle-income number within a range of household incomes arranged from low to high, and the “mean” is the average income number where all household incomes are added up and divided by the number of households. **Third** is the classification of B40 category as a **needy** class by the Budget

2020. For example, the Budget allocated RM25 Million to redistribute an estimated 3000 metric tonne of excess food to the needy target groups, especially B40.

Two observations are eminent as far as the determination of B40 category is concerned. **Firstly**, the threshold of RM4,360 is not necessarily based on the **poverty line**, which the Department of Statistics in Malaysia put it at 0.4% as of 2016. The households that come under the 0.4% are those with a household income of RM980 in Peninsular Malaysia, RM1,020 in Sarawak and 1,180 in Sabah. This research will examine later whether those earning above the poverty line (RM980) and below the B40 threshold (RM4360) are eligible for zakat. **Secondly**, the B40 category is not based on the **minimum acceptable wage** in the country. As such, Bank Negara Malaysia (BNM) maintains that the provisional living wage in Kuala Lumpur for 2016 ranges between RM2700 and RM6500 per month. Further details of BNM’s analysis shows that a single adult’s estimated living wage is RM2700, a couple without child is RM4500 and a couple with children is RM6500. BNM remarked, however; that the living wage rates are usually higher than the minimum wage rate, especially when the latter has been less frequently updated in line with living cost increases.

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Thus, the B40 threshold **is not** based specifically on **poverty line** and **minimum wage**, although both are within the B40 threshold. The B40 category is based on the principle of **need** that is determined by custom (*'urf*) and public welfare standards designed by policy makers in the Government. We shall examine in the next points whether need is sufficient to ascertain eligibility for zakat for the B40 category.

### **Is the poverty line with its current benchmarks include the B40 category?**

Zakat is distributable to the poor, beside other seven categories. To measure poverty in Malaysia, the poverty line income (PLI) was adopted. The latter is solely based on the threshold of RM980 as a monthly household income in Peninsular Malaysia. This would make poverty in Malaysia stands at 0.4% only. This figure will also exclude the B40 category as the threshold is capped at RM4,360.

Another measure called “Multidimensional Poverty Index (MPI)” was used. The MPI measures poverty based on the level of deprivation in four areas, namely income, education, health and living standards. The poverty level under MPI fell to only 0.86 per cent of households nationwide in 2016. World Bank senior economist Kenneth Simler said :“Without increasing the benchmarks in the MPI, the Malaysian government would not be able to see

how far it is progressing in improving living conditions for the B40, or which areas such as education or health where it is doing relatively well or not so well.

Both PLI and MPI, being measurements of poverty in Malaysia may fall short of meeting the B40 threshold quantitatively and qualitatively. Quantitative wise, PLI and MPI’s thresholds are below the B40’s, and qualitative wise, PLI and MPI’s may not really capture the multi-dimensional needs of the B40 category. Thus, the Government while designing welfare programs for the B40 category, did not rely solely on PLI and MPI, but relied on the qualitative principle of “**need**” to determine the benchmark of RM4,360. This benchmark, thus, is not based on specific indicators that needs to be adjusted.

### **Some benchmarks of Fakir and Miskin in Malaysia.**

The *ijtihad* of many religious authorities has produced certain benchmarks. For example, Zakat Selangor came up with the following benchmarks:

*Fakir*: Those with no asset and job or with job but cannot cover 50% of the needs of himself and family

*Miskin*: Those who can cover 50% of the needs, but still insufficient.

With these percentages, Zakat Selangor seems

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to adopt the *aghlabiyyah* (dominance) principle based on 51/49 ratio to differentiate between a *Fakir* and a *Miskin* for the purpose of zakat entitlement. However, the percentage proposed is based on the element of sufficiency highlighted earlier. It is also observed that Zakat Selangor mentioned job as a determining factor for the entitlement for zakat, although having a job depends on whether it achieves **sufficiency**. The following items will discuss this issue from *fiqhi* perspective.

### Is the ability for the B40 category to work makes them not eligible for zakat?

There is disagreement among Muslim jurists about the eligibility of a poor person, who is able to work, to receive zakat. Presenting a summary of the issue without going into details, there are two main views at hand:

- a. *The first opinion*: a poor person is eligible for zakat even if he is able to work. This is the view of the *Hanafis* and *Malikis*. *Imam al-Dardir* maintained that it is permissible to pay zakat to person who is able to work.
- b. *The second opinion*: a poor person is not eligible for zakat if he is able to work, which is the view of *Shafi'is*. *Imam Nawawi* did clarify only the poor (*fuqara'*) and needy (*masakin*) are not eligible for zakat if they are able to work. The rest of the *asnaf* are eligible for zakat even if they are able to work. However, *Imam Shafi'i* did differentiate

between *faqir* and *miskin* in terms of the impact of work on the eligibility for zakat. He says: "the poor (*faqir*) is the one without wealth or work, whereas the needy (*miskin*) is the one who has something but is not sufficient".

*Imam Baghawi* explained the word "something" mentioned by *al-Shafi'i* in *al-Umm*. According to *Imam al-Baghawi*, *Imam Shafi'i* defines *miskin* as "the one who has wealth and a profession (*hurfah*) but is not sufficient". He concluded by saying that "In general, poverty and need are two terms expressing need weakness". In the modern world, the view of *Imam Baghawi* is most relevant as "need" seems to be the most deciding factor of someone's social status.

This research gives preference to the first view, even though the second view can be interpreted in a way that conforms to the first. This is because those who have below the *nisab* are unquestionably categorised as poor, regardless of their ability to work.

Based on this view, and regardless of the source of income of the B40 category, or whether they are having an official work, they are eligible for zakat.

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### Surrender and Surplus distribution:

The research is presenting this model on the premise that Pusat Zakat pays the contribution to the B40 category, and the latter **owns** the contributions as their names appear in the certificates. Thus, the B40 category is entitled for surrender value or surplus distribution if decided by FWD. The discussion on this issue are similar to the normal takaful coverage; thus, we opted not to articulate this issue.

### Types of Waqf

#### Cash Waqf

Cash *Waqf* is a fungible *Waqf* that has been established with money to promote services to mankind in the name of Allah S.W.T. According to Muslim jurists, cash *Waqf* can be invested in *muḍārabah* and other safe investments so as to preserve the endowment capital and the revenue generated can be invested in various undertakings or activities which have charitable purposes. This approval had been followed by the other schools of law which also permitted this type of *Waqf*. (Mohsin, 2009).

*Waqf* assets are typically permanent fixed assets such as land that do not diminish through time or use, though movable properties and cash is also permitted. From the Ḥanafī school of *fiqh*, a disciple of *Abū Ḥanīfah*, *Imām Zufar* approved all fixed and movable properties to be dedicated as *Waqf* including the *Waqf* of *dirhām* and *dīnār* for

example *Waqf al-nuqūd* (cash *Waqf*). Along the same lines, *Imām Zufar* confirmed that jewelry could also be dedicated as *Waqf*. He based his opinion on the act of Ḥafṣah (may Allah be pleased with her), the wife of the Prophet (pbuh), who dedicated her jewelry to her relative. Similarly, both Imam Muḥammad and al-Sarakhsī had approved all movable properties as the subject matter for *Waqf*. (Mohsin, 2009).

Imam Mālik bin Anas had also agreed on both immovable and movable properties as a subject matter of *Waqf* even if it is cash *Waqf*. With respect to the other two schools of *fiqh*, both Imams, al-Shāfi‘ī and Ibn Ḥanbal had agreed on the validity of both immovable and movable properties as a subject matter of *Waqf*.

The issue of cash *Waqf* has been discussed by *fuqahā* (jurists) under the rubric of *Waqf* of something that perishes by consumption (*Waqf al-mithliyyāt*) such as *Waqf* of foodstuff. The essence of *Waqf* is to benefit from its usufruct of a property and corpus intact, however in cash *Waqf* the corpus (money) is consumed and therefore disappears, what remains is its equivalent. This has pushed some *Fuqahā* (Jurists) to reject such *Waqf* and some of them to make it *makrūh* (abhorred).

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The position of *Abū Ḥanīfah* and *Abū Yūsuf* (a prominent *Ḥanafī* jurist) was the impermissibility of making *Waqf* of movable things. *Abū Yūsuf* stated that *Waqf* is only valid if it is irrevocable and thus cannot be reverted back to the founder but must be made in perpetuity. Regarding the movable properties to be made into *Waqf*, *Abū Yūsuf* was of the view that no movable property can be endowed as *Waqf*, but weapons of war, cattle and implements of animal husbandry attached to the dedicated *Waqf* land and books can be dedicated as *Waqf*. He based his opinion on the tradition of the Prophet (pbuh) which stated as follows, 'The Prophet (pbuh) said; *Khālīd Ibn al-Walīd* has appropriated his horse and armour for the cause of Allah'. According to him *Waqf* of movable property is valid only if it was customary during the time of the Prophet (pbuh). In contrast to this last view, another disciple of *Abu Ḥanīfah*, *Imām Zufar* approved all movable properties to be dedicated as *Waqf*. He also included the *Waqf* of *dirhām* (pl. *darāhim*) and *dīnār* (pl. *danānir*) i.e. *Waqf al-nuqūd* (cash *Waqf*). (Mohsin, 2009).

Some classical texts that reflect the above discussion are as follows:

ومذهب الشافعية عدم جواز وقف ما لا يحصل الانتفاع به إلا

بإتلافه كالذهب والفضة والمأكول

(مجلة مجمع الفقه الإسلامي، 12/68)

"According to the *Shāfi'ī* School, *Waqf* is not permissible on objects that benefits cannot be derived from without affecting its essence, such as gold, silver and foods."

دَهَبُ الْخَنَابِلَةِ وَالشَّافِعِيَّةُ فِي الْأَصَحِّ وَابْنُ شَاسٍ وَابْنُ الْحَاجِبِ  
مِنَ الْمَالِكِيَّةِ إِلَى أَنَّ وَقْفَ النُّقُودِ غَيْرُ جَائِزٍ؛ لِأَنَّ النُّقُودَ لَا يُنْتَفَعُ  
بِهَا مَعَ بَقَاءِ غَيْبِهَا، بَلِ الْإِنْتِفَاعُ بِهَا إِنَّمَا هُوَ بِإِنْفَاقِهَا، وَهُوَ  
اسْتِهْلَاكٌ لِأَصْلِهَا، وَذَلِكَ مُخَالِفٌ لِمَوْضُوعِ الْوَقْفِ. (الموسوعة  
الفقهية الكويتية، 41/193)

*According to the most agreed opinion of the Ḥanbali and Shāfi'ī School and Ibn Shās and Ibn al-Ḥājjib of the Mālikī School, monetary waqf is not permissible because cash cannot be utilised while its original essence remains since the usage of its essence requires it to perish which is done by consuming it. This is contrary to the principles of Waqf.*

The cash *Waqf* is not permissible by these Schools/Scholars because the money does not stay with the same benefit of it but it is used by spending. The consumption of cash is thus contrary to *Waqf* and more of a donation.

وأما الشافعية فقد ذكر الإمام الشيرازي الخلاف فقال: (واختلف  
أصحابنا في الدراهم والدنانير؛ فمن أجاز إيجارها أجاز وقفها،  
ومن لم يجز إيجارها لم يجز وقفها) (النووي، المجموع شرح  
المهذب 15/321)

*Imām Shīrāzī from the Shāfi'ī School highlighted the conflict and said: Our scholars have different opinions regarding dirham and dinar. Those who permit the rental of dirham and dinar, permit that they can be given as Waqf and those who did not permit the rental of dinar and dirham did not permit to be given as Waqf.*

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ومذهب الإمام أحمد عدم جواز وقف ما لا ينتفع به إلا بإتلافه  
مثل الذهب والورق والمأكول والمشروب، والمراد بالذهب  
والفضة هنا الدراهم والدنانير وما ليس بحلي لأن ذلك هو الذي  
يتلف بالانتفاع به، أما الحلي فيصح وقفه واختار ابن تيمية

صحة وقفها (مجلة مجمع الفقه الإسلامي، 12/68)

*Imām Aḥmad is of the view that it is impermissible to make Waqf of property that its benefit cannot be derived except by consuming it for example gold, paper, food and drink. What is meant by gold and silver here is dirham and dinar not in the jewellery form because it perishes while being utilised and in this case the Waqf is permissible in the jewellery form. As for jewellery, it is permissible to donate it as Waqf and this is the opinion of Ibn Taymiyyah.*

وقف النقود للسلف ينبغي أن يقرر، وذلك لأن الأموال وإن  
كانت لا تتعين فإن بدلها يتعين، ولكنه يلزم مع ذلك ضمان هذا  
الوقف بتأسيس صندوق للسلف الوقفي ضمن شروط الاستثمار

الإسلامية (مجلة مجمع الفقه الإسلامي، 12/90)

*Cash Waqf needs to be accepted. Because money, although normally need not be specified, but its substitutes should be specified. However, the Waqf should still be guaranteed by establishing an endowment fund based on Islamic investment conditions.*

*Imām Mālik in Mudawwanah and the Mālikī school allow cash Waqf if it is for the purpose of lending it to those who are in need. Late Ḥanbalī scholars such as Ibn Taymiyyah allow cash Waqf. The outcome of the view of Muḥammad Ibn Ḥassān al-Shaybānī is the permissibility of such Waqf if it is accepted by custom and practiced. There is a narration of Imām Zufar allowing cash Waqf. The later Ḥanafī allow cash Waqf based on the principle of custom.*

قال ابن عابدين في حاشيته: "قلت إن الدراهم لا تتعين  
بالتعيين، فهي وإن كانت لا ينتفع بها مع بقاء عينها، لكن بدلها  
قائم مقامها لعدم تعيينها فكأنها باقية، ولا شك في كونها من  
المنقول، فحيث جرى تعامل دخلت فيما أجاز به محمد، ولهذا لما  
مثل محمد بأشياء جرى فيها التعامل في زمانه، قال في الفتح إن  
بعض المشايخ زادوا أشياء من المنقول على ما ذكره محمد لما  
رأوا جريان التعامل فيها، وذكر منها مسألة البقرة الآتية ومسألة  
الدراهم والكيل حيث قال: ففي الخلاصة وقف بقرة على ما  
يخرج من لبنها وسمنها يعطى لأبناء السبيل قال: إن كان ذلك  
في موضع غلب ذلك في أوقافهم رجوت أن يكون جائزاً، وعن  
الأنصاري - وكان من أصحاب زفر - فيمن وقف الدراهم أو ما  
يكال أو يوزن قال نعم، قيل: وكيف؟ قال: يدفع الدراهم  
مضاربة ثم يتصدق بها في الوجه الذي وقف عليه، وما يكال أو  
يوزن يباع ويدفع ثمنه لمضاربة أو بضاعة، قال: فعلى هذا  
القياس إذا وقف كراً من الحنطة على شرط أن يقرض للفقراء  
الذين لا بذر لهم ليزرعوه لأنفسهم ثم يؤخذ منهم بعد الإدراك  
قدر القرض، ثم يقرض لغيرهم من الفقراء أبداً على هذا السبيل  
يجب أن يكون جائزاً، قال: ومثل هذا كثير في الري وناحية

دوماند" (مجلة مجمع الفقه الإسلامي، 12/68)

*Ibn 'Ābidīn said in his book Ḥāshiyah: Dirhams are not specified by identification [i.e. are fungible]. Although they cannot be utilised while being kept, substitute [dirhams] can take their place since they are not specified; therefore, it is as if they still remain. Moreover, there is no doubt that they are movable, and since it has become customary practice [to make endowments of dirhams], they should be included into what was permitted by Muḥammad Ibn Hassan al-Shaybānī. Hence, since Muḥammad gave examples of things that were being treated in that way during his time, [the author of] al-Fatah stated that some scholars added things to what was mentioned by Muḥammad when they saw them being treated in that way. Examples he mentioned are the issue of a cow, dirhams and what is sold by*



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volume. The author of *al-Khulāṣah* said regarding the *Waqf* of a cow [which will perish after time, unlike land] on the basis that the milk and the butter should be given to wayfarers: if this is in a place where such practices are common in their endowments, then it should be permissible. *Al-Anṣārī* - the companion of *Zafar* – was asked about endowment of dirhams and items that are sold by volume or weight; he replied: Yes. He was asked how. He said: He would give the dirhams as *muḍārabah* capital; then he would give [the profits] in charity to the entity he has identified as the beneficiary of the *Waqf*. Items sold by volume or weight would be sold and the proceeds would be paid as *muḍārabah* capital or merchandise. He said: This principle would be applied to an amount of wheat that is endowed on the condition that it be lent to the poor who have no seed to cultivate for themselves; the amount loaned to them would then be recovered after the harvest. It would then be lent to other poor people continuously in a similar manner. This should be permissible. This is popular in *Al-Rayy* and the District of *Dawmāwand*.

### Contemporary Views on Cash *Waqf*

Some contemporary Islamic fatwa bodies have discussed this matter on the status of the cash whether it can be considered as a *Waqf* asset or not. According to *Majma' Fiqh al-Islamī* (2004) Resolution 140 (6/15), the amount of cash itself is regarded as *Waqf* asset and not the purchased asset later. When the cash is invested on buying a property or shares for example, those assets will not be regarded as *Waqf* asset by itself and it is permissible to sell those assets for purpose of investment. Thus, the ruling of *istibdāl* shall not be applicable here as the *Waqf* asset is the value of the cash endowed and not the assets purchased with the cash.

"إذا استثمر المال النقدي الموقوف في أعيان كأن يشتري الناظر به عقاراً أو يستصنع به مصنوعاً، فإن تلك الأصول والأعيان لا تكون وقفاً بعينها مكان النقد، بل يجوز بيعها لاستمرار الاستثمار، ويكون الوقف هو أصل المبلغ النقدي"

Therefore, the status of whether cash can be considered as a *Waqf* asset depends on the intention of the *wāqif* and model than they want to embark in. To consider cash as a *Waqf* asset by itself, the *wāqif* shall ensure that all utilisation of it must be in manner that preserves its perpetuity.

**International Islamic Fiqh Academy Council** (*Majma' Fiqh Islamī*, 2004) in its 15th meeting on 2004 in Muscat, Oman resolved that:

Cash *Waqf* is permissible because the main objection of *Waqf* by preserving the corpus while disseminating its benefits could be achieved through cash *Waqf*. Since money cannot be specified by separation (لا تتعين بالتعيين), by giving back its equivalence is the same as preserving the original.

It is permissible to use the cash *Waqf* for the purpose of giving benevolent loan (*qard ḥasan*), or to be directly invested or channelled by collective contributors in an investment portfolio or by issuing shares designated for *Waqf* to accelerate the *Waqf* in collective spirit.



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When the cash has been invested e.g. buying a property or shares, those assets will not be regarded as *Waqf* asset by itself and it is permissible to sell those assets for purpose of investment. **The *Waqf* asset is the amount of money that has been endowed.**

**The Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) (2010)** in its Sharīah standard no.33 on *Waqf* (3/4/3/2) stated that:

يجوز وقف النقود، ويكون الانتفاع بها بما لا يؤدي إلى  
استهلاكها مع الانتفاع بها مثل: الإقراض لمشروع أو  
باستثمارها بالطرق المشروعة المأمونة غالباً مثل المضاربة  
بها، ويُصرف نصيب الوقف من الربح في الموقوف عليه.  
مستند صحة وقف النقود أنه الأصل. وهو قول محمد بن عبد  
الله الأنصاري صاحب الإمام زفر، واختاره ابن تيمية. ونحوه  
وقف الأسهم والصكوك.

*“Waqf is permissible in the form of money. The income generated from utilisation of the money is to be spent, while retaining the principal amount [as a permanent Waqf endowment]. Utilisation may include, for instance, Sharīah based loan facility as well as permissible and safe investments like Muḍārabah where the profit share owned by the Waqf goes to beneficiaries”*

**Majelis Ulama Indonesia** (n.d) allows the practice of Cash *Waqf* on condition that it will be used in a manner that could guarantee its sustainability.

The 77th Muzakarah (Conference) of the **Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia** (2007) held on 10th - 12th April 2007 has discussed the rulings regarding the development of *waqf* land under the Ninth Malaysia Plan. In this meeting the committee had decided that Cash *Waqf* is permissible.

**Selangor Fatwa Committee (2006)** in its meeting on the 5th of September 2006 had resolved that gains from the Saham Wakaf Selangor Scheme must be used for the purchase of permanent assets. While money from *waqf* benefits may be used to provide aid and other expenses deemed appropriate by the Selangor Islamic Religious Council. (Muhd, Ahmad & Muḥammad, 2015)

It can be observed from the above discussion that the rationale for the permissibility of cash *waqf* is that money is a fungible asset *māl mithlī* and its equivalent can replace it. And even if it is consumed by using it, its equivalent, that needs to be paid back, remains. Allowing cash *Waqf* means considering this cash as a fixed asset that can be utilised (through providing loans or safe investment) but remains intact through recovery of the principal (original) amount. This is consistent with the definition of *Waqf* that says: The retention of an asset and the devotion of its profit or products " الوقف تحبيس الأصل مع تسبيل " الثمرة.

## APPENDICES

There is no difference between making *waqf* of palms and *waqf* of cash money: both are a fixed asset from one perspective, therefore if it is allowed to make *waqf* of palm dates, cash *waqf* should be also be allowed.

### Temporary Cash *Waqf*

Temporary cash *Waqf* occurs when the *wāqif* lends his money for a specific duration and receives it back at the expiry of the period. The justification for temporary cash *Waqf* is the logical outcome of the justification for the permissibility of temporary *waqf* and of cash *Waqf* and a combination of both evidences. It is also based on the permissibility to make conditional *Waqf* mentioned by Muslim Jurists. Benefiting from *waqf* asset/property has been stated in AAOIFI *Waqf* Standard No 33 clause 4/1/2; it states that it is permissible for the *wāqif* to put a condition in his *Waqf* to pay his debt from the outcome of *Waqf* after his death, or put in a condition to benefit from his *Waqf* during his life and to his children and after that to charity.

The text reads as follows:

*4/1/2 Regarding the form of the Waqf, the wāqif can make a condition that his debts should be settled from the waqf income; after his death, or he may stipulate a condition that the income of his Waqf should go to him first as long as he is alive, then to his family and finally to charitable*

*purpose. Another condition of the wāqif could be that the Waqf income has to be spent first on any member of his family who becomes poor, and then on charity purposes.*

2/1/4 يجوز أن يشترط الواقف في صيغة الوقف قضاء ديونه من ريع الوقف بعد موته، أو أن يشترط الانتفاع بوقفه مدة حياته ثم من بعده لذريته ومن بعدهم للخيرات، أو أن يصرف من ريع الوقف الخيري على من افتقر من ذريته ثم يستمر صرف الريع في الخيرات.

### Potential Shariah Issues on Takaful Contribution from Zakat Fund

The fundamental Shariah ruling of the distribution of *zakat* monies is that all collected amounts shall be distributed to the *asnaf* on that particular year. As mentioned earlier, it is proposed that the Takaful Fund to be comprising of *zakat* monies, *Waqf* funds as well as the contribution from the participants themselves. Therefore, this structure may pose an argument that the *asnaf* do not receive the *zakat* monies in actual form. Though it might be counter-argued that the *asnaf* are still entitled to the benefit in the form of takaful protection coverage, this kind of benefit may not fully satisfy the fundamental Shariah ruling on *zakat* distribution.

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### Basic Structure of Takaful Fund

It is important for this section to retreat a bit to the discussion of the basic structure of Takaful product. In general, the monies received by the Takaful Fund shall be used for two purposes. The first purpose is for the investment where the Takaful Operator will use part of the contributions to invest in Shariah-compliant ventures and share the returns with the participants based on the pre-agreed conditions (since the focus here is not on the investment part, this section will not engage further on the discussion related to the possible underlying structures for the investment and their impacts on the contractual relationship and the profit and/or loss distribution between the Takaful Operator and the participants).

The second purpose is for the coverage of participants. Upon the occurrence of calamity, the participants shall submit their claim from the Takaful Operator who is obliged to cover their loss due to the calamity subject to the satisfaction of the terms and conditions as agreed between both parties. For this purpose, the monies contributed by the participants, both in the initial stage as their subscription to the fund and later on as their instalment premiums, are considered as 'donation' (*Tabarru'*). Based on the spirit of mutual assistance, the participants agree to 'put their monies in one place' which shall be used to help the subscribing members who are facing the

difficulties. It is said the idea of this fund is based on the idea of 'Aqilah as practiced since the pre-Islamic era where the members of the clan (qabilah) will make contribution to a single fund as the 'reserve' for blood money; if any of them murders someone from another clan and, upon conviction, the victim's family requests for blood money, such amount shall be paid out from the fund/ reserve.

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