Waqf (plural awqaf) is popularly known in Malaysia as wakaf. Awqaf exist in various forms, from traditional to contemporary modes of creations. Current awqaf are extensions of the practice of waqifs (waqf donors) that occurred in the past. These were influenced by Islamic religious faith, whose introduction to Malaysia occurred around the 15th century.

It is important to note here that, in Malaysia, awqaf are given not only by Muslims but also by non-Muslims, and they are both domestic and international. In addition, Muslims and non-Muslims alike enjoy the benefits of mawquf (waqf property). According to the Department of Waqf, Zakat, and Hajj (JAWHAR, i.e., Jabatan Wakaf, Zakat dan Haji), awqaf lands in Malaysia are 11,091.82 hectares, worth RM1.17 billion (*). Efforts have been made from time to time by the respective organisations, particularly the State Islamic Religious Councils (SIRCs) with the co-operation of various parties, to develop awqaf lands. The Malaysian Government has also contributed significant funds for the purpose through the Malaysia Plan (Rancangan Malaysia).

Dr. Siti Mashitoh Mahamood, an internationally renowned expert of awqaf, analyses awqaf properties in Malaysia.

(*) Equivalent to US$508 million (using exchange rate of RM1 = US$0.30)
For example, Section 32 Waqf (State of Selangor) states that an ordinary waqf (waqf `am) or a special (waqf khas).

Majlis, are the sole trustees of all awqaf, whether that the SIRCs, also known as Majlis Agama Islam (Majlis), are the sole trustees of all awqaf, whether ordinary waqf (waqf `am) or a special (waqf khas). For example, Section 32 Waqf (State of Selangor) stipulates that:

Notwithstanding any provision to the contrary contained in any instruments or declaration creating, governing or affecting any wakaf, the Majlis shall be the sole trustee of all wakaf, whether waqaf `am or khas, situated in the State of Selangor.

The term “sole trustee of awqaf assets” implies that the Majlis of each state have been legally appointed by their respective laws to supervise all awqaf assets and be responsible for their management and development. No other parties or bodies are entitled to hold trusteeship power, except in cases from the past, i.e., Before the promulgation of the Islamic administrative laws of the states. Hence, delegating the powers to others, or the existence of private trustees, would be treated as illegal and not conforming to the laws.

The laws also provide that all mawquf should be vested in the Majlis and necessary steps have to be taken to fulfill the said provision. As for immovable property, registration should be made in accordance with the provisions of the National Land Code [Act 56]. For example, Section 50 of the Wakaf (State of Malacca) Enactment 2005 stipulates that:

1. The Majlis shall take all necessary steps as soon as practicable to vest in itself wakaf which are created under this Act.
2. Any usufruct or benefit from a mawquf shall be vested to the Majlis from the date of the commencement of the wakaf, and the Majlis may claim any usufruct or benefit of a mawqaf from any person before the registration of the wakaf.
3. All mawqaf situated in the State of Malacca, before the commencement of this Enactment, shall, without any conveyance, assignment or transfer whatsoever and in respect of all immovable property upon registration under the provisions of the National Land Code [Act 56 of 1965], is hereby vested to the Majlis to the extent of any property affected thereby.
4. Subject to the provision of section 32, the Majlis shall take all necessary steps to vest in itself for the like purposes any such property situated elsewhere than the State of Malacca.

The above are the important responsibilities that the Majlis have to carry out in order to fulfill their legal obligations as the sole trustees for all the mawqaf situated in the states.

Types of Awqaf

Generally, the creations of awqaf in Malaysia fall within 3 major categories:

a. Waqf `am
b. Waqf khas

Waqf `am refers to any form of waqf dedication aimed at general welfare or khairat without specifying any particular beneficiaries (individuals or organisations/institutions) or specific purposes. This category of waqaf is applicable to things or objectives directed towards general social welfare and charitable purposes. Under this form of waqaf, the waqif can identify the persons who are to benefit from the awqaf or the purpose for which the waqaf must be applied. The combination of waqf `am and waqf khas forms the hybrid category, waqf al-mushtarak.

Thus, a waqf which is created from any type of property or established under any type of scheme will use either the waqf `am or the waqf khas concept. Each type is treated differently in accordance with Islamic principles. It follows that for a waqf khas, the mutawalli or the trustee has the responsibility to implement all the stipulated
What is more unique is that the creation of waqf aims to accumulate funds and distribute them in called Wakaf Selangor Muamalat. This new scheme place with the introduction of a cash waqf scheme (PWS, Wakaf Corporation of Selangor) has taken Berhad (BBMB) and Perbadanan Wakaf Selangor collaboration between Bank Muamalat Malaysia existing waqf development projects. Recently, a approved a cash waqf provided that it is converted into or used towards creating permanent benefits. The Malaysian waqf authorities have its validity has been debated by some Muslim jurists as compatible with the Shari’a law of waqf. Cash waqf is also accepted in the country. Although the latter is a new kind of mawquf accepted by Yayasan Waqaf Malaysia (YWM, the Malaysia Waqaf Foundation).

PROPERTY ENDOWED AS AWQAF

Movable and immovable properties have been made awqaf for general and specific purposes or beneficiaries, depending on the wishes of waqifs. Previously, Malaysians preferred their awqaf to be established from immovables, consisting of landed properties, especially for the erection of mosques, graveyards and Islamic religious schools including pondok schools.

In the current context, awqaf from movables are also included. These include cash waqf, waqf shares and waqf of gold. The latter is a new kind of mawquf endowed as a wakaf to the Majlis.

Cash waqf is also accepted in the country. Although its validity has been debated by some Muslim jurists in Islamic jurisprudence due to its impermanent character, the Malaysian waqf authorities have approved a cash waqf provided that it is converted into or used towards creating permanent benefits. Normally, the funds collected will be used to purchase immovable assets or be added to existing waqf development projects. Recently, a collaboration between Bank Muamalat Malaysia Berhad (BBMB) and Perbadanan Wakaf Selangor (PWS, Wakaf Corporation of Selangor) has taken place with the introduction of a cash waqf scheme called Wakaf Selangor Muamalat. This new scheme aims to accumulate funds and distribute them in two main areas: healthcare and education.

What is more unique is that the creation of waqf has been expanded to cover waqf of shares which can be formed either from movable or immovable properties. It is very important to note here that waqf shares are different to waqf of shares. For ease of understanding, their definitions are given below as provided in Section 2 of the Wakaf (State of Malacca) Enactment 2005 (No.5 of 2005):

“wakaf shares” means the creation of a wakaf through the issuance of shares which are subsequently endowed as a wakaf by the purchaser to the Majlis;

“wakaf of shares” means shares of company or enterprise or existing shares dedicated for waqaf.

In regard to the Wakaf (Negeri Sembilan) Enactment 1999 (No.7 of 1999) only provides provisions on waqf shares, but nothing is mentioned about waqf of shares. Section 17(1) of the law provides that:

The Majlis may offer wakaf shares of any property obtained or to be obtained by it to any person for such shares to be purchased which is subsequently endowed as a wakaf to the Majlis.

In fact, this provision on waqf shares constitutes a sub-category of the waqf scheme. This statute is unique because other types of waqf, i.e., Cash waqf, waqf bonds and other instruments for valuable securities, have also been placed under this scheme. The statute further defines the meaning of these mentioned waqf in Section 11(2) as follows:

... The creation of a wakaf through the offering of shares, issuance of bonds or any other instrument for valuable securities which are subsequently endowed as a wakaf by the purchasers of the shares, bonds or any other instrument for valuable securities to the Majlis.

Other states do not have provisions on such innovative waqf products and schemes as these mentioned states do, although some of these have introduced their own waqf shares and waqf of shares. In fact, these two types of awqaf products serve as alternative ways of creating waqaf to the long-standing classical ones.

The mention of waqf bonds (also known as sukuk) and other valuable securities instruments clearly shows that Malaysia has already prepared to accept these contemporary modes of financing to establish awqaf properties in the country.

In the context of the implementation of waqf shares, the Majlis of a state or an institution with the permission of a state Majlis may offer units of waqf shares of any property, normally of immovables, to the public or to any person, so that such shares can be purchased and thereafter be endowed as a waqf. The person who is interested in buying the shares that are offered will pay a certain amount of money to the Majlis depending on the pre-determined unit price for a share. The price differs from one state to another, and depends on the shares bought by the purchaser. It can be as small as RM1. The accumulated monies will be put in a Waqf Fund which will later be used to purchase an identified immovable property, or be used to finance a property development project as determined by the Majlis or the trustee.

A number of states have introduced the waqf shares product. These are: Selangor, Johore, Pahang, Malacca and Penang, although the latter has been using the name Dana Waqaf (Waqaf Fund) for the product. In this type of waqf, the State of Johor under the Majlis Agama Islam Johor (MAIJ, i.e., The SIRC of Johor) introduced Saham Wakaf Johor. This was able to accumulate a total of RM6 million7 for the construction of a student hostel in Cairo.

As for the concept of waqf of shares, the application is simple. Any existing shares in a property or in a company that belong to a person may be endowed as a waqf, for any general or specific purpose.

It is worth mentioning here that the Corporate Waqf introduced by the Johor Corporation Berhad (JCorp) falls under the category of waqf of shares, whereby part of the units of shares owned by this corporation in its subsidiary companies are dedicated as awqaf. The dividend income from these shares is distributed to the SIRC of Johore (5 percent), JCorp (70 percent) and 25 percent to general purpose charities. Waqaf An-Nur Corporation Berhad (WANCorp) has been entrusted with managing all equity shares transferred by JCorp to awqaf. WANCorp is a company established under limited guarantee by the JCorp and the appointment of the Nazir Khas (Specific Manager) to manage the shares, particularly the awqaf.

(*) US$1.8 million (using exchange rate of RM1 = US$0.30).
In the latest development, Majlis Agama Islam Wilayah Persekutuan (MAIWP, i.e., the SIRC of the Federal Territories of Kuala Lumpur, Putrajaya and Labuan) also showed an interest in introducing its own Corporate Waqf product where corporate companies will be the targets for its implementation. A luncheon talk on the matter organised by the MAIWP, which was held on 12 September 2013, showed their determination to make the Corporate Waqf a reality. Today, the product has attracted commercial banks, corporate individuals and the public as waqifs.

In fact, the existing Corporate Waqf institutions mentioned above are in line with a resolution passed in the 1st Islamic Religious Council Congress held in PWTC, Kuala Lumpur on 26-27 September 2011, urging the establishment of such institutions at the national and state levels.

FINANCING & DEVELOPMENT OF AWQAF

In Malaysia, the development of awqaf properties has increased a great deal. Various approaches have been applied and these centre on the physical type of waqf land developments.

Awqaf hotels are the most iconic, a recent trend in waqf property development. Until now, four hotels have been built under the waqf concept in the states of Malacca (Pantai Puteri), Perak (The Regency Seri Warisan), Terengganu (Grand Puteri) and Negeri Sembilan (Klana Beach Resort). The latter hotel, which is located at the Baitul Hilal Complex, also has an observatory with the largest telescope in the country, measuring 26 inches in diameter.

The above hotels were built on awqaf lands entrusted to the mentioned SIRCs. These huge projects were funded by the Malaysian government, and the respective SIRCs of those states are the sole trustees for their administration. The hotels are operated by the appointed companies through leasing contracts.

Imarah Wakaf (Menara Wakaf) is another unique example of a waqf development project in Malaysia. It is a 34-storey waqf building under the administration of MAIWP, located at Jalan Perak within the Golden Triangle vicinity of Kuala Lumpur City Centre. The building was built on 1.21 acres of awqaf lands endowed by a wealthy Gujarati Muslim, the late Ahmad Dawjee Dadabhoy. The building incorporates Islamic architectural features with the latest in international building design. It was developed using Build Operate, Transfer (B.O.T) as well as the Islamic concepts of wakala, ijara and istisna’.

Imarah Wakaf was the first large-scale commercial development project in the country constructed on waqf land. It involved 3 leading Islamic organisations, namely the MAIWP, Lembaga Tabung Haji (TH, i.e, the Malaysia Pilgrimage Fund Board) and Bank Islam Malaysia Berhad (BIMB). The project was funded by the TH at a cost of RM151 million, and has a 25 year leasing period. MAIWP as the land owner (i.e., the trustee) will receive RM56.6 million over that period. Imarah Wakaf is now being used as the Bank Islam Headquarters and is well known as Menara Bank Islam. MAIWP has been provided with one story of the building and there is also a place of worship called Surau Wakaf Ahmad Dawjee Dadabhoy, named after the waqif. It is believed that MAIWP will receive RM700 million worth of this commercial waqf building upon the completion of the BOT period. It is worth noting that MAIWP has been recognised by Dewan Perdagangan Islam Malaysia (DIPIM, i.e., The Malaysian Islamic Chamber of Commerce) and the International Islamic University Malaysia (IIUM) as the Best Waqf Land Development by Malaysian SIRCs.

The above mentioned types of development clearly show that awqaf are not just confined to traditional subjects, such as mosques and graveyards which are always associated with ‘ibadah symbols, but also take in commercial ones. What is important is that the profits or revenues of such mawquf should ultimately satisfy waqf purposes and benefit mawquf ‘alayah (i.e., waqfi beneficiary/ies). In fact, there are many other instances of property developments in Malaysia established under the waqf concept which aim to meet the various needs of society, such as orphanages, business premises, educational complexes and women’s shelters.

In addition to the above examples, waqf development is also significant in the area of medical and health services. For example, JCorp, through WANCorp and in cooperation with some of the SIRCs and support from KPI Healthcare Berhad has developed and manages 20 Waqaf An-Nur Clinics (KWAN); one Waqaf An-Nur Hospital (HWAN) at Pasir Gudang; and two mobile clinics in Johor on the fundamental of charity through waqf concept’s adaptation. The main objective of their establishment was to provide healthcare treatment and dialysis facilities to the general public, in particular those in greatest need, regardless of their ethnicity and religion. Up to June 2014, a total of 1,001,115 treatments had been given to patients in the chain of KWANs. Out of those, 73,542 treatments were given to non-Muslim patients. The total number of patients with kidney failure that have been receiving dialysis treatment in HWAN and KWANs are now 124. In addition, HWAN and the chain of KWANs not only provide healthcare treatment for a nominal charge of RM inclusive of medication but also offer dialysis treatment at a subsidised rate to the needy. Patients also receive financial support from Baitulmal, SOCSO (also called PERKESO, i.e., The Social Security Organisation) and various other welfare agencies which allow them to receive free treatment.

CONCLUSION

Based on the foregoing discussion on the progress and development of awqaf properties in Malaysia, the future looks promising. Research on waqf, particularly on its financing and development, which has produced new findings, serves as good guidance for all the related parties. Financial support from the Government in awarding research grants to Malaysian universities in this respect is very much appreciated. Application of some Islamic modes of financing in the development of iREITs, waqf REITs and sukuk (Islamic bonds) will surely allow the country to develop awqaf properties in accordance with international standards. This has already happened in Saudi Arabia with the Zam-Zam Tower which used sukuk al-intifa (time share bonds) and Singapore which used MUIS internal REITs to develop awqaf properties. The time has come for Malaysia to start applying such commercial modes in developing awqaf properties. The successful application of BOT in the development of Ahmad Dawjee’s waqf land can be used as motivation. It is hoped that one day Malaysia will be one of the leading countries in waqf development.