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# Trust Fund: A Product Combining *Waqf*, *Ẓakāh* and *Ṣadaqah* for Socio-Economic Agenda

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***Abstract.*** This paper introduces *waqf, zakāh and ṣadaqah,* which are currently being mobilized by the non-Financial Institutions (non-FIs) such as charitable organizations and Non-Governmental Organizations (NGOs) as additional components of Islamic finance industry, to complement the efforts of financial intermediaries as contributor to key socio-economic development. The paper presents various aspects of a case study of the use of Trust Fund Instrument by the Islamic Development Bank (IDB) for socio-economic development in its member countries including a project run with the cooperation of Bill & Melinda Gates Foundation (Gates Foundation) for polio eradication in Pakistan as part of the Global Polio Eradication Initiative (GPEI). Towards the end of the paper, some recommendations are presented to push the activities of non-FIs in promoting *waqf, zakāh* and *ṣadaqah* via trust funds into the mainstream economy in a more coordinated, integrated and efficient manner at national and international levels.

## 1. Introduction

Despite the remarkable progress made by the Islamic finance industry and its growing maturity, it is a still truly challenging task to integrate relevant components of Islamic finance, which eventually reflect the whole spectrum of the industry, as a contributor to key socio-economic goals, different from the profit-making orientation. Many new ideas and researches (e.g., Khan I.A, 2011; Yakcop Samah Z. A. et.al., 2011; Jobst A.A., 2008; Yakcop N.M., 2002) from experts of various backgrounds, within the circle of banks[(1)] and non-bank financial institutions (FIs)[(2)], have been presented for improvement of the Islamic finance industry, but the efforts are still highly fragmented, without taking into account many

(1) Including commercial, investment and multilateral development banks.

(2) This refers to provident and pension funds, insurance companies, development finance institutions, saving institutions including co-operative society, credit guarantee cooperatives and venture capital companies.

components of Islamic finance industry from non-FIs[3]. In essence, by identifying the finance industry as 'Islamic', its components should have automatically accepted the moral obligation to realize certain crucial goals of the society in line with the *Maqāṣid al-Sharīʿah*[4]. When greater justice[5] is injected into the financial system, advancement is naturally made towards the realization of the vision that the *Maqāṣid al-Sharīʿah* require. In the absence of that vision, proposing the values and advantages of Islamic finance, as opposed to conventional finance, may not appeal to certain groups of people in society, particularly to the poor and needy group as well as the general community.

Notwithstanding the encouraging development of the industry for the past few decades, skeptics continuously allege that Islamic finance is failing to fulfill its objectives as defined by the *Maqāṣid al-Sharīʿah*. Indeed *Maqāṣid al-Sharīʿah* reflect the holistic view of Islam, which has to be looked at as a whole. Islam is a complete and integrated code of life, and its goals encompass the lives of the rich, poor and needy alike. This paper highlights trust fund as a product of *waqf, zakāh and ṣadaqah,* with reference to how these are being dynamically mobilized by the Islamic Development Bank (IDB) for fulfilling the socio-economic needs of the poor and needy groups in fragile, poor and occupied states among its members. The paper discusses a case study on the operations of the IDB, trust fund product. The mechanism integrates all components of Islamic finance industry in mobilizing resources for the trust fund, combined with other typical Sharīʿah-compliant financing such as *murābaḥah, istiṣnāʿ, muḍārabah* and *al-qarḍ al-ḥasan* as well as *waqf, zakāh* and *ṣadaqah* for the benefit of the larger society.

The paper is divided into seven sections. The following section presents the identification of the ideal components of the Islamic finance industry and the socio-economic impact via product-integration of mainstream components and isolated components. Section three presents a comprehensive picture of the combination of various components of

(3) *Bayt al-māl*, charitable organization and non-governmental organizations.
(4) For meaning, please see "Glossary" in the beginning of the issue.
(5) The Islamic perspective of distributive justice is based on spiritual content and encourages values and behavior which, when properly injected in any culture, helps rectifying uncalled for economic disparities and promotes human development.

relevant products and institutions. In sections four to six, the paper presents the generic structure and typical challenges in developing a product for the isolated components, namely, trust fund and the experience of IDB in managing trust funds, including its current design of trust funds and Sharīʿah discussion around that design. Towards the end of this paper, there are detailed recommendations on how to push into the mainstream the trust fund concept at different levels.

## 2. Identification of Ideal Components of the Islamic Financial Industry

### 2.1. The Mainstream Components of the Islamic Finance Industry

Under the current regulatory framework for banking, capital market and *takāful,* Islamic finance products cater merely for people involved in the sectors of commercial and investment banking, treasurers, fund managers and brokers as well as *takāful* operators respectively, in which to a larger extent forming the current mindset of the components of the Islamic finance industry. According to Aziz Z.A. (2003), the development of an Islamic financial system needs to include the components comprising the Islamic banking industry, the *takāful* industry, the Islamic capital and money markets, given the strong linkages, interdependence and synergies among these components in the system. The spectrum of participants and the diversity of instruments are among the key attributes in creating an enabling environment for a dynamic Islamic financial system. This has been the approach adopted by Malaysia at the very onset of its journey in the development of a comprehensive Islamic financial system that is progressive and sustainable. Askari (2011) stated that the Islamic finance industry consists of a number of components such as Islamic banks, Islamic windows, capital markets, Islamic insurance *(takāful),* and other non-bank FIs. All of the above-mentioned Islamic banks and non-bank FIs are currently being regulated by their respective country-level regulators, whether central bank or securities commission. Islamic banking usually refers to offshore and onshore deposit taking, commercial and investment banking, and is the most dominant sector in the market. Islamic windows are specialized services available through conventional banks catering to the demands of Islamic products. Activities in capital markets and money market in the form of Islamic funds and Islamic bonds (*ṣukūk*) as well treasury products(6) respectively are increasing and there are institutions specializing in investment banking, asset management, mutual funds and brokerage houses, which are managing those activities. *Takāful* is the organization running Islamic insurance, where members contribute money into a pool in order to guarantee each other against loss or damage. Islamic non-bank FIs include specialized institutions offering financial services through leasing *(ijārah)* and partnership *(muḍārabah),* similar to conventional fund management companies. There are also limited, but growing number of institutions engaged in micro-finance, venture capital and private equity financing.

## 2.2. The Isolated Components of the Islamic Finance Industry

Islam has taken many steps towards forming institutions for managing funds and/or properties through *waqf, zakāh* and *ṣadaqah.* Mohammad et. al. (2006) mentioned in their research paper, w*aqf*, which means "religious endowment", is recognized by the Islamic law as religious, pious or charitable donation. It has been a source of development such as the building of mosques, religious and other educational institutions, libraries, travelers' lodges, and inns. Its benefits are not restricted to the Muslim community alone but go beyond religious, cultural, racial and sectarian boundaries. Literally, *zakāh* means to grow (in goodness) or 'purifying'. The act of giving *zakāh* means purifying one's wealth to gain Allah's blessing to make it grow in goodness. Kamali M. H. (2008) mentioned that about *zakāh*, the rationale is also given: *"In order that the wealth may not circulate only amongst the rich"* (59:7). Atia (2008) cited that *ṣadaqah* is an act of personal devotion and piety; giving purifies the giver when performed with the sole intention of serving Allah, (34:39; 2:271; and 2:272). Charity should be given for the sake of Allah and will be repaid bountifully. The main difference between *zakāh* and *ṣadaqah* is that the *zakāh* is obligatory while *ṣadaqah, usually,* refers to voluntary charity. From a wider perspective of other unregulated non-bank FIs and Multilateral Development Banks (MDBs) in the Islamic finance industry, such as *bayẗ al-māl,* charitable organizations and NGOs as well as

(6) The activities of Treasury products (i.e., Forex, Repo and Swap, etc.) are not active in certain regions because of product limitations and lack of breadth and depth of its banking industry.

Islamic Development Bank (IDB) the activities of these organizations are mainly involved in equitably distributing and mobilizing resources from *zakāh, ṣadaqah* and *waqf* for socio-economic projects and also for eligible people under the Sharīʿah Laws. *Bayẗ al-māl* was historically financial institution responsible for the administration of taxes in Islamic states, particularly in the early Islamic era, serving as treasury for the caliphs and sultans, managing personal finances and government expenditures on public works. For charitable organizations, its activities center on non-profit and philanthropic goals, as well as social well-being; meanwhile for NGOs, organizations that are not a part of the government and are not conventional for-profit businesses. As the purpose of the IDB is to foster the economic development and social progress of member countries and Muslim communities individually as well as collectively, there are a number of its projects applying the concepts of *waqf, zakāh* and *ṣadaqah* in its operations. According to Ali (2011), the IDB Group has been making efforts to enhance and develop the *awqāf* in order to ensure sustainability of the flow of income from such trust funds. The establishment of the World Waqf Foundation is an important initiative by IDB in this regard. It complements the IDB's other initiatives to re-activate and promote the *awqāf* sector, such as, the *Awqāf* Properties Investment Fund which was established with the objective of promoting and developing of *awqāf* properties. Development of *awqāf* can significantly contribute to economic empowerment of the Ummah, given that government financing of the social sector globally has been diminishing, especially in the least developed countries (LDCs) where government budgets have been shrinking. At the same time, foreign aid is also becoming scarcer as a repercussion of the global financial crisis. As a consequence, the LDCs are finding themselves more and more unable to meet the needs of their societies, especially in health and education sectors. In such situations, *awqāf* can play a significant role as they did for centuries in all Muslim societies where schools and hospitals were financed primarily through *awqāf*. Thus, for the overall development of the Islamic finance industry, the ideal components should consist of the following:

(i) Islamic banks
(ii) Islamic banking windows
(iii) Islamic capital and money market;
(iv) *Takāful*

(v) Islamic non-bank FIs
(vi) *Waqf*
(vii) *Ẓakāh* and
*(viii) Ṣadaqah*

### 3. Integration of ALL Islamic Finance Industry's Components into Islamic Economy

It is of utmost importance to ensure that all the afore-mentioned components of the Islamic finance industry to systematically and strategically work together, in complementing their respective limitations in terms of goals and objectivity due to the prevailing "rules of game"(7) in the respective markets, in achieving the dual-roles of key socio-economic and profit generation. The current laws and regulations in the prevailing environment limit Islamic banks; Islamic windows, *takāful* and non-bank FIs' activities in the commercial sector of the economy only, and for decades, socio-economic motivated activities, have been carried out by non-profit organizations.

The existence of a beneficiary gap between the rich and the poor in the commercial sector becomes more apparent, when the conventional regulatory framework such as credit and risk management(8) and pricing mechanisms(9) are being set for the IFIs largely to the benefit of shareholders, depositors, commercial and corporate clients only, but not society at large. A lot of effort is still needed from regulators, players and

(7) For Islamic bank and Islamic funds management companies, apart from shareholders, they are generally obliged to their depositors and investors respectively to distribute prevailing profit rate, for their competitiveness in the dual markets of conventional and Islamic. Likewise for *takāful*, besides for protection reason, policyholders are also inclined to a competitive product giving some return.

(8) Under diminishing *mushārakah* financing, the buyer and Islamic bank jointly buy a house under a partnership contract and the buyer will buy gradually the ownership of the house from the bank over the tenure of the financing. During construction period, there should be no obligation of the buyer only to bear the losses, should developer fail to complete constructing the house. Thus, this kind of risk management should be considered by the bank for its participating in this kind of financing.

(9) The pricing calculation of retail products are generally on fixed rate basis, while for corporate products, these are based on reducing rate basis. The latter's pricing method would give more benefits to corporate clients.

academicians of the Islamic finance industry to narrow down the gap, and the one-off annual event of corporate social responsibilities (CSR) and *zakāh* distribution from the banks and non-banks FIs would not be a reasonable justification for them to claim they had already contributed to society. All Islamic finance industry components are equally important for a complete ecosystem and not only for the proliferation of Islamic finance but also for the Islamic economy as a whole. The Islamic finance should strive to add value towards enhancing greater integration to the economy and the financial system[(10)]. According to Aziz Z.A. (2013), a core principle underpinning Islamic finance is the tenet that requires Islamic financial transactions to be supported by genuine productive economic activity. Islamic finance is also a financial regime that places emphasis on risk-sharing, thereby further strengthening the link between finance and the real economy.

The integration between regulated Islamic banks, non-bank FIs and unregulated non-bank FIs for enhancing respective components in the market is critically needed, with the aim of promoting product innovation and at the same time to move away from over-reliance on debt-funding. The community at large will stand to benefit from it, apart from highly-rated countries for *ṣukūk* issuances[(11)] and corporate or high-level customers for corporate and investment banking products[(12)]. By pushing the unregulated non-bank FIs into the mainstream of the Islamic finance industry, the components of *waqf, zakāh* and *ṣadaqah* could be more easily integrated with regulated intermediaries for developing "trust fund" market. This product is one of the primary products being mobilized not only by the IDB, but also by other MDBs for the development of socio-economic justice and equitable distribution of

(10) The value proposition of Islamic finance should go beyond the discussion of its form, to really achieve the Islamic economic objectives.

(11) A study by Thomson Reuters (*Annual Ṣukūk Perceptions and Forecast*) labeled 2012 as the year of *ṣukūk* issuance with more than USD130 billion worth of issuances, the market is set for further growth as the global captive *ṣukūk* demand is expected to double from USD240 billion in 2012 to reach USD421billion by 2016 as per the same study.

(12) In many standard finance markets around the world, the banks will remain big players in Islamic corporate and investment sectors. HSBC has withdrawn from about 20 mainstream retail banking markets that were performing poorly, reinventing its global network as more of a corporate banking franchise.

income and wealth. With more awareness of the unregulated trust fund in the industry, it would likely soften the public's skeptical views of Islamic finance products, in which to some extent, though the form is in compliance with Sharīʿah principles, the substance is still perceived as comparable with conventional products, primarily because of it is lacking the socio-economic justice and equitable distribution of income and wealth to the poor customers. The above statement was supported by a study (Akbar et. al., 2012), which concluded that Islamic banking in the United Kingdom is not fully aligned with the paradigm version of Islamic finance. The respondents generally agree with the view that the principle of profit and loss sharing represents the true spirit of Islamic banking practices. However, due to the complex nature of Islamic banking products, they are unsure about the full benefits of this system. There are high expectations among the respondents about the commitment and strong welfare role of Islamic banks in the society. It is, therefore, suggested that through research, effective marketing and generating more awareness among users about Islamic finance, it is possible to achieve more from the Islamic banking paradigm. The complementary efforts are more effective in bridging the economic gap between the rich and the poor existing in communities, apart from complementing the financial activities of regulated components of the Islamic banks, Islamic windows, Islamic capital and money markets, Islamic non-bank FIs and takāful. It augurs well with the Islamic values of fairness, justice and equitable distribution of income and wealth and in social justice.

## 4. What is Trust Fund?

According to Graham B. (2005), a trust is a legal arrangement wherein one party, the trustor gives control of assets to another party, the trustee, to be administered on behalf of a third party, the beneficiary. Trustors, trustees, and beneficiaries can be individuals, groups of individuals, institutions, or governments. A trust fund, therefore, is a fund with financial assets that are managed under a legal trust arrangement. Trust fund could be understood differently by commercial and investment bankers, and by development bankers. Obviously, the fundamental dissimilarity between the two is that, the former uses the trust concept for protection of clients' wealth, which is to be inherited by specified beneficiaries and the latter structures a trust fund mainly for managing donors' money for socio-economic development purposes and other specific activities governed by Sharīʿah. From MDB's standpoint, according to the World Bank's definition, they are vehicles for channeling aid funds from governmental and non-governmental donors to be administered by a trustee organization such as the World Bank, United Nations Development Program (UNDP), or other multilateral organization. Trust fund is not a program, although they have often been labeled as such. Rather, they are dedicated sources of funding for programs and activities agreed by the donor(s) and the trustee organization. The activities they finance range from huge global programs with their own governance structures to conventional development projects and support to individual technical assistance advisers[(13)]. From the current practice of Sharīʿah-compliant MDBs, the IDB, trust fund is derived from *waqf, zakāh* and *ṣadaqah*, which have been entrusted by donors to manage for specified programs and projects and/or for eligible persons in accordance with the Sharīʿah. Regardless of the format of the trust fund; be it by establishing a company, partnership or unit trust[(14)]; there is an element of donors' assets in the form *waqf, zakāh* and *ṣadaqah,* which are held on trust by IDB[(15)]. The non-profit feature, unlike the typical commercial funds managed by funds management companies, requires that the trust fund has no association with contracts such as *murābaḥah, istiṣnāʿ, ijārah, salam, wakālah, muḍārabah* and *musharakah* (which involve profit making). Under trust fund mechanism, there is only a Trust Fund Agreement signed between donors, management committee and trustee, as to establish the trustee relationship between donors and trustee as well as to provide the governance structure of the trust fund, which outlines the scope and responsibility of the Board of Trustees, Executive Committee and the Trustee.

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(13) World Bank: http://ieg.worldbankgroup.org/Data/reports/chapters/tf_chap1.pdf Chapter 1, The Role of the Trust Funds in the Global Aide Architecture, p. 2-3.

(14) As per the definition of mutual fund of the Offshore Legislation of Malaysia as at 15th November 2005, p. 396.

(15) The practice of the IDB, Trust Funds Department only focuses on *zakāh* and *ṣadaqah* as well as purified money from prohibited and *ribā* activities for its source of funding. For w*aqf* as a source of funding, there are other departments handling that segment.

## 4.1. Generic Management Structure of Trust Fund

Notwithstanding the differences in definitions and objectives of the trust fund that are used, a trust fund should share the same features of three important parties in any of its establishment: The parties are as follows:

*The Grantor / donors / Trustor*: This is the party who establishes the trust fund, donates the property (such as cash, stocks, bonds, real estate, mutual funds, art, a private business, or anything else of value) to the fund, and who decides on the terms upon which it must be managed(16). *The Beneficiary*: This is the party for whom the trust fund is established. It is intended that the assets in the trust, though not belonging to the beneficiaries, will be managed in a way that will benefit them, as per the specifics laid out by the grantor when the trust fund was created.

*The Trustee*: The trustee, which can be a single individual, an institution (such as a bank trust department that appoints one of its staff to the responsibility), or multiple trusted advisors, responsible for overseeing that the trust fund maintains its duties as laid out in the trust documents and applicable law. The trustee is often paid a small management fee. Some trusts give the responsibility of managing the trust assets to the trustee, while others require the trustee to select qualified investment advisors to handle the money(17). It seems that, due to the prevailing “rules of the game”, it is extremely difficult to find an existing product of Islamic banks, Islamic non-banks FIs and *takāful* that falls under the definition of trust fund, because one or more of the aforementioned three parties is not present in these products. It is important to note that, the above-defined trust fund fully reside separately from IDB and other MDBs main organizational structure, for achieving their social-economic goals. As compared to this all “trust funds” which are being managed by Islamic banks and Islamic non-bank FIs work on for profit basis. The task of fulfilling the socio-economic objective, like voluntary spending, institutionalizing *zakāh* or investing in community projects does not fall under the responsibility of Islamic FIs. As an

(16) For *zakāh*, the distribution is strictly based on the eight categories, which have been determined by the Sharīʿah. For *waqf* and *ṣadaqah*, the grantor or donors may decide the terms of their contribution.

(17) http://beginnersinvest.about.com/od/Trust-Funds/a/What-Is-A-Trust-Fund.htm

alternative, socially-oriented projects would be undertaken by NGOs, social organizations and MDBs.

## 5. Trust Fund's Involvement by IDB

For IDB, almost 90% of its trust fund, (non-*waqf* source of funding), with an accumulated approved projects amount of about USD1.3 billion(18) for fragile and conflict-affected states in the form of grant for redevelopment purpose, and the remaining balance was allocated for relief assistance to states that had been affected by natural disasters. For cash-*waqf* trust fund, its average three years' returns from the *waqf* capital of around USD33.91 million(19) were dedicated for the objective of poverty alleviation.

### 5.1. Typical Challenges in Developing Trust Fund(20)

*Developing Programs for Trust Fund* (21)

The capability of targeting the most vulnerable situation in a country for developing a program is the key in any strategic and disciplined approach to the acceptance and management of the trust fund. A major test for the identified program for the trust fund in any case is the extent of alignment with national needs and priorities, as set in national poverty reduction strategies, recovery and development plans. The involvement of IDB in the programming stage is very important so as to leverage knowledge together with the high caliber of staff and member countries' expertise in key design questions of a trust fund. The typical key design questions may include target beneficiaries, lifespan of the trust fund, sectorial focus, types of activities for identified sectors, type and level of assistance offered, management and governance arrangement, eligibility criteria and program sustainability and many more parameters.

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(18) Based on the Budget and Performance Report of the IDB as of 1433H (2013 A.D.)

(19) The average figure was calculated from the audited accounts of Islamic Solidarity Fund for Development from 1431H-1433H (2011-2013 A.D).

(20) Apart from legal structure to establish a Trust Fund, these are the important components which require much attention for its longer-term sustainability.

(21) For MDTF, this is the pre-requisite step before approaching donors for contribution but for SDTF, it might be the priority as donor had determined a specific program/project.

*Governance, Efficiency and Accountability*

Although the trust fund is not regulated by a regulator, it has to find some ways to ensure an efficient use of its partnering arrangements and resources in creating an enabling environment for mainstreaming assistance to the identified beneficiaries. The operating model of IDB as facilitator could provide value in terms of the coordination multiplier effects in the served countries or beneficiaries. However, there is a critical need to develop fully functional tools to ensure efficiency in monitoring and evaluation of the results of the intervention. The strategic and disciplined approach to strengthening the effectiveness, efficiency, and accountability for results requires IDB to strengthen the relevant framework guiding the acceptance and management of the trust fund[(22)].

*Effectiveness and Sustainability*

Many of the trust fund projects have generated, validated, and communicated innovative solutions to conflict response challenges through skills and monetary contributions. Mature projects will go through a phase of redefining its policies and strategies for expansion, as well as an exit strategy. Sustainability of the programs within vulnerable countries will be assured by the close collaboration and leadership of government partners as well as the leveraging achieved in its programs. By bringing other donors and partners on board, it can push across sectors into the mainstream, thus becoming fully integrated with government planning. A study of Puetz (2013) summarized that, the three overarching issues raised by the three MDBs; World Bank, African Development Bank (AfDB) and Asian Development Bank (AsDB) were stated as follows:

(i) Opportunist approach from individual trust fund rather than strategic and "monitorable" results;

(ii) Slow programming approval and implementation; and

(iii) Lacking integration with a standard system of MDBs for better synergy.

(22) Under a post conflict situation, the establishment of proper governance always comes later after the establishment of trust fund, as to expedite intervention during the emergency circumstances.

### 5.2. The Experience of IDB in Managing Trust Fund

The IDB approach has primarily centered on the creation of social safety net programs and skill-enhancement programs for the poorest of the poor from the trust fund, which applies different Sharīʿah requirements under *zakāh, ṣadaqah* or *waqf.* The biggest beneficiaries of the IDB's trust fund are people in fragility and conflict state. The approved funds have been and will be disbursed for redevelopment of nine industries; namely, education, healthcare, sanitation, public facilities, public works, electricity, municipality, transportation and housing. From *zakāh* contribution, the IDB has received contributions from donors in creating a trust fund for developing 15 year Orphan Kafālah Program (OKP) in helping more than 5,000 orphans in Banda Aceh[23], affected by tsunami in 2004. The trust fund amount of USD30 million have been complemented by other cash contributions from local *bayẗ al-māl* institution, *zakāh* organizations and civil society organizations in Banda Aceh as to smoothen the running of the program. Another example of the poverty alleviation efforts that a trust fund can apply is the concept of w*aqf* as the *Sustainable Villages Program* of Islamic Solidarity Fund for Development that has earned appreciation of many. The Islamic Solidarity Fund is in the form of a *waqf*, with a principal targeted capital of USD10 billion and aims at: reducing poverty; building the productive capacities of member states; reducing illiteracy; and eradicating diseases and epidemics, particularly Malaria, Tuberculosis (TB) and AIDS.

## 6. The Current Structure of the IDB's Trust Fund in Socio-Economic Agenda

Leveraging on the innovative *"Triple-Win"* financing mechanism of USD227 million to support national responses to Polio Eradication in Pakistan as part of the Global Polio Eradication Initiative (GPEI), established by the IDB and the Bill and Melinda Gates Foundation[24] (Gates Foundation), the IDB has made available the same design and arrangement, to entice donors of its existing trust fund to subscribe for the model, as to increase the quantum of concessionary financing that could be

(23) Banda Aceh is the provincial capital and largest city in the province of Aceh, Indonesia, located on the island of Sumatra.

(24) Bill & Melinda Gates Foundation is the largest private foundation in the world, founded by Bill and Melinda Gates.

provided by the IDB. The existing deal with Gates Foundation envisages paying the mark-up, though at discounted sale price, for the ordinary component and administrative service fee for the concessional component (averaging USD3.55 million per year), the IDB could provide a sum of USD227 million. The Gates Foundation will be able to pool its risks in achieving one of its philanthropic goals and at the same time would be able to finance more projects in many more countries from the resources it would have spent only on this project. Under the "Triple-Win" financing concept mechanism, it would benefit three parties, i.e., the IDB, country beneficiaries and donor(s) to trust fund in areas of non-payment profit risk mitigation; retaining full ownership of the project, and project diversification. To illustrate further, for the IDB, relying on the grant money from donor(s) contributed in trust fund to fully subsidize the profit portion of financing (marked up portion), it would naturally mitigate the non-payment risk of profit portion from the beneficiary country. The lower risk of financing would entice the IDB to increase the quantum of concessionary financing. Thus more people could benefit from the funding. From a beneficiary country's perspective, the recipient government remains in the driver's seat for its development, which will ensure effective implement and enhance national ownership of the project. This element is extremely crucial for the success and sustainability of any projects in a country. Thus, all the three partners stand to win in this "Triple-Win" financing mechanism. In effect, the mechanism could enable the use of ordinary/non-concessional resources of MDBs coupled with market funds to finance projects in developing countries that would not, otherwise, have been possible, and in greater quantum than before, thereby changing the model of concessional financing.

### 6.1. Sharīʿah Issues Relating to the Tripple-Win Arrangement

There have been many arguments from Sharīʿah scholars on the obligation for the financier to honor its promise to grant a discount (*ibrā'*)[25] to any contracted sale price in a sale-based financing in the case of any early settlement made by debtor[26]. The underlying issue of *ibrā'* is the existence of two transactions in one contract. According to Al-Tirmidzi,

(25) For meaning, please see "Glossary" in the beginning of the issue.

(26) In the current practice, *ibra'* is a unilateral contract on the basis of *tabbaruʿ* even though *ibra'* clause is stated in the agreement.

*ʿulamā'* interpreting the two transactions in one contract happens whenever the seller says for example, "I sell this cloth to you at a price of ten dinar on cash and twenty dinar on deferred payment, and they depart without either one choosing one of the two prices". From the above view, a contract involving two transactions in one is *ḥarām* due to no actual agreed price which creates *gharar*. If either one of the prices has been concluded, the transaction is allowed. All Islamic banks in Malaysia, which offer Islamic products apply the concept of *ibrā'* in *bayʿ bi thaman al-ājil, murābaḥah, ʿīnah, tawarruq* and diminishing *mushārakah* products, which were approved by the Bank Negara Malaysia's Sharīʿah Advisory Council (SAC). In the beginning, *ibrā'* was practiced in Islamic banking institutions based on a financier's discretion to grant it to a customer who settles his debt earlier than the stipulated period. However, since the practice of giving rebate is solely discretionary on the part of an Islamic banking institution, the customer may have doubts whether they are eligible to receive *ibrā'* when they make an early settlement. Furthermore, they are also unaware of the formula for the *ibrā'* computation by the bank. As a result, customers shift to conventional financing instead. To overcome confusion in the granting and computation of *ibrā'* by Islamic banking institutions, it was proposed that a clause on the promise to provide *ibrā'* to customers who settle their debts earlier than the stipulated period be introduced. Therefore, it is important to resolve the issue of whether the incorporation of such clause on promise to give *ibrā'* to customers in the Islamic financing agreement is permissible by Sharīʿah. The SAC in its 24th meeting, held on 24th April 2002 (11 Safar 1423H) resolved that Islamic banking institution may incorporate the clause on undertaking to provide *ibrā'* to customers who make early settlement in the Islamic financing agreement on the basis of public interest (*maṣlaḥah* ). This clause shall be stipulated in the method of payment. With the inclusion of the *ibrā'* clause in the financing agreement, the bank is bound to honor that promise. This approach mirrors the concept of giving a discount on the price or reducing the debt of the customers who make early settlement based on the concept of *ḍaʿ wa ta'ajjal* that is acceptable in Sharīʿah. The confusion on the issue of uncertainty in the price (*gharar*) does not arise if the clause on promise to give *ibrā'* is stated clearly in the financing agreement(27).

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(27) Islamic Banking and Takāful Department, Resolution of Sharīʿah Advisory Council of Bank Negara Malaysia, p. 30-31

In the case of triple-win arrangement, to avoid any Sharīʿah dispute on sale price, the calculation of mark-up or profit portion could be based on the present value of the total profit portion, which is the amount derived from the market rate for a certain tenure of Sharīʿah-compliant financing. For example, if the total profit portion for USD45 million *istiṣnāʿ* financing with a 19-years tenure (including gestation period of 4 years) is approximately USD24 million[(28)], trust fund pays upfront fully the profit portion of about USD12 million, which is the present value of USD24 million, leaving the principal amount of USD45 million to be paid by the borrower. Therefore, the calculation of the sale price is based on USD45 million plus approximately USD12 million.

## 7. Conclusion

Currently, Islamic finance industry is dominated by some prominent products, such as ṣukūk, ijārah, murābaḥah, istiṣnāʿ, salam, mushārakah, muḍārabah, takāful and Islamic investment-linked products as well as Islamic funds. Trust fund, which is a product based on waqf, zakāh and ṣadaqah should also appear visibly in the Islamic finance industry. For such visibility, immediate actions can be taken at three levels namely intermediaries, countries and internationals.

*Intermediaries' level*: For a dominant presence in the industry, for each Islamic bank to have a dedicated entity to mobilize the resources of waqf, zakāh and ṣadaqah via trust fund would be an ideal business model for socio-economic objectives. The best example of the proposed outfit is Bayt al-mal Muamalat (BMM), which is a subsidiary of Bank Muamalat, Indonesia. The most notable achievement of BMM is managing more than 3,000 orphans affected from the Banda Aceh's Tsunami in 2004. The yearly seed capital, in the form of zakāh, received from its parent entity (which is normally allocated for annual CSR activities), could be used as a springboard for securing more contribution from other zakāh-payers and donors. Leveraging the expertise and payment system from the parent entity would noticeably enhance the effectiveness and efficiency of programming and managing the funds. These factors are very relevant for the success to link its development with mainstream economic development to ensure an effective mobilization of the waqf, zakāh and ṣadaqah.

(28) The calculation of profit rate was at applicable rate in the IDB as on 9 December 2013.

*Countries level*: To have a centralized regulator for activities of waqf, zakāh and ṣadaqah, might be feasible, complementing the efforts of the existing authority. For example waqf assets in Malaysia are currently under the purview of the state Islamic religious affairs councils of each state. The Majlis Agama Islam (state religious authority) is the sole trustee to manage any waqf asset in the interest of the founder. For an interim step, there is an immediate need to bring a pool of industry experts to chart a development plan, create a national database, unlock the value of waqf property and link the waqf, zakāh and ṣadaqah development of assets with mainstream economic development. From a larger perspective, with a centralized regulator, it would revive the market by more participation of stakeholders in the structured market of trust fund, such as lawyers, accountants, Sharīʿah Advisors, bankers, rating agencies for optimal structuring and execution efforts, as well as extensive thought, research works for enticing donors, which is similar to what has been happening in ṣukūk market.

*International level*: To become a well-regulated trust fund market, it is always a prerequisite to have a multinational authority to provide a forum for regular cooperation on regulation and supervisory matters with an objective to enhance the understanding of key local issues, developing accounting and market standards for improving the quality of management and implementation of cross-border trust funds worldwide, the like of Basel Committee on Banking Supervision (Basel), the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS) for banking, securities and insurance businesses respectively. Although "free money" should not be highly regulated, a multilateral forum is still needed for developing a code and conduct for cross-border transactions. Its existence would decrease legal impediments for any initiative to bring the excess capacity of *waqf, zakāh* and *ṣadaqah* from one country to another. There should be a multilateral entity to lead these infrastructure development roles for the betterment of the trust fund market. The leadership role might become more and more prominent with the passage of time; once the aforementioned recommendations at the intermediary and country levels have been implemented successfully.

## References

**Ahmad K** and **Hassan A.** (2000) "Distributive Justice: Islamic Perspective*", Intellectual Discourse*, 8 (2), p169.

**Akbar S, Zulfiqar S, Shah A,** and **Kalmadi S** (2012) "An investigation of user perceptions of Islamic banking practices in the United Kingdom", *International Journal of Islamic and Middle Eastern Finance and Management*, 5 (4), 353-370.

**Ali A. M.** (2011) Official speech of "*Waqf*, *zakāh* and *ṣadaqah* as Community Empowerment Strategies for Economic Transformation of the Ummah" Presented at the 3rd Langkawi Islamic Finance and Economics Conference, Langkawi, Malaysia, 29 October 2011.

**Askari H, Iqbal Z.** and **Mirakhor A.** (2011) *Globalization and Islamic Finance: Convergence, Prospects and Challenges*, Singapore: John Wiley & Sons (Asia) Pte.Ltd., p.16.

**Atia M** (2011) "Islamic Approaches to Development: A case study of *zakāh*, *ṣadaqah* and *qarḍ ḥasan* in Contemporary Egypt", 8th International Conference on Islamic Economic and Finance. p.7.

**Aziz Z.A.** (2013) "Islamic finance - financial stability, economic growth and development", Islamic Development Bank (IDB) Prize Lecture, Jeddah, 27 November 2013.

**Aziz Z.A.** (2003) Keynote address on "Building a Comprehensive Islamic Financial System: New Financial Opportunities", organized by the Institute of Islamic Banking and Insurance's International Conference on Islamic Insurance.

**Dusuki A.W.** and **Bouheraoua** (2011) **"**The Framework of Maqāṣid al-Sharīʿah and its Implications for Islamic Finance", Research Paper Number 22, International Shariah Research Academy (ISRA) Kuala Lumpur.

**Graham B.** (2005) "Trust Fund in the Pacific: Their Role and Future", Asian Development Bank, pp. 5-6

**Hellman J., Bajer G., Vish R.** (2012) World Bank's Slides presentation during the Donor Forum in Paris on 15-16 May 2012.

**Ismail, A.H.** (1986) "Islamic Banking in Malaysia: Some Issues, Problems and Prospects", Unpublished Manuscript, Bank Islam Malaysia Berhad, Kuala Lumpur.

**Jobst A.A.** (2008) "The Economics of Islamic Finance and Securitization", *IMF Working Paper,* 07/177.

**Kamali M.H**, (2008) "Al Maqāṣid Al Sharīʿah, The Objective of Islamic Laws" published in *Maqāṣid al-Shariʿah Made Simple,* Occasional Paper Series 13*,* August 2008, The International Institute of Islamic Thought: London, Washington.

**Khan I.A.** (1999) "Developing Country Frameworks for Islamic Finance", *Proceedings of the Third Harvard University Forum on Islamic Finance: Local Challenges, Global Opportunities*, Cambridge, Massachusetts: Center for Middle Eastern Studies*,* pp. 159-162.

**Puetz D.** and **Gutman J.** (2013) "Trust Fund Management at African Development Bank, An Independent Report" published by Operations Evaluation Department of African Development Group, p. 28.

**Mohammad T.S.B.M** and **Iman A.H.B.M** (2006) "Obstacles of the Current Concept of *Waqf* to the Development of *Waqf* Properties and the Recommended Alternative", Research at the Department of Land Administration and Development and Centre for Real Estate Studies, Faculty of Geoinformation Science and Engineering Universiti Teknologi Malaysia, 81310 Skudai, Johor, Malaysia, p 27.

**Samah Z.A, Sulaiman N.N.A.N., Salam H.A., Osman M.** and **Hussain T. M.T.T.** (2011) "Issues in Developing Islamic Financial System: The Case of Malaysia", Review Article published in *Academia*, 16 December 2011.

**Yakcop N.M.** (2002) "Islamic Financial Market Development: The Malaysian Strategy" Speech delivered at the Malaysia Securities Event International Islamic Capital Market Conference, 26-27 March, 2002, Kuala Lumpur.

# صندوق الاستثمان: منتج يجمع بين الوقف والزكاة والصدقة لتحقيق أهداف اجتماعية واقتصادية

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**المستخلص.** تقدم هذه الورقة أموال الوقف والزكاة والصدقة، التي تتحرك حاليًا من خلال المؤسسات غير المالية مثل الهيئات الخيرية والمنظمات غير الحكومية كمكونات إضافية في صناعة التمويل الإسلامي، لتكملة جهود مؤسسات الوساطة المالية كمساهمين في أسس التنمية الاجتماعية والاقتصادية. تعرض هذه الورقة الجوانب المختلفة لحالة دراسية عن استخدام البنك الإسلامي للتنمية أدوات صندوق الوقف في التنمية الاقتصادية والاجتماعية بالدول الأعضاء والذي يتضمن مشروع استئصال مرض شلل الأطفال في الباكستان بالتعاون مع مؤسسة بيل وميليندا جيتس (مؤسسة جيتس) كجزء من المبادرة العالمية لاستئصال مرض شلل الاطفال. وفي نهاية الورقة، يتم تقديم بعض التوصيات بخصوص الأنشطة التي تقوم بها المؤسسات غير المالية لتنمية أموال الوقف والزكاة والصدقة لدفعها من خلال صناديق الوقف نحو التيار الرئيسي للاقتصاد بطريقة أكثر تنسيقا وتكاملا وفاعلية على المستويين القومي والعالمي.

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