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The Use of Islamic Real Estate Investment Trust (I-REITs) as a Contemporary Instrument in Developing *Waqf* Assets: Potential Structure, Issues and Challenges

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Abstract: The primary objective of this paper is to explore the potential of Islamic Real Estate Investment Trusts (I-REITs) as an effective instrument for financing *waqf* development activities. This study employs legal research methodology, (the data used were largely library-based and documentary in nature), in which opinions of jurists, classical and contemporary are analysed in discussing the potential of I-REITs as a mechanism to develop *waqf* assets. Besides, several resolutions issued by relevant market authorities are referred to in this study. The study concludes that despite several challenges, with proper implementation, I-REITs may be adopted by a *waqf* institution as a mechanism to finance the development of their *waqf* assets. The novelty of this paper lies in the proposed structure of I-REITs, which can be a useful reference for the policy-makers and REITs issuers in establishing an enabling environment within which *waqf* I-REITs can potentially operate. Therefore, this study hopes to shed some light on the potential of *waqf* I-REIT to become an asset class to provide diversity for the public to give *waqf.*

Keywords: *Waqf,* Islamic Real Estate Investment Trust (I-REITs), Social finance, Islamic finance, Malaysia

Abstrak: Objektif utama kertas ini adalah untuk meneroka potensi amanah pelaburan hartanah Islam (I-REIT) sebagai instrumen yang efektif untuk

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membiayai aktiviti pembangunan wakaf. Metodologi yang digunakan adalah berasaskan kajian perundangan (sebahagian besar data yang digunakan adalah bersifat kajian kepustakaan dan dokumen), melibatkan pandangan fuqaha klasik dan kontemporari yang dianalisis bagi membincangkan potensi I-REIT sebagai mekanisme pembangunan aset wakaf. Di samping itu, beberapa resolusi yang dibuat oleh badan kawal selia yang berwibawa turut dirujuk dalam kajian ini. Kajian ini merumuskan bahawa meskipun berdepan dengan pelbagai cabaran, menerusi implementasi yang baik dan terurus, struktur I-REIT berupaya diaplikasikan sebagai satu kaedah untuk membiayai pembangunan aset wakaf. Kertas ini mengetengahkan hasil dapatan kajian yang baharu bahawa struktur I-REIT yang dicadangkan boleh dijadikan rujukan dan panduan kepada pihak pembuat dasar dan penerbit I-REIT dalam mewujudkan persekitaran yang membolehkan I-REIT wakaf beroperasi. Sehubungan itu, diharapkan kajian ini berupaya memberikan pencerahan mengenai potensi I-REIT wakaf sebagai satu kelas aset bagi memberikan kepelbagaian pilihan kepada orang awam untuk berwakaf.

Kata kunci: Wakaf, Amanah Pelaburan Hartanah Islam (I-REIT), Pembiayaan sosial, Kewangan Islam, Malaysia

1.0 Introduction

According to Hodgson (1974), *waqf* has been regarded as a primary vehicle for a Muslim society to finance its business activities. As the role of *waqf* is becoming more significant, it has become one of the key underlying components of social sector (*ijtima'i*) in the entire Islamic economic system (Surtahman and Sanep, 2010). In addition, *waqf* may serve as a safety net for socio-economic security through wealth distribution and sharing of benefits with the poor and needy, which to a certain extent is parallel to the role of *zakah* (Kahf, 1998). History has shown many evidences of the tremendous impact of *waqf* development on socio-economic development of the Muslim society (Cizakca, 1998) without putting inward pressure on government expenditure (Mohsin, 2010). A great example is the building of Masjid al-Haram, Masjid al-Nabawiy and University al-Azhar (Ahmad Zaki, 2006). These are among the inventions due to *waqf* development which have significant contribution to the well-being and civilization of Muslims around the world. It is indisputable that there are various models for developing *waqf* assets that have been proposed and implemented throughout the Islamic era. Aminah and Sabit (2011) analysed the effectiveness of these models for developing *waqf* assets and concluded that most of them suffer from two major problems, namely insufficiency of liquid funds and illiquidity *of waqf* assets. Indeed, it is a difficult task to find a sustainable model that could solve these liquidity issues in the effort of generating stable and continuous returns for *waqf* institutions as well as the beneficiaries. Thus, as pointed out by Kahf (1998), ongoing research pertaining to contemporary methods of developing *waqf* assets is urgently needed.

The above discussion provides a dire and valid justification for considering the implementation of various innovative structures, including using Islamic capital market instruments such as Islamic Real Estate Investment Trusts (I-REITs) in developing *waqf* assets. I-REITs is a collective investment scheme similar to mutual funds or unit trusts, which raises funds from investors for the purpose of buying and hiring property such as houses, commercial buildings, farms and car parks or other financial assets related to property such as construction company stock and *sukuk* issued by real estate companies (Securities Commission Malaysia, 2006; 2007). A holder of REITs unit is deemed as a buyer of a fraction of a managed pool of real estate which entitles the unit holders the beneficial ownership or beneficial interest to the real estate in terms of rights to the receivables. I-REIT itself can be seen as a company that owns and usually manages commercial and residential properties like apartments, offices and factory spaces, on behalf of the shareholders.

From an industrial point of view, I-REITs are seen to have a great deal of potential to attract a wider pool of institutional and individual investors in providing abundant support for the expansion of the property sector through acquisition of properties via the scheme hence stimulating the industry's growth. The proven ability of I-REITs to raise capital can also benefit activities of upgrading and maintaining public infrastructure and facilities such as airports and healthcare institutions (Messer, 2011). This whole idea is in line with the fundamental role of a financial market as a platform that mobilizes capital from a surplus sector to those that have a shortage of funds. Consequently, this may result in a more enhanced level of economic efficiency in a country due to better resource allocation (Mishkin, 2010).

This study aims to explore the prospect of I-REITs as an alternative mechanism to unlock the value of *waqf* assets, hence developing *waqf* assets for the betterment of the *ummah*, with Malaysia taken as a sample for discussion. This is done by deploying a legal research methodology in which opinions of jurists, classical and contemporary, are analysed in discussing the potential of I-REITs as a mechanism to develop *waqf* assets. Several resolutions issued by relevant institutions are also referred in this study. This paper advocates, inter alia, that the integration of I-REITs and *waqf* will be able to provide an enhancement to *waqf* properties which will, in turn benefit the beneficiaries via the income that will be generated by the I-REITs. In doing so, a viable structure of *waqf* I-REITs is proposed, which is a novelty of this paper.

2.0 The Landscape of I-REITs in Malaysia

In the conventional practice, REITs are recognized as a group of financial assets which are defensive and low risk (Newell and Atasya, 2009) especially when it faces uncertain market situations (Yeap, 2011). This is due to the characteristic of REITs that consists of diversified portfolios across different types of assets. REITs features prominently on the investors' radars as it can possibly generate attractive returns without having to take colossal risks. The returns to the investors may come in forms of dividend payment which is generated from rental income of the properties and any capital appreciation resulting from holding REITs units (Securities Commission Malaysia, 2007). According to statistics provided by Bursa Malaysia (2012), on average, REITs return is around 6 to 7 per cent, which is higher than the returns from bonds and fixed deposit savings. In addition, the findings of Anuar and Soi (2011) on the performance of several REITs in Malaysia, including both conventional and Islamic REITs, show that the dividend yields of Malaysian REITs was recorded above the return of fixed deposit, at an average of 2 to 3 per cent. Meanwhile, in comparison to equity investment, although the dividend yield may not be as high as the returns gained from investing in stock markets, REITs involve lesser risk due to regular rental income flows from their rental properties (Afiq and Harul Izwan, 2011). When it comes to I-REITs, Newell and Atasya (2009) concluded that I-REITs have demonstrated a high degree of robustness during the global financial crisis compared to conventional REITs.

Malaysia became the first jurisdiction in the global financial sector to issue the Guidelines on I-REITs (Securities Commission Malaysia, 2006) which sets as a global benchmark for the development of I-REITs.

The 2008 Securities Commission Malaysia's (SC) Guidelines on REITs stipulates that REITs must invest at least 50% of its total assets in real estate, whether via direct ownership or through a single purpose company whose principal assets comprise real asset[1]. This allows shareholders to invest in property without actually having to own directly the property (Wajdi, 2011). The major advantage of I-REITs is that it is much easier to buy or sell, shares in I-REITs which is traded on major exchanges than to buy or sell property in the traditional way. Therefore, I-REITs may be viewed as the best combination of investment in real property and stocks (Anuar and Soi, 2011).

Malaysia has been hailed as the pioneer of I-REITs development with the launch of the first instrument of its kind in the world namely Al-'Aqar KPJ REITs in the year 2006 (Newell and Atasya, 2009). This was followed by Al-Hadharah Bousted REITs and AXIS REITs both in 2007 and 2008 respectively. In May 2013, the KLCCP-i, a stapled-security which consists of equity and I-REITs was established. The recent establishment of this stapled REITs has contributed towards significant growth of market capitalization of I-REITs in Malaysia from RM3.64 billion to RM15.4 (Securities Commission Malaysia, 2013). The launch of I-REITs has embarked on another dimension of ethical investment which provides the opportunity for Muslim investors around the world to diversify their investment portfolios to generate returns and improve profitability based on the principles of *Shariah.*

On a global level, there is a large, untapped market for I-REITs and Malaysia has an advantage over the rest of the region to provide new opportunities for market players, including fund managers to further diversify their investment portfolios. With established regulatory framework that facilitates the creation of a new asset class, it provides huge opportunity for the Malaysian market to attract foreign investors, especially from the Middle East to invest in this country (Alias and Soi, 2011). This was evidenced in the case of Al-Aqar Healthcare REITs (formerly known as Al-Aqar KPJ REITs) which successfully attracted the Middle Eastern investors to invest approximately $100 million in its syndicated *ijarah* facility after its launch in 2006 (Newell and Atasya, 2010).

3.0 Literature Review

3.1 The Concept of Waqf

The word *waqf* is derived from the Arabic verb *waqafa* which means withholding (*al-habs)* and preventing (*al-man')* (Al-Sarakhsi, 2005). According to Ibn Qudamah (1995), *waqf* means "withholding the corpus of an asset (without disposing it) and distributing the return (outcome) of the asset". The perpetuity element of *waqf* which preserves the corpus of *waqf* and distributes the benefits to beneficiaries distinguishes *waqf* from other concepts of *infaq* (charity) such as *hibah* (grant), *sadaqah* (donation) and *hadiyyah* (gift) (Mohd Zamro, 2008). Likewise, Kahf (1999) asserted that the repeatability of benefits generated from *waqf* assets has theoretically differentiated *waqf* from ordinary *sadaqah* since the concept of *sadaqah jariyyah* (perpetual charity) only applies to the former and not the latter.

The perpetual or continuous feature of *waqf* is further manifested through a progressive approach in developing *waqf* property, in which no *waqf* asset should be left idle and unattended in order to ensure sustainable return to beneficiaries. Essentially, the *sadaqah jariyah* concept signifies the Muslims' willingness to sacrifice their wealth for the sake of others, so that they will be rewarded eternally in this world and hereafter (Imam Muslim, 1997). A *waqf* also reflects the concept of *qurbah* as a mean of drawing oneself closer to Allah (Al-Zuhayli, 1997). It should be highlighted at this particular juncture that the practice of *waqf* works not only within the boundaries of self-devotion to Allah, but also as a central role in bonding and bridging the social gap among humanity based on the principles of *mahabbah* (love), *ta'awun* (cooperation) and *ukhuwwah* (brotherhood) (Syahnaz, 2008).

3.2 Features of Shariah-*Compliant REITs*

The distinguishing feature of I-REITs is its classification as an ethical investment that prohibits non-*halal* or non-permissible rental activities such as financial services based on interests (*riba*), gambling/gaming, manufacture or sale of non-*halal* products or related products, conventional insurance, leisure activities that are non-permissible according to *Shariah,* manufacture or sale of tobacco-based products or related products, stockbroking or share trading in non-*Shariah* compliant securities, as well as hotels and resorts. Among the main requirements of I-REITs are: (i) in acquiring new property, the rental from non-permissible activities of the property should not surpass 20 per cent of the total turnover of the I-REITs in the current financial year. If it does exceed 20 per cent the benchmark, the *Shariah* advisors shall advise the property manager against acquiring and investing in such property; (ii) for renting out to a new tenant, I-REITs manager shall ensure that the new tenant does not engage in activities that are considered impermissible in *Shariah,* and (iii) he or she should also ensure that all types of investments, deposit and financing instruments conform to *Shariah* principles.

In 2005, the SC introduced Guidelines on Islamic REITs which is the first of its kind in the world. Among the most important features of the Guidelines include various requirements regarding its tenancy, managing of its liquidity, investment, *takaful* and hedging mechanism according to *Shariah* principles. Apart from this, the Guidelines also require for an appointment of *the Shariah* committee or advisory panel who will be responsible to watch over the entire process of I-REITs so that it conforms to the *Shariah* principles throughout the investment tenure. In addition, the Guidelines on I-REITs specifies that an I-REIT is obliged to employ *takaful* schemes to insure its real estate. Nevertheless, in case that *takaful* schemes are not available or not economically viable, the I-REIT is permitted to take conventional insurance, provided that prior approval from the *Shariah* Advisors have been obtained. Besides, I-REITs are allowed to take part in forward sales or purchases of currency for the purpose of hedging its position only. In this respect, I-REITs shall involve only in *Shariah* compliant hedging instruments. Only if the Islamic instruments are not commercially viable will I-REIT be allowed to obtain *Shariah* non-compliant instruments, provided prior approval is obtained from *Shariah* Advisors.

3.3 The Implementation of I-REITs in the Areas of Waqf

3.3.1 The "Internal REITs" in Singapore

The Islamic Religious Council of Singapore (MUIS) has creatively invented an "internal REITs" for its *waqf* assets. This was done through the purchase of a six–level office building at 11, Beach Road where an asset migration exercise was undertaken. *Waqf* assets with low value and yield were transferred to a high yielding asset through *the istibdal* process. The net returns from the rental of the building was then distributed to the *waqf* beneficiaries based on their shareholdings in the asset (Shamsiah, 2010). The beneficiaries of *waqf* assets with low returns prior to the migration process have now become the shareholders to high quality assets with better yield. The net assets value of the property increased from $S25 million in year 2007 to $S100 million in year 2012 (Shamsiah, 2012). As a result, MUIS was able to contribute many benefits for the trustees or administrators as well as the beneficiaries in terms of good location, proficient management, and high sustainable income. The beneficiaries of the *waqf* also include provisions for education and the needy.

3.3.2 Waqf *of Shares by Johor Corporation Berhad*

Malaysia is the global pioneer in establishing I-REITs with the launch of Al-Aqar KPJ Healthcare REITs (formerly known as Al-'Aqar KPJ REITs) in August 2006 whose portfolio comprises six hospitals. The number of property in the portfolio has increased from 6 to 25[2] with the primary focus on the healthcare-related property such as hospitals, nursing colleges and retirement living facilities. Value of these properties increased approximately three times from RM486 million in 2006 to RM1.4 billion in the year 2012 (Damansara REITs Managers, 2012). By implementing the I-REITs mechanism, Johor Corporation Berhad (JCorp) as the sponsor managed to raise fund from the investors to expand the healthcare business in terms of financing new medical equipment and facilities, upgrading the existing buildings as well as acquiring more hospitals in order to enhance the size of the investment portfolio (Md. Nurdin, 2011).

In 2000, JCorp established Waqaf An-Nur Corporation (WANCorp) to spearhead the management of shares or stocks and assets that were given for *waqf* development. WANCorp is also responsible to implement corporate social responsibility (CSR) initiatives by managing hospitals, clinics, mosques, entrepreneurship and educational programs which all are based on *waqf* concept. The contributions were also extended to an international level through the Somalia Humanitarian Aid and GAZA Humanitarian Fund in 2011 (Johor Corporation, 2011).

JCorp has once again carved its own history to be the pioneer and the only company in Malaysia that has been actively involved in *waqf* on shares and I-REITs. By donating some of the shares and I-REITs, dividend received each year from the *waqf* assets will be disbursed to the *waqf* beneficiaries. Based on the *waqf* deed regarding the distribution of the *waqf* benefits, 70 per cent out of the dividend will be distributed for reinvestment in Islamic fixed deposit and human resource development and 25 per cent will go for general welfare of the society, which is under the *fisabilillah* (charitable) theme, covering healthcare, education, entrepreneurship aid and other charity programs and the rest, 5 per cent, will be disbursed to the Islamic Religious Council of Johor (Waqaf Annur Annual Report, 2012). As at 31 Disember 2012, the net asset value (NAV) of JCORP subsidiary (listed companies) consist of Kulim (Malaysia) Berhad, KPJ Healthcare Berhad and Al-Aqar Healthcare REITs that have been allocated to *waqf* worth up to RM444.67 million (Waqaf Annur Annual Report, 2012). For the year 2012, the WANCorp spent RM3.5 million from the contribution and allocation of pledged aids under the *fisabilillah* benefits or charity purpose (Johor Corporation Annual Report, 2012). It is very interesting to learn that about 2 percent of Al-Aqar Healthcare REITs units (Johor Corporation Annual Report, 2012) have also been put under the *waqf* initiative and contributed towards the well-being of the society in the religious, social and economic areas.

From these two examples, it is observed that combining the elements of innovation and creativity by highly talented and motivated people, coupled with progressive fatwa and easy access to finance, together with a robust legal framework and strong governance, has contributed towards the successful management of *waqf* assets by MUIS and WANcorp. Corresponding to this advancement of *waqf* management in Singapore and the dynamic role of stock *waqf* in socio-economic development in the state of Johor, further research to analyse the potential of I-REITs structure in *waqf* development in Malaysia is crucial, particularly in bringing more innovation and expertise towards pursuing *waqf* growth to the next level.

4.0 Discussion

4.1 Is the Waqf *Concept and I-REIT viable?*

The *waqf* concept emphasizes generating sustainable income of the *waqf* property for the beneficiaries. Thus, the effort of developing abandoned *waqf* property by means of efficient dynamic structures should be given high priority by the *mutawalli*. In fact, there are many *waqf* properties that have yet to be exploited in generating more income and benefits for the *maslahah* of the *ummah*. It is expected that if I-REITs, an investment instrument that have the potential to enable larger group of investors to own property, with a small amount of money, were to be implemented in *waqf*, the number of *waqf* contributors will increase in the future. Therefore, it is vital to explore the REITs structure in the development of *waqf* assets. The REIT structure is argued to be appropriate, and essential for individual investors who would like to participate in this investment by contributing their property for *waqf* as it requires a low investment outlay (Shamsiah, 2011). As a vehicle managed by real estate professionals and subject to rigorous regulation on good governance and transparency, I-REITs create portfolio of income-generating properties and distribute net returns on a regular basis, hence providing stable yields for unit holders.

4.2 Issues of Waqf *Development Based on I-REITs Structure as A Social Financing Mechanism*

The establishment of I-REITs *waqf* based on the structure mentioned above may face few issues and challenges that will be addressed in the following discussion.

i. Viable size and quality of waqf assets to establish I-REITs

The first feature that is crucial in order to establish an I-REIT is that the initial size of the assets in the investment portfolio should be big enough to allow for relatively potential high return for the *waqf* assets. The SC's Guidelines on Real Estate Investment Trusts stipulate that the minimum size required to issue REITs in Malaysia is RM100 million. The question arises as to whether there are enough number of *waqf* assets to be injected into the I-REITs to meet the minimum requirement of the REITs' Guidelines.

To explain this further, according to Sing and Ling (2003), REITs income extremely depends on the type of commercial property that are injected into the REITs portfolio. Office, industrial (warehouse and logistic) and retail (shopping malls) are among the type of assets which yield high rent to REITs. In Malaysia, office building is one category of assets that yield higher return to the REITs company, followed by industrial REITs and retail and health care services, as shown in *Table 1*.

Table 1. Average REITs Income in Malaysia by Type of Assets

Type of REITs Assets	Average Annual Income (%)
Office	7.6%
Industrial	6.9%
Retail	6.2%
Healthcare	6.1%

Source: Affin Investment Bank (2014) and Maybank Investment Bank (2013)

Currently in Malaysia, most of the *waqf* buildings managed by SIRCs in Malaysia have a value of less than RM100 million and only a few property are income producing assets. This situation reflects the reality that most *waqf* assets in Malaysia are less suitable to be injected into I-REITs portfolios because they do not fulfill the requirement set by the 2008 REITs' Guidelines by the Securities Commission of Malaysia. However, since there are lots of scattered uneconomically-sized *waqf* lands in various states in Malaysia, there is potential that this pool of abandoned lands be replaced (*istibdal*) with high quality and income producing high rise buildings in strategic location cities like Kuala Lumpur, Penang or Johor Bahru. *Istibdal* is one of the pragmatic mechanisms or an "exit policy" that is allowed by *Shariah* to be considered in order to develop abandoned *waqf* lands all over the nation for the benefit of the *ummah*.

ii. The nature and background of I-REITs Industry

The modus operandi of any I-REITs is to acquire high quality assets to create a larger and sustainable size investment portfolio to attract wider investors to participate. Given the fact that real estate business is a high profile and expensive industry which requires strong financial company background in acquiring new assets, almost all of I-REIT companies will obtain financing facilities from financial institutions or will issue *sukuk* to enable them to buy new property or to serve the existing debt. A study over the annual financial statements of three I-REITs companies in Malaysia, namely Axis REITs, Al-Aqar Healthcare REITs and KLCC REITs show that these companies have been actively involved in *sukuk* issuance. Annual Report of Axis REITs, for example, clearly stated that the purpose of the issuance of *sukuk* is to refinance the existing debt of the fund (refinance the fund's financing facilities). This is to assist the company to strengthen their financial position in line with the provisions of the REIT Guidelines. This reflects that debt financing seems to be one of the most favoured approach taken by the majority of REIT/I-REITs companies to strengthen their financial management. It seems that the modus operandi of *waqf* I-REIT should also emulate this practice in creating value for the waqf I-REITs.

Besides, *waqf* I-REITs can also employ cash *waqf* mechanism to generate more funds to create *waqf* properties. For instance, SIRCs may design *waqf* prospectus to invite cash from the public to be donated in *waqf* I-REITs. The *waqf* I-REITs itself may determine assets to be acquired under it. Next, the public will donate their money which shall be used to acquire properties and shall be declared as *waqf*.

iii. Transfer of ownership of waqf assets to third party

As a basic rule, *waqf* assets cannot be disposed since the ownership of the *waqf* assets has been transferred to Allah permanently and remains unchanged. Hence, the asset has to remain in the *waqf* domain perpetually (Al-Zuhayli, 1997). Also, the *waqf* assets shall not decrease in size or quantity, as it is prohibited for *mutawalli* to dispose the assets. Nevertheless, the assets should not be left idle by any act of neglect. Thus, the *mutawalli* as the sole trustee is responsible to venture into strategic and viable plans to develop *waqf* assets in order to enhance the value, quality and size.

Based on the REITs Guidelines by the SC, the creation of I-REITs will involve the process of selling assets (in this respect, *waqf* assets) to a special purpose vehicle (SPV) which later establishes an I-REITs. Such structure raises the concern from a *waqf* point of view because selling of *waqf* properties would not be allowed as it infringes the inalienability element of the *waqf* property. Considering this, the application of an *ijarah* contract for a long term or *al-hukr* (long-lease) may be regarded as a viable option to the current practice provided that the current law is amended to allow the establishment of *waqf* I-REITs for a certain definite period. Apart from that, the "selling" of a *waqf* property for a certain period of time with the condition to buy back in the future would be another alternative which is worth considering. For instance, a *waqf* I-REITs is established for up to 30 years, upon which the *mutawalli* shall have the right to purchase back the assets.

According to Mohd Daud Bakar (2014), I-REIT is a viable model to finance the development of *waqf* through the offering of units to the investors where the capital raised can be used to refurbish the existing buildings or to establish new *waqf* assets. This can be realized through a specific clause in the agreement between the SIRCs as a trustee and the I-REIT that the SIRCs will buy back the *waqf* asset that have been "sold" to I-REIT after a certain period of time for example 20 years. He added that in this situation, there is no issue that the ownership of the *waqf* property would be transferred to any third party as it is secured by a clause where the assets would be bought back by SIRCs after the maturity period. This mechanism is to allow *waqf* assets that have no liquidity to be "sold for a while" for the purpose of obtaining capital to finance the construction or upgrading the infrastructure on the basis of preserving *maslahah* of the *waqf* itself.

iv. Subscription by non-muslims

The notion of *waqf* reflects religious and charitable act of expressing one's submission and piety to Allah. The concern then is whether *waqf* I-REITs can be subscribed by non-Muslims as the proceeds will be channeled to institutions that serve the needs of the Muslims such as mosques and Islamic religious schools. These institutions are closely related to the sanctity of Islamic rituals and divine devotion to Allah. In this regard, Muslim jurists ruled that non-Muslims are allowed to perform *waqf* as long as the objective is towards the virtue of righteousness and against immorality (Al-Saritiy, 1997). On that note, *waqf* I-REITs is open to the public largely, regardless of being Muslims or non-Muslims, for the purpose of realizing social benefits.

v. Legal issues

From a legal perspective, a thorough research is required to analyze the implementation of *waqf* I-REITs which involves *waqf* assets that are in the category of religious property. This gives rise to the question of whether these properties are recognized as at par with other commercial assets (Sabit, 2008), mainly during the migration exercise of *waqf* assets into the I-REITs structure that have to strictly comply with, among others, the National Land Code, and provisions and regulations related to the Islamic capital market sector. Moreover, it is important to study the operations of *waqf* in different countries and the implementation of cross-border issues of *waqf* I-REITs that raises challenges in term of legal, *Shariah* and tax requirements.

vi. Risk management

Since it is a must to keep a *waqf* corpus intact, *waqf* capital preservation has become the major concern in any developing or investing strategy. Thus, the I-REITs manager must take due diligent effort in mitigating risks to avoid losses or reduction to the principal assets while at the same time actualizing the benefits to the beneficiaries. Corresponding to this, the OIC International Council of Fiqh Academy in Resolution No. 140 has recognized the diversification and risk management in the form of taking guarantees and securities in investment strategies.

4.3 Paradigm Shift Among the Waqf *Authorities*

After all, the greatest challenge that need to be addressed is the readiness and willingness of all *waqf* authorities in Malaysia, especially the SIRSc to make a paradigm shift of accepting contemporary instruments such as I-REITs as a tool in expanding the benefits of the *waqf* property. This will ensure an effective transformation and development in achieving substantial and broad-based improvements for the well-being of the *ummah.*

It should be noted that the establishment of *waqf* I-REITs will embark on a new asset class of *waqf*. This initiative is in line with the resolution by Majma‘ Fiqh in 2009 on the permissibility of *waqf* of financial rights *(huquq al-maliyah)* that are *Shariah*-compliant such as company shares, *sukuk* and intangible rights *(huquq ma‘nawi)* that comprises intellectual property such as copyrights, trademarks and patents along with *waqf* of unit trusts (Al-Majma‘ al-Fiqh al-Duwali, 2009. Looking at the massive size and fast development of Islamic equity market throughout the world, further research need to be carried out to harness the potential of unit trust, including I-REITs as a contemporary *waqf* instrument to develop *waqf* assets.

5.0 The Proposed *Waqf* I-REITs Structure

Having discussed the issues of developing *waqf* properties via I-REITs, it is clear that the main obstacle of developing *waqf* through I-REITs lies in the current legal framework in Malaysia. For example, REITs Guidelines which stipulates that the establishment of I-REIT can only be realized by true selling of the assets to the REITs company. The approach, however, contradicts the underlying principles of *waqf* which dictate that the asset should not be transferred out of *waqf* ownership through buying and selling or be given as a *hibah*. Thus, the initial idea of developing abandoned *waqf* assets thought the I-REITs structure is inherently difficult to implement as it violates the Malaysian laws pertaining to I-REITs, unless the law is amended to facilitate the practice of *waqf* REITs.

Having said that, the idea of incorporating *waqf* into the I-REIT structure is still a viable mechanism where it can be realized at the investors level. Based on the structure, the investors are given the option to channel all or part of their holding units of REITs to *waqf*, and this can be done at the beginning of the issuance of I-REITs or at any time during the lifetime of the I-REITs. If the opinion that allows for temporary *waqf* is to be adopted, they can even transfer their holdings of I-REITs units for a certain period of time only. *Figure 1* illustrates the proposed structure of *waqf* I-REITs.

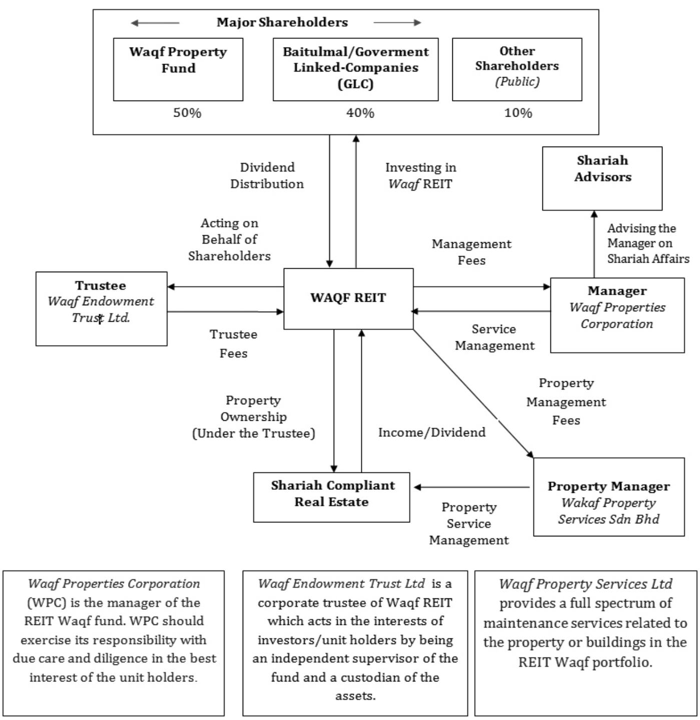

Figure 1. Proposed Waqf REITs Structure

In this structure, a REIT will be established by the SRICs as the sponsor. Suitable assets which are non-*waqf* assets (to avoid the notion of selling *waqf* properties) will be identified and be injected into *waqf* REIT. The REITs manager will offer the REITs units to various entities, ranging from *Waqf* Property Fund, Baitulmal, GLC and also the public. These investors will purchase units of *waqf* REIT, whose proceeds will be used to purchase *Shariah*-compliant assets that are previously identified by SIRCs. The assets will be leased backed to the SIRCs. SIRCs will then sublease the assets to the *Shariah*-compliant tenants. The returns from the tenancy will be distributed to the investors. The dividend from this *waqf* REITs will be used by the SRICs to refurbish the existing *waqf* assets which are not in *waqf* REITs.

This structure can also facilitate for temporary *waqf* as recommended by the Maliki school of law. The time is specified for instance for a short period of two or three years or for a long period up to 99 years. This can be done by allowing the investors to temporarily give up their I-REITs units to *waqf*. During this period, any dividend from the I-REITs units will be given to *waqf*. The unit holders can even change their purpose of buying the I-REITs unit from investment into charity by declaring *waqf* on their I-REITs unit later. This flexibility in application will definitely entice investors to participate in this proposal. The idea is also in line with the recent law development pertaining to *waqf* in Malaysia particularly in the state of Selangor. Section 23 of the Wakaf (State of Selangor) Enactment 2015 on "*wakaf* of shares" outlines that "shares, bonds, sukuk or other instruments for valuable guarantee; and benefits from the units of share, bonds, sukuk or other instruments for the said valuable guarantee" can be a *mawquf (waqf object).* The illustration in section 23 of the Enactment clearly specifies the permissible practice of "*wakaf* of shares" which can also be analogized to the *waqf* I-REITs as follows: "A owns one thousand units of share in company B. A may give *wakaf* the dividend from the said units of share for the purpose of *wakaf am* or *wakaf khas* to the Majlis."

6.0 Conclusion

In the current competitive global economy, the search for a new mechanism that integrates Islamic finance and the *waqf* sectors has brought a new array of development in the Muslim world. The convergence of these two *Shariah*-compliant sectors is very promising to be a new engine of growth and quantum leap that engages more Muslims to an efficient and systematic way of managing *the waqf* asset. This paper submitted that the Islamic REITs structure for *waqf* development has the potential to be a source of social finance, particularly in financing the development of abandoned and scattered *waqf* assets by unlocking the values of the *waqf* assets with I-REITs mechanism. This structure may be regarded as a viable option to the current practice provided that the current law is amended to allow the establishment of *waqf* REITs for a certain definite period. The I-REITs structure is deemed feasible to be implemented and incorporated as a mean to develop *waqf* with the arrangement made at the investors level where they are given options to give all or part of their holding units to the *waqf*. The proposed structure involves the engagement of SRICs in providing underlying non-*waqf* assets for the *waqf* I-REITs. It also helps to attract other investors, including corporate entities and the public. The dividend which has become *mawquf* can be channeled for further development of other *waqf* assets which have not been developed well. The proposed structure can also be used to create a new *waqf* asset by inviting prospective investors to donate their money via I-REITs units (which is equivalent to cash *waqf*) that will be used to create new *waqf* assets.

Apart from that, this study also proposed the practice of temporary *waqf* which is permissible under the Maliki School and also in line with the current law in the Federal Territories of Malaysia. The development of *waqf* assets via I-REITs structure has far-reaching objectives and its implementation is expected to significantly increase its portfolio. It can possibly attract a larger pool of the growing Muslim base investors as the value that can be injected into *waqf* asset can be in small denomination. In conceptualizing the *waqf* I-REITs*,* it is evident that more research needs to be done, especially in analyzing the best mechanism to introduce the new asset class of *waqf*, namely *waqf* unit trust and *waqf I-REITs* to the public at large, the issues related to the legal framework as well as risk management. Thus, this paper is believed to be a catalyst to the relevant authorities to restore the core function of *waqf* in serving the community and public.

Endnotes

1. Other countries take up different approaches in establishing REITs particularly concerning the ratio of investing in real estate. In the US for example, REITs is obliged to invest at least 75% of the company's total total assets in real estate while for Korea and Singapore, the minimum ratio is 70%.

2. This include two hospitals in Indonesia, one in Thailand and a retirement and aged care resort called Jeta Gardens in Brisbane, Australia.

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