

The New Waqf (Islamic Trust) Law in the Emirate of Sharjah

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What is a Waqf?

Waqf is a concept which resembles closely the Anglo-American trust. It is a form of endowment under which the ownership of assets is transferred to a juristic body (namely the Waqf), which manages the assets and the fruits of the assets for named beneficiaries for a defined period of time.

The Emirate of Sharjah (by Law No. 4 of 2011 has now introduced a special decree facilitating the establishment and operation of Waqfs.

Why was the Sharjah Law Needed?

Islamic Sharia law has developed the concept of the Waqf and also legal rules on how Waqfs are to be regulated or governed. However, there is not complete consensus amongst Sharia scholars on some of the base legal principles concerning Waqfs. This has created areas of uncertainty in Islamic jurisprudence and led to the Waqf being rarely used as a vehicle for asset management. Because there was previously no secular civil law to use as reference source and rely upon in creating Waqfs, or settling their terms and conditions, most Waqfs were vulnerable to challenge due to this unsettled and contentious Sharia jurisprudence.

Although Waqfs are not infrequently used to manage small assets, the use of a Waqf structure previously carried high risks when administering large and highly significant assets, where challenges to the Waqf and its administration were more likely.

What are the Key Terms of the New Sharjah Law?

The Sharjah law requires the settlor/creator of a Waqf to decide and record their wishes on several subjects. The most important are:

- the assets to be transferred;
- the beneficiaries of the proceeds of the assets; and
- the governance/management of the Waqf.

A Waqf deed needs to be drafted and certified by the competent judge at the Sharjah Court. The Waqf, once certified, acquires full and separate artificial legal personality as provided under Article 16 of the Sharjah Waqfs Law. This legal personality enables the Waqf to operate autonomously in carrying out the objectives set by the Waqf's creator.

The law mandates that a coherent management structure must be put in place. Articles 37 to 50 of the Sharjah Waqfs Law regulate the management of Waqfs. The management of any Waqf is to be conducted by a trustee or a board of trustees. The trustee or board of trustees is authorized to act on behalf of the Waqf. The new law contains provisions designed to ensure that any trustee acts in good faith and in line with the objectives of the Waqf. It is an option open to a settlor/creator to assign the management of the Waqf to a new statutory body created by the Sharjah law, namely the Waqf General Secretariat.

Article 8 of the Sharjah Waqfs Law lists the types of assets which are able to be owned and managed by a Waqf. The traditional view was that Waqfs could own only immovable assets. However, Article 8 of the new

law now provides explicitly that movable as well as immovable assets may be transferred to a Waqf.

Moreover, the law provides that interests in movable and immovable assets held in common with other owners or parties may be validly transferred to a Waqf, even if the assets concerned are under common ownership, provided that the transfer does not harm the interests of the other owners or partners. Article 8 further makes it clear that Waqfs may own all kinds of securities, trade names, moneys and intellectual property rights.

Conclusion

The Sharjah Waqfs Law means that Waqfs are no longer a risky option to adopt as an ownership structure. The absence of a secular civil source code to rely upon was previously the main deterrent against establishing a Waqf. Fortunately, the new Sharjah Waqfs Law covers most aspects of the Waqf structure and provides answers to many questions. Accordingly, the risk of a successful challenge to a Waqf duly established under this new law should be minimal.

In light of the new Sharjah Waqfs Law, there is a possibility that this long dormant form ownership structure will be revived, particularly as its unique attribute is that it is a Sharia compliant vehicle for owning and managing assets.