

# How to Convert your Property to a Waqf?

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For example, by the endowment of an entire building, the *waqif* dedicates all rental income generated from that building to the benefit of a specific recipient. It also prohibits any use or disposition of that building by anyone other than the specified recipient.

Dubai Local Law No. 9 of 2007 (“AMAF Law”) establishing the Awqaf and Minors Affairs Foundation (“AMAF”) codifies the Sharia position and defines a *waqf* as “Every item being endowed, whether movable or immovable, for the sake of other persons who are in need and with the intention of seeking the Almighty’s satisfaction by such endowment”.

## The Advantages of a Waqf

The advantages of establishing or granting a *waqf* cannot be measured in terms of income and expenses only. The benefits will accrue to the *waqif*, the community as a whole, and the poor and disadvantaged in general.

A *waqf* has the following benefits and advantages:

- creating a long-term and large community capital fund;
- establishing and supporting projects from the revenues of the AMAF on a sustainable basis;
- aiding the poor and disadvantaged communities;
- raising the self-esteem of the poor and the disadvantaged;
- contributing towards poverty alleviation;
- empowering society and encouraging people to contribute in charity;
- contributing towards forming a united community; and
- leaving a legacy that future generations will be proud of and incentivising them to follow the footsteps of the *waqif*.

*Waqfs* play an important role in nurturing solidarity and charity in society and provide a significant economic aid to the poor and disadvantaged.

## The Role of AMAF in Dubai

The main objectives of the AMAF are the guardianship of minors, managing and investing their funds, guiding their education and social development, and ensuring their empowerment. Furthermore, it aims to promote the grant of *waqfs* through a contemporary Islamic perspective by encouraging individuals to participate for the public good.

The AMAF is a public foundation that enjoys the independent corporate character and the legal competence to perform all activities in pursuit of its objectives. The AMAF may also contract with others legal persons, participate in litigation, and delegate to any other person for these purposes, generally under the supervision of the Executive Council.

Article 21 of the AMAF Law states that the AMAF shall undertake the legal superintendence of endowments, taking care of, investing, raising and managing funds, and disbursing their proceeds in accordance with the conditions stipulated by the *waqif*.

### **Waqf Requirements**

The *waqf* is a contract and therefore the *waqif* must have the capacity to enter into a contract. In summary, the *waqif* must:

- be an adult;
- be of sound mind;
- be capable of handling his or her own financial affairs; and
- not be subject to bankruptcy.

The AMAF Law is silent with respect to the faith of the *waqif* and although *waqf* is an Islamic concept, being a Muslim, or even a resident of Dubai, are not mandatory requirements to be a *waqif*. The AMAF encourages individuals from all faiths and nationalities to participate and donate to aid the poor and the disadvantaged.

### **Registration of a Waqf at AMAF**

A *waqf* must be registered at the AMAF following the attestation of a Dubai Courts judge. In this regard, Article 38 of the AMAF Law states that: "The endowment shall emanate from a court's attestation".

The requirements for registration of a *waqf* on a property at the AMAF are the following:

- original property title deed and site plan;
- letter from the Dubai Land Department confirming that the property is clear from any encumbrances or liabilities and that it can be converted into a *waqf*;
- passport copy and Emirates ID of the *waqif*;
- identity of the charity income recipient;
- selection of the superintendent of the *waqf* (e.g. the AMAF or any third party); and
- two witnesses for the certification of the *waqf*.

The *waqif* may register a *waqf* on a property that was granted to him by the Ruler of Dubai. However, the *waqif* must first seek the consent of the Ruler through the Ruler's Court to proceed and register a *waqf* on the granted property.

### **The Commencement and Term of a Waqf**

A *waqf* may commence at the time of registration during the life of the *waqif* or may commence following the death of the *waqif*. In this regard, Article 45 of the AMAF Law states that: "*The endowment which depends on the death of the waqif is not compulsory during his life. However, following the death of the waqif, it is necessary to carry out the endowment as registered by the waqif*".

Paragraph 1 of Article 40 of the AMAF Law states that the *waqf* shall be considered perpetually constrained from any kind of disposition whatsoever, whether it be sale, donation or mortgage, unless it is in the interest of preserving the *waqf* which stipulates otherwise, and any such disposition shall not be made without the court's permission.

Furthermore, paragraph 2 of Article 40 of the AMAF Law states that the endowment of a mosque shall always be perpetual. However, the endowment of other property can be either temporary or perpetual

depending on the choice of the *waqif*.

### **Supervision of a Waqf**

The supervision of the *waqf* is decided by the *waqif* and in the event that the *waqif* appoints a third party, other than the AMAF, the third party must provide detailed annual reports to the AMAF, including the income and expenses of the *waqf*. In this regard, Article 47 states that: *"The superintendent of the Waqf (endowment) shall provide the Foundation with periodical statements of account regarding the returns of managed endowments, and such statements shall be provided at a date fixed by the Foundation. The Foundation may fix a separate date for each endowment (separately)"*.

In the event that the *waqif* does not specify a superintendent, the AMAF will be the superintendent by law. The AMAF is granted this authority by Article 39 of the AMAF Law, which states: *"Provided that the waqif does not appoint any relative or any other specific individual as a superintendent, the Foundation shall be the superintendent, being the authority in charge of the general custodianship regarding charity and the returns of charities for the public benefit"*.

Furthermore, the *waqif* has the right to choose any beneficiary to receive the charity and income from the *waqf* and such beneficiaries may be individuals or institutions with or social purposes, such as health, education, social services etc.

In the event that the *waqif* does a charity recipient of the *waqf*, Article 44 of the AMAF Law provides the AMAF with the authority to disburse the returns totally or partially to a party that is deemed to be the most suitable and rightful in accordance with Islamic Law.

The supervision of the property that is the subject of a *waqf* is generally administered under a property management agreement, governing issues related to distribution of the income generated from the property and the maintenance of the property. We recommend that parties intending to grant a *waqf* seek legal advice to ensure that the property is managed by the *waqif* in the manner, and for the purposes, intended.