In Awqaf we trust – Management of family wealth

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Some of the earliest awqaf in Islam were founded for the benefit of the poor members of the family. On advice of the Prophet (pbuh), most of the Prophet's companions (*sahaba*), notably, Umar Ibn Al-Khattab and Abu Talha Al Ansari, established awqaf for the benefit of their poor relatives by following the Prophet's advice to hold the property as waqf and donate its usufruct. This directive of the Prophet became the basic principle upon which all the formal and procedural rules that govern awqaf were built.

Wealth creation and accumulation is part of human nature, and Islam recognizes its importance as a means for life fulfilment. Wealth in Islam is measured not only by material possessions, but includes all ethical and moral aspects that lead to good life in this world and the hereafter. Wealth preservation is a Shariah requirement, and is mentioned in the Quran and in Hadith. Quranic verses prohibit wastefulness, extravagance and squandering of wealth, and require Muslims to provide for their families during their lifetime and after their death. This means that the wealth we have control over is ultimately a trust from Allah to be used in accordance with sound moral principles. Allah says:
{**And do not entrust your wealth which Allah made a means of support for you – to the feebleminded, but provide for them with it and clothe them and speak to them with kind words**} 4:5.

The following Hadith urges the Muslim to provide for his family after his death:
(**It is better to leave your heirs rich than to leave them poor begging from people**.)
Sahih Muslim

The waqf principle of holding the asset and expending its usufruct is a golden rule for wealth preservation and a Shariah compliant mechanism for estate planning and wealth transfer across generations of beneficiaries. Throughout Muslim history, the family waqf (*waqf ahli* or *thurri*) was used as an instrument for wealth protection and estate management. Family awqaf were established to protect family property from falling into the wrong hands or to reduce its exposure to risks that might arise from such things as insolvency, liabilities, creditors and other legal claims. Once a property is made a waqf, it becomes inalienable and therefore cannot be sold, pledged, gifted, inherited or otherwise disposed of.

Generational change is a big risk factor and two thirds of family businesses do not survive the transition to the second generation. The issues that cause the demise of a family business are mostly family issues not business issues. Sibling rivalry, conflicting interests and defections reduce the survival rate to the third generation to less than thirteen percent. Failing to establish a clear and definite succession plan can ensure the demise of the family business and cause splits within even the most loving families.

Awqaf and family business can coexist in harmony indefinitely. Declaring the family business as a waqf does not harm the business or the heirs. The waqf structure does not damage the balance sheet. In fact, it gives the business a robust foundation with patient capital for additional growth and profitability. The waqf model creates a "culture of purpose" that moves the family business away from the dog-eat-dog contest and provides sensible balance between the business and family life. Family beneficiaries need not all be involved in the business. The waqf structure makes it possible for beneficiaries to pursue their own interests while still getting their share of the net profit.

Family businesses can evolve through the waqf ecosystem as it provides a sound governance framework that not only saves family wealth from fragmentation, but also helps its intergenerational transition in a frictionless environment. The family waqf is the responsible legal unit created by the founder to own and manage the business. Once created, the waqf will have its own legal entity separate from that of its founder, nazir or beneficiaries. It is permissible for the founder to be a beneficiary and nazir during his lifetime, and to include non-relatives as beneficiaries, and to dedicate a share of the business profits for charitable causes. After the founder's death, if an independent nazir is appointed, his relationship vis-à-vis the waqf will be at arm's length, in that he shall have control over the waqf's business and its assets, but no beneficial interest in them. He has fiduciary responsibility towards the beneficiaries to protect the assets and manage the business profitably for their benefit. He is entitled to a management fee but not a share of the profit. The beneficiaries will be entitled to the revenue and benefit from the business but will not own the waqf property itself.

The modern concept of family trust was developed in the west in the nineteenth century to preserve family business. Monica M. Gaudiosi (The influence of the Islamic law of waqf on the development of the trust in England: The case of Merton College- 1988) has noted the resemblance between the Islamic waqf and the English Law of Trust and highlighted the strong influence of the waqf on the development of Western laws. There are similarities between the family waqf and the private trust in respect of the continuity of the family business and the flow of revenues to the heirs. Under the Law of Trust as under the rules of waqf, property is preserved and its usufruct is appropriated to nominated beneficiaries or some other charitable purpose. These institutions can be created for an indefinite period of time and favour the successive beneficiaries.

Notwithstanding the similarities, there are substantial differences between trusts and awqaf. The structure and purposes are different. The trust is not a separate legal entity like a company or an individual. It is essentially a relationship involving the settlor or grantor, the trustee and the beneficiaries which is recognised by the courts in the context of their jurisdiction. Family trusts, are often established for tax considerations and other financial reasons. They can dispose of their assets and can be imminently wound up according to laws regarding dissolution of trusts by the settlor, or the trustee or the beneficiaries. Family trusts are sometimes established as discretionary trusts, where the beneficiaries and their entitlements are determined by the trustee according to criteria set out by the settlor in the trust instrument. However, these criteria are not legally binding and the only way a beneficiary will get income from the trust is if the trustee chooses to given him or her something.

In contrast, the waqf is perceived as a sacred trust and there is no separation between its legality and morality. The waqf is protected by a whole raft of Shariah rulings which ensure its irrevocability, inalienability and perpetuity. A family waqf would ultimately devolve to a charitable waqf (*Waqf Khairi*) after the fulfillment of the object of its creation such as the passing of a certain number of generations or the extinction of the family line in which case the business unit shall remain within the domain of the waqf.

A family waqf may also be set up in the founder's will (*wassiyah*) which by its nature is a testamentary trust that comes into effect only after death of the founder (grantor). However in such a case, the waqf should not exceed one third of the estate and should not include beneficiaries who are heirs under the Islamic inheritance (*faraidh*) rules. Thus the waqf allows for transfer of the business both while the founder is alive or after his death. Unlike wills, which can be easily contested, a waqf is rarely successfully challenged.

Most Muslim parents share the same concerns and worries about their children's long term financial security and happiness. Many of these concerns arise from the inheritance of wealth. Parents hope that the values upheld by the family and the principles that they cherish will be embodied and handed down to future generations. Family values should be documented and communicated to every family and non-family member in the business to ensure everyone knows what they are and how to be practiced. The waqf structure is a mechanism that provides a trusted genealogical record of the family history. Wealth protection and investment performance are just two of its functions. What ultimately is more important is realizing the founder's wishes and upholding the family legacy.