

Investment of Cash Waqf A Comparative Study between Islamic Jurisprudence and the Algerian Waqf Law (Law No. 25-06)

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Abstract

This study examines cash waqf investment as an emerging development tool that provides financial flexibility and liquidity to waqf institutions, addressing the issue of legislative and jurisprudential adaptation in Algeria under Law No. 25-06. The study demonstrates that the Algerian legislator has resolved the longstanding jurisprudential disagreement by affirming the permissibility of cash waqf, while expanding the recognition of investment instruments that combine developmental partnership-based models, such as mudarabah, musharakah, and investment funds, with sale and exchange-based contracts, particularly murabaha in its two forms. The study further confirms the capacity of the contemporary national legal framework to reconcile the preservation of the principal of waqf assets with the renewal and development of their benefits through Islamic financial instruments. The findings highlight the need to establish governance and risk-management mechanisms that ensure the sustainability of returns and efficiently direct them toward service complexes and public-benefit projects.

Introduction

First: Background and Significance of the Topic

The Islamic waqf institution represents one of the most profound and efficient financial and social systems in the history of Islamic civilization. Throughout the ages, its function has not been confined to the religious dimension; rather, it has evolved into an economic and social pillar contributing to the achievement of social solidarity and comprehensive economic development, thereby reducing reliance on public state budgets. Although real-estate endowments, such as houses, lands, and mosques, were predominant during earlier historical periods due to their characteristics of continuity and stability, contemporary financial developments and economic transformations have necessitated a shift toward more liquid and flexible forms, foremost among which is cash waqf.

The significance of this topic is particularly evident in the role of money as an expression of purchasing power, liquidity, and the speed with which resources can be directed toward investment and development, in contrast to real-estate assets, which may be subject to depreciation or require substantial maintenance and restoration costs that reduce their net returns. In this context, the Algerian legislator, through Law No. 25-06 on Waqf, has sought to keep pace with this transformation and accommodate contemporary jurisprudential developments by opening the way for the investment of cash waqf and diversifying its

development-oriented instruments through modern Sharia-compliant and legally regulated methods.

Second: Research Problem and Sub-Questions

The research problem of this study is based on the following fundamental question:

To what extent has the Algerian legislator, through Law No. 25-06 on Waqf, succeeded in accommodating the jurisprudential characterization of cash waqf and establishing an integrated legislative framework for the forms and mechanisms of its investment in a manner that ensures the preservation of the principal of the endowed capital while achieving the highest possible developmental return?

This main question gives rise to a number of subsidiary questions:

What are the terminological, jurisprudential, and legal parameters defining the concept of cash waqf?

What are the Sharia and legal foundations upon which the permissibility of establishing and investing cash waqf is based?

What investment instruments are adopted for the investment of cash waqf under Algerian Law No. 25-06, in comparison with Islamic jurisprudence?

Section One: Cash Waqf: Concept and Legitimacy

Subsection One: Definition of Cash Waqf in Linguistic, Islamic Jurisprudential, and Legal Terminology

First Branch: Linguistic Definition of Cash Waqf

Waqf in linguistic terms: The term waqf is the verbal noun derived from the triliteral verb It is said: "I stopped the thing" and "I detained it". Its plural form is awqāf. Thus, waqf means detention or withholding. To endow a house or land means to withhold it from disposal and dedicate it as a waqf.¹

Cash in linguistic terms: The Arabic term naqd originally refers to distinguishing genuine coins from counterfeit ones. Naqd also denotes money, and the expression "he paid him the money" refers to giving him the coins.² Currency refers to money made of gold, silver, or other forms of monetary instruments used in transactions.³

Second Branch: Terminological Definition of Cash Waqf in Islamic Jurisprudence and Law

We shall first examine the definition of waqf according to Muslim jurists, and then proceed to define cash waqf.

First: Definition of Waqf in Islamic Jurisprudence

Definition of Waqf according to the Maliki School:

The Maliki jurists used several formulations to define waqf (or ḥabs). One of the most comprehensive definitions is that of Imam Ibn 'Arafa al-Maliki, who defined it as granting the usufruct of an asset for as long as it exists, while requiring that its ownership remain with the

¹ Al-Fayruzabadi, Muhammad ibn Amin Ya'qub, Al-Qamus al-Muhit, 8th ed., revised edition, 2005, Al-Risalah Foundation, Beirut, p. 860; Al-Jawhari, Isma'il ibn Hammad, Al-Sihah: Taj al-Lughah wa-Sihah al-'Arabiyyah, 4th ed., revised edition, 1990, Dar al-'Ilm lil-Malayin, Beirut, Vol. 4, p. 1440.

² Al-Fayruzabadi, op. cit., p. 322; Al-Jawhari, op. cit., Vol. 2, p. 544.

³ Arabic Language Academy, Al-Mu'jam al-Wasit, 4th ed., revised edition, 2004, Al-Shorouk International Bookshop, Egypt, p. 944.

donor, even if only constructively or legally.⁴ It may also be defined as donating the right to benefit from an asset throughout the period of its existence. Such granting is made by way of voluntary donation and is not intended to obtain any worldly compensation; rather, the donor seeks reward from Allah. In this case, what is transferred is the usufruct rather than the corpus of the property itself.⁵

The foregoing definition reveals the following characteristics of waqf according to the Maliki School:

It applies to usufructs rather than to the physical assets themselves.

It may be established for a specified period and is not necessarily required to be perpetual.⁶

Ownership of the corpus remains with the waqif, whether constructively or legally.

It constitutes a binding contract, and therefore the waqif may not revoke it.

Definition of Waqf according to the Shafi'i School:

Waqf is the withholding of property from disposal while its corpus remains intact, by preventing disposition of its substance, and dedicating it to a permissible and existing purpose.⁷

The foregoing definition reveals the following characteristics of waqf according to the Shafi'i School:

It is limited to property from which benefit can be derived while its corpus remains intact; consequently, consumable goods such as food are excluded.

Ownership of the endowed property is transferred away from the waqif.

Definition of Waqf according to the Hanafi School:

Waqf is the withholding of owned property from being transferred into the ownership of another person.⁸

The foregoing definition reveals the following characteristics of waqf according to the Hanafi School:

Disposition of the endowed property is prohibited through ordinary legal transactions such as sale, gift, inheritance, and similar forms of disposal.

The proceeds or revenues generated by the endowed property are dedicated to the designated waqf purpose.

Definition of Waqf according to the Hanbali School:

Waqf means "immobilizing the principal and dedicating its fruits."⁹

The foregoing definition reveals the following characteristics of waqf according to the Hanbali School:

⁴ Al-Rassa', Abu 'Abd Allah Muhammad al-Ansari, *Sharh Hudud Ibn 'Arafa* (Al-Hidayah al-Kafiyah al-Shafiyah), 1st ed., revised edition, 1993, Dar al-Gharb al-Islami, Beirut, p. 539.

⁵ Al-Gharyani, Al-Sadiq 'Abd al-Rahman, *Mudawwanat al-Fiqh al-Maliki*, n.d., n.p., Al-Rayyan Foundation, Vol. 4, p. 209.

⁶ Al-Zuhayli, Muhammad, *Al-Wasaya wa al-Waqf fi al-Fiqh al-Islami*, 2nd ed., 1996, Dar al-Fikr, Damascus, p. 136.

⁷ Al-Shirbini, Shams al-Din Muhammad ibn al-Khatib, *Mughni al-Muhtaj*, 1st ed., 1997, Dar al-Ma'rifah, Beirut, Vol. 2, p. 485.

⁸ Al-Sarakhsi, Shams al-Din, n.d., n.p., Dar al-Ma'rifah, Beirut, Vol. 12, p. 27.

⁹ Ibn Qudamah, Muwaffaq al-Din ibn Ahmad, *Al-Mughni*, 3rd ed., 1997, Dar 'Alam al-Kutub, Riyadh, Vol. 8, p. 184.

The endowed asset is prevented from being disposed of through sale, gift, or other transactions because it is removed from the private ownership of the waqf and dedicated to the public good.

The benefits and proceeds of the endowed asset are directed toward charitable and benevolent purposes.

Research Methodology and Research Plan

Third: Research Methodology

This study adopts the following methodological approaches:

The Comparative Analytical Method: This method is employed to examine jurisprudential opinions and the texts of the various Islamic schools of jurisprudence, and to compare them with the legal framework established under Law No. 25-06 on Waqf (Endowments).

The Deductive Method: This method is used to derive the Shariah and legal principles governing cash waqf investment contracts and to determine their juristic and legal characterization.

Fourth: Research Plan

1. Introduction

Background and significance of the topic

Research problem and sub-questions

Research methodology

Research plan

2. Chapter One: Cash Waqf: Concept and Legitimacy

Section One: Definition of Cash Waqf in Linguistic, Shariah, and Legal Terminology

Subsection One: Definition of Cash Waqf in Linguistic Terminology.

Subsection Two: Definition of Cash Waqf in Legal and Shariah Terminology.

Section Two: Legitimacy of Cash Waqf and Its Investment in Islamic Jurisprudence and Waqf Law No. 25-06

Subsection One: Legitimacy of Cash Waqf and Its Investment in Islamic Jurisprudence.

Subsection Two: Legitimacy of Cash Waqf and Its Investment under Waqf Law No. 25-06.

3. Chapter Two: Forms of Cash Waqf Investment in Islamic Jurisprudence and Algerian Waqf Law No. 25-06

Section One: Partnership and Investment-Based Forms

Subsection One: Mudarabah (Profit-Sharing Partnership).

Subsection Two: Musharakah (Partnership).

Subsection Three: Contribution to Capital.

Subsection Four: Depositing Funds in Investment Accounts with Financial Institutions.

Section Two: Sale and Purchase-Based Forms

Subsection One: Murabahah (Cost-Plus Financing).

Subsection Two: Murabahah to the Purchase Orderer.

It appears from the discussion of the foregoing definitions that:

Jurists agree that a waqf is initially established as an act of donation; however, they differ as to whether it subsequently becomes binding or whether the founder may revoke it.

They also differ as to whether a waqf may be established for a fixed period or must be perpetual, as well as with regard to the ownership of the endowed property: whether

ownership ceases to belong to the founder (waqif), or whether his ownership remains while only his right to dispose of, transfer, or alienate the property is extinguished. Nevertheless, this disagreement is essentially formal and theoretical, as will become clear when examining the legal provisions governing waqf.

Second: Definition of Cash Waqf (Endowment of Money) in Islamic Jurisprudence

The foregoing definitions of waqf indicate that they do not preclude the possibility of establishing a waqf in the form of money. Although some of these definitions predominantly refer to houses and real estate, this should be understood as reflecting the prevailing nature of waqf at that time rather than constituting an exhaustive limitation. This is evidenced by the fact that, when jurists imposed the relevant condition, they required that the property should not be consumed through its use. Accordingly, they expressed reservations regarding the endowment of movable property, including money. Those among them who were able to conceive of money remaining intact while its benefits were renewed permitted cash waqf, following the position of the early Hanafi jurists.¹⁰

Accordingly, cash waqf in Islamic jurisprudence may be defined as the withholding of money from ownership and dedicating its usufruct, represented by the profits generated through its investment. This definition demonstrates that establishing a cash waqf necessarily entails investing the money. This is due to the fact that money is susceptible to depreciation and loss of value, unlike fixed assets. Therefore, the only means of ensuring the continuity of the benefit derived from a cash waqf is to invest it.

Third: Definition of Cash Waqf in Law

First: Definition of Waqf under Algerian Law

Article 8 of Law No. 25-06 relating to Waqf defines waqf as follows: “The withholding of property from ownership, either permanently or temporarily, and the dedication of its usufruct to one of the forms of public, private, or common charity and benevolence. Waqf is a binding gratuitous contract arising from the free and unimpaired unilateral will of a founder who has attained legal majority and full legal capacity.”¹¹

Thus, it is clear that the legislature has resolved the foregoing jurisprudential disagreements by considering waqf to be binding, permitting both temporary and perpetual waqf, and prohibiting ownership of the endowed property. Article 15 of the aforementioned Waqf Law further provides that endowed property may consist of real estate, movable property, or money, among other forms. In doing so, the legislature has adopted the position of those jurists who permit the establishment of cash waqf.

Based on the foregoing, cash waqf under law may be defined as the withholding of money from ownership, either permanently or temporarily, and the dedication of its usufruct to one of the forms of public, private, or common charity and benevolence. This definition is formulated on the basis of the general definition of waqf provided under the law relating to waqf.

Section Two: The Legitimacy of Cash Waqf and Its Investment in Islamic Jurisprudence and the Algerian Waqf Law

¹⁰ Al-Zuhayli, op. cit., p. 141.

¹¹ Law No. 25-06 of 19 July 2025, relating to Waqf, Official Gazette of the People’s Democratic Republic of Algeria, No. 37.

Subsection One: The Legitimacy of Cash Waqf and Its Investment in Islamic Jurisprudence

The Mālikīs,¹² a group of Shāfi‘īs,¹³ al-Anṣārī and Zufar among the Ḥanafīs,¹⁴ as well as one narration attributed to Imam Aḥmad,¹⁵ which was adopted by Ibn Taymiyyah,¹⁶ held that it is permissible to establish a waqf in the form of cash and that such funds may be invested. This position has also been adopted in contemporary fiqh academies. They based their view on the following arguments:

1. Establishing a cash waqf is legally permissible in Islamic law. This is supported by analogy with other types of property for which the permissibility of waqf has been explicitly established. The underlying Shari‘ah objective of waqf preserving the principal asset while dedicating its benefit to charitable purposes is realized in cash as well. Money is not sought for its physical substance but rather for its value; even when it is consumed, its equivalent replaces it.¹⁷ Accordingly, lending the money as an interest-free loan (qard ḥasan) or allocating it for investment and muḍārabah does not entail the disappearance of the waqf asset, since its equivalent is returned, and this does not affect the preservation of the principal. Likewise, it does not prevent the continuity and renewal of its benefit through relending the funds after their recovery or donating the returns generated from their investment.

2. They also relied on what was narrated from al-Zuhrī concerning a person who dedicated one thousand dinars as a waqf for the sake of Allah and entrusted them to a servant of his who was a merchant so that he could trade with them, while designating the profits as charity for the poor and his relatives. He was asked: “May the man consume any of the profits generated by those thousand dinars, even if he had not designated their profits as charity for the poor?” He replied: “He has no right to consume any of them.”¹⁸

The implication is that establishing a cash waqf is permissible, and that al-Zuhrī considered the waqf of one thousand dinars valid, as well as their investment and use in trade. He prohibited the founder of the waqf from benefiting personally from them because the waqf contract deprives the founder of the right to dispose of the endowed property.

3. An examination of the opinions of both jurists who prohibited and those who permitted cash waqf reveals that the influence of custom on their views was evident. They referred to prevailing customs and permitted the waqf of movable property that people had traditionally endowed, such as cauldrons and vessels used in washing the deceased, copies of the Qur’an, horses and other mounts, and weapons intended for jihad.¹⁹

¹² Al-Khurashī, ‘Abd Allāh Muḥammad, *Sharḥ Mukhtaṣar Khalīl wa-bi-Hāmishihi Ḥāshiyat al-‘Adawī*, 2nd ed., 1317 AH, Al-Amīriyyah Press, Būlāq, Egypt, vol. 7, p. 80.

¹³ Al-Nawawī, *Rawḍat al-Ṭālibīn wa-‘Umdat al-Muftīn*, 3rd ed., 1991, Al-Maktab al-Islāmī, Beirut, vol. 5, pp. 315–316.

¹⁴ Ibn Nujaym al-Ḥanafī, *Al-Baḥr al-Rā‘iq Sharḥ Kanz al-Daqā‘iq*, 1st ed., 1997, Dār al-Kutub al-‘Ilmiyyah, Beirut, vol. 5, p. 339.

¹⁵ Ibn Qudāmah, *op. cit.*, vol. 8, pp. 229–230.

¹⁶ Ibn Taymiyyah, Aḥmad Taqī al-Dīn, *Majmū‘ al-Fatāwā*, 3rd ed., 2005, Dār al-Wafā’, Al-Mansūrah, vol. 31, p. 129.

¹⁷ Resolution No. 140 (6/15), “Concerning Investment in Waqf and Its Yields and Returns,” *Journal of the International Islamic Fiqh Academy*, 15th Session, Issue No. 15, 2004, vol. 3, p. 525.

¹⁸ Narrated by al-Bukhārī, *Kitāb al-Waṣāyā* (Book of Wills), chapter: “The Waqf of Animals, Horses, Property and Cash,” *Hadith No. 31/31*, p. 679.

¹⁹ Al-Sarakhsī, *op. cit.*, vol. 12, p. 45.

In conclusion, monetary assets fall within the category of property for which textual evidence has established the permissibility of waqf, as they embody the same underlying rationale. Accordingly, they may be analogically incorporated into such assets. Furthermore, cash waqf serves the objectives of both the waqif (endower) and the mawquf ‘alayh (beneficiary), as well as the objectives of Islamic law. Moreover, cash waqf has come to achieve benefits that may exceed those generated by real estate waqf,²⁰ while the methods of investing monetary waqf are broader and more flexible in our contemporary context, particularly when considering the expenses required for the restoration and maintenance of real estate and their increasing costs. Therefore, public interest requires facilitating matters for Muslims by adopting the view that permits cash waqf. Since money cannot generate renewed benefit except through investment and development, this position becomes necessary. It is stated in Majmu‘ al-Fatawa: “It appears permissible to establish waqf of monetary assets for the purpose of lending or investment and development, and to give the profits in charity.”²¹

Second Subsection: The Legitimacy of Cash Waqf and Its Investment under the Algerian Waqf Law

The Algerian legislator has expressly provided for cash waqf and the methods of investing it in the new Waqf Law.²² By doing so, the legislator has adopted the opinion that permits the establishment and investment of cash waqf. Article 15 thereof stipulates: “The waqf property (the endowed asset) may consist of immovable property, movable property, money, material or moral rights, usufruct, or anything that may be considered property, even if held in undivided ownership...”

Thus, the legislator has broadened the concept of endowed property by including all categories without imposing substantive restrictions, in line with developments in investment and waqf practices and in response to the flexibility inherent in Islamic legislation.

With regard to waqf investment, the legislator has established numerous provisions intended to achieve this objective under Chapter Ten, entitled: “Management and Administration of Waqf Properties, Their Utilization, Investment and Development.”

Article 68 thereof provides: “Waqf properties shall be utilized, invested, and developed, particularly in the following fields...”

Article 69 of the same Law further provides: “Public waqf properties or the charitable share in a joint waqf may be utilized, invested, and developed through contracts compliant with Islamic Sharia...” The provision lists several investment contracts and instruments, and those relevant to the investment of cash waqf will be examined in the second section of this study, God willing.

Second Section: Forms of Investment of Cash Waqf under Law No. 25-06 on Waqf and Islamic Jurisprudence

An examination of the new Waqf Law, particularly Article 69 thereof, reveals that it provides for numerous investment instruments applicable to waqf in general. It stipulates that: “Public waqf properties or the charitable share in a joint waqf may be utilized, invested, and developed through contracts compliant with Islamic Sharia, particularly: lease, sharecropping,

²⁰ Youssef Saghour, Means of Activating Cash Waqf in Algeria, Doctoral Dissertation submitted for the degree of PhD, University of Batna 1, 2024–2025, p. 110.

²¹ Ibn Taymiyyah, Majmu‘ al-Fatawa, previously cited reference, Vol. 31, p. 129.

²² Law No. 25-06, dated 19 July 2025, on Waqf, Official Gazette, No. 37.

irrigation partnership, long-term lease, investment arrangement, contracting, exchange, maintenance and restoration, partnership, build-operate-transfer (BOT), build-and-operate, profit-sharing investment, cost-plus financing, and forward sale.”

Article 84 further introduced additional investment forms, providing: “Public waqf properties or the charitable share in a joint waqf may be utilized, invested, and developed through the following forms compliant with Islamic Sharia:

Participation in capital funds.

Takaful insurance.

Investment accounts with financial institutions.”

Based on the substance and nature of these forms, as well as the legislator’s explanation thereof in Articles 70 to 83 and Articles 85, 86, and 87, which amount to fourteen forms, it appears that five of them are related to the investment of cash endowments (waqf): partnership, qirad, contribution to capital, and deposits in investment accounts with financial institutions. These forms will be examined, God willing, in this study.

We have decided to divide them into two sections, depending on whether the person acts as an investing partner or as a seller (trader).

Section One: Partnership and Investment Forms

These forms are based on participation and the sharing of profits and losses.

Subsection One: Qirad

The Algerian legislator defines (qirad) in Article 81 of the Waqf Law ²³as follows: “It is a contract whereby the authority responsible for waqf grants capital to a person who uses it in trade in return for an agreed-upon profit.”

In Islamic jurisprudence, mudarabah or qirad is defined as an arrangement whereby the owner of capital provides funds to a working partner to engage in trade with them, with the profits being shared between them according to the terms they have agreed upon. As for losses, they are borne solely by the capital provider; the working partner does not bear any financial loss, but rather loses only his work and effort.

The jurists of the various Islamic schools have unanimously agreed on the permissibility of mudarabah, considering it a form of partnership.²⁴ Reference has already been made to what was narrated from al-Zuhri concerning a person who “devoted one thousand dinars for the sake of Allah and entrusted them to a servant of his who was a merchant, so that he could trade with them, and he designated the profits as charity for the poor and relatives. He asked: May the man consume any of the profits generated by those one thousand dinars? If he had not designated their profits as charity for the poor? He replied: He may not consume any of them.”²⁵

What can be inferred from this narration is that entrusting money to another person for the purpose of trade and generating profit is permissible, and this constitutes the essence of qirad. This narration also indicates the permissibility of investing cash endowments through mudarabah, as previously explained.

²³ Law No. 25-06 of 19 July 2025, relating to waqf, Official Gazette, No. 37.

²⁴ Wahbah al-Zuhayli, *Islamic Jurisprudence and Its Evidence*, 2nd ed., 1985, Dar al-Fikr, Damascus, Vol. 4, pp. 836–837, 794.

²⁵ Narrated by al-Bukhari, *Book of Wills, Chapter on Endowing Animals, Horses, Property, and Cash Assets*, Hadith No. 31/31, p. 679.

Subsection Two: Partnership

The legislator defines musharakah in Article 78 of the Waqf Law as follows: “It is a contract²⁶ concluded between the authority responsible for waqf and a natural or legal person, or with several natural or legal persons, with the aim of participating in the capital of an institution, company, or project, or in commercial transactions for the purpose of generating profits.”

In Islamic jurisprudence, it is defined as a contract between two or more persons whereby their capital or efforts are combined for the purpose of generating profit, such that each of them authorizes the other to dispose of his effort or of the partnership’s assets for their mutual benefit.²⁷ It is also defined as a contract between partners concerning capital and profit.²⁸

It is considered permissible by consensus among Muslim scholars, although they differ regarding some of its forms.²⁹ There is no disagreement concerning its permissibility, whether it relates to property or to services and activities.³⁰

Subsection Three: Contribution to Capital

Article 85 of the Law on Endowments stipulates that: “Contribution to capital consists of the authority responsible for endowments investing endowed funds through:

Shares and equity interests in institutions and companies.

Investment funds and investment portfolios.”³¹

In Islamic jurisprudence, this type of transaction, whereby capital is contributed in the form of shares and equity interests, falls under the category of joint-stock companies. In Islamic law, a joint-stock company is defined as a company whose capital is divided into equal shares and equity interests that are transferable and tradable, with liability distributed among the partners according to each partner’s share in the capital. The partners share profits and losses in proportion to their respective contributions to the capital.

In principle, companies are generally permissible, provided that they are free from Shariah prohibitions and impediments, such as dealing in interest, or engaging in prohibited activities, such as trading in unlawful goods.³² In Islamic jurisprudence, a joint-stock company is classified as a form of partnership and profit-sharing partnership; accordingly, it is subject to the relevant legal rulings governing such arrangements.³³

In Islam, investment portfolios consist of a collection of lawful financial assets owned by an individual, whether real estate, movable assets, or other forms of property. Investment funds, on the other hand, are financial institutions managed by a licensed fund manager whose function is to pool investors’ funds and employ and invest them for a specified period in accordance with the principles of Islamic Shariah. This is done through investment units representing undivided ownership interests held by the participants, who bear losses in

²⁶ Law No. 25-06 of 19 July 2025, relating to waqf, Official Gazette, No. 37.

²⁷ al-Gharyani, *op. cit.*, Vol. 3, p. 606.

²⁸ al-Zuhayli, *Islamic Jurisprudence and Its Evidence*, Vol. 4, p. 793.

²⁹ *Ibid.*, Vol. 04, p. 793.

³⁰ Al-Gharyani, *op. cit.*, Vol. 03, p. 602.

³¹ Law No. 25-06, dated 19 July 2025, concerning Endowments, Official Gazette, No. 37.

³² Resolution No. 130 (14/4), “Modern Companies: Holding Companies and Their Shariah Rulings,” *Journal of the International Islamic Fiqh Academy*, 14th Session, Issue No. 14, Vol. 02, p. 665.

³³ Al-Khathlan, Saad bin Turki, *Fiqh of Contemporary Financial Transactions*, 2nd ed., 2012, Dar Al-Sumai‘i, Riyadh, pp. 47–48.

proportion to their respective units and are entitled to profits according to the same proportion.³⁴

Thus, an investment fund constitutes a vehicle for pooling the funds of a number of investors for collective investment under the management of an investment manager, whereas an investment portfolio belongs to a single individual or entity and is managed in accordance with that investor's specific objectives.

This type of investment is permissible in principle, provided that the portfolio or fund does not contain interest-bearing bonds, in order to avoid *riba*. The International Islamic Fiqh Academy has held that investing cash endowments according to this structure is permissible, stating: "It is permissible to establish a cash endowment for an interest-free loan or for investment, either directly or through the participation of a number of endowers in a single fund..."³⁵ In Islamic jurisprudence, investment funds are classified as one of the forms of *mudarabah*.³⁶

The ruling governing *mudarabah* has already been discussed, and the permissibility of investing cash endowments through *mudarabah* has likewise been established.

Subsection Four: Depositing Funds in Investment Accounts with Financial Institutions

Article 87 of the new Waqf Law provides as follows: "Depositing funds in investment accounts with financial institutions: this consists of the authority responsible for waqf endowments placing investment deposits, investment savings, and investment *sukuk*."³⁷

Banks are generally the financial institutions that offer investment accounts into which individuals and entities deposit monetary funds, with the institutions undertaking to return an equivalent amount upon demand, subject to certain conditions.³⁸ This transaction is permissible when the deposit is made with financial institutions and banks that comply with the provisions of Islamic Sharia and is based on an investment contract providing for a share of the profits, whereby the deposited capital constitutes the capital of a *mudarabah* partnership, and is therefore governed by the rules and provisions of *mudarabah*.³⁹

Section Two: Forms of Sale and Purchase

Unlike the first section, which involves partnership and the sharing of profits and losses, this section does not involve partnership or profit-and-loss sharing; rather, it concerns sale and purchase transactions. It addresses two forms, one of which derives from the other: *murabaha* and *murabaha* to the purchase orderer.

Subsection One: Murabaha

Article 82 of the Law on Waqf Endowments provides as follows: "Murabaha is a contract whereby the authority responsible for waqf endowments transfers ownership of a specified

³⁴ Abadi, Batoul Sarawa, and Hussein Ahmed Mohammed, "Investment Portfolios and Investment Funds," Journal of the Academy for Legal and Political Research, Amar Telidji University of Laghouat, Issue No. 01, 2026, pp. 2123, 2135.

³⁵ Resolution No. 140 (6/15), "Investment in Endowments, Their Returns and Revenues," Journal of the International Islamic Fiqh Academy, 15th Session, Issue No. 15, Vol. 03, p. 527.

³⁶ Al-Khathlan, Saad bin Turki, op. cit., p. 55.

³⁷ Law No. 25-06, dated 19 July 2025, on Waqf Endowments, Official Gazette, No. 37.

³⁸ Journal of the International Islamic Fiqh Academy, Ninth Session, Issue No. 09, Vol. 01, p. 771.

³⁹ Resolution No. 90 (3/9), concerning bank deposits (bank accounts), Journal of the International Islamic Fiqh Academy, Ninth Session, Issue No. 09, Vol. 01, p. 931.

commodity to the beneficiary at its acquisition cost, with the addition of a predetermined profit margin, in accordance with the payment terms agreed upon by the two parties.”⁴⁰

It appears that the legislator has authorized the authority responsible for waqf endowments to invest cash waqf funds through murabaha sales, without restricting it to a particular form of murabaha, whether traditional simple murabaha or compound murabaha, although the wording of the article appears to refer to traditional murabaha. However, the aforementioned provision to which reference was made earlier, namely Article 84, which allows waqf investments to be carried out through any form that complies with the provisions of Islamic Sharia, together with the legislator’s objective—clearly reflected in the law—of expanding waqf investment mechanisms, calls for the adoption of murabaha as an investment mechanism because of the advantages, financing opportunities, and flexibility it offers.

In Islamic jurisprudence, murabaha is defined as a sale at the original purchase price with an additional profit.⁴¹

It is permissible provided that the following conditions are fulfilled:

Knowledge of the original price at which the first purchaser acquired the commodity;

Knowledge of the amount of profit;

The capital must consist of fungible goods, i.e., goods that are measured by volume, weight, or number;

The transaction must not involve deferred payment .

The first contract must be valid.⁴²

Branch Two: Murabaha to the Purchase Orderer

It is defined as a transaction whereby one person requests another person to provide a specific commodity with specified characteristics and promises to purchase it from him once it becomes available, on the basis of a Murabaha arrangement with an agreed profit margin. The price is then paid in installments according to the purchaser’s financial ability and capacity.⁴³ Contemporary scholars have permitted this type of transaction, and its permissibility has been adopted in contemporary Islamic jurisprudential academies, subject to two conditions:

First, the initial agreement between the contracting parties must constitute merely a promise to sell and a promise to purchase, without being legally binding. Both the seller and the purchaser must retain the option to proceed with or withdraw from the transaction. Thus, if either party wishes, the sale may be completed; otherwise, they may withdraw. What takes place between them at this stage is merely a promise and not a contract.

Second, the contract of sale may only be concluded after the seller has acquired ownership of the commodity and taken full possession of it before selling it on a Murabaha basis.⁴⁴

This form of financing is widely practiced by financial institutions and Islamic banks because of the financing it provides, the commercial activity it stimulates, and the investment returns it generates. It is also suitable for the development and investment of cash endowments.

⁴⁰ Law No. 25-06, dated 19 July 2025, on Waqf Endowments, Official Gazette, No. 37.

⁴¹ Al-Zuhayli, *Islamic Jurisprudence and Its Proofs*, Vol. 04, p. 703.

⁴² *Ibid.*, same volume, p. 706.

⁴³ Al-Khathlan, *op. cit.*, pp. 110–111.

⁴⁴ Saad ibn Turki Al-Khathlan, *Fiqh al-Mu‘āmalāt al-Māliyya al-Mu‘āshira* [Jurisprudence of Contemporary Financial Transactions], 2nd ed., 2012, Dar Al-Sumai‘i, Riyadh, pp. 110–111.

Conclusion

After examining and analyzing the jurisprudential views concerning the investment of waqf assets in general, and cash waqf in particular, and after reviewing the provisions of Algerian Waqf Law No. 25-06, the following conclusions were reached:

First: Findings

1. Legislative settlement of the jurisprudential disagreement:

Algerian Waqf Law No. 25-06 has settled the historical jurisprudential debate concerning the legitimacy of endowing movable assets and cash and investing them. It explicitly adopted the jurisprudential position permitting cash endowment and its investment in Article 15, recognizing cash as an independently valid endowed asset in its own right.

2. Responding to the requirements of economic flexibility:

Cash waqf constitutes a development-oriented mechanism, provides a source of financing, and ensures liquidity flows. It can be invested easily and rapidly, unlike fixed real-estate endowments, which may be subject to deterioration and high restoration and maintenance costs.

3. Comprehensiveness and inclusiveness of the legislative framework:

To a considerable extent, the Algerian legislator has succeeded, through Articles 68 to 87, in accommodating the fundamental forms suitable for developing endowed funds. Furthermore, the legislation has broadly opened the door to both cash and non-cash waqf investment through any form that complies with the provisions of Islamic Sharia.

1. Integration of Sharia and Legal Frameworks

The legislative framework established by Law No. 25-06 has successfully incorporated contemporary jurisprudential approaches to waqf in general and cash waqf in particular. It is fully consistent with the resolutions issued by contemporary Islamic jurisprudential councils, such as the International Islamic Fiqh Academy, particularly with regard to the utilization of waqf investment funds and the activation of Islamic financial instruments.

Second: Recommendations

1. Activating Implementing Provisions and Procedural Regulations:

Expediting the issuance of the regulatory provisions necessary to implement the investment-based waqf mechanisms provided for under the Waqf Law.

2. Establishing a Unified Sharia and Economic Authority for Waqf Investment:

Establishing a specialized advisory committee bringing together Sharia scholars and financial industry experts to assess the feasibility of cash investment projects and examine their associated risks before their approval by the authority responsible for waqf affairs.

3. Linking Islamic Banking Institutions with Waqf Administration:

Expanding the frameworks for cooperation and partnership between the waqf administration and banks and financial institutions that offer Sharia-compliant investment accounts, in order to ensure stable and secure returns.

4. Promoting Public Awareness of Cash Waqf:

Organizing awareness campaigns to inform individuals and institutions about the importance of cash waqf and emphasize its role in promoting sustainable development, as well as establishing collective cash waqfs through small and medium-sized contributions.

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