

# The Corporate Waqf in Law and Practice

Aisha I. Saad\*

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## INTRODUCTION

Over the past fifty years, a novel form of corporate ownership has emerged in Turkey, Pakistan, India, Bangladesh, and Malaysia. The innovation of the “corporate *waqf*,”<sup>1</sup> as this form has become popularized,

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\* Aisha I. Saad, Research Scholar in Law and Bartlett Research Fellow, Yale Law School. MPhil/DPhil, University of Oxford (2013). J.D., Yale Law School (2018).

1. Malaysia’s Johor Corporation was the first to coin the term “corporate waqf” in establishing Waqaf An-Nur in 2006. However, the organizational structure itself appeared

refers to a charitable endowment whose asset base consists of shares in a company. The term “corporate *waqf*” is a reference to the Islamic trust (the *waqf*<sup>2</sup>), a traditional arrangement used to further charitable ends by placing an asset into perpetual endowment with the returns allocated to prescribed beneficiaries,<sup>3</sup> and to the modern Western corporation and its main features of issued stock, limited liability, and established governance models. The corporate *waqf* arrangement enables an individual to transfer his/her ownership share in a company to a charitable foundation in perpetuity. Voting rights for the shares typically transfer to one or more trustees (*mutawallis*) and dividends are allocated to the prescribed beneficiary.

The “corporate *waqf*” shares a number of key features with the industrial foundations<sup>4</sup> popularized in Northern Europe. It is charged with managing endowed shares and disbursing earned dividends. In some cases, the corporate *waqf* is a majority owner of a company and exercises managerial control, while in other cases the corporate *waqf* is a minority shareholder and exercises minority voting rights. A review of existing literature on the corporate *waqf* brings to light a wide range of arrangements that have been given this label. For example, Waqaf Selangor Muamalat is a collaboration between an Islamic commercial bank, Bank Muamalat Malaysia Berhad (BMMB), and the state-owned *waqf* management institution, Perbadanan Wakaf Selangor Berhad (PWS).<sup>5</sup> The bank collects *waqf* funds from individuals and institutions, and a joint committee with membership from BMMB and PWS manages the *waqf* fund and diverts investment returns to education, healthcare, and

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as early as 1948 in India in the form of the Hamdard Wakf Laboratories, and in Turkey in 1967 with the establishment of Vehbi Koç Vakfı.

2. Variably spelled as waqaf or wakaf (Malaysian) and vakfi (Turkish).

3. For a rigorous account of the history and modern status of the *waqf*, see generally Murat Çizakça, *Awqaf in History and its Implications for Modern Islamic Economies*, 6 ISLAMIC ECONOMIC STUDIES 1 (1998); Magda Ismail Abdel Mohsin et al., FINANCING THE DEVELOPMENT OF OLD WAQF PROPERTIES: CLASSICAL PRINCIPLES AND INNOVATIVE PRACTICES AROUND THE WORLD (2019).

4. For background on the industrial foundations, see generally Steen Thomsen, THE DANISH INDUSTRIAL FOUNDATIONS (2017); Henry Hansmann and Steen Thomsen, *Virtual Ownership and Managerial Distance: The Governance of Industrial Foundations* (March 2013); Steen Thomsen, *Industrial Foundations: Foundation Ownership of Business Companies*, in LEGITIMACY OF PHILANTHROPIC FOUNDATIONS: UNITED STATES AND EUROPEAN PERSPECTIVES (Kenneth Prewitt, Mattei Dogan, Steven Heydemann, and Stefan Toepler eds., 2006).

5. See Asharaf Mohd Ramli and Abdullaah Jalil, *Banking Model of Corporate Waqf: An Analysis of Wakaf Selangor Muamalat*, available at <https://comaif.files.wordpress.com/2014/02/2013-01-25-banking-model-of-corporate-waqf-full-paper.pdf>.

investment activities.<sup>6</sup> Scholars who label this arrangement a corporate *waqf* do so on the grounds that “it is established by corporate institutions of BMMB and its investment arm, Muamalat Invest Sdn. Bhd.”<sup>7</sup>

For the purposes of this article, the corporate *waqf* models considered will be limited to those institutions whose asset base is comprised of shares in a company and who hold some managerial role in that company. Within this narrowed definition, organizational features of the corporate *waqf* remain diverse. Individuals or entities endow shares in companies belonging to widely ranging sectors, from industrial conglomerates to religious travel agencies. The corporate *waqf*'s share in a company ranges from a minority percentage to complete ownership. The corporate *waqf* is established by a company's founder, individual shareholders, or government entities. Governmental regulation ranges from exercising complete control over the *waqf* assets to providing limited oversight by the trustees to prevent managerial abuse. Some core features are consistently observed across the various corporate *waqfs*: the perpetual nature of the foundation, divestment of ownership from the original shareholder, the management of the endowed shares by a not-for-profit entity, and the allocation of returns to a charitable foundation.

The corporate *waqf* has gone virtually unnoticed in Western scholarship<sup>8</sup> and, until now, comprehensive theorization and mainstreamed models of the corporate *waqf* have not been developed. Such an effort would benefit from comparative reference to the foundation-owned firms of Northern Europe, which have attracted

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6. *Id.* at 10-11.

7. *Id.* at 13.

8. A number of Malaysian scholars have written on the corporate *waqf* over the past decade. This body of scholarship is limited to theoretical origins of the *waqf* and provides limited description and some examples of the corporate *waqf* in practice. See e.g., Asharaf Mohd Ramli and Abdullaah Jalil, *Corporate Waqf Model and its Distinctive Features: The Future of Islamic Philanthropy*; Fakhru Anwar Zainol et al., *Social Entrepreneurship Via Corporate Waqf: A Case of Islamic Chamber of Commerce (ICC) in Malaysia*, GLOBAL J. OF COM. & MGMT. PERSP. (2014); Norma Md Saad et al., *Managing Corporate Waqf in Malaysia: Perspectives of Selected SEDCs and SIRCes*, 25 SHARIAH J. 1 (2017); Nurul Adilah Hasbullah and Khairil Faizal Khairi et al., *Corporate Waqf as an instrument for Sustainability of Economic Well-Being*; Khairil Faizal Khairi, *Share Waqf (Corporate Waqf) As An Alternative Financial Instrument In Improving The Communities And Nation Welfare*; Nathasa Mazna Ramli and Nurul Aini Muhamed, *Good Governance Framework for Corporate Waqf: Towards Accountability Enhancement*, Proceedings of World Universities' Islamic Philanthropy Conference 2013. The most serious analyses have been advanced by Murat Çizakça. Notably, no scholarship has developed rigorous theorization of the corporate *waqf* and no empirical studies of this form have been developed. Additionally, no literature considers the parallels between the corporate *waqf* and the industrial foundations.

scholarly attention in the past decade due to their favorable economic performance and apparent contravention of mainstream agency theory.<sup>9</sup> An account of the structure and features of the corporate *waqf* can contribute to this growing literature and offer the beginnings of institutional knowledge transfer between regions with differing cultural, legal, political, and economic contexts. This article offers the beginnings of such a venture, by introducing the corporate *waqf* to Western legal academia and outlining its main features.

This article proceeds in three parts. Part I identifies the legal foundations of the corporate *waqf* in both Islamic law and the codified laws of Turkey, Malaysia, and India, where the corporate *waqf* has become popular. It begins with a brief account of the “cash *waqf*” innovation in Ottoman Turkey, and attributes the emergence of the “share *waqf*,” and subsequently the corporate *waqf*, to those jurisprudential origins. It then turns to the modern legal codes of Turkey, Malaysia, and India to examine the corporate *waqf* in practice. Part II examines the ways that the theory of the corporate *waqf* has been operationalized by providing three illustrative examples: Koç Holding and Vehbi Koç Vakfı; Johor Corporation and Waqaf An-Nur; and Hamdard (Waqf) Laboratories and Hamdard National Foundation. Part III examines the corporate waqfs alongside the industrial foundations and foundation-owned-firms of Northern Europe, and offers the beginnings of a comparative analysis of the two institutions. The article concludes by outlining the broad strokes of a research agenda focused on the corporate *waqf*.

#### I. LEGAL FOUNDATIONS OF THE CORPORATE *WAQF*

The corporate *waqf* sits at the intersection of *Shari'a* (classical Islamic law) and modern corporate law, offering a unique hybridization of these two legal traditions. This section provides context for the jurisprudential origins of the corporate *waqf* and the modern legal codes that govern it today. In the first part of this section, the corporate *waqf* is situated as the offshoot of the classical Islamic doctrine of *waqf*, which witnessed the emergence and mainstreaming of the cash *waqf*, and later gave rise to the share *waqf* that now comprises the foundation of this novel corporate arrangement. A look into the Islamic doctrine offers insights into the objectives of the corporate *waqf*, and identifies the parameters that define and constrain its institutional design. The second part of this section turns to the modern legal codes in Turkey, Malaysia, and India that have been

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9. See generally Henry Hansmann and Steen Thomsen, *The Governance of Foundation-Owned Firms* (July 14, 2017).

promulgated to establish and regulate the corporate *waqf* as a recognized institutional form in their contemporary economies. The two-pronged exposition brings to light a modern institution with classical roots, which has taken various shapes informed by religious, cultural, and political influences.

#### A. Foundations of the Waqf in Islamic Law

The *waqf* institution emerged and developed in the early centuries of Islam.<sup>10</sup> The legal theory underlying the *waqf* was to advance charity as a means of fulfilling religious obligations.<sup>11</sup> Of course, the *waqf* arrangement was used to achieve worldly ends as well, including tax evasion, distribution of assets outside the *Shari'a* requirements for inheritance, or protection of assets from misuse or mismanagement by successive generations.<sup>12</sup> The *waqf* arrangement permits separation of ownership from usufruct and grants interest in the usufruct to the intended beneficiaries. A *waqif* (founder of the *waqf*), who must be the owner of the asset endowed, may place his assets into a *waqf*.<sup>13</sup> Upon its designation as the object of a *waqf* arrangement, the *waqf* asset, in effect, becomes inalienable. In the opinions of the classical Islamic jurists, no party has an interest in the *waqf* property itself<sup>14</sup> and beneficiaries retain interest in the *waqf* usufruct only.<sup>15</sup>

The *waqif* enjoys wide discretion in prescribing the conditions of the *waqf*, such as appointing a *mutawalli* (trustee<sup>16</sup>), designating beneficiaries, and prescribing all matters generally relating to the *waqf* insofar as they

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10. See Peter C. Hennigan, *THE BIRTH OF A LEGAL INSTITUTION: THE FORMATION OF THE WAQF IN THIRD-CENTURY A.H. HANAFI LEGAL DISCOURSE* (2004) at 50-51.

11. See Jon E. Mandaville, *Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire*, 10 INT'L J. MIDDLE EAST STUD. 289 (1979) at 293.

12. See Ahmed Fekry Ibrahim, *School Boundaries and Social Utility in Islamic Law: The Theory and Practice of Talfiq and Tatabbu' Al-Rukhas in Egypt*, Dissertation (2011) at 128.

13. See Muhammad Zubair Abbasi, *The Classical Islamic Law of Waqf: A Concise Introduction*, 26 Arab Law Quarterly 126 (2012).

14. Some jurists have interpreted this as meaning that ownership of *waqf* property becomes vested in God. More recent views interpret this to mean that the *waqf* is a juristic person that becomes endowed with ownership.

15. *Fath al-Qadir*, vol.5, 'bab al-waqf'. The Hanbali school of Islamic jurisprudence considers ownership to transfer to beneficiaries.

16. A key difference between the *mutawalli* and the trustee in Anglo-Saxon law is that the *mutawalli* is strictly a manager to whom the *waqf* is entrusted and the *waqf* has no recognized owner, while in the Anglo-Saxon legal tradition the trustee holds title to the entrusted property.

do not contradict the dictates of the *Shari'a*.<sup>17</sup> The *waqf* instrument may reserve to the *waqif*, or to the *waqif* and to *mutawallis*, the right to amend terms related to use of the usufruct or the designation of beneficiaries.<sup>18</sup> This right grants flexibility to the *waqif* and the *mutawalli* to adapt the *waqf* to new conditions arising over the course of the *waqf*'s implementation, which creates institutional resilience given the *waqf*'s permanent character and the likelihood that unexpected circumstances will arise. The *waqf* instrument may designate the *mutawalli* or, if it does not do so, a *qadi* (judge) may designate him.<sup>19</sup> The *mutawalli* is generally charged with adhering to the terms of the *waqf* instrument, protecting the *waqf* assets, and distributing its proceeds among designated beneficiaries.<sup>20</sup> Distinct from the Anglo-Saxon trustee, the *mutawalli* has a right of administration but no ownership rights and no claim to title to the *waqf* assets.

In order for *waqf* property to be created, the *waqif* must explicitly designate it as such, either orally or in writing. A *waqf* may take several forms: a *waqf dhurri* (family *waqf*) reserves income to the founder's children and their descendants in perpetuity, a *waqf khayri* (charitable *waqf*) reserves income to some charitable purpose, and a hybrid arrangement may combine both the *waqf dhurri* and the *waqf khayri*.<sup>21</sup> At one point, the jurisprudential schools differed on the types of property that could be used to establish a *waqf*, with some interpretations limiting it to real property or to certain types of movable property.<sup>22</sup> While classical jurists recognized the cash *waqf*<sup>23</sup> as early as the ninth century, by the mid-

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17. Used here as a reference to the compilation of jurisprudence from the classical Hanafi, Shafii, Maliki, and Hanbali schools.

18. The four schools allowed a *waqif* to amend the terms of his *waqf* instrument one time, if he had stipulated that right in the instrument to start with. If, in the *waqf* instrument, the *waqif* had stipulated for himself the right to make repeated amendments then he could amend the terms of the *waqf* an unlimited number of times. Furthermore, if the *waqif* stipulated in the *waqf* instrument the *mutawalli*'s right to amend the *waqf*, then the *mutawalli* could exercise this right once unless the *waqf* instrument allowed him to make repeated amendments. See Muhammad Abu Zahrah, *Kitab al-waqf*.

19. See Oxford Islamic Studies Online, Mutawalli, available at [http://oxfordislamicstudies.com/article/opr/t125/e1666?\\_hi=0&\\_pos=5210](http://oxfordislamicstudies.com/article/opr/t125/e1666?_hi=0&_pos=5210).

20. Abbasi at 124.

21. Mohsin et al. at 4.

22. *Id.* at 135.

23. As early as the ninth century Maliki jurisprudence had already considered the possibility of placing cash or coins into a *waqf*. See *The Mudawwanah* (Vol. II, p. 103, Ed. Cairo), available at [https://ia902304.us.archive.org/30/items/FP144241/02\\_144241-2.pdf](https://ia902304.us.archive.org/30/items/FP144241/02_144241-2.pdf). The compilation of Imam Malik's jurisprudence by Sahnun, in the classic *al-Mudawwana*, cites a case where "[a] man makes *waqf* of a hundred dinars with the object of lending them

sixteenth century the Ottomans popularized the creation of *waqf* endowments with original capital consisting partially or entirely of cash.<sup>24</sup> In the twentieth century, the *waqf* of stocks (or “share *waqf*”) has appeared in Iran, Egypt, Lebanon, India, Pakistan, Bangladesh, Turkey, and Malaysia.<sup>25</sup>

### B. Modern Law and Regulation of the Corporate Waqf

Based on the foundations of *Shari'a* jurisprudence, modern legal regimes in each country elaborate their respective details of administration. Under colonial rule, the *waqf* system remained dormant for extended periods which were characterized by the dominance of secular law over Islamic law. Reform efforts after independence and details of implementation varied widely between countries. In most cases, the modern *waqf* regimes were established after the 1960s. The examples of Turkey, Malaysia, and India, detailed below, offer a limited sample of the current laws of *waqf*. They are by no means an exhaustive survey of the range of legal regimes enacted to manage modern *waqfs*. Building on the *Shari'a*, foundations of the cash *waqf*, the share *waqf*, and the corporate *waqf* emerged and gained popularity in a number of countries over the past two decades.

#### 1. Turkey

Turkey's modern law of *waqf* originated with law 903 of 1967<sup>26</sup>, which made it possible for a *waqf* to establish its own company,<sup>27</sup> for a

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to people who would return the same to the dedicator.” See al-Ma'mun Suhrawardy, *The Waqf of Movables*, Journal of the Asiatic Society of Bengal, 7 n.s. (1911) 323-430, available at <https://archive.org/stream/mobot31753002183827#page/351/mode/2up>.

24. The sixteenth century jurist of the Ottoman Empire, EbuSuud, mainstreamed the arguments for the cash waqf in his *Treatise Regarding the Permissibility of Cash Waqfs*. See Ebusuud, *Risālah fi Jawāz Awqāf al-Nuqūd*. Mandaville chronicles the emergence of the cash waqf in the early fifteenth century, its mainstreaming as a legal practice in the mid-sixteenth century, and its dominance as the most common form of endowment by 1560. See Jon E. Mandaville, *Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire*, 10 INT'L J. MIDDLE EAST STUD. 289 (1979) (Mandaville characterizes the emergence of the cash waqf as a “revolution” countering the traditional criticism of Islamic law as unresponsive to change.).

25. See Murat Çizakça, ISLAMIC CAPITALISM AND FINANCE: ORIGINS, EVOLUTION AND THE FUTURE 101 (2011).

26. See Murat Çizakça, *History of Awqaf in the Ottoman Empire and the Turkish Republic* 14, available at [https://www.academia.edu/16156826/Waqfs\\_in\\_the\\_Ottoman\\_Empire\\_and\\_the\\_Turkish\\_Republic?auto=download](https://www.academia.edu/16156826/Waqfs_in_the_Ottoman_Empire_and_the_Turkish_Republic?auto=download).

27. The Diyanet Vakfi, for example, created companies and provided equity finance

company to establish its own *waqf*,<sup>28</sup> and for an individual or entity to establish a cash *waqf* using shares in a corporation as the asset base.<sup>29</sup> These regulations enabled a *waqf* arrangement where founders' directives could prescribe how revenue would be expended, but not how the *waqf* assets would be managed, as the *waqfs* "became passive recipients of profits made by professional managers of companies whose shares they held."<sup>30</sup> In 1999, Turkey's General Directorate of *Waqfs* permitted *waqfs* to purchase shares of unlisted companies, at the discretion of trustees.<sup>31</sup> Further reforms to the law of *waqf* were promulgated in the 2008 law of *waqf*.<sup>32</sup> Among its main provisions were: granting full legal personality to *waqfs*,<sup>33</sup> exempting *waqfs* from corporate taxation<sup>34</sup> and subjecting them to income taxation, establishing a fifteen-member Council of *Waqfs*<sup>35</sup> charged with appointing trustees for *waqfs* managed by their founders or their descendants<sup>36</sup>, and reducing the minimum capital requirement for establishing a new *waqf*.<sup>37</sup> Article 26 of the 2008 law permitted a *waqf* to establish companies to raise revenue and to enter into partnership with established companies.

Foundations may establish economic enterprises and companies provided that they provide information to the General Directorate in order to help fulfill the purpose and to provide income to the foundation. Income derived from economic enterprises, including corporations, can not be allocated for any purpose other than the purpose of the foundation. Provisions governing the acquisition of property by the same foundations about the acquisition of assets by companies whose majority founders are foreign nationals or whose shares are owned by more than half of their shares are

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to existing companies. This *waqf* has established at least six companies, with 80-99% equity in each. See <https://www.tdv.org/> (last visited May 10, 2019).

28. Koç Holding, for example, was a large conglomerate that created its own *waqf*, Vehbi Koç Vakfı.

29. Çizakça (2011) at 104-105.

30. *Id.*

31. Çizakça (2011) at 105.

32. Law on Foundations, Law no. 5737 (Feb. 2008).

33. *Id.* at Article 4 ("Foundations have private law legal personality.").

34. Notably, commercial enterprises established by *waqfs* are subject to corporate tax even if their earnings are allocated to charitable ends.

35. The Council includes five members from Turkey's General Directorate of *Waqfs* including the General Director, five members recommended by the Prime Minister, three members elected by new *waqfs*, one member elected by *waqfs* established by deceased founders, and one member elected by the minority *waqfs*.

36. This change notably restricted a traditional right of the *waqif* to appoint the *mutawalli*.

37. See Murat Çizakça, *History of Awqaf in the Ottoman Empire and the Turkish Republic* at 14-15.



applied.<sup>38</sup>

Article 31 requires *waqf* trustees to issue annual statements, including updates on the *waqf* management team, the previous year's activities, budget and balance sheet, a list of assets, and all companies and partnerships.

## 2. Malaysia

According to the Federal Constitution of Malaysia, the *waqf* falls within the exclusive powers of the thirteen state governments.<sup>39</sup> Since the Civil Law Act of 1956<sup>40</sup> recognizes the disposal of property in accordance with Islamic law, *waqf* properties are within the jurisdiction of the State Islamic Religious Councils (SIRCs). State-level regulations concerning *waqfs* fall into two categories: specific rules and enactments relating to *waqf*, and provisions in the state Administration of Muslim Law enactments. None of the states have restricted the type of asset that may be placed into a *waqf*,<sup>41</sup> thus allowing for the creation of cash *waqf*, share *waqf*, and corporate *waqf*. All of the enactments appoint the SIRC as the 'sole trustee' of all *waqfs*.

All [waqf property] . . . shall without any conveyance, assignment or transfer, and, in the case of immovable property, upon registration under

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38. Law no. 5737 Article 26 (Feb. 2008).

39. Federal Constitution of Malaysia §Ninth Schedule, List II – State List (1953) (“Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State”). For a list of the states that have promulgated *waqf*-related legislation and the relevant sections, see Sharifah Abdul Kader et al., *The Legal Framework of Waqf in Malaysia* (2013) at 6-7, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2547440](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2547440).

40. Act 67, Civil Law Act 1956 §25 (“Nothing in this Part shall affect the disposal of any property according to Muslim law or, in Sabah and Sarawak, native law and custom.”), available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%2067.pdf>.

41. In the states of Perlis, Kedah, Perak, Selangor, Negeri Sembilan, Melaka and Terengganu the *waqf* has been defined as ‘any property from which its benefit or interest may be enjoyed for any charitable purpose’. In the states of Kelantan and Pahang as well as the Federal Territories, the *waqf* is defined as ‘any property from which its capital and income may be enjoyed for any charitable purpose’. In Johor, the *waqf* is defined as ‘any permanent gift of properties or part thereof by its owner for religious purposes in accordance with [Shari’ah]’.

the written law relating to land, vest in the [SIRC], for the purpose of the wakaf. . . affecting the property.<sup>42</sup>

In four states,<sup>43</sup> the SIRC has issued further rules and regulations for the administration of *waqfs*, detailing more comprehensive definitions for the *waqf*, the *waqif*, the *waqf* assets, and the beneficiaries. The SIRC may refer any disputed issue relating to the *waqf* to the state *fatwa* committee (which issues *Shari'a* rulings) for resolution. In 2004, the Federal Government of Malaysia established a Department of *Awqaf*,<sup>44</sup> *Zakat*, and *Hajj* (JAWHAR) to provide oversight for the streamlining of *waqf* management and administration for all states.<sup>45</sup>

### 3. India

The laws of *waqf* in India, Pakistan,<sup>46</sup> and Bangladesh<sup>47</sup> are strikingly similar due to their shared history as part of undivided India until 1947.<sup>48</sup> The first comprehensive *waqf* legislation in independent India was the Wakf Act of 1954.<sup>49</sup> Major changes to the law of *waqf* include the Wakf Act of 1995<sup>50</sup> and the Wakf Reform Act of 2013.<sup>51</sup> *Waqf* regulation in India is housed under the Ministry of Minorities Affairs.<sup>52</sup> In accordance

42. See Enactment No. 2 of 2001 Administration of Islamic Religious Affairs (Terengganu) Enactment, Section 64. Vesting of wakaf, nazar and trust property in Majlis, available at [http://www2.esyariah.gov.my/esyariah/mal/porta1v1/enakmen2011/Eng\\_enactment\\_Upd.nsf/f831ccddd195843f48256fc600141e84/8aeaa31561903cae48257aa600128fc6?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/porta1v1/enakmen2011/Eng_enactment_Upd.nsf/f831ccddd195843f48256fc600141e84/8aeaa31561903cae48257aa600128fc6?OpenDocument).

43. Johor (Johor Wakaf Rules 1983), Selangor (Selangor Wakaf Enactment 1999), Negeri Sembilan (Negeri Sembilan Wakaf Enactment 2005), and Melaka (Melaka Wakaf Enactment 2005).

44. Awqaf is the Arabic plural of waqf.

45. See History of JAWHAR (May 2018), <http://www.jawhar.gov.my/en/profil-jabatan/mengenai-jawhar/sejarah-jawhar/> (last visited May 10, 2019).

46. In Pakistan, the Provisional Waqf Ordinances of 1979 in its four provinces provide the regulatory framework for the waqf.

47. In Bangladesh the Waqf Ordinance of 1962 primarily governs the creation and administration of a waqf.

48. See Mohammed Obaidullah, *A Framework for Analysis of Islamic Endowment (Waqf) Laws*, 18 INT'L J. OF NOT-FOR-PROFIT LAW 1, 55 (2016), available at <http://www.icnl.org/research/journal/vol18iss1/v18n1%20revd%20Obaidullah.pdf>.

49. The Wakf Act, 1954, available at [http://www.liiofindia.org/in/legis/cen/num\\_act/wa195458/](http://www.liiofindia.org/in/legis/cen/num_act/wa195458/).

50. The Wakf Act, 1995, available at [http://www.minorityaffairs.gov.in/sites/default/files/wakf\\_act.pdf](http://www.minorityaffairs.gov.in/sites/default/files/wakf_act.pdf).

51. The Wakf (Amendment) Act, 2013 §5(v)(i), available at [http://www.minorityaffairs.gov.in/sites/default/files/Wakf\\_Amendment\\_2013.pdf](http://www.minorityaffairs.gov.in/sites/default/files/Wakf_Amendment_2013.pdf).

52. See *Id.* at 59.

with the Wakf Act of 1995, provincial or state governments establish State Waqf Boards (SWBs), which in turn constitute local committees to manage, regulate, and protect *waqf* properties. The Central Waqf Council, also established by the *Wakf* Act of 1995, is charged with advising the government on the workings of the SWBs and on the administration of *waqfs*. Indian law permits placing any type of property into *waqf*; “*waqf* means the permanent dedication by any person, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable.”<sup>53</sup> Notably, the law remains silent on rules relating to investment of cash *waqf*<sup>54</sup> and to corporate *waqf*. The only exception is a reference in the 1995 Act, which has gone unchanged in the 2013 version, defining the “*mutawalli*” as “any person, committee or corporation for the time being managing or administering any wakf or wakf property”.<sup>55</sup>

## II. THE CORPORATE WAQF IN PRACTICE

The corporate *waqf* remains under-studied as an organizational form, and no empirical data was available for analysis. As a starting point of examination, this section provides narrative accounts of three examples of corporate *waqfs*: Koç Holding and the Vehbi Koç Vakfı in Turkey, Johor Corporation and Waqaf An-Nur in Malaysia, and Hamdard Waqf Laboratories and Hamdard Foundation in India.

The purposes and objectives of the corporate *waqfs* may be interpreted from the founding charters, the mission statements, and the regulatory systems governing these institutions. Corporate *waqfs* generally take six main forms: business entities or corporations, banking and financial institutions, universities, foundations, cooperatives, and hospitals or clinics.<sup>56</sup> For the purposes of this article, the types of organizations examined as “corporate *waqf*” are those whose asset base is comprised of shares in a company and who hold some managerial roles in that company.

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53. See The Wakf (Amendment) Act, 2013 §5(v)(i), available at [http://www.minorityaffairs.gov.in/sites/default/files/Wakf\\_Amendment\\_2013.pdf](http://www.minorityaffairs.gov.in/sites/default/files/Wakf_Amendment_2013.pdf).

54. See Obaidullah at 63.

55. See The Wakf Act, 1995§3(i).

56. Ashraf Mohd Ramli and Abdullaah Jalil, *Corporate Waqf Model and its Distinctive Features: The Future of Islamic Philanthropy* at 5 <[https://www.academia.edu/30325483/CORPORATE\\_WAQF\\_MODEL\\_AND\\_ITS\\_DISTINCTIVE\\_FEATURES\\_THE\\_FUTURE\\_OF\\_ISLAMIC\\_PHILANTHROPY](https://www.academia.edu/30325483/CORPORATE_WAQF_MODEL_AND_ITS_DISTINCTIVE_FEATURES_THE_FUTURE_OF_ISLAMIC_PHILANTHROPY)>.

A. *Koç Holding and Vehbi Koç Vakfı*

Koç Holding was founded in 1926 by Vehbi Koç. It has since grown to become Turkey's largest industrial conglomerate.<sup>57</sup> The company conducted an IPO in 1970 and now has 2.5 billion issued shares with a \$7.15 billion market capitalization.<sup>58</sup> The Koç family has maintained control of the company since its founding, and Ömer M. Koç of the third generation now chairs the Board of Directors.<sup>59</sup> In 1969, Vehbi Koç endowed 10,000 shares of Koç Holding to establish the charitable foundation, Vehbi Koç Vakfı (Vehbi Koç Foundation).<sup>60</sup> Members of the Koç family have since supplemented this initial endowment with donations of their own, with Vehbi Koç's initial contribution now comprising a small fraction of the foundation's total assets in book value. With 7.26% equity in Koç Holding, Vehbi Koç Vakfı has assets valued over \$1.75 billion and controls equity valued at over \$722 million in 2017.<sup>61</sup>

In the Deed of Trust establishing Vehbi Koç Vakfı, Koç established a clear vision for the foundation's perpetual existence that is tied to the continued success of his corporation:

Praise be to Almighty God, who with His Will enabled me to perform charitable works during my lifetime with pleasure, and granted me the means to continue (performing ongoing charity) after my death. In my belief that the Turkish Nation will continue to exist so long as the world endures. . . and my wish being to establish this foundation in perpetuity, I have based this endowment on a commercial entity that will be able to adopt itself to the requirements of the day rather than on properties dependent on economic conditions and natural disasters. I have chosen to set up this endowment with the shares of Koç Holding. These are made up of numerous commercial and industrial enterprises, and are therefore less subject to risks. This foundation that I have established by the grace and kindness of God, I entrust, first of all, to my heirs and to their succeeding generations, to my business colleagues and to the Government of the Republic of Turkey.<sup>62</sup>

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57. Koç Holding was the only Turkish company on the Fortune 500 list for 2017. *See* Fortune, *Fortune Global 500*, <http://fortune.com/global500/list/> (last visited May 10, 2019).

58. 38.038 billion TRY converted to USD. *See* Koç Holding AS Market Capitalization, <https://www.bloomberg.com/quote/KCHOL:TI> (last visited May 10, 2019).

59. *See* Koç, *Board of Directors*, <https://www.koc.com.tr/en-us/about/board-of-directors> (last visited May 10, 2019).

60. Also referred to as Vehbi Koç Foundation.

61. *See* Koç Holding A.Ş., *2017 Annual Report* at 109.

62. Koç Üniversitesi, *Bequest from Vehbi Koc (January 17, 1969)*, <https://25.ku.edu.tr/bequest/?lang=en> (last visited May 10, 2019).

The Foundation has established Koc University, Koc School, Koc Elementary and Middle Schools, and built museums, research centers, community centers, and hospitals across the country.<sup>63</sup> Article 9 of the Foundation's Deed provides that a minimum of 80% of the *waqf* revenue is allocable to social and cultural services, while a maximum of 20% may go to administrative expenses, emergency cash and investment to purchase additional waqf properties.<sup>64</sup> This stipulation accords with Turkey's 1967 Law, which provides that *waqfs* can be exempted from taxation, pursuant to approval from the Council of Ministers, if 80% of their revenues are reserved for public purposes.<sup>65</sup> Accordingly, the Koç Foundation was granted tax-exempt status in 1968.<sup>66</sup>

The Vehbi Koç Foundation is governed by a Board of Directors, comprised of ten individuals, including the following: four members of the Koç family, the CEO of Koç Holding, two members who are "recognized experts in financial and economic matters" and who are elected by the Board, two university professors, and the General Manager or Assistant General Manager of İş Bankası, Turkey's second largest bank. Vehbi Koç's oldest daughter, Semahat Arsel, chairs the Foundation.<sup>67</sup> Seven out of ten members of the Foundation's Board of Directors also sit on Koç Holding's Board of Directors, evidencing significant managerial overlap.<sup>68</sup> The foundation also maintains a 5.73% voting stake<sup>69</sup> and the terms of the Foundation's Deed include stipulations for preventing this stake from dilution. While this voting stake falls far short of majority control, the Koç family has an 18.5% voting stake (23.46 equity ratio) and Temel Ticaret ve Yatırım A.Ş., which is majority owned by Koç family

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63. Vehbi Koç Foundation Annual Report 2017, *available at* [http://www.vkv.org.tr/uploads/faaliyetraporlari/pdf/VKV2017\\_Faaliyet\\_Raporu\\_1.pdf](http://www.vkv.org.tr/uploads/faaliyetraporlari/pdf/VKV2017_Faaliyet_Raporu_1.pdf)

64. Çizakça (2011) at 107.

65. Law No. 903 (July 13, 1967).

66. *See* Vehbi Koç Foundation Annual Report 2017.

67. Vehbi Koç Vakfi, *Board of Management*, [http://www.vkv.org.tr/yonetim\\_default.aspx?hl=en](http://www.vkv.org.tr/yonetim_default.aspx?hl=en) (last visited May 10, 2019).

68. *See* Vehbi Koç Vakfi, *Board of Directors*, [http://www.vkv.org.tr/yonetim\\_default.aspx?hl=en](http://www.vkv.org.tr/yonetim_default.aspx?hl=en) (last visited May 10, 2019) and Koç Holding, *Board of Directors*, <https://www.koc.com.tr/en-us/about/board-of-directors> (last visited May 10, 2019). The overlapping individuals are Semahat Arsel, Rahmi M. Koç, Ömer M. Koç, Ali Y. Koç, İpek Kırac, Temel Atay, and Levent Çakıroğlu.

69. *Koç Holding Information Document for 30 March 2017 Ordinary General Assembly to Review Financial Year 2016* at 3, *available at* <https://www.koc.com.tr/en-us/investor-relations/corporate-overview-and-governance/agm/agm%20agenda%20document/1d%20KH%20AGM%20information%20document.pdf>.

members<sup>70</sup>, has a 55.6% voting stake and a 43.65% equity ratio. Article 7 of the Deed requires that all excess cash accruing to the *waqf* annually be converted into government bonds and kept as a reserve fund.<sup>71</sup> The fund kicks in when Koç Holding exercises capital enhancement, enabling the foundation to maintain its share in the conglomerate. The Deed further provides that if this fund is not sufficient, the Board of Trustees may draw 20% of the *waqf*'s primary revenue.<sup>72</sup>

### B. Johor Corporation and Waqaf An-Nur

Johor Corporation (JCorp) was established as a public enterprise and a statutory body via Johor Enactment No. 4 1968.<sup>73</sup> As a Malaysian state-owned conglomerate, JCorp is comprised of 332 companies conducting business in, among other sectors, palm oil, healthcare, food and restaurant services, port services, real estate, hospitality, and oil & gas.<sup>74</sup> In 2005, JCorp established Kumpulan Waqaf An-Nur Berhad (Waqaf An-Nur)<sup>75</sup> and transferred to it 75% equity in the company Tiram Travel Sdn Bhd.<sup>76</sup> The objective of Waqaf An-Nur is “to manage the assets and shares of companies of the Corporation which have been endowed in accordance with the principles of [*Shari'a*].”<sup>77</sup> Its activities include involvement in education, healthcare, welfare, entrepreneurship, community development, and real estate management.<sup>78</sup>

In 2006, JCorp transferred to Waqaf An-Nur shares in a number of companies: 12.35 million shares of Kulim Bhd, 18.6 million shares of KPJ

70. In addition to all four board members being members of the Koç family (Mehmet Ömer, İpek Kırış, Caroline Nicole Koç, Yildirim Ali Koç), the Chairman and Vice Chairman of its Board of Directors are members of the Koç family (Semahat Arsel and Mustafa Rahmi Koç). Temel Ticaret ve Yatırım A.Ş., *Company Information*, <https://e-sirket.mkk.com.tr/esir/Dashboard.jsp#/sirketbilgileri/10307> (last visited May 10, 2019).

71. Çizakça (2011) at 107.

72. *Id.*

73. Johor Corporation, *About Johor Corporation*, <http://www.jcorp.com.my/about-johor-corporation-3.aspx> (last visited May 10, 2019).

74. *Id.*

75. “Berhad” (Bhd) is a suffix used to refer to a Malaysian public limited company, which has a minimum number of two shareholders and no maximum number of shareholders.

76. *Johor Corporation Annual Report 2011* at 130.

77. *Johor Corporation Annual Report 2016* at 130, available at [http://www.jcorp.com.my/userfiles/file/JCorpAR16\\_Eng.pdf](http://www.jcorp.com.my/userfiles/file/JCorpAR16_Eng.pdf).

78. Waqaf An-Nur Corporation, *WanCorp Activities*, [http://www.wancorp.com.my/Default.aspx?p\\_Id=0](http://www.wancorp.com.my/Default.aspx?p_Id=0) (last visited May 10, 2019).

Healthcare Bhd, and 4.3 million shares of Johor Land Bhd.<sup>79</sup> In 2009, Waqaf An-Nur signed a Memorandum of Understanding with the State Islamic Religious Council (SIRC) of Johor designating Waqaf An-Nur as the *mutawalli* of all JCorp *waqf* properties.<sup>80</sup> Today, Waqaf An-Nur holds a minority ownership in three companies: Al-Salam REIT (9.98%)<sup>81</sup>, KPJ Healthcare (7.2%)<sup>82</sup>, and Al-'Aqar Healthcare REIT (2.52%)<sup>83</sup> The corporate *waqf* has controlling ownership in four companies: Larkin Sentral Property Sdn Bhd (61%)<sup>84</sup>, Capaian Aspirasi Sdn Bhd (75%), Tiram Travel Sdn Bhd (75%), and Menaka Ansar (100%).<sup>85</sup>

70% of the dividends accruing to Waqaf An-Nur are reinvested, while 25% go to charitable and social works, special projects, and human capital development, and 5% go to SIRC Johor.<sup>86</sup> There is considerable overlap between JCorp's management and Waqaf An-Nur's management. Waqaf An-Nur's ten-member board includes a Chairman who is also the President and Chief Executive of JCorp, three Directors from within JCorp, four independent directors, one director who is the CEO of the Johor State Religious Council, and one director who is the State Mufti of Johor.<sup>87</sup>

### C. *Hamdard (Wakf) Laboratories and Hamdard National Foundation*

Hamdard Laboratories was established by Hakim Hafiz Abdul

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79. *Id.*

80. *Johor Corporation Annual Report 2011* at 132.

81. *Johor Corporation Annual Report 2016* at 129 (JCorp and its subsidiaries collectively hold 66% equity interest of Al-Salam).

82. *Id.* at 129 (“[JCorp] is the majority shareholder of KPJ with 37% equity interest. The second and third largest shareholders are Employee Provident Fund (“EPF”) and Waqaf An-Nur Corporation Berhad, which own 11% and 7% of the equity shares of KPJ respectively. All other shareholders individually own less than 5% of the equity shares of KPJ. Historically, the other shareholders did not form a group to exercise their votes collectively.”).

83. *Id.* at 129 (“[JCorp] via KPJ, held 49% equity interest in Al-'Aqar.”).

84. Sdn Bhd companies are private limited companies with a minimum number of two shareholders and a maximum number of fifty shareholders.

85. Waqaf An-Nur, *Listed Companies*, [http://wancorp.com.my/Ain-Waqaf.aspx?p\\_Id=3](http://wancorp.com.my/Ain-Waqaf.aspx?p_Id=3) (last visited May 10, 2019)

86. Saad et al., *Involvement of Corporate Entities in Waqaf Management: Experiences of Malaysia and Singapore*, 3 *ASIAN ECONOMIC AND FINANCIAL REVIEW* 736, 741 (2013).

87. Waqaf An-Nur Corporation, *Board of Directors*, [http://www.wancorp.com.my/BOD.aspx?p\\_Id=2](http://www.wancorp.com.my/BOD.aspx?p_Id=2) (last visited May 10, 2019).

Majeed in Delhi, India in 1906 with the purpose of manufacturing medicine and distributing it cheaply.<sup>88</sup> After the Partition of India in 1947, Hamdard was organized as a waqf in 1948.<sup>89</sup> Abdul Majeed's son, Hakim Mohammed Said, established Hamdard Pakistan in the same year, converting it into a waqf in 1953.<sup>90</sup> He also established Hamdard Bangladesh in 1953.<sup>91</sup> In 1962, Hamdard National Foundation (HNF) India was established as Hamdard's *mutawalli* and charged with driving Hamdard's CSR initiatives.<sup>92</sup>

Today, 85% of profits earned by Hamdard (Wakf) Laboratories go into HNF and the remaining 15% are reinvested<sup>93</sup> in the business.<sup>94</sup> Beneficiaries include Jamia Hamdard University, Hamdard Education Society, Business and Employment Bureau, Majeedia Hospital, and Ghalib Academy.<sup>95</sup> Hamdard (Wakf) Laboratories is managed by a seven-member Steering Committee, including five family members and two independent members.<sup>96</sup> They are charged with "earning-for-charity" and,

88. Rajeswary Brown, *The Chinese and India Corporate Economies: A Comparative History of their Search for Economic Renaissance and Globalization* (2017) at 360-61.

89. See Hamdard National Foundation, *Historical Background*, [http://www.hamdardnationalfoundation.org/historical\\_background.html](http://www.hamdardnationalfoundation.org/historical_background.html) (last visited May 10, 2019).

90. See Hamdard Pakistan, <http://www.hamdard.in/legacy> (last visited May 10, 2019).

91. See Hamdard Laboratories (Waqf) Bangladesh, *About Us*, <https://hamdard.com.bd/about/hakim-mohammed-said/> (last visited May 10, 2019). Hamdard India is not involved in revenue sharing with the other two branches, and Hamdard Bangladesh operates under license from Hamdard Pakistan. Moinak Mitra, *The Economic Times*, *The men behind 113-year-old Hamdard's modernization drive* (May 2013), <https://economictimes.indiatimes.com/magazines/corporate-dossier/meet-the-men-behind-113-year-old-hamdards-modernisation-drive/articleshow/20086927.cms> (last visited May 10, 2019).

92. Hamdard, *About Us*, <http://www.hamdard.in/legacy> (last visited May 10, 2019). HNF is registered under India's Societies Registration Act XXI of 1860, available at [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=10](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=10).

93. Moinak Mitra, *The Economic Times*, *The men behind 113-year-old Hamdard's modernization drive* (May 2013), <https://economictimes.indiatimes.com/magazines/corporate-dossier/meet-the-men-behind-113-year-old-hamdards-modernisation-drive/articleshow/20086927.cms> (last visited May 10, 2019).

94. A requirement of India's Section 10 (23C) of the Income-Tax Act of 1995, available at <https://indiankanoon.org/doc/37115/>.

95. Hamdard National Foundation, *Institutions Established and Funded by Hamdard National Foundation*, [http://www.hamdardnationalfoundation.org/hamdard\\_university.html](http://www.hamdardnationalfoundation.org/hamdard_university.html) (last visited May 10, 2019).

96. Moinak Mitra, *The Economic Times*, *The men behind 113-year-old Hamdard's*



as one Director of HNF has noted, “[t]he only motivation family members have is to generate more funds and be more professional so that you can give money for charity.”<sup>97</sup> Members of the Steering Committee do not get a share of the profits. Rather, “[t]hey are salaried employees making less than some of the newly-appointed professionals.”<sup>98</sup> Five of the Steering Committee members also serve as board members for HNF.<sup>99</sup>

The organization of Hamdard’s operations in Pakistan and in Bangladesh largely parallel those of the Indian company. Hamdard (Wakf) Laboratories Pakistan was also reorganized as a waqf in 1953,<sup>100</sup> and, in 1964, Hamdard Foundation was established in Pakistan as a *mutawalli*, charged with distributing the net profit from Hamdard Laboratories to the specified beneficiaries.<sup>101</sup> Profits from Hamdard (Wakf) Laboratories Pakistan were to be used “for the promotion of health, education, and social uplift programmes according to [the founder’s] vision and mission - service to nation and humanity.”<sup>102</sup> Hamdard (Wakf) Laboratories in Bangladesh is also organized as a waqf.<sup>103</sup> Hamdard Foundation Bangladesh was established in 1989 and is funded by the earnings of Hamdard Laboratories (Waqf) Bangladesh (HLWB). Hamdard’s management is comprised of eight members: a Managing Director/Chief Mutawalli, a Deputy Managing Director/Mutawalli, a Director of Human Resource Development/Mutawalli, and five additional Directors.<sup>104</sup>

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*modernization drive* (May 2013) (quoting Rakesh Nayyar), <https://economictimes.indiatimes.com/magazines/corporate-dossier/meet-the-men-behind-113-year-old-hamdards-modernisation-drive/articleshow/20086927.cms> (last visited May 10, 2019).

97. *Id.*

98. *Id.*

99. Hamdard National Foundation, *Management of Hamdard National Foundation*, [http://www.hamdardnationalfoundation.org/managment\\_hnf.html#](http://www.hamdardnationalfoundation.org/managment_hnf.html#) (last visited May 10, 2019).

100. Hamdard Pakistan, *Introduction & History*, <https://hamdard.com.pk/pages/about-us-history—introduction> (last visited May 10, 2019).

101. Magda Ismail Abdel Mohsin, *Scrutinizing the Role of Corporate Waqf in Turkey, India & Malaysia*, INCEIF (2015).

102. Hamdard Pakistan, Hamdard Foundation, <https://www.hamdard.com.pk/pages/hamdard-foundation-hamdard-foundation> (last visited May 10, 2019).

103. Hamdard Laboratories (Waqf) Bangladesh, *Hamdard Foundation Bangladesh*, <https://www.hamdard.com.bd/hamdard-foundation/> (last visited May 10, 2019).

104. Hamdard Laboratories (Waqf) Bangladesh, *Managing Director & Directors*, <https://hamdard.com.bd/managing-director-and-directors/> (last visited May 10, 2019).

### III. THE CORPORATE WAQF AND THE INDUSTRIAL FOUNDATION

As the preceding two sections have demonstrated, the corporate *waqf* has developed as an arrangement combining the perpetual charitable features of the traditional *waqf* with the organizational efficiency of the corporate form. A Western analogue to the corporate *waqf* is found in the industrial foundations and the foundation-owned firms of Northern Europe. At the heart of both the corporate *waqf* and the industrial foundation lies the aspiration to establish a perpetual legacy and to further charitable ends through the enduring success of a business organization. Both organizational forms incorporate, to varying degrees, management by a non-profit foundation and both are subject to government oversight. A main difference between the two organizational forms is that a foundation-owned firm is majority-owned by a charitable foundation, while the corporate *waqf* examples vary with respect to ownership-share held by a foundation.

This section begins with a brief account of industrial foundations and foundation-owned-firms, gesturing to the main conclusions of a robust body of scholarship that has examined the main features and successes of this organizational form. It goes on to highlight some major similarities and to identify notable differences between the foundation-owned firm and the corporate *waqf* to demonstrate an early foray into comparative analysis between these two forms.

#### A. *The Industrial Foundation and the Foundation-Owned-Firm*

The industrial foundation is a private nonprofit entity that holds a controlling equity interest in a conventional business company.<sup>105</sup> In most cases, the business company's founder creates the foundation and donates to it his/her equity interest in the business company. The foundation is prohibited from distributing profits to anyone exercising control over it, is considered to have perpetual life, and has no owners or members.<sup>106</sup> Although the foundation's board of directors is typically self-electing, some constraints may be imposed on the election process, or an outside entity may elect board members.<sup>107</sup>

Markus Herman and Günter Franke,<sup>108</sup> among others, documented

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105. Steen Thomsen and Henry Hansmann, *The Governance of Foundation-Owned Firms* (2018) at 4.

106. Steen Thomsen and Henry Hansmann, *The Performance of Foundation-Owned Companies* (2013) at 3.

107. *Id.* at 4.

108. Herrmann, M. and G. Franke. 2002. *Performance and Policy of Foundation-*

the economic performance of foundation-owned firms in Germany, finding them to perform slightly better than companies organized with a more conventional ownership structure. Steen Thomsen and Henry Hansmann confirmed this finding in an examination of Danish, Finnish, Norwegian, and Swedish companies. Their work demonstrates that “foundation-owned companies have similar accounting profitability, take less risk, and grow more slowly than listed investor-owned companies.”<sup>109</sup> In a study examining the reputations of foundation-owned firms in Denmark, Christa Borsting and Steen Thomsen demonstrate that these firms appreciate better reputations and public perceptions of social responsibility in corporate image ratings than conventionally owned firms.<sup>110</sup> They also found that foundation-owned companies are “more stable employers, pay their employees better, and keep them for longer” and that “foundation-ownership is associated with more responsible business behavior toward employees.”<sup>111</sup>

*B. Comparing the Organizational Architecture of the Corporate Waqf and the Industrial Foundation*

The aspiration for immortality is common between the corporate *waqf* and the industrial foundation, and in both cases it is pursued through perpetual institutions. Borsting and Thomsen note that industrial foundations “are founded by entrepreneurs who wish to secure the future of the company, which they regard as their contribution to society.”<sup>112</sup> This intent is similarly observed in the examples of Vehbi Koç Vakfi and Hamdard (Wakf) Laboratories. Vehbi Koç’s Deed of Trust establishing Vehbi Koç Vakfi memorializes this objective, “and my wish being to establish this foundation in perpetuity, I have based this endowment on a commercial entity that will be able to adopt itself to the requirements of the day.”<sup>113</sup> The Abdul Majeed family similarly pursued to immortalize their company by organizing Hamdard Laboratories as a *waqf*, which, pursuant to Indian law requires “the permanent dedication by any person, of any movable or immovable property for any purpose recognized by the

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*Owned Firms in Germany*. European Financial Management 8 (2002): 261-279.

109. See Steen Thomsen and Henry Hansmann, *The Performance of Foundation-Owned Companies* (2013) at 2.

110. See Christa Borsting and Steen Thomsen, *Foundation ownership, reputation, and labour*, 33 OXFORD REV. OF ECON. POL’Y 2 (2017).

111. *Id.* at 317-318.

112. Borsting and Thomsen at 318.

113. Bequest from Vehbi Koc.

Muslim law as pious, religious or charitable.”<sup>114</sup> Johor presents a unique case in that its founder is a state entity.

Borsting and Thomsen also note that “founders establish the foundations and donate their company stock to them”, that “donation is irrevocable”, that the “foundations are governed by a foundation board whose fiduciary duty is to the foundation and the goals expressed in its charter”, that the “principal assets of the foundation are shares in the company from which it receives dividends”, and that the foundation-owned firms “combine a business goal (preservation and development of the company) with a philanthropy funded by dividends from the company.”<sup>115</sup> All of these features are identical to the arrangements of Vehbi Koç Vakfi, Waqaf An-Nur, and Hamdard (Wakf) Laboratories. Furthermore, in the foundation-owned firms, the family is “active in about half of the foundation boards, but cannot by law constitute a majority of the board.”<sup>116</sup> No such restriction exists in the *waqf* law of Turkey, Malaysia, or India. In the case of Vehbi Koç Vakfi, four board members are from the Koç family. Waqaf An-Nur presents a complex case. Four board members are from JCorp, the founding entity, and their managerial power is delegated from the SIRC as the state-mandated trustee. However, Waqaf An-Nur holds majority ownership in three companies, but is not the founder for any of them and hence is not required to maintain ownership in perpetuity. In Hamdard (Wakf) Laboratories, five members of the steering committee are from the Abdul Majeed family.

Thomsen and Hansmann note that the European industrial foundations are typically supervised by governmental entities to ensure that they are run lawfully and in adherence with their charters, and that the supervising body has power to intervene in extreme cases if the foundation board breaches its fiduciary duties. The scope of supervision is limited to issues of legality such as compliance with the law or the terms of the charter, and supervisors generally cannot challenge business decisions, unless they involve unusually risky issues that put the foundation’s survival at risk.<sup>117</sup> This function is similar to that observed in Malaysia with the relationship between SIRC and the *waqfs*, with the main difference being the requirement that the SIRC is the official trustee who may delegate managerial powers to another entity. Closer examples are the *waqf* regulatory regimes in Turkey and India, which also entail governmental supervision related to issues of legality and compliance with

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114. See The Wakf (Amendment) Act, 2013 §5(v)(i).

115. Borsting and Thomsen at 318.

116. *Id.*

117. *Id.*

the waqf charter and which may intervene in decision-making to prevent corruption.<sup>118</sup>

The terms of ownership present one main point of departure between the industrial foundations and the corporate *waqfs*. Borsting and Thomsen note that “[s]ome of the largest industrial foundations have listed their shares on the stock exchange and maintain control through dual class stock”, while the majority of the firms are privately owned.<sup>119</sup> With respect to ownership share, some industrial foundations own all the stock in the company, while others own a controlling block with remaining minority shares either held privately or traded publicly. The industrial foundations sometimes retain a voting majority by holding shares with full voting rights while having the company issue limited voting shares to the public.<sup>120</sup> *Waqf* law stipulates that endowed assets must be inalienable and that trustees retain managerial power but do not hold title to the endowed property.

Of the three examples of corporate *waqf* examined, the closest parallel to the industrial foundation is exhibited in the structure of Hamdard (Wakf) Laboratories, where the Steering Committee retains managerial control over the entire company. However, the Steering Committee is not a foundation and the Hamdard National Foundation only serves as a means to disburse earning and has no managerial powers. In the case of Vehbi Koç Vakfı, the foundation only owns a 7.26% equity stake and 5.73% voting stake. Though the Koç family retains majority control of Koç Holding, this is not done through the foundation. In the case of Waqaf An-Nur, the *waqf* holds an endowed minority equity share in JCorp but has no managerial rights, while it holds a majority stake in several subsidiary companies and a minority stake in others.

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118. In Turkey, Law no. 5737 of 2008 details these supervisory functions in Article 32 (“[T]he statement of the foundation’s executive or board members, the activity reports of the previous year, the budget and the balance sheets, the financial statements and the financial statements of these tables published by appropriate means, the financial statements of the enterprises and associations and other information to be determined by regulation shall be presented for the first six months of each calendar year to the General Directorate.”). In India, The Wakf Act of 1995 details these supervisory functions in §33 (“With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any wakf or wakf property, the Chief Executive Officer with the prior approval of the Board, either himself or any other person authorized by him in writing in this behalf, may inspect all movable and immovable properties, which are wakf properties, and all records, correspondences, plans, accounts and other documents relating thereto.”)

119. Borsting and Thomsen at 318.

120. *Id.*

## CONCLUSION

The corporate *waqf* provides a base for the development of industrial foundations and foundation-owned-firms in countries where a *waqf* system is legalized, including Turkey, Malaysia, and India, among others. The legal structure of companies that have already adopted the use of corporate waqfs demonstrates similarities to that of foundation-owned firms. Transferable lessons and best practices from the foundation-owned firms would benefit the corporate *waqf* and facilitate the achievement of charitable ends along with strong financial performance. Scholars point to the need for corporate *waqfs* to adopt a model governance framework.<sup>121</sup> The successes of the industrial foundations and foundation-owned-firms offer a fitting reference for this objective.

This article has attempted to provide a first step towards developing a body of scholarship focused on understanding, theorizing, and devising best practices for the emerging corporate *waqf*. This work might proceed in a number of different directions. As a first step, a comprehensive survey of the law of *waqf*, alongside the laws promulgated specifically to manage the corporate *waqf* would provide an informative baseline for this effort. A second set of inquiries might focus on theorizing the corporate *waqf* and developing more precise definitional clarity for the organizational form. A third approach might compile quantitative data on the corporate *waqfs*, particularly from Turkey and Malaysia, where the use of corporate *waqfs* is the most prevalent. A vein of research with the greatest practical bearing would collect empirical data, such as attributes and objectives of their founders, the size of the companies, stakeholder relations, voting structure, financial performance, employee relationships, and reputational value, on existing corporate *waqfs* to identify patterns within the types of organizations that are likely to adopt a corporate *waqf* model. The practical project might draw on the legacy of the industrial foundations and the foundation-owned firms to inform the development of a model governance framework for the corporate *waqf*.

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121. Nathasa Mazna Ramli and Nurul Aini Muhamed, *Good Governance Framework for Corporate Waqf: Toward Accountability Enhancement*, Proceedings of World Universities' Islamic Philanthropy Conference (2013).