



REPUBLIQUE DU SENEGAL
PRIMATURE
SECRETARIAT GENERAL DU GOUVERNEMENT
Haute Autorité du Waqf (HAW)



Legal framework of Waqf in Senegal

SUMMARY

LAW NO. 2015-11 OF MAY 06, 2015 ON THE WAQF.....Page 1

Decree No. n ° 2016-449 of April 14, 2016.....Page 20

LAW NO. 2015-11 OF MAY 06, 2015 ON THE WAQF

Explanatory statement

Under Muslim Law, the waqf is a property whose enjoyment is granted either to a public recipient, (public waqf), to specific family members of the donor or to third parties (family waqf), or to both classes of recipients (joint waqf).

The establishment of the waqf, the possession of which may benefit various charitable organisations, has a significant impact on the economic development, the welfare of beneficiary populations in the areas of health, education, employment or agriculture, as verified in many countries that have long ensured legal and economic protection to their waqf assets.

Aware of the efficiency of such a tool of solidarity, the Government which is embarked on a social policy of reducing inequities, improving access to basic social services, redistributing income, providing social protection to vulnerable groups and organizing national solidarity, wants to promote and facilitate the completion of waqf projects by establishing an appropriate legal framework.

In this regard, this draft law is worked out and its purpose is to ensure the protection of the assets subject to waqf, to preserve the wish of the grantors, to ensure the perpetual or temporary character of the waqf, to constitute a legal structure with a view to hosting already existing waqf initiatives and other waqfs to be created.

This legal framework considers that the public waqf consists of goods and resources from the public and/or private sectors, managed by a public entity and made widely available to the public to benefit from gestures of charity and solidarity.

Considering the specificity of this category of Waqf, which requires the protection of its assets in order to enable it to play its role as a potential tool for development and social promotion, the draft law grants privileges in terms of debt collection while framing the procedures for the sale of the property subject to the waqf.

The bill law enshrines an original category of waqf called waqf of public interest, which consists of private property and resources managed by a private natural or legal person, eligible for recognition as being in the public interest.

This concept takes into account the Senegalese environment marked by the existence of waqf that their settlers intended for charity, thus pursuing a goal of public interest.

This category of waqf is privately held or is assigned to a foundation of public utility. The bill law gives the State the power to control or supervise private or family waqf.

In organizational terms, there are plans to create a high administrative authority which in charge of managing public waqf and supervising other categories of Waqf.

From the point of view of its architecture, the draft law is structured around one (01) preliminary title, which sets out the scope and definitions and four (4) other titles respectively on:

- the provisions common to the waqf (first title),
- the provisions specific to public waqf (Title II),
- the provisions specific to public interest waqf (Title III),
- the transitional and final provisions (Title IV).

ACT NO. 2015-11 OF MAY 06, 2015

ON WAQF

The National Assembly discussed and adopted the Act set forth below:

PRELIMINARY TITLE - DEFINITIONS AND SCOPE

FIRST SECTION - DEFINITIONS

Article 1.- For the purposes of this Act, the following definitions shall apply:

- Waqf: Any property whose bare ownership is tied up in perpetuity or in time, and whose enjoyment is allocated to a public or private charity.

The Waqf shall be public, family, joint or of public interest.

- Public Waqf: Any waqf property that is managed by a public person and whose enjoyment is first or last assigned to charitable works as well as the achievement of a work of general interest.

- Family Waqf or private Waqf: Any property constituted waqf for the benefit of certain members of the family or descendants of the grantor or a third natural or legal person.

- Joint Waqf: Any waqf property for a part for the benefit of a public work, and for the other part of said property, for the benefit of a designated person or his descendants or for the exclusive benefit of the designated person. It may consist of a family waqf and a public waqf or waqf of public interest.

In the case of a joint waqf with a public waqf component, waqf management reverts to the public waqf.

-Waqf of public interest : Any waqf with a public interest purpose that is managed by a private individual or moral entity.

-Grantor : Any natural or legal person who constitutes his property in waqf.

-Beneficiary: Any natural or legal person capable of receiving the usufruct of the waqf property.

SECTION II - SCOPE

Article 2.-The rules relating to the establishment, effects and termination of the waqf, enacted by the provisions of this Act, shall apply to all categories of waqf, when they do not conflict with the specific provisions governing them.

The waqf of public interest and the public waqf are governed, each in so far as it is concerned, by specific provisions.

TITLE I - COMMON PROVISIONS

CHAPTER I - NATURE AND LEGAL REGIME OF THE WAQF

SECTION I - LEGAL NATURE OF THE WAQF

Paragraph 1: General information

Article 3.-The public Waqf, as defined in Article 1, may consist of one or more goods and resources, whether of public or private origin.

When a private grantor places a waqf property for the benefit of charity with private management, this waqf may be of public utility under the conditions laid down in this Act. It shall be called "public interest waqf", as defined in Article 2.

The private or family waqf may have as beneficiary, members of the grantor's family, another individual person or corporate body.

The part of the joint waqf constituted family waqf is subject to the legal regime that applies to it.

The waqf of public interest part shall comply with the rules and procedures laid down in articles 63 and 65 of this law.

Article 4 -The waqf may consist of movable and immovable property as well as financial or monetary assets.

However, monetary assets must be invested in accordance with the condition stipulated in the incorporation deed.

The property constituted public waqf shall be unattachable and imprescriptible.

Paragraph 2: Constitution of the waqf

Article 5 -The grantor of the waqf, whether natural personal or legal entity with a lawful object must be the owner of the property and not be unable to dispose of it, free of charge on pain of nullity of the waqf.

Where the asset to be constituted as waqf is encumbered, the grantor must obtain special approval from the registered creditors who expressly waive any claim in respect of the asset.

The rules of common law, including those of family law, the governing capacity to contract, the representation or the proxy, the prohibition and protection of the prohibition, shall apply to the grantor.

Article 6 - The waqf is constituted by the express offer of the grantor provided in writing. If the offer is made by the grantor during his last illness, it shall be deemed as a will pursuant to the provisions of the Family Code and may not exceed one third of his property, except with the consent of the heirs.

Article 7 - The acceptance of the offer by the beneficiary designated by the grantor must be provided in writing within the time limit set by the grantor. In the absence of having fixed one, acceptance must take place within a reasonable time; whether express or implied, it must not be ambiguous.

The acceptance of the offer by the beneficiary shall be deemed to be implied in the absence of a written reply from the beneficiary within three months following the date on which his appointment was notified or served on him.

However, the settlement of waqf is perfect as soon as the offer is made, unless it has been subject to a condition precedent, the fulfilment of which alone can perfect the waqf.

Where the grantor has not designated a beneficiary or the offer has not met the acceptance of the beneficiary designated by the grantor, the property is constituted as a public waqf.

ARTICLE 8 - The settlement of the property in Waqf is done by notarial deed or by private deed lodged with the records of a notary with recognition of writings and signatures.

The settlement of the real property in Waqf, its inalienability in time or in perpetuity are recorded in the land register.

For waqf created by the State or its branches, the constitution is made by decree without prejudice to the applicable texts on the transfer of State property.

Article 9 .-The undersigned notary shall transmit a copy of the constituent act to the person in charge of the High Authority of the Waqf provided for in Article 27, at the latest 30 days after receipt of the act.

The settlement- of waqf, when made by will is subject to the same conditions of authenticity and communication of the copy of the act to the above-mentioned authority.

Paragraph 3: Taking possession of the property waqf

Article 10 - The grantor authorizes the beneficiary to take possession of the property by in the incorporation deed of the waqf if the required acceptance of the said beneficiary is given at the time of its establishment.

If the acceptance is not concomitant with the deed of incorporation, the grantor shall deliver to the beneficiary a notarial statement of entry into

possession after express or tacit acceptance by him, within three (03) months following the date on which he was notified or served with his designation.

When the notarial statement cannot be filed, for various reasons, the entry into possession of the property may be established by the registration of the property waqf on the land title or by any act performed by the beneficiary on the property with the consent of the grantor.

SECTION II - WAQF LEGAL RULES

Paragraph 1: validity

Article 11 - The conditions stipulated by the grantor must, on pain of nullity, be respected and applied if they prove to be lawful and enforceable.

Where the constitution of the waqf is subject to an illicit condition or the fulfilment of which is impossible, the waqf shall remain valid. Only the condition incurs nullity. In this case, the grantor is required to make a lawful condition, failing which the High Authority of the Waqf shall do so.

Article 12 -. The proof of the settlement of the Waqf created by the State or its dismemberments results from the decree establishing it. That of the settlements of the other waqf is established by the notarial deed or the private deed lodged with the records of a notary with recognition of writings and signatures. The authentic character of the deed of incorporation of the said waqf shall extend to the entries in the register provided for in article 27.

Paragraph 2 : Grounds for invalidity

Article 13 : - The settlements of waqf is null and void for the following reasons:

- the object of the grantor is clearly unlawful;
- the grantor is in a state of hindrance with respect to the rules on capacity and prohibition as they result from the laws and regulations;

- the rules governing their representation by agents or by the authorities empowered to appoint their representatives have not been complied with;
- the property was constituted waqf in favor of the grantor himself;
- the grantor dies before the beneficiary validly takes possession of the waqf, unless during the grantor's lifetime, the beneficiary had already claimed possession of the property.

Paragraph 3: End of Waqf

Article 14.- The waqf ends in the following cases:

- at the expiry of the duration of the waqf constituted in time;
- irreversible deterioration of the property, in particular, due to an act of God or force majeure.

However, if the waqf property disappears by the act of a third party, the latter is bound to replace it and the beneficiary's right is exercised over the property supplied in replacement.

In the event of destruction of a part of the property, the waqf continues to produce its effects on the intact part and on what can constitute the replacement of the damaged part.

CHAPTER II - THE LEGAL EFFECTS OF THE SETTLEMENT OF PROPERTY AS A WAQF

SECTION I – THE RIGHTS AND OBLIGATIONS OF THE GRANTOR.

Article 15 - The grantor of a private or family waqf must designate the beneficiary or the work to benefit from the enjoyment of the waqf property.

When he has not heard of a beneficiary, the property is constituted as a public waqf by operation of law.

Article 16 - The grantor must make the waqf property available to the beneficiary. To do so, he must establish by notarial deed, private deed or by decree that the property was constituted as waqf in favor of the beneficiary.

Article 17 - The constitution regularly made good in waqf is final. The grantor may only retract from the constitution of waqf in the following cases:

- when it stipulates in the act this possibility in the event of impoverishment;
- when the condition of existence of a future beneficiary is not fulfilled.

Article 18 - The grantor is not bound to the guarantee of eviction of the waqf property nor the guarantee of its redhibitory defects vis-à-vis the beneficiary.

However, he is liable for any intentional act or gross negligence he commits which has caused damage to the waqf property.

SECTION II - RIGHTS AND OBLIGATIONS OF BENEFICIARY

Article 19 - The beneficiary may be determined by his person or by his quality at the time the waqf is constituted. It can also be determined after the constitution of waqf.

The designated beneficiary must express expressly or tacitly acceptance under the conditions defined for taking possession by this law.

The rules of representation and mandate laid down by common law shall apply to the beneficiary.

Article 20 - The beneficiary is entitled to use the waqf property and to exploit it according to the stipulation of the grantor and in a manner compatible with the purposes of the waqf.

He may also enjoy himself the waqf property or transfer the right of enjoyment to third parties, unless the right to waqf is exclusive to his person.

Article 21 - If the waqf relates to an immovable, the beneficiary may enjoy all the rights assigned to the immovable and any accessory which joins and is incorporated therein.

When the waqf is on a piece of land, the beneficiary's enjoyment extends over the land as well as all the buildings and plantations therein, unless otherwise stipulated or used.

The beneficiary may, subject to the provisions of this Act, assign the immovable property real rights which provide him with added value. In this case, these rights are considered waqf in the same way as the building.

Article 22 :- If the beneficiary or a third party carry out, at his own expense, buildings, installations or plantations on the building, the prior authorization of the High Authority of the Waqf, the latter may either keep them or compel him to remove them at his own cost and to return the building as it was.

Article 23 - The beneficiary shall ensure the conservation of the waqf property with the same care as he takes in the conservation of his own property. He is liable for damage caused to the property by his fault, negligence or recklessness. He is held responsible for breaches of custody obligation.

Article 24 - The beneficiary's right to the waqf property is extinguished in the following cases:

-death or cessation of activities;

-absence or disappearance of the beneficiary when the enjoyment is exclusive to him;

-forfeiture of the status conferred on him by the right to the waqf;

- express waiver of his right to the enjoyment of the waqf property.

Article 25 - If the entitlement of the beneficiary is extinguished, in one of the above-mentioned cases, the right to the waqf property is reverts to one of his assignees, if he exists and if the incorporation deed of the waqf so provides.

Upon the extinction of the assignees' right, he latter reverts to the grantor or his heirs.

SECTION III - ADMINISTRATION OF WAQF

Article 26 - An independent administrative is established to administer and supervise the Waqf, called the High Authority of the Waqf. The rules of organization and functioning of the said structure are laid down by decree.

Article 27 - The High Authority of the Waqf has the following tasks in particular:

- to receive from the notary the incorporation deeds of the waqf and the documents referred to in Article 9 above;
 - administer public waqf;
 - promote the development of the waqfs especially public ones.
 - to control and supervise family waqfs, joint waqf and waqf of public interest;
 - ensure the use of the waqf according to the wishes of the grantor;
 - to keep a register in which the Waqf property is recorded in order to effectively carry out its missions;
 - ensure the registration in the land register of any property constituted waqf;
- to ensure the protection and preservation of the heritage of the Waqf.

TITLE II - SPECIFIC PROVISIONS ON THE PUBLIC WAQF

CHAPTER I - LEGAL NATURE AND SCOPE OF THE PUBLIC WAQF

SECTION I - LEGAL NATURE OF THE PUBLIC WAQF

Article 28 - The general waqf provisions which are not contrary to those of these provisions shall remain applicable to the public waqf.

Article 29 -The High Authority of the Waqf manages and promotes the property constituting the public waqf in accordance with the rules provided for by this law and with the texts adopted for its application. In this respect, all legal acts aimed at preserving such property and increasing its income must be carried out with due regard for its nature and proven interest.

Article 30 - The High Authority of the Waqf is represented in all acts involving civilian life and before court by its manager.

Article 31 - Due to the importance or peculiarity of the aim pursued, the High Authority of the Waqf may delegate the management of one of the assets constituting the public waqf.

The management and operating procedures of this category of waqf are laid down by decree.

SECTION II - WAQF LEGAL RULES

Article 32 -The public waqf property may be alienable only in accordance with the provisions of this law.

They may be exchanged in cash or in kind, following the exceptional transfer procedures provided for in Chapter II of this Title.

Article 33 - Any property constituted waqf in perpetuity for the benefit of a private work shall revert to the grantor or to his heirs, in the event of interruption.

The waqf is deemed to be interrupted in the event of termination of the work for whose benefit it was constituted or when it ceases to exist or in the event of the death of the beneficiary, when designated.

Article 34 - Receivables due to the public waqf are deemed privileged claims having the same rank as those classified in third (3th) priority by the provisions of Article 107 of the Uniform Act Organizing Securities of the Organization for Harmonization of Business Law in Africa (OHADA).

CHAPTER II - PROCEDURES FOR THE TRANSFER OF THE WAQF PUBLIC: THE EXCHANGE, SALE, RENTAL OF PUBLIC WAQF.

SECTION ONE - COMMON PROVISIONS

Article 35 – The Waqf may, exceptionally, be exchanged in cash or in kind for:

- preserving its perpetual character;
- carrying out the work necessary for its maintenance;
- replacing it with another good able to fulfil the same functions of the waqf in case of unavoidable loss.

Article 36 - Exchanges and leases relating to waqf goods, as well as sales of products belonging to the public waqf, are subject to the principles of competition between tenderers and to the rules of transparency and prior publicity in force.

Article 37 - Exchanges or leases relating to waqf buildings for public facilities or equipment, exchanges relating to transferable securities, as well as sales of crops subject to deterioration, may be effected by direct agreement by duly substantiated decision.

SECTION II - EXCHANGES

Article 38 - Public Waqf property may be exchanged in cash or in kind on the initiative of the High Authority of the Waqf or at the written request of any interested person.

Paragraph 1: Cash exchanges

Article 39 - An order from the Minister of Finance establishes the system for assessing the value of the goods to be exchanged and specifies the authorities empowered to sign and approve exchanges according to the thresholds of competence.

The funds derived from the exchange of public waqf assets must be allocated to the acquisition of replacement property or must be invested, in order to preserve the interests of the Waqf and improve its income, in accordance with the provisions of Article 40.

Paragraph 2: In-kind exchanges

Article 40 - Any property to be exchanged in kind for public property constituted Waqf must have an appraised value equal to or greater than the public property constituted Waqf, established by an appropriate expertise.

Real estate received in exchange by the waqf must be entered in the land register.

Article 41 - The terms of exchange shall be determined set by order of the Minister of Finance.

The exchange-in-kind agreement drawn up by notarial deed.

DIVISION III - SALE OF PRODUCTS BELONGING TO THE PUBLIC WAQF

Paragraph 1: Sale offering

Article 42 - Products belonging to the public waqf such as wood, logs or others, as well as quarry products extracted from lands constituted public waqf or manufactured products are offered for sale in accordance with the specifications set by the High Authority of the Waqf .

Paragraph 2: Payment terms of the price

Article 43 - The payment terms of the price are set by order of the Minister of Finance.

SECTION IV - RENTAL OF THE PUBLIC WAQF

Paragraph 1: common provisions

Article 44 - The property constituted waqf public is rented by a manager with the authorization of the High Authority of the Waqf. It cannot be rented for less than the rent on similar properties.

Article 45.-The rental is made through a tendering procedure approved by the High Authority of the Waqf.

Article 46 - Leases are subject to the legal and regulatory provisions in force with regard to residential and commercial leases.

Article 47 - The tenant is liable for all taxes and duties to which he is legally subject.

Article 48 - Judicial decisions pronounced in disputes involving public waqf property are rendered in first and last resort.

Paragraph 2: Specific provisions for the rental of non-agricultural Waqf property

Article 49 - The non-agricultural Waqf property is leased for a period not exceeding three years.

However, the said term may be renewable at the request of the lessee made three months before its expiry, subject to the approval of the High Authority of the Waqf.

The High Authority of the Waqf has the right to terminate the lease of the non-agricultural property if it needs to:

- take back the rented property with a view to creating an institution of a religious, scientific, social or administrative nature;
- rebuild the rental object or to make substantial modifications it.

In the first case, the lessee is entitled to compensation equal to the amount of the rent for the last three months, and to the preference for the rental of the rebuilt thing in the second case.

Paragraph 3: Provisions specific to the rental of the agricultural Waqf property

Article 50 -An order of the Minister in charge of Finance shall lay down specific provisions relating to the rental of agricultural waqf property.

SECTION V - INVESTMENT OF PUBLIC WAQF PROPERTY

Article 51- The assets, funds, income of the waqf are invested in accordance with the principles of Islamic finance.

Investment income is allocated primarily to the maintenance of waqf assets, the purpose of waqf and the basic social sectors.

The waqf manager may entrust a specialized institution with the investment of the waqf property in whole or in part.

CHAPTER III: ORGANIZATION OF WAQF PUBLIC FINANCES AND CONTROL

SECTION ONE - PRINCIPLES OF THE FINANCIAL AND ACCOUNTING ORGANIZATION OF THE WAQF PUBLIC

Article 52 - The patrimony of the public waqf includes all the constituted public waqf assets and their proceeds as well as all assets allocated for its benefit.

Article 53 - An annual budget separate from the general budget of the State and the High Authority of the Waqf is allocated to the public waqf. It is based on the financial balance between revenue and expenditure. This budget comprises income and expenditure divided into two titles, one of which is devoted to operations and the other to investment.

The receipts are:

- rental income;
- trade products;
- sales revenue from tree products, crops and quarry products made up of public waqf and others;
- proceeds from subscriptions for securities issued;
- subsidies from the state and other bodies;
- donations and legacies,
- borrowings in accordance with the principles of Islamic Finance;
- income from Islamic financing;
- Miscellaneous revenue

Expenses include:

- repair and maintenance costs of property constituted public waqf;
- expenses allocated to the works designated beneficiaries, as stipulated by the grantor;
- the operating expenses of the property constituted public waqf;
- expenditure on social and religious works;
- construction and equipment costs of public waqf institutions;
- capital expenditures;
- subsidies granted to meet the needs of the public waqf;
- miscellaneous expenses.

The revenue from the annual public waqf budget is divided into two forms: the revenue allocated to cover operating expenses of the waqf and the revenue allocated to finance the investment operations relating to the creation of public Waqf projects and the increase in revenue from public waqf assets.

On the proposal of the manager of the High Authority of the Waqf, the Minister of Finance determines by order the distribution of revenue allocated to operating and investment expenses.

Article 54.- When the revenue earmarked for operating expenditure is in surplus, after having covered the said expenditure the surplus must be carried , .



over to investment expenditure with a view to increasing the income of the public waqf.

However, investment income may not be used to cover operating expenses. Similarly, expenses may be incurred, authorized or paid only to the extent of the revenue assigned to it.

In all cases, the provisions of Article 39 above relating to the allocation of products derived from trade must be observed.

Article 55 - The High Authority of the Waqf is responsible for preparing the draft annual budget of the public waqf and implementing it after approval by the Minister of Finance.

Article 56 - The manager of the High Authority of the Waqf is the authorising officer of the receipts and expenses of the public waqf budget.

Article 57 - The High Authority of the Waqf may, ex officio and without prior authorization, appeal to the public generosity for the benefit of the public waqf by collecting donations in cash or in kind.

They may also issue securities at a specified value, the proceeds of which are used to carry out public waqf projects of a religious, scientific or social nature.

Article 58 - The financial management of the public waqf and the keeping of its accounts are subject to a financial organization and a procedures manual approved by order of the Minister of Finance, taken on the proposal of the head of the Waqf High Authority.

Article 59 - Works, supplies and services contracts concluded by the High Authority of the Waqf, for the benefit of the public waqf, are subject to public procurement regulations and procedures.

Article 60 - At the end of each financial year, the High Authority of the Waqf draw up a management account showing the implementation of the annual budget of the public waqf, which shall be subject to audit by the Court of Auditors.

Article 61 -The tax regime of the applicable public Waqf is that provided for by the provisions of the General Tax Code.

Imports of materials and equipment intended for the realization of waqf recognized as being of public utility may be exempted from customs duties.

SECTION II - FINANCIAL CONTROL OF THE PUBLIC WAQF

Article 62 - The High Authority of the Waqf is subject to the control of state control bodies and external control of compliance with the principles governing Waqf.

TITLE III: WAQF OF PUBLIC INTEREST

Article 63 - The waqf of public interest, at the request of the grantor, during his lifetime or, otherwise, at the request of the Waqf administrator to the High Authority of the Waqf, may be recognized as being in the public interest by decree.

The decree of recognition of public utility set the conditions of administration and control required to benefit from the advantages of the tax system and the privileges granted by laws and regulations to an activity recognized as public utility.

The general conditions and methods of recognition of a waqf of public utility are specified by decree.

Article 64 - The property of the waqf recognized as being of public utility shall be alienable only under the conditions provided for in this law for public waqf.

Article 65 - The annual report on the management, the estimated budget and the financial statements of the public interest waqf must be transmitted to the High Authority of the Waqf within six (06) months following the end of the fiscal year.

TITRE IV – TRANSITIONAL AND FINAL PROVISIONS

Article 66 - Public interest waqf and similar foundations of public utility may, at the request of the grantor, during his lifetime or, otherwise, at the request of the administrator of the Waqf High Authority, become a public Waqf.

Article 67 - As from the entry into force of this law, the waqf previously constituted, has a period of one (01) year to comply with the above-mentioned provisions or to abandon the said designation.

Article 68 - The grantor who wishes his property constituted waqf to benefit permanently from this legal regime is obliged to pay it into the public waqf.

Article 69.- This law shall be published in the Official Gazette of the Republic of Senegal.

Decree No. n ° 2016-449 of April 14, 2016

laying down the rules governing the organization and functioning of the High Authority of the Waqf

The President of the Republic,

IN VIEW OF the provisions of the Constitution,

IN VIEW OF Act No. 61-33 of 15 June 1961 relating to the general terms of employment of Civil Servants, as amended;

IN VIEW OF Act n ° 97-17 of 1st December 1997 concerning the Labor Code, as amended;

IN VIEW OF Act No. 2012-31 of 31 December 2012 on the General Tax Code;

IN VIEW OF Act No. 2015-11 of May 6th, 2015 relative to the Waqf;

IN VIEW OF Decree No. 2011-1880 of 24 November 2011 on general government accounting regulations;

IN VIEW OF Decree No. 2014-845 of 06 July 2014 appointing the Prime Minister;

IN VIEW OF Decree No. 2014-853 of 09 July 2014 on the distribution of State services and the control of public institutions, State-owned companies and associated companies, between the Presidency of the Republic, the Prime Minister's Office and the Ministries, as amended by Decree n ° 2015-299 of March 06, 2015;

IN VIEW OF Decree No. 2014-872 of 22 July 2014 pertaining to the remit of the Minister of the Economy, Finance and Planning;

IN VIEW OF Decree No. 2014-1171 of 16 September 2014 on the organization of the Ministry of Economy, Finance and Planning;

IN VIEW OF Decree No. 2015-855 of 22 June 2015 on the composition of the Government;

On the report of the Minister of Economy, Finance and Planning,

DECREES:

Chapter 1.- General provisions

Article 1.- The purpose of this Decree is establish the regulations for the organization and functioning of the High Authority of the Waqf created by Article 26 of Act No. 2015-11 of May 6, 2015 relating to the Waqf.

Article 2.- The High Authority of the Waqf is an independent administrative authority attached to the Office of the Prime Minister. It is endowed with administrative and financial autonomy.

Article 3.- The Waqf High Authority is in charge of managing and administering public waqf and for controlling and supervising other types of waqf.

Chapter II.ORGANISATION AND FUNCTIONING

Article 4.- The organs of the High Authority of the Waqf are:

-the Supervisory Board;

-the Directorate-General

Section1.- The Supervisory Board;

Article 5.- The Supervisory Board shall comprise in addition to its Chairman:

- one (1) representative of the National Assembly;

- one (1) representative of the Economic, Social and Environmental Council;

- one (1) representative of the Prime Minister;

-one (1) representative of the Minister of Justice;

-one (1) representative of the Minister of Finance;

- one (1) representative of the Minister of Social Action;

- one (1) representative of the Minister of Women, Family and Children;

- one (1) representative of the Minister of Education;

-one (1) representative of the civil society;

- two (2) individuals, selected for their expertise in the respective fields of Islamic; finance and principles governing waqf.

The Supervisory Board may invite any person whose assistance it deems necessary in the performance of its duties to take part, in an advisory capacity, in its work on the grounds of his or her competence on the issues to be discussed.

The President of the Supervisory Board, chosen for his moral integrity, his experience and his competence, is appointed by decree from among the agents of hierarchy A or equivalent for a term of three (3) years, renewable once (1).



- approve the multiannual programs and investments of public waqf actions, ensuring their proper implementation;
- adopt the internal procedures manuals and the organisation chart of the High Authority of the Waqf and approves any amendments thereto;
- adopt the annual activity reports of the Director-General;
- approve the pay scale for the staff of the High Authority of the Waqf as well as the bounties or grants;
- approve the Staff Regulations and Rules of Procedure applicable to the staff;
- adopt its rules of procedure;
- approve the selection of the statutory auditor and the external auditor and set their fees;
- authorize any transfer and alienation of the assets of public waqf;
- review Waqf control reports, impose sanctions and take the necessary safeguarding measures;
- provides oversight of the family waqf, the joint waqf and the waqf of public interest;
- ensure that the waqf is used according to the wishes of the grantor;
- examine the annual reports submitted by the public interest waqf and applications for waqfs of public interest;
- review requests for the transformation of public interest waqf and public utility foundations into public interest waqf;
- decide on any other matter having an impact on the functioning of the Waqf High Authority.

The Supervisory Board may, in the exercise of its functions, create specialized committees within its ranks.

Article 10.- The Supervisory Board shall meet, in ordinary session, four (4) times a year upon convocation of its Chairman.

It may meet in extraordinary session whenever necessary upon convocation by the Chairman or at the request of at least one third of its members.

In case of absence of the Chairman, the oldest member shall act as Chairman.

The convocations and the corresponding files must reach each member at least seven (07) clear days before the date of the meeting.

Any member who is unable to attend may be represented by another member of the Commission with a duly signed proxy. In any event, no member of the Commission may represent more than one member at the same meeting. Any member who has been absent from two meetings of the Commission in the same year without legitimate reason will be deemed to have resigned from office.

Decisions of the Supervisory Board are made by a simple majority of the votes of the members present and represented. In the event of a tie, the Chairperson shall have a casting vote.

The deliberations of the Supervisory Board are valid only if a quorum of two-thirds (2/3) is reached.

The Supervisory Board deliberates validly even if the quorum is not reached following the second convocation which must take place within a period of eight (8) days.

The Director-General of the Waqf High Authority attends the meetings of the Supervisory Board in an advisory capacity and serves as secretary. He may be assisted by his collaborators.

In the event of emergency, members of the Supervisory Board may be consulted at home. They shall have forty-eight (48) hours maximum, from the date of receipt of the documents, to issue their opinion. Any member who has not responded within the time limit is considered not having given his/her opinion.

Section 2. The Directorate-General

Article 11.- The General Directorate of the High Authority of Waqf shall be subject to the authority of a Director-General appointed by decree, on the grounds of criteria of moral integrity, educational level and work experience.

Article 12.- The Director-General shall be vested with the decision-making power necessary for the smooth functioning of the High Authority of the Waqf. He/she implements the decisions made by the Supervisory Board.

As such, he is responsible in particular for:

- Receiving from the notary the incorporation deeds of the waqf and any other document relating thereto;
- keeping a register in which are recorded the waqf assets;
- managing the public waqfs;
- undertaking to control the High Waqf Authority over the family, joint and public interest Waqfs;
- making sure that the waqf shall be used according to the wishes of the settlor;
- ensuring that any immovable property made Waqf shall be entered in the land register;
- drawing up multi-year actions and investments programs for public waqf;
- preparing the budget of the Waqf High Authority and implementing it after approval;
- preparing the public waqf budget and implementing it after approval;

- providing the Supervisory Board, no later than six (06) months after the close of the financial year, with the financial statements for the financial year closed, the state of implementation of the budget for that year, the annual activity report and the social report;
- proposing the organization chart of the Waqf High Authority and the procedural manuals and submitting them to the Supervisory Board for adoption;
- establish the staff pay scale as well as bonuses or gratuities and submitting them to the Supervisory Board for approval;
- preparing and submitting the quarterly reports on the implementation of the budget of the High Authority of the Waqf and that of the public Waqf to the Supervisory Commission ;
- preparing and submitting to the Supervisory Board all reports relating to public interest, joint or family waqfs and applications for recognition as being public interest waqfs;
- seeking funding for public Waqf investment projects;
- recruiting and administering staff members;
- representing the institution in justice and in all acts of civil life;
- promoting the development of the waqf especially the public ones.

Article 13.- The Director General is an employer within the meaning of the Labor Code.

The remuneration and the various advantages granted to the Director General of the High Authority of Waqf are laid down by decree.

Article 14.- The Waqf High Authority may employ any staff it deems necessary for its operation, in particular:

- staff members recruited directly under a private law contract;
- civil servants and state agents in secondment positions.

Employees of the Waqf High Authority must not, under any circumstances, be employees or receive other remuneration from another public or private institution.

Employees of the Waqf High Authority are bound by professional secrecy.

Chapter III- Financial and control provisions

Article 15.- The resources of the High Waqf Authority are different from those of Waqf. They are made up of:

- an overall annual budget allocation allotted by the State;
- direct contributions from the partners of the Waqf High Authority;
- subsidies and financial assistance from all other public and private persons;
- donations, bequests and other contributions;
- investment proceeds of the available funds;
- any other recipe authorized by the laws and regulations.

Article 16.- The resources of the High Waqf Authority are intended to cover its operating and investment expenses.

Article 17.- The accounts of the High Waqf Authority are kept according to the rules and principles of private accounting.

Article 18.- The Waqf High Authority shall adopt a manual of administrative, financial and accounting procedures.

Article 19.- The financial and accounting operations of the High Authority of the Waqf are carried out by an accounting officer appointed by order of the Minister of Finance. It reports to the authority of the Director-General of the Waqf High Authority.

Article 20.- The financial operations of the Waqf High Authority are subject to permanent internal control by a management control and internal audit structure under the authority of the Director General.

The external audit of the accounts of the Waqf High Authority is carried out by an auditor.

The High Authority of the Waqf is, moreover, subject to the control of the State's bodies and control organs.

An external control of compliance with the Waqf principles is also carried out by an external auditor competent for that question.

Article 21.- An annual report of activities of the High Authority of Waqf shall be drawn up and transmitted to the Prime Minister no later than six (06) months after the end of the previous year.

Chapter 4. - FINAL PROVISIONS

Article 22.- The Minister in charge of Finance shall proceed to the execution of this decree which will be published in the Official Gazette.

NOTE ON THE PROVISIONS OF THE GENERAL TAX CODE (CGI) APPLICABLE TO THE WAQFS

The provisions of the General Tax Code (CGI) applicable to Waqf are dispersed in the different books of the said Code.

Direct taxes:

1 °) The Article 5 of the General Tax Code exempts the following from corporation tax within the limit of their purpose:

- Associations or private not-for-profit bodies, as well as recognized foundations and waqfs of public utility;
- Public institutions, bodies, communities and other non-profit legal entities under public law aside from:
- Income from renting out buildings constructed or to be built which they are owners and those to which they are entitled as members of non-trading real estate condominium companies referred to in the last paragraph of Article 35 of this Code;
- the exploitation of agricultural and forestry properties;
- investment income tax which they have at their disposal, exclusive of income subject to withholding tax pursuant to Articles 203 and 208 of this Code.

The legal persons concerned must run separate accountancy, which shows the net result taxable;

2 °) The provisions of articles 9 and 55 of the the General Tax Code allow the legal persons and the natural persons to give donations to the waqfs while having the possibility to deduct them from their expenses, within the limits set by the law (0.5% of their turnover or their net income).

The same mechanism is incorporated in Article 157 for holders of non-commercial profits, but the limitation is set at 5/1000 of gross revenues.

These articles are intended to facilitate the financing of the waqfs by companies or individuals.

Indirect tax

The waqf which performs a VAT taxable activity shall be liable for the tax. For the input VAT, the waqf as any taxable person shall be entitled to its deduction and, accordingly, to the return of any VAT credits;

However, if the Waqf is not legally liable to the tax, the input VAT represents a final tax burden.

Registration fees

Under the terms of Article 465 (6) of the General Tax Code, donations and bequests of any kind made for the benefit of the waqf shall be exempted from the registration requirement. As a result, the waqfs shall not pay registration fees on donations received.

This shall not be the case for acquisitions for valuable consideration that are not expressly tax-exempt.

As regards the tax of the real estate capital gain due in the event of the transfer of property rights, the State and its components are exempted from it in the event of transfer of property. The High Authority could benefit from this provision. However, it is not expressly stipulated that this should be the case for the waqf.

