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THE WAQF ACT 1941

Act 9/1941

Date in Force: 25th April 1941

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PART I - PRELIMINARY

1. Short title

This Act may be cited as the Waqf Act.

2. Interpretation

(1) In this Act -

"beneficiaries under the waqf" means any person or class of persons that are to benefit by the object of the waqf;

"Board" means the Board of Waqf Commissioners established under section 49;

"charity" means any charitable or religious object or purpose;

"court" means the Supreme Court;

"declaration of waqf" means the statement by the owner of any specific property that he has declared the property to be waqf, or has dedicated it in perpetuity by way of charity;

'Hanafi Muslim" means a Muslim who conforms to the tenets and doctrines of the Hanafi school of Muslim law;

"mutawalli" means the person entrusted with the fulfilment of the object of the waqf and the carrying out of the directions given at the time of the declaration of waqf;

"object of the waqf" means the purpose to which the waqif declares that the profits, income or benefit of the subject of the waqf shall be devoted;

'Shiah Muslim" means a Muslim who conforms to the tenets and doctrines of the Shiah sect of Muslims;

"subject of the waqf" means the property dedicated by way of waqf;

'Sunni Muslim" means a Muslim who conforms to the tenets and doctrines of the Sunni sect of Muslims;

"testamentary waqf" means a declaration of waqf expressed to come into effect after the death of the waqif,

"waqf" means the permanent dedication by a person professing the Muslim faith of any property in order that the use of, or the income accruing from, such property may be devoted to any purpose recognised by Muslim law as religious, pious or charitable;

"waqfnama" means the document evidencing a declaration of waqf;

"waqif" means the person making a declaration of waqf.

(2) This Act shall be interpreted in accordance with the principles of Muslim law.

3. -

4. Scope of Act

(1) This Act shall apply to -

(a) all waqfs created by members of the Sunni Muslim community;

(b) subject to subsection (IA), all waqfs created by members of the Shiah Muslim community.

(1A) Where, in any matter, the law governing waqfs created by members of the Shiah Muslim community in any way differs from the corresponding provisions of law governing waqfs created by members of the Sunni Muslim community, as set out in this Act, that matter shall be decided by the court in accordance with the Shiah Muslim law of waqf.

(2) All questions relating to waqfs dedicated by members of the Sunni or Shiah Muslim communities shall be within the jurisdiction of the court and, subject to subsection (1A), shall be decided in accordance with this Act.

PART II - DECLARATION OF WAQF

5. Provisions as to form

(1) (a) A declaration of waqf may be made in any appropriate words which show an intention to make a dedication by way of waqf.

(b) The use of the word waqf is neither essential for the validity of a declaration of waqf, nor conclusive to show that a dedication by way of waqf was intended to be made.

(2) (a) (i) Where a declaration of waqf is made whether by a Sunni or Shiah Muslim, a waqfnama shall be drawn up in English or French and shall be signed or marked by the declarant in presence of at least 2 Waqf Commissioners who shall attest it after having satisfied themselves as to the identity of the declarant.

(ii) Where the declarant is unknown to the Waqf Commissioners, his identity shall be certified by 2 witnesses known to the Waqf Commissioners.

(b) (i) Subject to paragraph (e), the waqfnama shall be registered by, and shall remain in the custody of, the Board.

(ii) The waqfnama shall, to all intents and purposes, have the same force and effect as if it were a notarial deed.

(c) (i) The declaration of waqf may also be evidenced by a deed drawn up by a notary public.

(ii) A certified copy expedition of the notarial deed shall, within one month of the drawing up of the original, be forwarded by the notary to the Board by which it shall be registered and in whose custody it shall remain.

(d) No fee or stamp duty shall be payable in respect of the registration by the Board of the waqfnama or copy of the notarial deed expedition.

(e) All declarations of waqf shall be registered in the Office of the Registrar-General and transcribed with the Conservator of Mortgages.

(f) Except in the case of declarations under section 7, registration and transcription under paragraph (e) shall be exempt from duty.

(3) A declaration of waqf not so evidenced, signed and witnessed shall be null and void.

(4) Notice of the creation of any waqf registered with the Board shall be published by the Board in the Gazette, containing the name of the waqif and particulars of the nature of the waqf property.

5A. Creation of waqf

(1) Where property in Mauritius is the subject of a waqf created by a Sunni Muslim or a Shiah Muslim, not subject to the jurisdiction of the court, in virtue of a waqfnama drawn up abroad, the Board may, on the application of -

(a) the waqif;

(b) the mutawalli or any of the mutawallis appointed for the management or administration of the waqf;

(c) the agent of the waqif or mutawalli or of one of the mutawallis; or

(d) any person having the management, administration, control or possession of the subject of the waqf,

register a declaration of the waqf, in accordance with subsection (2).

(2) For the purpose of subsection (1) a declaration of waqf shall be registered on production -

(a) where the waqfnama -

(i) is drawn up in English or French, of a copy of the waqfnama duly certified by the waqif or his agent or by the mutawalli or his agent or by one of the mutawallis or his agent, as the case may be;

(ii) is not drawn up either in English or in French, of a duly certified translation into English by one of the interpreters of the court, of the document or of a certified copy of it;

(b) of a written declaration setting out the particulars of the waqf drawn up in English and signed or marked by the waqif or his agent, or by the mutawalli or his agent, or by one of the mutawallis or his agent, appointed under the waqfnama, in presence of at least 2 Waqf Commissioners who shall attest it after having satisfied themselves as to the identity of the declarant or where the declarant is unknown to the Waqf Commissioners, his identity shall be certified by 2 witnesses known to the Waqf Commissioners.

(3) The copy or translation of the waqfnama mentioned in subsection (2) shall be certified by an officer of the court having jurisdiction in the country where the waqf was created as being a true copy of the original.

5B. Effect of document in respect of waqf

The certified copy of the waqfnama or the certified translation of the waqfnama or of a certified copy of it, as the case may be, together with the written declaration specified in section 5A (2), shall, on registration by the Board and subject to section 5 (2) (e), have to all intents and purposes, the same force and effect as if they were notarial deeds and shall remain in the custody of the Board.

5C. Effect of waqfnama drawn up abroad

All property the subject of a waqf registered by the Board as waqf property in virtue of any waqfnama drawn up abroad by a Sunni Muslim or a Shiah Muslim whether subject to the jurisdiction of the court or not, shall be deemed to constitute a waqf in accordance with the prescription of the Muslim law governing waqfs, notwithstanding the fact that no waqfnama has been drawn up in accordance with this Act.

5D. Where waqf created abroad is not declared

(1) Where any property in Mauritius is the subject of a waqf created by a Sunni Muslim or a Shiah Muslim, not subject to the jurisdiction of the court, in virtue of a waqfnama drawn up abroad, and any party who could under section 5A apply for registration of such waqf fails to do so and is subject to the jurisdiction of the court, the Board may apply to the court for an order compelling such party to register the waqf.

(2) Where within a month from the date on which the court orders a party to register a waqf under subsection (1), the party fails to comply with the order, the Board may apply to the court for an order vesting in the Board any property in

Mauritius which is the subject of the waqf, and on proof of failure to comply with the order of the court, the court shall make the vesting order prayed for.

(3) Where a vesting order is made under subsection (2), the Board shall, in respect of the property affected by such order, exercise all the powers and perform all the duties of the mutawalli appointed by the waqfnama and the mutawalli shall resume office only when the vesting order is set aside.

(4) (a) A vesting order granted under subsection (2) shall only be set aside by the court on proof that the registration of the declaration of waqf has been made.

(b) The setting aside of the vesting order shall in no way affect anything done by the Board before the order is set aside.

6. Waqf may be made inter vivos or by will

(1) Notwithstanding article 920 of the Code Napoléon, a dedication by way of waqf may be made inter vivos of property of the waqif and the dedication shall not be reducible at the time of the opening of the succession of the waqif.

(2) Subject to subsection (3), a declaration of waqf may be made by will.

(3) (a) Where the waqf is purported to be made of property which exceeds in value that portion of the waqif's estate which may be bequeathed by will, it is valid and effective as to such portion, and void as to the excess, unless the heirs of the waqif consent to the waqf.

(b) Where a waqf so made is for the benefit of a mosque it is -

(i) wholly valid if the heirs of the waqif consent to the waqf; and

(ii) wholly void if the heirs of the waqif do not consent to the waqf.

(c) Where a testamentary waqf is purported to be made, and any of the beneficiaries under it are the heirs of the waqif, the portion of the income to which the heirs are purported to be entitled under the waqf shall be divisible among all the heirs of the waqif in the proportion of their rights of inheritance, notwithstanding any other direction that the waqif may have given in the waqf unless, after the death of the waqif, the heirs whose rights are affected by the waqf consent to the waqf being given effect to in accordance with the directions.

7. Life interests and limited estates

(1) Subject to subsection (3), provision may validly be made in a declaration of waqf for the benefit of a succession of persons, during their lives, or during specified periods and notwithstanding that at the time of the declaration of waqf those persons are not in being.

(2) Subject to subsection (3), provision may in particular be made in a declaration of waqf for the maintenance and support wholly or partially of the family, children, or descendants of the waqif and, where the person creating a waqf is a Hanafi Muslim, also for the maintenance and support of the waqif during his life time, or for the payment of his debts out of the rents and profits of the property dedicated.

(3) The ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by Muslim law as a religious, pious or charitable purpose of a permanent character.

(4) The share provided by the waqif for the benefit of any of his male children or descendants may be double the share provided by him for the benefit of any of his female children or descendants respectively.

8. Defeasible interest

A declaration of waqf may provide that a beneficiary named in it shall cease to take any benefit under it on the happening of some future event.

9. Capacity

(1) Any Muslim who has attained the age of 18 and is of sound mind may create a waqf.

(2) A husband may, with the concurrence of his wife, create a waqf of property belonging to the community.

(3) Any waqf under this Act shall be invalid -

(a) where a waqf is created or declared in such circumstances that the rights of creditors are, or may be, defeated or delayed; or

(b) where at the time the waqf was created the waqif was interdicted, insolvent or bankrupt.

(4) Any person claiming that his interests are prejudicially affected by the creation or declaration of a waqf, or otherwise, may, within 3 years from the creation of the waqf, apply to the court for an order declaring the waqf to be void.

10. Intention to be given effect to

A declaration of waqf shall be construed in accordance with the intention of the waqif, and not according to the strict interpretation of any particular word.

11. References to generations

(1) Where the declaration of waqf refers to one or 2 generations of the descendants of a specified person as being entitled to the benefit of the waqf, the benefit shall be confined to those generations.

(2) Where 3 generations or more are referred to, the benefit shall be for the descendants in perpetuity, so long as they exist.

12. Proximity of relationship

Where the waqf is dedicated to the nearest relatives of a named person, nearness of relationship is to be reckoned in the following order of priority, each excluding all those below them-

- (a) sons and daughters;
- (b) father and mother;
- (c) grandchildren;
- (d) grandparents;
- (e) greatgrandchildren;
- (f) greatgrandparents;
- (g) brothers;
- (h) sisters.

13. -

14. Terms of description when applicable

(1) Unless there is anything in a declaration of waqf to show a contrary intention, where the beneficiaries are referred to or identified by some quality or description which is of a permanent nature, or which cannot be acquired again after it has once

been lost or ceased to be

applicable, those persons alone are entitled to benefit under the waqf who can be identified or described in the manner referred to in the declaration at the time it was made.

(2) Where the quality or description is such that it may be lost or cease to be applicable, all those persons are entitled to take the benefit of the waqf who can be referred to or identified in the same manner, when the produce or income accrues.

15. Interpretation of child

(1) Subject to subsection (2), in a declaration of waqf "child of the waqif"-

(a) means a legitimate or acknowledged child of the waqif before or after the declaration; but

(b) does not include grandchildren and more remote descendants.

(2) (a) At the time of the declaration where there is no child living, but the child of a son, or other agnatic descendant is living, that child or descendant, but no person in a lower generation, shall be deemed to be a child of the waqif.

(b) Where in the circumstances described in paragraph (a) a child is born to the waqif after the declaration of waqf, that child shall become entitled to the produce of the waqf.

(c) Where there is no descendant in the first and second generations, all those who are in the third or any lower generation shall be deemed to be children of the waqif.

(3) (a) "Orphan" means a minor who has no father living, though the mother and grandfather are alive.

(b) The condition of orphanage shall cease on the attainment of majority.

16. Equal and concurrent shares

(1) Where several objects or beneficiaries are referred to in a declaration of waqf, they shall take the benefit of the waqf concurrently or simultaneously and in equal shares, unless there is anything to show an intention that they should benefit in a different proportion, or in succession to one another.

(2) Where the beneficiaries under a waqf consist of a class of persons who are individually identified, they are entitled to the benefit of the waqf equally among

themselves, and where one of them dies, his share goes to the poor.

(3) Where a waqf is for the benefit of a person's son and his children, and the children of his children forever, so long as there are descendants, the benefit accrues to them per capita, males and females being on the same footing, the children of daughters being included.

(4) (a) Where a declaration of waqf purports to be in favour of the children of a named person and in default of them, in favour of the poor, and some of the children die, the survivors are entitled to the whole of the profits of the waqf property.

(b) Where the children are individually identified in the declaration, the share of each child lapses, on his death, to the poor or other ultimate charity.

(5) Where the declaration of waqf provides that the beneficiaries should take specified shares consisting of fractions of the total income of the waqf property and -

(a) those fractions added together amount to more than unity, the share of each beneficiary shall abate proportionately;

(b) there is any remainder left after giving them their specified shares, the remainder shall be divided among each of the beneficiaries in equal shares, provided that the intention is shown to give the whole of the income of the waqf property to the said beneficiaries.

17. Lapse of share of beneficiaries

(1) In the absence of anything showing a contrary intention, the interest of a beneficiary under a waqf lapses on his death and accrues to the benefit of the poor or other ultimate charitable object of the waqf.

(2) Where it is provided, either expressly or impliedly, in a declaration of waqf, that the descendants of the beneficiaries under a waqf shall succeed to the respective interests of the beneficiaries, and there is nothing to show a contrary intention, the descendants succeed per stirpes and not per capita and males and females take equal shares.

PART III - NATURE, SUBJECT AND ALTERATION OF WAQF

18. Waqf must be in perpetuity

(1) A dedication by way of waqf shall be in perpetuity.

(2) In cases where a waqf is not expressed, or does not purport, to be limited in point of duration, it shall be presumed to be made in perpetuity, and effect will be given to it accordingly.

19. Completion of waqf

(1) A waqf is completely created by the simple declaration of intention on the part of the waqif, and the completion of the formalities prescribed in section 5 (2).

(2) (a) After the completion of a waqf the subject passes out of the ownership of the waqif.

(b) Subject to sections 40 and 53, it shall not be alienated or transferred, either by the waqif or the mutawalli, nor may their heirs take it by way of inheritance.

20. Unlawful alienation of waqf set aside

Where the subject of a waqf is unlawfully alienated, any person interested in the object of the waqf may apply to the court to have the alienation set aside and effect given to the waqf.

21. Subject of waqf

The subject of waqf may consist of any property other than things which are consumed by use.

22. Waqif must own subject of waqf

The subject of waqf must be owned by the waqif at the time when the waqf is made.

23. Undivided property as subject of waqf

(1) The subject of waqf may consist of an undivided part of property notwithstanding that the property is divisible.

(2) Where the object of the waqf is a mosque or a tomb, an undivided part of any property cannot validly form the subject of the waqf.

24. Court to give effect to charitable object

(1) Where a waqf is purported to be made expressing a general intention of charity, but either particularizing no objects, or particularizing objects which have failed, the property may, by an order of the court, be devoted to the poor, or to

charitable objects as near as possible to those that have failed.

(2) Making a declaration of waqf is conclusive proof for inferring a general charitable intention.

25. Objects which may not be dedicated as waqf

(1) A declaration of waqf is void where it is made –

- (a) for a limited period of time;
- (b) for objects which will fail;
- (c) subject to a contingency;
- (d) when the subject of the waqf is not defined with certainty;
- (e) for any object which is prohibited by Islam;
- (f) for the repair and upkeep of a private tomb;
- (g) a waqf made in favour of the rich alone.

(2) Subject to subsection (1) (f), the tomb of a saint may be the object of a valid waqf.

(3) Where the beneficiaries consist of a class of persons some of whom are poor and others rich, the benefit of the waqf property shall be applied for the poor class alone.

26. Waqf cannot be revoked or altered

(1) (a) A waqf inter vivos cannot be revoked after it has been completed.

(b) Where at the time of creating a waqf inter vivos the waqif reserves to himself the powers of revoking the waqf, the waqf is void.

(2) No portion of the declaration of waqf can be altered by the waqif after the waqf has been declared, unless the power to alter has been reserved in the declaration of waqf.

(3) A testamentary waqf may be revoked by the waqif at any time before his death.

- (4) A waqf created with a power reserved to sell the subject of the waqf and to expend its proceeds on the waqif is void.

27. Power to exchange subject of waqf

- (1) A declaration of waqf may validly empower the waqif to exchange any land forming the subject of the waqf for other land, or to sell the land and to purchase other land in exchange for it and the land so taken in exchange or purchased shall become subject of the waqf.

- (3) The waqif shall not validly exchange or sell the waqf land except in strict accordance with the terms of the declaration.

PART IV - APPLICATION OF THE INCOME OF WAQF PROPERTY

28. Repairs a first charge on income

- (1) The benefit, income, or proceeds of the waqf property shall be applied for the following purposes, in the following order -

- (a) for the maintenance and repairs of the subject of the waqf,
- (b) for the specified object of the waqf,
- (c) for that which is necessary for the general purpose of the specified objects;
- (d) for the benefit of the poor.

- (2) In this section, 'repairs'-

- (a) means the preservation of the waqf property in the state in which it was at the time when it was dedicated; but
- (b) does not include improvements in the property.

- (3) Where the repairs of the subject of waqf are not made the first charge on its income or proceeds, the court may order that the income or proceeds be suspended from being applied to the objects specified in the waqfnama and that the repairs should be made from it, but neither the mutawalli nor the beneficiaries may do so without an order of the court.

29. Failure of some objects

(1) Where some objects for which a waqf is purported to be made fails or cannot be given effect to, the validity of the other objects of the waqf is not affected, except as provided in this section.

(2) Where a waqf is created for mixed purposes, some of which are unlawful, effect shall be given to those purposes which are lawful, and so much of the property as is dedicated for unlawful purposes shall revert to the waqf.

(3) Where in construing the terms of a declaration of waqf the terms in which the beneficiaries under a waqf or its objects are referred to in the declaration cannot apply to any existing person or object, the benefit of the waqf property shall be given to the poor, provided that if thereafter the terms apply accurately to any person or objects, he or it shall be entitled to the benefit.

30. Interest disclaimed accrues to poor

Where the beneficiaries under a waqf consist of a number of persons, and -

(a) they all disclaim their interest under the waqf, the whole of the benefit shall be divided to the poor;

(b) some of them disclaim and others accept it -

(i) where the beneficiaries are identified in the waqfnama as a class, under a general description, which applies to those who have accepted, they shall take the whole of the benefit;

(ii) where the beneficiaries are named or otherwise specifically identified in the waqfnama, the share in the benefit of those who disclaim must be distributed among the poor.

PART V - APPOINTMENT OF MUTAWALLI AND MANAGEMENT OF WAQF PROPERTY

31. Provision for appointment of mutawalli

The waqif may -

(a) provide in the declaration of waqf for the appointment of -

(i) a mutawalli to act as manager or administrator of the waqf;

(ii) a successor to the mutawalli; and

(b) specify -

- (i) the conditions on which;
 - (ii) the manner in which;
 - (iii) the period for which; and (iv) the person by whom,
- the mutawalli and his successor may be appointed.

32. Persons to be appointed as mutawalli

(1) A mutawalli shall be appointed for the management or administration of every waqf.

(2) A mutawalli may do all acts which are reasonable and proper for the protection of the waqf property and for the management or administration of the waqf property.

(3) Subject to subsections (4) and (5) -

(a) any person appointed to be mutawalli by the founder of the waqf, including a female or a non-Muslim;

(b) the founder of the waqf himself;

(c) the children or descendants of the founder of the waqf,

may become mutawallis of a waqf.

(4) Where the mutawalli has to perform religious or spiritual functions which cannot be performed by a female, a female may not be appointed as mutawalli.

(5) Where a person of unsound mind is purported to be appointed as a mutawalli his appointment is void.

(6) Where the office of mutawalli devolves upon a person who is a minor, the court may appoint another mutawalli to act in his place during his minority.

33. Who may appoint successor to mutawalli

(1) In the absence of any express provision in the declaration of waqf for the appointment of successive mutawallis -

- (a) the waqif is entitled to make the appointment;
 - (b) after the death of the waqif, the executor or the survivor of several executors of the waqif is so entitled;
 - (c) on the death of the surviving executor the court may appoint a mutawalli;
 - (d) subject to paragraphs (a) to (c), the mutawalli may appoint a successor to himself, and
 - (e) the executor of the last mutawalli, as his legal representative, may administer the waqf property after his death in the absence of appointment by a competent authority.
- (2) An application for the appointment of a mutawalli shall be instituted in conformity with section 53.

34. Removal or resignation of mutawalli

- (1) (a) Where the Board considers that a person performing the functions of mutawalli is unfit to perform such functions, the Board may remove such person from the office of mutawalli and appoint another person in his place.
 - (b) Any person removed from the office of mutawalli under paragraph (a) may, within 21 days of the notification to him of the decision of the Board, appeal from the decision to the District Court of Port Louis in the exercise of its civil jurisdiction.
 - (c) An appeal by any person under paragraph (b) or by the Board, as the case may be, shall lie to the Supreme Court from the decision of the District Court within 21 days of the decision.
- (2) A mutawalli once appointed cannot be removed by the waqif unless in the waqfnama he has expressly reserved that power to himself.
- (3) A mutawalli cannot discharge himself from his office without the permission of the waqif, the Board or the court.
- (4) Where a mutawalli has been removed from his office by the waqif in accordance with a provision in the waqfnama to that effect, or has resigned his functions with the permission of the Board, the Board may appoint a person to fill the

office of mutawalli until the vacancy is filled by a substantive appointment.

Amended by [[Act No. 29 of 1992](#)]

35. -

36. Right to receive remuneration

(1) (a) The declaration of waqf may validly authorise the mutawalli appointed by the waqif, and each succeeding mutawalli, to receive the remuneration specified in it.

(b) In the absence of anything to the contrary, the remuneration specified in the declaration of waqf shall only be payable to the first mutawalli, and the succeeding mutawallis are not entitled to it in the absence of an order of the court.

(2) (a) Subject to paragraph (b), the mutawalli may take from the income of the waqf such remuneration as the waqif may have authorised him to receive for administering the waqf.

(b) The mutawalli shall never acquire such an interest in the waqf property as to make it capable of being attached and sold in execution of a judgment against him.

(3) Where no provision is made in the declaration of waqf for the remuneration of the mutawalli, the court may, upon an application being made to that effect, fix the remuneration which he may authorise the mutawalli to receive.

37. Quantum of remuneration

(1) The remuneration to which a mutawalli is entitled shall not exceed one tenth of the income where the mutawalli has no beneficial interest in the subject of the waqf.

(2) Where, after the religious or charitable objects of the waqf have been and continued to be duly maintained, and an application is made to the court by the mutawalli for a grant of higher remuneration the court may, where it is satisfied that there is a sufficient surplus left, and upon a consideration of the nature of the waqf, if it is of opinion that higher remuneration would be just and proper, grant such higher remuneration as it thinks fit.

38. Employment of agents

(1) The mutawalli may employ agents for the administration of the waqf, where he is empowered to do so by the declaration of waqf or where it is necessary, or in accordance with the usual course of business so to do.

(2) The authority of the agent or manager so appointed ceases on the death or removal of the mutawalli so appointing him.

38A. Borrowing with authorisation of Board

(1) Subject to subsection (2), where a mutawalli has been authorised in the declaration of waqf to borrow money on mortgage or without mortgage, or to sell or exchange waqf property, he shall only borrow money, or sell or exchange the waqf, after obtaining the authorisation of the Board.

(2) The amount of any loan or mortgage or the proceeds of any sale of waqf property shall be deposited in the name of the waqf at a bank designated by the Board and shall not be withdrawn in whole or in part except with the written authorisation of the Board.

39. Borrowing with permission of court

(1) In the absence of any express provision to that effect in the declaration of waqf, the mutawalli shall not borrow money for any purpose, or sell or exchange the waqf property, except with the authorisation of the court.

(2) (a) The court may, upon an application being made in that behalf by the mutawalli, authorise him to borrow money and mortgage the waqf property where it is in the interest of the waqf to do so.

(b) The court may confirm, with retrospective effect, a mortgage made by the mutawalli without the sanction of the court, where the court is satisfied that the mortgage was of urgent necessity and was properly made in the circumstances.

(3) The court may order the sale or exchange of any waqf property when satisfied that it has become unfit for the objects of the waqf.

(4) Where any person, other than the mutawalli, who is in any way concerned in the waqf property, is desirous of obtaining an order for the sale or exchange of the waqf property or an order authorising a loan on mortgage or without mortgage, he shall proceed in accordance with section 53.

40. Breach of trust

Any mutawalli who contravenes section 38A or 39 shall commit a breach of trust for which he may be removed by order of the court.

41. Power to grant lease for 3 or 9 years

(1) Where the waqf property consists of a house dedicated to the poor or other charitable object, the mutawalli may validly grant a lease thereof for 3 years and where it consists of land, he may validly grant a lease for 9 years, the lease not being determined by his death.

(2) Where -

(a) the mutawalli purports to grant a lease for a longer term than of 3 years or 9 years respectively, the lease is voidable;

(b) it is necessary for the purpose of the waqf, the court may authorise a lease to be made for any longer term, notwithstanding that the declaration of waqf expressly provides that the lease shall not be made for a longer term than a term specified in it.

(3) Except as provided in the declaration of waqf, no person may occupy the waqf property without paying a reasonable rent for it, and if the mutawalli purports to allow any person so to occupy the waqf property, reasonable rent will nevertheless become due and payable by the person for occupation of the property.

42. Erection of buildings

The mutawalli may erect buildings on the waqf property, or cultivate lands appertaining to the waqf, if it is beneficial to the objects of the waqf so to do.

43. Provision in waqfnama no longer applicable

Where the existing conditions relating to the appointment of a successor to the mutawalli or to the administration of the waqf are no longer applicable owing to the altered circumstances of the waqf property, or of society, or of the position of the parties, and persons are actually in the administration of the waqf property, by the tacit consent of the beneficiaries, such persons, if acting without dishonesty and without improper dealings with the funds of the waqf property, shall not be held responsible for mere errors of judgment in which the beneficiaries have acquiesced but they are answerable for money actually received, and for defalcations which they would have discovered but for their default or neglect.

44. Mutawalli to file annual audited accounts

(1) Every mutawalli of a waqf shall -

- (a) prepare once every year and in any case not later than 1 March, a true statement in English of the accounts of the waqf property in respect of the preceding year;
- (b) cause such statement of accounts to be audited by an auditor approved by the Board in respect of such period;
- (c) submit a certified copy of such audited accounts to the Board not later than 1 April of each year.

(2) Any mutawalli who fails to comply with subsection (1) or who furnishes any statement of accounts which he knows or has reason to believe to be false, misleading or untrue in any material particular, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees.

(4) Any such offences shall be within the jurisdiction of a District Magistrate.

44A. Compulsory registration of waqf property

(1) Any mutawalli or any person having the administration, control or possession of waqf property not registered with the Board shall cause such waqf property to be so registered within one month of his assuming the functions of mutawalli or the administration, control or possession of such waqf property.

(2) Any person bound to register waqf property under subsection (1) who fails to do so without a valid excuse shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees or to imprisonment for a term not exceeding 6 months.

(3) The validity of any excuse advanced by a person prosecuted for the offence provided under this section shall be a question for the trial court.

PART VI - SPECIAL PROVISIONS RELATING TO MOSQUES

45. Mosque property must be divided off

Where a person erects or designates a building for the purpose of dedicating it as a mosque, the waqf is not completed by such erection or designation and the ownership of such person in the land and building does not cease, until he has divided it off from the rest of his property, and provided a means of access thereto and either permits public prayers to be said in it, or delivers possession of the mosque to a mutawalli.

46. Waqif cannot benefit under waqf for mosque

Where the object of a waqf is a mosque, the waqif cannot reserve any benefit to himself under the waqf and a waqf with any such reservation is void.

47. Provision for poor not necessary

Where the object of the waqf is a mosque -

- (a) the declaration of waqf need not contain any provision as to any ultimate dedication to the poor;
- (b) provision may be made for expenses connected with the use and upkeep of the mosque as a place of worship.

48. Provision for poor on endowment for mosque

Property may be dedicated by way of waqf for supplying an existing mosque with its necessary expenses and -

- (a) with a provision that where the mosque is not in need of the expenses, the income of the waqf property should be expended on the poor; or
- (b) with provisions for the benefit of objects which must in time cease, and the lapse of which will leave the whole benefit available for the benefit of the mosque.

PART VII - BOARD OF WAQF COMMISSIONERS

49. Establishment of Board

- (1) (a) The President may set up a Board of Waqf Commissioners, consisting of not less than 4 persons of the Muslim faith as he thinks fit to appoint.
- (b) The President may appoint a Chairman of the Board, who shall be a senior Government official, or a person employed in State's service, and who shall be paid by the Board such fee for his services as the President may direct.
- (c) Such Chairman may be a person not belonging to the Muslim faith.
- (2) The members of the Board shall retire on 31 December of each year, but shall all be eligible for reappointment by the President for the next ensuing period of

12 months.

(3) The President may remove any Commissioner, including the Chairman, at any time after appointment.

(4) Where a vacancy occurs in the membership of the Board by reason of the death, resignation, or removal from office, of the Chairman or any member of the Board, the President may appoint a successor for the remainder of the period of 12 months.

(5) Three members shall constitute a quorum at meetings of the Board, in addition to the Chairman, who shall have a casting vote.

(6) (a) The Board shall be a body corporate.

(b) Service of process on the Chairman of the Board shall be deemed to be service on the Board.

(7) (a) Subject to paragraph (b), the Board may levy yearly on all waqf properties registered with the Board such sum of money, not exceeding 3 per cent of the gross total income of each waqf property, as the Board may decide for the purpose of defraying any expenses which may be incurred by the Board in the execution of its duties.

(b) With respect to any waqf which is also registered as a registered association, any sum payable to the Registrar of Associations shall be deducted from the contribution payable to the Board under paragraph (a).

(c) Every decision of the Board under paragraph (a) shall be taken on or before 15 December in the year preceding that in respect of which the levy shall be payable, and shall be published in the Gazette.

(8) The President may make such regulations as he thinks necessary for the execution of the duties of the Board.

Amended by [[Act No. 48 of 1991](#)]

50. Powers of the Board

(1) The Board may, without prejudice to any of the powers vested in the court by this Act -

(a) supervise generally the administration of any waqf property by its mutawaii, in accordance with the terms of the waqfnama, and for that purpose

have access to the waqf property;

(b) supervise the finances of all waqf property, require the submission each year of properly audited accounts relating to every waqf, and submit to the President an annual report upon the financial position of all waqf properties;

(c) keep a register of all waqfs;

(d) call for all information, whether documentary, or oral, of which they may be in need, and summon by registered letter any person before them, including the mutawalli, for this purpose, and examine witnesses on oath;

(e) apply to the court in any of the cases provided for in section 53.

(2) Any person who fails to comply with any requirements of the Board under subsection (1) (a), (b) and (d) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees.

(3) Any such offences shall be within the jurisdiction of a District Magistrate.

Amended by [[Act No. 48 of 1991](#)]

51. Conflict of interest

(1) Where, in the opinion of the Board, there exists a conflict of interest between a person exercising the functions of mutawalli and the waqf managed or administered by him, the Board shall so notify such person by registered letter for the receipt of which such person shall sign an acknowledgment.

(2) As from the receipt of such registered letter, the person exercising the functions of mutawalli shall cease to exercise such functions and the Board may appoint another person to fill the office of mutawalli in his place for such time as in the opinion of the Board the conflict of interest subsists.

52. Vesting of waqf property in the Board

All waqf property of which there is no properly constituted mutawalli shall, pending the appointment of a mutawalli by the court or otherwise, vest in the Board as mutawalli of the property.

PART VIII - LEGAL PROCEEDINGS AND GENERAL

53. Procedure on breach of trust

In case of any alleged breach of trust in the management or administration of a waqf, or

where the direction of the court is deemed necessary for the management or administration of a waqf the Board or any person having an interest in the property made waqf may apply to the court to obtain an order -

- (a) removing any mutawalli;
- (b) appointing a new mutawalli;
- (c) vesting any property in a mutawalli;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the waqf property, or of the interest in it, shall be allocated to any particular object of the waqf;
- (f) authorising the whole, or any part of the waqf property to be sold or exchanged;
- (g) authorising a loan on mortgage or without mortgage;
- (h) directing the registration or transcription of a declaration of waqf,
- (i) settling a scheme; or
- (j) granting such further or other relief as the nature of the case may require.

54. Disciplinary jurisdiction

The court when making an order under section 53 may -

- (a) direct the mutawalli to do any of the things mentioned in that section in cases where the performance of any act in conformity with such order would be incumbent upon the mutawalli;
- (b) in particular, deprive a mutawalli of his remuneration where he has been guilty of improper conduct in the discharge of his duties; and
- (c) further order a mutawalli who has been guilty of waste to file, at stated intervals, a true and complete account of the income and expenditure of the waqf, and of his dealings with the waqf property.

55. Who may sue in case of breach of trust

The Board and any person interested in any mosque, or in the performance of the worship

or of the service of it, or the trusts, if any relating to it, may, without joining as plaintiff any of the other persons interested, sue before the court the mutawalli of such mosque for any misfeasance, breach of trust or neglect of duty, committed by the mutawalli in respect of the trust vested in him and the court may direct the specific performance of any act by the mutawalli and may grant damages and costs against the mutawalli, and may also direct the removal of the mutawalli.

55A. Proceedings concerning waqfs

Where proceedings before any court may affect the interests of a waqf, notice of such proceedings shall be given to the Board by the party entering the proceedings in time to allow the Board to be represented at the proceedings and the Board shall be entitled to be represented at the proceedings.

56. Waqf property not liable to attachment

Waqf property shall not be liable to attachment and sale in execution of a judgment against the mutawalli, nor may the rents and profits be seized in execution.

57. Donations and legacies

Articles 910, 911 and 931 of the Code Napoleon shall not apply to waqfs.

58. Succession duties payable on all waqfs

Any person acquiring, or succeeding to, the enjoyment of property, the subject of a dedication by way of waqf, whether made inter vivos or by will, shall be liable to pay duty on the full value of such property according to section 3 of the Succession and Donation Duties Act, and the provisions of that Act relating to the payment of succession duties shall apply in respect of the payment of duty under this section.

58A. Change in person to be notified

(1) Any change occurring in the person enjoying waqf property shall be notified to the Receiver of Registration Dues by the mutawalli of the waqf concerned within 3 months of the change.

(2) Any mutawalli who falls to comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees.

59. Application of the Bankruptcy Act

Nothing in this Act shall be taken to affect, modify or amend the Bankruptcy Act and any property being the subject of a waqf shall, in the event of the bankruptcy of the waqf, be

governed by that Act.

60. Undivided share of waqf property

(1) Any person being the owner of an undivided share in property, part of which has been made waqf, may ask for the sale by licitation of the said property, the sale to be prosecuted against the mutawalli.

(2) The mutawalli may apply to the Master for the partition of the property if the property can conveniently be divided between the parties.

(3) Where any property, part of which is waqf, has been sold by licitation, the share accruing to the waqf in the proceeds of the sale shall be deposited in the name of the waqf in any bank designated by the Board, and the amount shall not be withdrawn in whole or in part, except with the written authorisation of the Board.

61. Judges may make rules

The Judges of the court may make rules governing the procedure to be followed in matters within the jurisdiction of the court under this Act.

62. Regulations

(1) The President may make such regulations as he thinks fit for the purpose of this Act.

(2) Any regulations made under subsection (1) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 6 months.

Amended by [[Act No. 48 of 1991](#)]

63. Application to other islands

All declarations of waqf made in any island other than the Island of Mauritius shall be registered with the Board.

Related documents: