

WAQF ACT

Cap 293 – 25 April 1941

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WAQF ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Waqf Act.

2. Interpretation

(1) In this Act—

“beneficiary under the *waqf*” means any person or class of persons that are to benefit from the object of the *waqf*;

“Board” means the Board of *Waqf* Commissioners set up under section 49;

“charity” means a 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;

“Shia Muslim” means a Muslim who conforms to the tenets and doctrines of the Shia 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, the 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; and
- (b) subject to subsection (1A), all *waqfs* created by members of the Shia Muslim community.

(1A) Where, in any matter, the law governing *waqfs* created by members of the Shia 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 Shia Muslim law of *waqf*.

(2) All questions relating to *waqfs* dedicated by members of the Sunni or Shia 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 Shia 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.

(ii) A certified copy (*expédition*) 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 (*expédition*).

(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 Shia 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 Shia 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 Shia 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 the 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 Civil Mauricien, 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 shall be 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 shall be—

- (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 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 lifetime, or for the payment of his debts out of the rents and profits of the property dedicated.

(3) The ultimate benefit shall in such cases be expressly or impliedly reserved for the poor or for any other purpose recognised 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) A *waqf* under this Act shall be invalid where—

- (a) a *waqf* is created or declared in such circumstances that the rights of creditors are, or may be, defeated or delayed; or
- (b) at the time the *waqf* was created, the *waqif* was interdicted, insolvent or bankrupt.

(4) A 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 shall 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) great-grandchildren;
- (f) great-grandparents;
- (g) brothers; and
- (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 shall be 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 a grandchild or 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) In this section, “orphan” means a minor who has no father living, though his mother and grandfather are alive.

(b) The condition of orphanhood 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 shall be entitled to the benefit of the *waqf* equally among themselves, and where one of them dies, his share shall go 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 shall accrue 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 shall be 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 shall lapse, 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* shall lapse on his death and shall accrue 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 shall succeed *per stirpes* and not *per capita* and males and females shall take equal shares.

PART III — NATURE, SUBJECT AND ALTERATION OF WAQF

18. *Waqf* to 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* shall be 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 shall pass 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* to own subject of *waqf*

The subject of *waqf* has to be owned by the *waqif* at the time when the *waqf* is made.

23. Undivided property 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 objects

(1) Where a *waqf* is purported to be made expressing a general intention of charity, but either particularising no objects, or particularising 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 an object which is prohibited by Islam;
- (f) for the repair and upkeep of a private tomb; or
- (g) 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* not to be revoked or altered

(1) (a) A *waqf inter vivos* shall not 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* shall be 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* shall be 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*.

(2) 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 INCOME OF WAQF PROPERTY

28. Repairs to be 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) the maintenance and repairs of the subject of the *waqf*;
- (b) the specified object of the *waqf*;
- (c) that which is necessary for the general purpose of the specified objects; and
- (d) 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 fail or cannot be given effect to, the validity of the other objects of the *waqf* shall not be 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 *waqif*.

(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; or
- (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; and
 - (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. 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*; and
 - (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) a 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; and
- (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 shall be 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 an express provision in the declaration of *waqf* for the appointment of successive *mutawallis*—

- (a) the *waqif* shall be entitled to make the appointment;
- (b) after the death of the *waqif*, the executor or the survivor of several executors of the *waqif* shall be 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) A 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 a 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 consequently 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.

[S. 34 amended by Act 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 continue to be duly maintained, 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

(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 shall be voidable;
- (b) it is necessary for the purpose of the *waqf*, the Court may authorise a lease to be made for a 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 where 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*, where 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, those 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 shall be 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* 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 the statement of accounts to be audited by an auditor approved by the Board in respect of that period; and
- (c) submit a certified copy of the 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 a 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.

(3) An offence under subsection (2) shall be within the jurisdiction of a District Magistrate.

44A. Compulsory registration of *waqf* property

(1) A *mutawalli* or other 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 an excuse advanced by a person prosecuted for the offence provided under this section shall be a question for the trial Court.

PART VI — PROVISIONS RELATING TO MOSQUES

45. Mosque property to be divided off

Where a person erects or designates a building for the purpose of dedicating it as a mosque, the *waqf* shall not be completed by such erection or designation, and the ownership of such person in the land and building shall 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 *waqf* cannot reserve a benefit to himself under the *waqf*, and a *waqf* with any such reservation shall be 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; and
- (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 shall 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. Setting up of Board

(1) (a) The President may set up a Board of *Waqf* Commissioners, consisting of such persons of the Muslim faith, not less than 4 in number, as he thinks fit to appoint.

(b) The President may appoint a Chairperson 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) The Chairperson 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 a Commissioner, including the Chairperson, 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 Chairperson 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 Chairperson, who shall have a casting vote.

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

(b) Service of process on behalf of or on the Chairperson shall be deemed to be service by or 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 an 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 functions of the Board.

[S. 49 amended by Act 48 of 1991.]

50. Powers of 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 *mutawalli*, 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; and
- (e) apply to the Court in any of the cases provided for in section 53.

(2) Any person who fails to comply with any requirement 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 offence under subsection (2) shall be within the jurisdiction of a District Magistrate.

[S. 50 amended by Act 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 that person by registered letter, for the receipt of which he shall sign an acknowledgment.

(2) As from the receipt of the registered letter, the person exercising the functions of *mutawalli* shall cease to exercise those 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 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 a person having an interest in the *waqf* property may apply to the Court to obtain an order—

- (a) removing a *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 *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 an act in conformity with the 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 a person interested in a 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* 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 an 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 a Court may affect the interests of a *waqf*, notice of the 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 Civil Mauricien shall not apply to *waqfs*.

58. —

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 fails 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 the Bankruptcy Act, and any property being the subject of a *waqf* shall, in the event of the bankruptcy of the *waqif*, be governed by that Act.

60. Undivided share of *waqf* property

(1) A 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 and Registrar 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, except with the written authorisation of the Board.

61. Rules

The Judges 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.

[S. 62 amended by Act 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.
