

**ADMINISTRATION OF MUSLIM LAW ACT**  
**(CHAPTER 3, SECTION 32)**

**FATWA ISSUED**

BY

**FATWA COMMITTEE, ISLAMIC RELIGIOUS COUNCIL OF  
SINGAPORE**

*The Fatwa Committee discussed the question received from the Disability Unit, Ministry of Social and Family Development (MSF) at the 12<sup>th</sup> fatwa meeting on 23<sup>rd</sup> June 2015.*

**FATWA**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
الحمد لله رب العالمين ، والصلاة والسلام على سيد المرسلين وإمام المتقين نبينا محمد  
وعلى آله وأصحابه أجمعين. اللهم أرنا الحق حقا وارزقنا اتباعه، وأرنا الباطل باطلا  
وارزقنا اجتنابه، وبعد.

**Background**

1. The Muis Fatwa Committee received a question from the Disability Office, Ministry of Social and Family Development (MSF) regarding the trust managed by SNTC. The question asked was: What is the status of this endowment fund from the Shariah perspective?

**Background of Special Needs Trust Company (SNTC)**

2. The Ministry of Social and Family Development (MSF) and the National Council of Social Service (NCSS) formed Special Needs Trust Company (SNTC) in 2008/2009. It is registered as a non-profit private company. SNTC manages the endowment fund set up by parents or caregivers of Persons with Disabilities

(PwD)<sup>1</sup>. This endowment fund includes a care plan as well as a savings component, and is only exercised when both the parents or caregivers pass away, or are of unsound mental capacity. When this happens, SNTC plays the role of managing the care of the special needs child and administers his/her expenses based on the plan drawn up in the trust deed.<sup>2</sup>

### **The needs of persons with disabilities.**

3. SNTC Trust was established to fulfil the needs of Singaporeans with special needs. According to an official estimate in 2010, there were 97,200 persons with special needs in Singapore, or about 3% of the entire population in Singapore.<sup>3</sup>

4. Persons with special needs require specific support. Statistics have shown that 63% of them do not have the ability to work outside of the special centres that are set up to employ persons with disabilities, and hence are not capable of being financially-independent. Findings have also show that the life expectancy for people with disabilities is generally similar to other people, and hence they would incur higher expenses to cater to their intensive caregiving and financial needs. The government has provided various assistance schemes for those with disabilities. However, many parents wish to further ensure that their children will continue to be cared for and would have sufficient savings, even after their passing.

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<sup>1</sup> Persons with disability include those with Alzheimer/dementia, autism, cerebral palsy, Down syndrome, intellectual disability, mental disabilities, multiple disorders and physical disability.

<sup>2</sup> For more information, please visit <http://www.sntc.org.sg/Pages/Home.aspx>

<sup>3</sup> Since there are no official statistics on special needs individuals in Singapore, the figure stated is only an estimate. Please refer to: “*No clear data on disability situation in Singapore*” published by The Straits Times, 13 March 2014. Also, Enabling Masterplan Steering Committee, “Enabling Masterplan 2012-2016”, p 8. <http://app.msf.gov.sg/Portals/0/Topic/Issues/EDGD/Enabling%20Masterplan%202012-2016%20Report%20%288%20Mar%29.pdf>

## Comparison of instruments for the transfer of wealth and the SNTC endowment fund

5. As the SNTC endowment fund only comes into effect when both parents pass on, this has led to questions as to whether the fund is part of the estate of the parents, and whether there are financial instruments similar to the fund in classical *fiqh*. Hence, there is a need to study and compare the contract of the SNTC endowment fund and other instruments of wealth transfer in Islamic law.

6. The conclusions of the comparison are as follow:

- The SNTC Trust does not fulfil the conditions of will because the transfer of wealth through SNTC is not limited to 1/3 of the entire estate, and the beneficiary can be an inheritor of the estate. This is different from the rules of leaving a will in Islam, whereby the beneficiary cannot be among those who will inherit the estate.
- The SNTC Trust is not the same as a special *wakaf* as it is not perpetual.
- The SNTC Trust is also different from that of a *nuzriah* as a *nuzriah* is an instrument which requires *sighah* or special pronouncement, which is not found in the SNTC trust.<sup>1</sup>
- While there are elements of *hibah* which can be found in the trust, the trust is not the same as *hibah* as it does not fulfil the conditions of *hibah*. This is because the transfer of property ownership does not happen completely during the lifetime of the giver. The trust also has elements of *hibah ruqba* because the giver has the option to take back the property in the event that the beneficiary predeceases the giver. However, the trust is not the same as *hibah ruqba* because there is an existence of a third party

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<sup>1</sup> For more information on Nuzriah please refer to the Office Of the Mufti website: [http://www.officeofthemufti.sg/Irsyad/nuzriah\(mly\).html](http://www.officeofthemufti.sg/Irsyad/nuzriah(mly).html)

that functions as a trustee – the SNTC – before the *qabdh* takes place fully. It is on these grounds, that the Fatwa Committee considers it as a Specific Hibah Trust, and it is a new instrument of gifting.

### Decision of the Fatwa Committee

7 Based on the above considerations, the Fatwa Committee has decided that the pledging of the wealth to the SNTC Trust by the parents or caregivers of a person with disability is permissible. This trust is an instrument of wealth transfer that is different from the instruments contained in the classical *fiqh*, but is in line with the objectives of shariah (*maqasid shariah*). It is hence a **special trust hibah** (*hibah amanah khas*) and does not have to comply with the rules of faraidh.

8 As stated in the fatwa ruling on the issue of CPF nomination and insurance nomination,<sup>1</sup> the approach to create a new contract (*akad*) can be taken as long as it fulfils two main conditions:

I. It does not contravene any clear Islamic rulings. This is based on a method raised by Ibn Qayyim al-Jauziyyah with regard to making *ijtihad* in matters regarding *muamalah* (transactions). He wrote:

الأَصْلُ فِي الْعُقُودِ وَالشُّرُوطِ الصَّحَّةُ إِلَّا مَا أَبْطَلَهُ الشَّارِعُ أَوْ نَهَى عَنْهُ

Which means: *The original hukum (ruling) for a contract is valid, except what is voided or prohibited by Syariah.*<sup>2</sup>

II. It is in line with the goals of Islamic law and fulfils the *maqasid*. In this case, it fulfils the needs of the disabled and ensures that the person's welfare is taken care of. It meets the *maqasid* of **preservation of religion** because it

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<sup>1</sup> Fatwa on CPF nomination issued on 3rd August 2010 and fatwa on insurance nomination issued on 2nd February 2012.

<sup>2</sup> Ibn Qayim al-Jauziyy, *I'lam al-Muwaqqi'in*, Beirut, Dar al-Jil, 1973, chapter 1, p 470; al-Shatibi, *al-Muwafaqat*, Beirut, Dar al-Kutub al-'Ilmiyah, first print, 1425H- 2004, p 399.

ensures that the needs of the person with disability, which includes his religious needs, will be well taken care of by a trusted party. It also ensures the **preservation of life** because his daily needs including his physical development and specialised training, are being met. For those who are unable to live independently, they can get long term care from institutions that care for persons with disabilities. Furthermore, the **preservation of intellect** is met through special education classes for those with such needs. This is often done through educational programmes that begin at a young age, special schools and additional support at mainstream schools. With the endowment fund, **the wealth needed** for the person with disability will be protected and it will be managed in a way to ensure that their needs are fulfilled. Prophet Muhammad s.a.w. emphasised the importance of caring and protecting the weak in the society, in a hadith reported by Imam an-Nasai:

إنما نصر الله هذه الأمة بضعفتهم بدعواتهم وصلاتهم وإخلاصهم

Which means: *Verily Allah's benevolence to this ummah is through the weak among them; through their supplications and prayers and their sincerity.*

9 In accordance with the principle of *hibah qabla al-qabdh*, if the beneficiary passes away before the giver (mother, father or caregiver), then the wealth can be returned to the giver. If the beneficiary of the trust passes away before the fund is exhausted, then the remaining amount is to be included as part of his estate, and must be disbursed according to appropriate Islamic guidelines upon his death.

10 The Fatwa Committee would like to state firmly that the transfer of wealth in the form of an SNTC trust or endowment fund is only to ensure that the *maslahah* (interest) and the needs of the person with disability are safeguarded.

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