THE LABUAN ISLAMIC TRUST & ISLAMIC FOUNDATION

by

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INTEREST IN ISLAMIC OPTIONS

An increasing number of Muslim high net worth individuals are exploring legal options and structures and achieve strategic objectives and optimal resolutions in asset management, planning and distribution.

- Efficient management
- Preparation for exigencies
- Expertise
- Distribution
- Charity
- Succession Planning
- Preservation
USES OF TRUSTS & FOUNDATIONS

- Holding of investments and assets of a family and allow the founder, family members and professional managers to manage the investments and assets;
- For long term holding and business continuity, e.g. family trusts;
- Can be charitable or non-charitable or both;
- For families to build family governance and ensure that future beneficiaries receive benefits according to a flexible distribution arrangement.
- Provides for advanced age, ill health and disability, emergency situations – reduce reliance on costly and time consuming probate/letters of administration applications;
- Transfer of the benefit of investments and assets to beneficiaries confidentially in such proportions and at such times and to such persons as the founder wishes;
- Allows the founder to designate who to control the investments/assets;
- All assets of the founder may be consolidated for ease of administration and accounting under one roof.
- Minimize tax payments.
SHARIAH COMPLIANCE IN LABUAN

Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA):

- Omnibus, specific legislation for Labuan Islamic businesses
- Requires compliance with Shariah principles:
  Section 6: “Any person carrying on any activity under this Act shall ensure that such activity shall be in compliance with Shariah principles.”
- LIFSSA has specific provisions for Shariah governance for the Labuan Islamic entities and the Labuan Islamic Foundation
- Establishes the Shariah Supervisory Council of the Labuan Financial Services Authority (Labuan FSA) which is the ultimate authority and reference on Shariah matters.
SHARIAH COMPLIANCE IN LABUAN 2

“Shariah adviser” means a qualified person appointed by any licensed entity or entity pursuant to this Act to advise on matters relating to Shariah principles; “qualified person” means a person who—

(a) is not an undischarged bankrupt;
(b) has not been convicted of any offence arising out of criminal proceedings;
(c) is of good repute and character; and
(d) possesses the necessary qualifications and expertise in Islamic commercial law or Islamic jurisprudence, and includes a corporation having in its employment at least one individual meeting the criteria mentioned in paragraphs (a) to (d);…..

• There is Shariah certainty and sound Shariah governance under the LIBFC legal framework.
THE LABUAN ISLAMIC TRUST
TRUST IN GENERAL

A trust:

- a relationship whereby property is held by one party for the benefit of another.
- Created by a settlor, who transfers some or all of his or her property to a trustee, who holds that property for the trust's beneficiaries.
- Separates the property's legal ownership and control from its equitable ownership and benefits. This may be done for tax reasons or to control the property and its benefits if the settlor is absent, incapacitated, or dead.
- Usually governed by the terms of a deed of trust which outline how money and property will be managed for beneficiaries.
TRUST IN GENERAL 2

The trustee:

- is given legal title to the trust property, but is obligated to act for the good of the beneficiaries.
- may be compensated and have expenses reimbursed, but otherwise must turn over all profits from the trust properties. Trustees who violate this fiduciary duty are self-dealing. Courts can reverse self-dealing actions, order profits returned, and impose other sanctions.
- may be either an individual, a company, or a public body. There may be a single trustee or multiple co-trustees.
ISLAMIC TRUSTS

Trusts can be structured to be fully Shariah compliant

- Advice and approval from a Shariah advisor
- Nature of the trust assets
- Management of the trust assets
- Investments
- Terms of the deed of trust
- Beneficiaries’ activities
- Channeling of any impermissible amounts arising from investments
- Shariah review and Shariah audit
LABUAN ISLAMIC TRUSTS

• The Labuan Trust Act 1996 (LTA) and Labuan Islamic Financial Securities & Services Act 2012 (LIFSSA) apply
• Enables a settlor to exercise his rights in creating a trust in accordance with Shariah principles.
• Can be for a fixed duration
• The trust itself or a power exercisable under it can be revocable in whole or in part
• Terms can be varied
• Confidentiality
• Labuan trust, validly created in accordance with or as provided by the LTA, whether in Labuan or abroad, shall be recognized and be enforceable in accordance with its terms, by the courts in Malaysia situated at Labuan
• Unenforceability of foreign claim or judgement: Where a Labuan trust is validly created in accordance with or as provided by the LTA, the Court shall not vary it or set it aside or recognize the validity of any claim against the trust property pursuant to the law of another jurisdiction or the order of a court of another jurisdiction.
LABUAN ISLAMIC TRUSTS 2

Labuan Trust Act 1996 provisions:

30. (1) A trustee shall in the execution of his duties and the exercise of his powers and discretion act with due diligence as would a prudent person to the best of his ability and skill, and observe the utmost good faith.

33. (1) Subject to the terms of the trust and to the LTA, a trustee shall have all the powers of a beneficial owner in relation to the trust property. (2) A trustee shall exercise his powers in the interest of the beneficiaries and in accordance with the terms of the trust and the provisions of the LTA;

33A. In exercising any power of investment, a trustee shall observe the standard investment criteria – suitability and need for diversification.

33B. A trustee shall, before exercising any power of investment, obtain and consider proper advice relating to the way in which the power should be exercised, having regard to the standard investment criteria.
SSC RESOLUTION ON LABUAN ISLAMIC TRUSTS

The Shariah Supervisory Council of Labuan FSA, in its meeting dated 30 October 2013, resolved the following relating to the Labuan Islamic Trust which is a Shariah compliant Labuan trust established under Section 105 of the Labuan Islamic Financial Services and Securities Act 2010. It is hereby resolved that:

(a) The vesting of property into a Labuan Islamic Trust (LIT) by a settlor to the LIT may be facilitated by way of hibah or hadiah.

(b) Upon vesting of the property by the settlor to the LIT, the legal ownership of the property must be transferred to the trust and be disclosed in the trust deed.

(c) Where the LIT satisfies the following conditions, Faraidh in regards to the distribution of the settlor’s property, upon the demise of the settlor, is inapplicable and irrelevant on the vested property in the LIT.

   (i) The vesting has been made immediate and irrevocable.
   (ii) The vesting has been made without any reserve power of the settlor.
   (iii) The vesting of ownership of the property through the trust instrument is absolute.

(d) In relation to paragraph (c), where the settlor is one of the trustees and a manager of the trust property under the LIT, Faraidh remains inapplicable and irrelevant.

(e) Where the settlor is one of the beneficiaries in the LIT, Faraidh would be applicable and relevant on the portion of the property that the settlor is entitled to.
THE LABUAN ISLAMIC FOUNDATION
FOUNDATIONS IN GENERAL

• Foundations are legal structures (legal entities) and/or legal persons (legal personality), may have a diversity of forms and may follow diverse regulations depending on the jurisdiction where they are created.

• In some jurisdictions, a foundation may acquire its legal personality when it is entered in a public registry, while in other countries a foundation may acquire legal personality by the mere action of creation through a required document/s.

• Unlike a company, foundations have no shareholders, though they may have a board, an assembly and voting members.

• A foundation may hold assets in its own name for the purposes set out in its constitutive documents, and its administration and operation are carried out in accordance with its statutes or articles of association rather than fiduciary principles. The foundation has a distinct patrimony independent of its founder.

• Foundations are often set up for charitable purposes, family patrimony and collective purposes.
HOW FOUNDATIONS WORK

• The founder endows the foundation assets to the foundation via the foundation charter, without consideration. Once endowed and legally transferred, the assets become the sole property of the Foundation and no longer is the property of the founder;

• Foundation Council: Higher supervisory body of the foundation, appointed by the founder;
  ➢ ensures compliance by the foundation and the officers of the terms of the charter and the law;
  ➢ is responsible for the general supervision of the management of the foundation by the officers.

• Officers: Similar to directors of a company;
  ➢ administers the foundation to achieve its objectives.

• Endowment of subsequent assets can be done as the charter permits – e.g. by the unanimous approval of the officers or the Foundation Council;

• The founder can maintain control as he can be either a Council Member or an officer, a beneficiary, amend the charter, add and remove beneficiaries, appoint foundation Council members, appoint and remove officers, etc.

• Beneficiaries have the right to request information and documents relating to his interest and the foundation, and right to confidentiality of his or her information from other beneficiaries.
ISLAMIC FOUNDATIONS

Foundations can be structured to be fully Shariah compliant

- Advice and approval from a Shariah advisor
- Establishment, object and purpose of foundation
- Nature of the foundation assets
- Management, operations & activities of the foundation
- Investments
- Terms of the charter
- Beneficiaries’ activities
- Channeling of any impermissible amounts arising from investments
- Shariah review and Shariah audit.
LABUAN ISLAMIC FOUNDATIONS

- separate legal personality from the founder;
- no capital requirement;
- hold investments and assets directly, sue and be sued in its own name;
- permits founder to maintain control over the investments and assets;
- registration is compulsory for foundations.

- managed by officers appointed by the founder;
- officers are supervised by a Foundation Council;
- terms spelt out in a Charter;
- relationship amongst the parties are contractual as per the terms of the charter (not fiduciary unlike in trusts);
- duration can be for a fixed duration or indefinite, no perpetuity rule;
- Confidentiality – charter is registered but information is not accessible by the public.

- Malaysian Courts recognizes its validity against foreign claims;
- dissolved contractually by the officers acting in accordance with the terms of the charter or by a court order;
- foreign foundations can redomicile in Labuan, and Labuan foundations can redomicile overseas;
- Good creditor protection laws;
- Bankruptcy remote.
LABUAN ISLAMIC FOUNDATIONS

Applicable laws:

• Labuan Foundations Act 2010
• Islamic Foundations – additional requirements in Part IX of the LIFSSA.

➢ Endowment through hibah.

The Guidelines on the Establishment of Labuan Foundation including Islamic Foundation require that:

10.3 The foundation must have a clearly executed legal transfer of ownership of the property(ies) from the founder to the foundation.
10.4 The endowment of the property into the Labuan Islamic foundation could be done through Hibah or Hadiah.
The Shariah Supervisory Council of Labuan FSA, in its meeting dated 28 March 2013, resolved the following relating to the Labuan Islamic Foundation (LIF) which is a Shariah compliant Labuan foundation that is established under Section 107 of the LIFSSA. It is hereby resolved that:

(a) The endowment of assets by a founder into a LIF may be facilitated by way of hibah or hadiah. This endowment must be done during the founder’s lifetime.

(b) Where the endowment of the assets into the LIF satisfies the following conditions, Faraidh, upon the demise of the founder, is not applicable and relevant on the endowed assets in the LIF.

   (i) The endowment has been made immediately and irrevocably;
   
   (ii) The endowment has been made without any reserve power of the founder;

   (iii) The transfer of the ownership of the assets is absolute; and

   (iv) The transfer has been accepted by the LIF.

(c) Paragraph (b) would still be applicable where the founder manages the assets and receives remuneration for such management in the LIF.

(d) Where the founder is one of the beneficiaries in the LIF, Faraidh would be applicable and relevant on the portion of the assets that the founder is entitled to.
<table>
<thead>
<tr>
<th>Trusts:</th>
<th>Foundations:</th>
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<tbody>
<tr>
<td>• Common law origins.</td>
<td>• Civil law origins.</td>
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<tr>
<td>• Relationship amongst parties is fiduciary.</td>
<td>• Relationship amongst parties is contractual.</td>
</tr>
<tr>
<td>• Assets, upon being vested in the trust, are legally owned by the trustee.</td>
<td>• Assets are legally owned by the foundation. Upon registration of the foundation, the property endowed or to be endowed becomes an estate separate and apart from that of the founder by acquiring a separate legal entity status.</td>
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<tr>
<td>• The person who establishes the trust is known as the settlor and the persons who benefit from the trust are known as beneficiaries.</td>
<td>• The person(s) who creates the endowment is known as the founder and the persons who benefit from the endowment are known as the beneficiaries.</td>
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<tr>
<td>• The trust deed is the document that establishes the trust.</td>
<td>• The charter is the main constituent document of a foundation. A foundation may also have articles which is a set of more detailed rules governing its administration matters.</td>
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Thank you

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