The Role of Wealth Distribution in Islamic Wealth Management:

“The Case of Labuan Islamic Trust and Foundation”

BNP Paribas-INCEIF Public Lecture
30 April 2014
Introduction to Labuan IBFC

Economic Trends in Asia Pacific

Labuan’s Wealth Management Solutions

Inducing Growth of Islamic Economies
“Fu Bu Guo San Da” - the wealth of a family never lasts for more than three generations.

“Shirtsleeves to shirtsleeves in three generations” - family-owned enterprises to fail when the founder’s grandchildren took charge.

“It is not right for any Muslim person who has anything to bequeath that he may pass even two nights without having a Will written.” Hadith Nabi, Sahih Bukhari
Labuan-one of the more than 70 IFCs in the world

[Map showing various financial centers around the world, including Labuan, with a red arrow pointing to Labuan.]
The origin of these companies reflects the growth of Labuan IBFC in the Asian region with more than 70% of the companies from Asia.
Growth of Labuan Foundations and Trusts...

- 103 Foundations
- 95 conventional
- 8 Islamic
- 72% originated from Asia

• 53 Labuan Trusts registered with Labuan FSA

Foundations origins

- Middle East & Africa 17%
- Far East 6%
- Europe 10%
- America 1%
- Asia & The Pacific 66%

Number of Labuan Foundations

- Registered
- Operating

- 2010: 5
- 2011: 40
- 2012: 65
- 2013: 93

103 Mar’14
Economic Trends in Asia Pacific
Emerging trends impacting Asia-Pacific market...

Salient mega trends driving the transformation of Asian landscape

**NOW**

- ✔ Rising global economic influence of Asian economies
- ✔ Growth in intra regional trade and investment
- ✔ Growth of Islamic finance
- ✔ Structural and demographic changes
- ✔ Technology and innovation
- ✔ Communication revolution
- ✔ Rising catastrophes and calamities
- ✔ Regulatory and legal shake ups
- ✔ Huge increase in health and education spending
- ✔ Rise of the individual
- ✔ Political interests of China and use of Renminbi

**Asian Century 2050**

- ✔ Dominant global economic position

Jointly organised by CIWM - Centre for Islamic Wealth Management
Growth directions between economies are diverging

GDP of major economies and emerging Asia countries

GDP CAGR in local currency

<table>
<thead>
<tr>
<th>Country</th>
<th>GDP CAGR (07-11)</th>
<th>GDP CAGR (11-15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>1.8</td>
<td>1.8</td>
</tr>
<tr>
<td>Australia</td>
<td>5.5</td>
<td>5.5</td>
</tr>
<tr>
<td>Korea</td>
<td>6.0</td>
<td>6.9</td>
</tr>
<tr>
<td>Singapore</td>
<td>3.5</td>
<td>6.8</td>
</tr>
<tr>
<td>India</td>
<td>13.7</td>
<td>12.3</td>
</tr>
<tr>
<td>China</td>
<td>13.1</td>
<td>12.2</td>
</tr>
<tr>
<td>Malaysia</td>
<td>5.1</td>
<td>8.0</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>12.4</td>
<td>10.9</td>
</tr>
<tr>
<td>Philippines</td>
<td>7.9</td>
<td>8.2</td>
</tr>
<tr>
<td>Indonesia</td>
<td>15.4</td>
<td>11.6</td>
</tr>
<tr>
<td>Vietnam</td>
<td>19.3</td>
<td>14.0</td>
</tr>
</tbody>
</table>

Mature

Developing

New emerging economies

Slower growth expectations in developed economies and higher growth expectations in Asia and emerging economies
Renminbi as an international currency

- HSBC predicts that the Chinese currency will be the third-largest unit used for trade by 2015 and fully convertible within the next five years as the People’s Bank of China gradually liberalises policy.

- SWIFT reported that use of Chinese Renminbi is 2nd to USD in international payment.
By the middle of the century, Asia will account for more than half of global GDP and will own half of the world’s financial assets and financial institutions - ADB, 2011

Asian countries in Top 10 to command world trade in 2050

1. China - $52.2 trillion (18.2% of world trade)
2. India - $25.7 trillion (9% of world trade)
5. Korea - $9.7 trillion (3.4% of world trade)
6. Indonesia - $8.8 trillion (3.1% of world trade)
7. Hong Kong - $8.5 trillion (2.3% of world trade)
8. Japan - $7.6 trillion (2.7% of world trade)
9. Singapore - $6.8 trillion (2.4% of world trade)

Citigroup, 2011
Growth of Islamic finance

The global Islamic Finance market has grown at 23% CAGR to over USD 1.2 trillion and is expected to reach USD 2.6 trillion by 2017, with the MENA region and Asia accounting for a large part of the growth – PWC

<table>
<thead>
<tr>
<th>Region</th>
<th>2012</th>
<th>2013</th>
<th>Asset growth from 2012</th>
<th>CAGR 2007-2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>GCC</td>
<td>404,896</td>
<td>496,942</td>
<td>22.73%</td>
<td>18.50%</td>
</tr>
<tr>
<td>Non-GCC MENA</td>
<td>487,426</td>
<td>489,755</td>
<td>0.48%</td>
<td>17.35%</td>
</tr>
<tr>
<td>MENA total</td>
<td>892,323</td>
<td>986,698</td>
<td>10.58%</td>
<td>17.92%</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>10,733</td>
<td>10,365</td>
<td>-3.42%</td>
<td>16.57%</td>
</tr>
<tr>
<td>Asia</td>
<td>208,482</td>
<td>248,586</td>
<td>19.24%</td>
<td>12.24%</td>
</tr>
<tr>
<td>Australia/Europe/America</td>
<td>54,716</td>
<td>21,704</td>
<td>-60.33%</td>
<td>0.84%</td>
</tr>
<tr>
<td>Global Total</td>
<td>1,166,255</td>
<td>1,267,355</td>
<td>8.67%</td>
<td>16.02%</td>
</tr>
</tbody>
</table>

- Strong linkages to the underlying economic and asset growth
- Asia and Africa which is currently account for over 95% of the world’s Islamic population projected to grow 35% by 2030
- Increasing Islamic assets which is picking up at 16.2% CAGR globally (2007 – 2013)
- Increase in institutional investors in sukuk inducing specific interests by Government to further grow market
Huge increase in health expenditure...

Total healthcare costs in the Asia-Pacific region are projected to increase by 8.2% annually to USD2.7 trillion by 2020 - Swiss Re 2012
Increase in flow of international students

Australia remains the top destination in Asia for foreign students.

- **Australia**: 30% ↑ in foreign students from 402,000 (2012) to 520,000 (2020).
- **Japan**: 300,000 foreign students by 2020.
- **China**: 500,000 foreign students by 2020.
- **Malaysia**: 200,000 foreign students by 2020.
- **Russia**: 21% increase.
- **Korea**: 8% increase.
- **New Zealand**: 9% increase.
- **Japan**: 18% increase.
- **New Zealand**: 9% increase.
- **Australia**: 35% remains the top destination.

Demographic and economic drivers; bilateral trade patterns and shift in inbound and outbound student flows linked to rapid expansion of tertiary education and will re-shape the global higher education landscape by 2020.
Higher Education Cost is Expected...

Estimated average cost of 1 year in selected countries of an international student in 2013

- **Canada**: (USD26,011)
- **Germany**: (USD6,285)
- **UAE**: (USD27,375)
- **Taiwan**: (USD8,257)
- **Hong Kong**: (USD22,443)
- **Australia**: (USD38,515)
- **Japan**: (USD19,184)
- **China**: (USD8,766)
- **US**: (USD35,705)
- **Russia**: (USD9,441)
- **UK**: (USD30,325)
- **Spain**: (USD7,006)
- **Singapore**: (USD24,248)
- **Solomon Island**: 34%
- **Thailand**: 29%
- **Malaysia/S’pore**: 21%
- **HK, China**: 20%
- **Indonesia**: 15%
- **India**: 12%
- **Pakistan**: 10%

The US is the second most-expensive country for international students
Annual Fees: USD25,226
Cost of Living: USD10,470

Asia Pacific countries spend between 8%-34% of their government expenditure on education.
- Solomon Island: 34%
- Thailand: 29%
- Malaysia/S’pore: 21%
- HK, China: 20%
- Indonesia: 15%
- India: 12%
- Pakistan: 10%

Australia is the most-expensive country for international students
Annual Fees: USD25,375
Cost of Living: USD13,140
More elderly and retirees in Asia

% aged 60 or over, selected Asia countries

Population growth rate (%)

Longer life spans and improved healthcare contribute to dramatic aging of population coupled with lower birthrates → Aging population

United Nations population division
Rising HNWIs Population and Wealth in 2013

**NORTH AMERICA**
- 3.73M HNWI Population
- USD12.7 T HNWI Wealth

**EUROPE**
- 3.44M HNWI Population
- USD10.9 T HNWI Wealth

**ASIA PACIFIC**
- 3.68M HNWI Population
- USD12.0 T HNWI Wealth

**MIDDLE EAST**
- 0.54M HNWI Population
- USD1.85 T HNWI Wealth

**AFRICA**
- 0.11M HNWI Population
- USD7.5 T HNWI Wealth

**LATIN AMERICA**
- 0.48M HNWI Population
- USD12.7 T HNWI Wealth
Driving demand for wealth management services...

The growth is partly due to the increasing wealth by HNWIs

High net worth individuals (HNWIs) by country, 2011-2030

Increasing in HNWIs and wealth in Asia Pacific

- Asia Pacific seeing the biggest increase in wealth. Significant growth rates in HNWIs to occur in Asia’s emerging economies - a 687% growth in Myanmar’s, 402% and 369% for Indonesia and Mongolia respectively between 2012 – 2022
- By 2020, more than 60% of Muslims would be residents in Asia.
- Increase in foundations and trust business evidenced in Labuan IBFC

Annual growth rate of HNWIs wealth by region

- Asia Pacific: 12.8%
- North America: 7.0%
- Latin America: 6.8%
- Europe: 6.5%
- Middle East: 5.7%
- Africa: 4.1%

The growth is partly due to the increasing wealth by HNWIs

Frost & Sullivan

Labuan IBFC
### 10 wealthiest charitable foundations in the world...

<table>
<thead>
<tr>
<th>Foundation</th>
<th>Size</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>INGKA Foundation, Leiden, Netherlands</td>
<td>$36.0 billion</td>
<td>1982</td>
</tr>
<tr>
<td>Bill &amp; Melinda Gates Foundation, Seattle, Washington</td>
<td>$34.6 billion</td>
<td>1994</td>
</tr>
<tr>
<td>Wellcome Trust, London</td>
<td>$22.1 billion</td>
<td>1936</td>
</tr>
<tr>
<td>Howard Hughes Medical Institute, Chevy Chase, Maryland</td>
<td>$16.1 billion</td>
<td>1953</td>
</tr>
<tr>
<td>Ford Foundation, New York City, New York</td>
<td>$11.0 billion</td>
<td>1936</td>
</tr>
<tr>
<td>J. Paul Getty Trust, Los Angeles, California</td>
<td>$10.5 billion</td>
<td>1982</td>
</tr>
<tr>
<td>Mohammed bin Rashid Al Maktoum Foundation, Dubai, United Arab Emirates</td>
<td>$10.0 billion</td>
<td>2007</td>
</tr>
<tr>
<td>Li Ka Shing Foundation, Hong Kong, Hong Kong</td>
<td>$8.3 billion</td>
<td>1980</td>
</tr>
<tr>
<td>The Church Commissioners for England, London</td>
<td>$8.1 billion</td>
<td>1948</td>
</tr>
</tbody>
</table>
Today and tomorrow

- The centre of gravity of global trade patterns projected to shift further to within Asia
- More asians are becoming High Networth Individuals
- Shift in currency of settlements
- Islamic finance becoming mainstream

BUT

- Higher medical expenditure?
- Higher education cost?
- Asians are aging
- Foundations amongst Asian and Muslims still few
- Are Islamic economies still fledging?

1990 (20 years ago)
- Developed economies dominated the world trade map
- Europe was responsible for over half of the world’s exports
- Start of global shift of manufacturing to Asia

Wealth needs to be preserved for a better future…
Labuan’s Wealth Management Solutions
Wealth Preservation and Asset Planning is Complex…

• Understand the differences between common, civil and Shariah laws.
• International assets ownership in different territories have different requirements.
• Three considerations for choosing a jurisdiction:
  1. Legal foundation – comprehensive legal system ie sufficiency of law to render legal protection, clarity of syariah rulings, well regulated;
  2. Stability – political and strong Government fostering economic and financial stability; and
  3. Ease of doing business – cost efficient and easy procedures to set up entities, professional intermediaries and authorities
Private Foundation
Jurisdictions of the World

- Anguilla
- Antigua
- Austria
- Bahamas
- Belize
- Cook Islands
- Curacao
- Guernsey
- Isle of Man
- Jersey

- Labuan
- Liberia
- Liechtenstein
- Malta
- Mauritius
- Netherlands
- Nevis
- Panama
- Seychelles
- St. Kitts
- Switzerland

*list is not exhaustive

- Strong legal system
- Stable
- Cost efficient
## The Foundation Acts in the World

<table>
<thead>
<tr>
<th>Labuan</th>
<th>Mauritius</th>
<th>Panama</th>
<th>Liechtenstein</th>
<th>Switzerland</th>
<th>Jersey</th>
<th>Isle of man</th>
<th>Seychelles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private and Charitable</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>Only charitable foundations No private family foundations</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>No minimum capital requirement</td>
<td>✓</td>
<td>Minimum Capital USD10K</td>
<td>Minimum Capital CHF30,000</td>
<td>Authorities will check initial endowment is sufficient to achieve goals</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>No licence</td>
<td>Required if to benefit from DTA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>Require licence</td>
<td>✓</td>
</tr>
<tr>
<td>Registered with Registrar</td>
<td>Required if obtain legal personality</td>
<td>Available to public</td>
<td>Liechtenstein Office of Land &amp; Public registration</td>
<td>Family foundation – no registration. Other foundation - register @ commercial register</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>3% or RM20K</td>
<td>Exempt if non-resident</td>
<td>Exempted</td>
<td>0.1% on declared net assets subj to min. of CHF1,000</td>
<td>Tax exempted for charitable purposes</td>
<td>Tax free</td>
<td>Tax free</td>
<td>Tax free</td>
</tr>
<tr>
<td>Resident secretary requirement</td>
<td>✓</td>
<td>Secretary not required but a Resident Agent</td>
<td>Agent for Service</td>
<td>No requirement for specific local secretary</td>
<td>Qualified member as “guardian” required</td>
<td>No requirement for qualified person</td>
<td>Appoint registered agent who may not be resident</td>
</tr>
<tr>
<td>Perpetual</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>
Part of Malaysia’s Islamic finance ecosystem...

- Islamic Banking
- Takaful
- Islamic capital and funds
- Islamic foundation and trusts
- Islamic Instruments (e.g., sukuk, equities)

- Labuan Islamic Financial Services Act 2010
- Labuan Foundation Act 2010
- Labuan Trusts Act 1996
- Shariah Supervisory Council members' expertise and availability
- LFSA Guidelines
- Syariah Supervisory Council resolutions for trust and foundations
- Competent service providers (e.g., trust companies, lawyers, and accounting firms)
- Several Islamic financial institutions
- University and research houses
- Removed points of frictions (e.g., tax and stamp duty) in Labuan IBFC
TRUSTS

- The appointed trustee is the person responsible to hold the trust assets and administer the trust.
- Registration of the trust is not mandatory.
- The settlor has certain reserved powers after establishing the trust and vesting the legal title in the trust assets to the trustee.
- A trust can be established for any lawful purpose but a trust that is set up for a purpose must appoint an enforcer.
- There is no capital requirement for trusts.

FOUNDATIONS

- An appointed body called the Council is entrusted to carry on the business and affairs of the foundation and pursue its objects. Officers and Council are required to act in accordance with the terms of the charter and articles.
- Registration of the foundation is mandatory.
- The foundation does not have a share capital, does not recognise shareholders and the founder does not retain or acquire any ownership rights in relation to the foundation’s property. The law does recognise however, the beneficiaries or the persons in whose benefit the foundation is created, which can include the founder.
- A foundation can be established for any lawful purpose which shall be spelt out in the charter of the foundation. There is no capital requirement for foundations.
Trusts v Foundations

**Trusts**
- Common law origins.
- Relationship amongst parties is fiduciary.
- Assets, upon being vested in the trust, are legally owned by the trustee.
- The person who establishes the trust is known as the settlor and the persons who benefit from the trust are known as beneficiaries.
- The trust deed is the document that establishes the trust.

**Foundations**
- Civil law origins.
- Relationship amongst parties is contractual.
- 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.
- 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.
- 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.
## Trusts vs Foundations

### Similarities

<table>
<thead>
<tr>
<th>Perpetuity</th>
<th>Capital Requirement</th>
<th>Officers</th>
<th>Constituent Document</th>
<th>Reserved Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Both can be created in perpetuity</td>
<td>There is no capital requirement for both</td>
<td>Both states the purpose. Trust in trust deed and Foundation in Charter &amp; Article</td>
<td>Both states the purpose. Trust in trust deed and Foundation in Charter &amp; Article</td>
<td>Trust has a Settlor who may have reserved powers &amp; Foundation has a Founder who has rights reserved over management</td>
</tr>
</tbody>
</table>

### Differences

<table>
<thead>
<tr>
<th>Legal Ownership</th>
<th>Laws</th>
<th>Liability</th>
<th>Registration</th>
<th>Beneficiary Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>9</td>
<td>8</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Foundation is a registered legal entity (Contractual) but Trust is not a legal entity (Fiduciary)</td>
<td>Trust is created in common law origins whereas Foundation in civil law countries</td>
<td>Trustees have unlimited liability in respect of activities in the trust but Foundation’s founders are not personally liable</td>
<td>Registration is optional for Trust but mandatory for Foundation</td>
<td>Interest of the beneficiaries of a Trust is paramount but the founder carries weight with a Foundation</td>
</tr>
</tbody>
</table>
Types and Purpose of Labuan Foundation

5 common purposes:

- Education & Research
- Philanthropic
- Private Wealth Management
- Charity
- Asset Preservation
WHY Labuan Foundation?

1 PROTECTION

• Full protection of assets from creditors’ claims after 2 years of establishment.
• Unenforceability of foreign claims in respect of consequences of marriage or termination of marriage, succession rights and insolvency claims.
• Protection against claims of intent to defraud.

2 FLEXIBILITY

• Provides the ability to choose and create the foundation that is compatible to your purpose.
• Can be set up without restrictions by individuals and corporations who are residents and non-residents of Malaysia.
• No minimum amount of assets required to be injected into the foundation.
• Charitable or Non-charitable
• Easily re-domiciled.
WHY Labuan Foundation?

3 CONFIDENTIALITY

• Strong confidentiality protection is provided under the Act. It is a criminal offence to wrongfully disclose info.
• Breaching the secrecy provision, upon conviction, shall be liable to a fine or imprisonment.
• Beneficiaries are empowered with the rights to info pertaining to his interest/benefits.
• Confidentiality of other beneficiaries will not be compromised.

4 FISCAL EFFICIENCY

• Enjoys the same taxation benefits of other offshore business entities domiciled in Labuan IBFC.
• Labuan foundation, its activities are non-trading and not subject to any tax in Labuan.
• Labuan foundation that directly engaged in trading activities without income derived from Malaysian properties, may opt to be taxed 3% or RM20,000.
• The distributions by a Labuan foundation to its beneficiaries are tax-exempted in Labuan.
• Access to benefits under Malaysia’ DTAs.

5 CONTROL

• Control over how you want your assets should be managed and run.
• Control over various aspects of the Labuan foundation include addition or removal of beneficiaries, appointment of council members, revocation of charters, return of properties to founder.
Labuan Foundation Structure

Key Management of Foundation
- A council
- An officer
- A secretary (Labuan trust company)
- Supervisor

Charter/Articles
The charter and article set out the parameters within which the foundation shall be managed and governed.

Beneficiaries

Assets

Founder
Labuan Foundation with Waqf Structure

**Key Management**
- Mutawali/Nazir as administrator in Council (who can be the founder)
- Syariah advisor as supervisor

**Key Management of Foundation**
- A council
- An officer
- A secretary (Labuan trust company)
- Supervisor

**Charter/Articles**
The charter and article set out the parameters within which the foundation shall be managed and governed.

**Waqif/Founder**
Family/ Poor public/ Public utilities

**Charter**
Detailing feature of Waqf eg utilise benefits of the property and its profits solely, perpetual

**Assets**

**Beneficiaries**

**Labuan IBFC Foundation**
Key challenges...

- Legal disputes could challenge the setting up of trusts and foundations i.e. sham trust
- Role of trustees, protector and supervisors are critical to work in the best interest of the vehicle
- Highly skilled and independent talents are required
- Asians want control, a feature which can be structured in a foundation
Resolutions Pertaining to Force-heirship rule...

- Syariah Supervisory council resolutions in March 2013 (foundation) and October 2013 (trusts) resolved that the force-heirship rule does not apply, when:
  
  - Basic tenets are observed
    - Endowment of the assets by way of *instruments of wealth transfers* Hibah in one’s lifetime to the trustee or foundation
    - Endowed assets are halal and existed
    - The endowment has been made without any reserve power of the settlor or founder
    - The endowment has been made immediately and irrevocably
    - The vesting of ownership of the property is absolute
Inducing Growth of Islamic Economies
Labuan IBFC: Building the future economic landscape...

Labuan IBFC completing the value chain

- Malaysia, including Labuan IBFC as an international Islamic Financial Centre offer an array of Islamic finance offerings and facilities, banking, takaful, syariah-compliant financial market (sukuk including), fund management, foundations and trusts..

Fulfilling the need for wealth preservation vehicles

- The increase in wealth accumulation in Asia Pacific and in Muslim hands precipitates a search for vehicles such as foundations and trust to preserve wealth.

“Believe in Allah and His Messenger and spent out of that in which He has made you successors. For those who have believed among you and spent, there will be great reward.”

"Berimanlah kamu kepada Allah dan Rasul-Nya dan nafkahkanlah sebagian dari hartamu yang Allah telah menjadikan kamu menguasainya. Maka orang-orang yang beriman diantara kamu dan menafkahkan (sebagian) dari hartanya memperoleh pahala yang besar” [QS. Al-Hadid : 7]
THANK YOU

www.labuanfsa.gov.my