

● SHARIA COMPLIANT FOUNDATIONS AND TRUSTS IN THE CHANNEL ISLANDS

Islam is the second largest and fastest growing religion in the world. When protecting and preserving his wealth, the client must, with professional advice, take into account not only the various tax liabilities of his country of residence but also the likely impact of any forced heirship provisions.

A foundation or a trust can be modified to form an important part of a client's lifetime tax planning strategy creating a flexible long term structure to address certain succession issues which are inherent under Islamic Law.

SUCCESSION UNDER SHARIA LAW

Under Sharia law, there are succession/forced heirship rules which will be different for each school, but generally:

- At least two-thirds of the estate must be distributed to surviving family in fixed shares, in accordance with Islamic law.
- The fixed share for the wife is one sixth. If the deceased has more than one wife then the one sixth share will be divided equally between them.
- The share of the male heir is usually twice that of the female heir because he is subject to a duty to maintain his family whereas she inherits free of any conditions.
- There is testamentary freedom to dispose of the remaining one-third share with the exception of applying it for the benefit of those who have already received an entitlement under a fixed share.

LIFETIME GIFTS

The forced heirship rules apply only on death. There are no restrictions under Sharia law with regard to making lifetime gifts. Consequently, a client is free to form a trust during his lifetime with any assets he wishes provided that the following two conditions are satisfied:

- there is a clearly defined proposal and acceptance with regard to the gift; and
- the recipient takes possession of the asset.

'Death bed' gifts are not treated as lifetime gifts. The definition of a death bed gift is wide and includes a gift which is made whilst aware of a fatal illness but which will not generally extend to negate a gift made more than a year before death.

THE BENEFITS OF A SHARIA COMPLIANT FOUNDATION OR TRUST

- Assets may be protected from creditors, divorce or seizure by a politically unstable regime because foreign law does not apply.
- Holding the family business in the foundation or trust (or a combination of the two) may allow for the whole family to benefit and help prevent fragmentation resulting from forced heirship.
- Assist with the reduction or deferment of any tax liabilities.
- Assets held in a foundation or a trust will be outside the reach of the forced heirship rules and probate formalities.
- Trusts are not registered with any regulatory body and so confidentiality is assured.
- A Jersey foundation is registered with the Registrar of Foundations in Jersey, but the confidentiality of the founder and beneficiaries can be assured.
- Both foundations and trusts are very flexible vehicles which can be adapted to deal with any changes in family and/or financial circumstances. In particular the client may retain powers in the foundation or the trust.
- It is possible to restrict the workings of the foundation or trust to ensure that it complies with Sharia law.

The benefits of a foundation or trust for the client are very much the same as for any individual considering wealth and succession planning. The significant difference is the ability to tailor the foundation or trust to ensure that it is Sharia compliant.

ENSURING THAT THE FOUNDATION OR TRUST IS SHARIA COMPLIANT

There are a number of safeguards, to ensure that the foundation or trust will be Sharia compliant:

1. The Foundation Regulations or Trust Instrument

The foundation regulations or the trust instrument can include an obligation or recommendation that the foundation council or trustees seek advice from a Sharia scholar during the administration of the foundation or trust and on the death of the founder or settlor to ensure that any distributions are made in accordance with Sharia law.

Furthermore the regulations can make provision for the founder's or settlor's obligation to pay Zakat (the annual charitable donation).

2. Reserved Powers

Both the foundation regulations and trust instrument can make provision so that certain powers normally vested in the foundation council or trustees are retained by the founder or settlor. This may include the power to appoint beneficiaries or make capital distributions.

3. Investment policy of the Foundation or Trust

The foundation regulations or trust instrument can be restricted to ensure that any investment is appropriate under Sharia law such as investing in Sharia compliant stocks, Islamic investment funds or bonds (sukuk).

4. A Foundation Guardian

It is a requirement of Jersey law that a foundation has a Guardian (possibly the founder or a Sharia scholar) who supervises the foundation council's activities. This requirement will be optional under Guernsey law. The Guardian may also have a duty to provide his consent to the exercise of specified powers/actions so the founder can remain assured that the foundation will be administered in accordance with Sharia law.

5. A Trust Protector

A trust protector is optional and may be the settlor, a family member or a Sharia scholar), but his appointment may require the trustees to obtain his consent before exercising specific powers or actions so the client can remain assured that the trust will be administered in accordance with Sharia law.

6. Letter of Wishes

As an alternative to the foundation regulations or trust instrument specifying the obligation to consult a scholar or where beneficiaries are to benefit subject to the discretion of the foundation council or trustees, a letter of wishes can be used to provide non-binding guidance to the foundation council or trustees to assist in their administration and ensure that specific requirements of Sharia law are adhered to.

7. Foundations: Council

It is possible for the foundation council to include the founder, professionally regulated administrators, advisers and members of the founder's family. This can help to keep the family closely involved and up to date in respect of the foundation assets and to act as an additional safeguard to ensure the foundation is Sharia compliant.

8. Trusts: Private Trust Company

The sole purpose of a private trust company is to act as a trustee of the trust. Its directors may include the settlor, professional regulated trustees and advisers and members of the settlor's family. The power to select the directors can help to keep the family closely involved and up to date in respect of the trust assets and to act as an additional safeguard to ensure the trust is Sharia compliant.

The foundation or trust can be successfully tailored to form an important part of a client's strategy for safeguarding asset(s) whilst complying with Sharia law.

**FOR MORE INFORMATION,
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