COLLAS CRILL

From Fara'id to firewalls: Islamic succession and offshore structures in Jersey, Guernsey and the Cayman Islands

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This article examines how Jersey, Guernsey and Cayman's trust legislation interacts with Islamic rules on inheritance (*Fara'id*) and lifetime gifts (*Hibah*).

Introduction

Across the Islamic world, wealth holders frequently seek to balance faith-based inheritance rules with the flexibility offered by modern private wealth structures. Shariah succession law (*Fara'id*) mandates fixed inheritance shares for heirs and limits testamentary freedom to one third of an individual's net estate. This can present challenges for wealth holders wishing to use offshore wealth structuring solutions for asset protection or succession planning.

This article looks at the principles of Islamic inheritance rules, examines the operation of Hibah and explores how the courts in Jersey, Guernsey and the Cayman Islands may approach forced heirship challenges.

The Islamic law of inheritance

Under Islamic law, an individual's estate is divided among a fixed class of heirs according to Quranic shares. Testamentary freedom is limited: generally a Muslim may bequeath up to one-third of their estate as they wish, but cannot disinherit or alter the prescribed shares of any Quranic heirs.

Islamic law does however permit the making of lifetime gifts, known as *Hibah*, which may in certain cases provide scope for wealth structuring using offshore solutions.

There can also be flexibility where Quranic principles of justice and fairness are considered and with an appropriate scholar's opinion (*Fatwa*) a more flexible approach to giving can be upheld.

Hibah: Lifetime gifts under Shariah law

Hibah is a voluntary, immediate and unconditional transfer of ownership from one person (the donor) to another (the donee) without consideration. Certain core conditions must be met, namely:

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- **Declaration by the donor** – the donor must clearly express an intention to gift, free of coercion or undue influence.
- **Acceptance by the donee** – the gift must be accepted by the recipient during the donor's lifetime, expressly or impliedly.
- **Delivery and possession** – the donee must take possession of the gifted property, for example by physical delivery or symbolic transfer.

A *Hibah* must also be immediate, unconditional and irrevocable once possession of the gift has been transferred. Gifts made while the donor is suffering from a sickness that leads to their death or in contemplation of death (*hiba fi marad al-mawt*) are generally treated as testamentary on the donor's death, and therefore subject to Shariah inheritance rules.

As such, while Hibah are valid tools for inter vivos planning, they must be executed while the donor is in good health, be properly documented and be aligned with Islamic principles of fairness and goodwill.

Forced heirship and trusts under Jersey law

Statutory framework in Jersey

Article 9 of the Trusts (Jersey) Law 1984, as amended (the so called 'firewall provision') states that all questions concerning the validity, construction and administration of a Jersey trust are governed exclusively by Jersey law. No foreign law, including any rule of forced heirship, shall affect a Jersey trust nor may a foreign judgment be enforced to the extent it is inconsistent with Article 9.

This means that, in principle, a Jersey trust validly created by a settlor subject to Shariah law should not be subject to challenge in Jersey by heirs claiming under foreign forced heirship or Shariah inheritance rules.

Judicial approach in Jersey

The seminal decision in relation to the firewall provision remains *Mubarak v Mubarak* [2008] JRC 136, where the Jersey Royal Court refused to enforce an English ancillary relief order purporting to vary a Jersey trust. The Court held that Article 9 prevented recognition of any foreign judgment that would require the forced distribution of trust assets.

This case illustrates Jersey's strong judicial commitment to protecting trusts against foreign heirship laws, including, by extension, Shariah-based claims that attempt to impose mandatory inheritance rights.

Forced heirship and trusts under Guernsey law

Statutory framework in Guernsey

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Guernsey's trust law offers comparable protection to Jersey through a dedicated 'firewall' provision. Section 14 of the Trusts (Guernsey) Law 2007 provides that all questions concerning the validity, construction and administration of a Guernsey trust are determined exclusively by Guernsey law. No rule of foreign law relating to inheritance, succession or forced heirship shall affect the validity of a Guernsey trust, and no foreign judgment inconsistent with Guernsey law will be recognised or enforced by the Guernsey courts.

As with Jersey, Guernsey's firewall was stress-tested in Court in the case of *Rothschild Trust Guernsey Ltd v Pateras* in 2011 and the legislation was found to be robust.

Similarly, robust firewall provisions are also contained in s37 of the Foundations (Guernsey) Law, 2012, and these provisions are likely to be equally as effective.
This means that, as in Jersey, a Guernsey trust or foundation properly established will not be invalidated or varied by reference to foreign heirship rules (including those derived from Shariah or civil law systems).

Forced heirship and trusts under Cayman Law

Statutory framework in Cayman

Sections 90 to 93 of the Trusts Act (2021 Revision) confirm that all matters relating to a trust governed by the laws of the Cayman Islands are determined exclusively in accordance with Cayman law. Similarly to Guernsey and Jersey, these 'firewall provisions' prevent the application of foreign laws to undermine or affect a Cayman trust. For example, foreign forced heirship rules and rights arising from family relationships are excluded from recognition under Cayman law. A trust will not be rendered void, voidable, or defective because such foreign laws are avoided or because another jurisdiction does not recognise trusts. In addition, foreign judgments founded on those laws will not be recognised or enforced in the Cayman Islands.

Additionally, section 3(4) of the Foundation Companies Act (2025 Revision) provides that sections 92 and 93 of the Trusts Act (2021 Revision) are of general application, and apply to property contributed to Cayman foundation companies and other companies.

Cayman's statutory framework allows a wealth holder resident in a Shariah-law or other forced-heirship jurisdiction to establish a private wealth structure in the Cayman Islands with confidence that it will not be compromised by foreign succession regimes, including those derived from Shariah or civil law systems, provided the principles and core conditions of *Hibah* are properly observed when assets are transferred into the structure.

Judicial approach in Cayman

In *Geneva Trust Company (GTC) SA v IDF (Re The Stingray Trust)* [2021 (1) CILR 186] the Grand Court confirmed that while those provisions shielded Cayman trusts from foreign substantive rules (in particular forced heirship rules and other foreign laws that do not recognise trusts), they do not preclude a foreign court from

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adjudicating on the proper construction of such a trust, so long as the foreign court applies Cayman Islands law.

Hibah and offshore structures: Points of intersection

Where a Muslim settlor wishes to make lifetime gifts consistent with Shariah, a Hibah can in principle be implemented through the transfer of assets into a trust or foundation. However, several key considerations arise:

1. **Formality and completion** – a Hibah requires clear delivery to and acceptance by the intended recipient (e.g. the trustee, foundation, foundation company); a declaration of trust/foundation charter and rules alone may not suffice if possession of the asset is not effectively transferred.
2. **Purpose and fairness** – if the Hibah is intended to exclude heirs, courts in Islamic jurisdictions may re-characterise it as a will, and as a consequence it will be subject to Shariah inheritance rules. Whilst a validly established trust/foundation should not be vulnerable to a forced heirship claim, trustees may find it easier in practice to protect the trust assets where they are not physically located in an Islamic jurisdiction.
3. **Documentation** – trustees should retain contemporaneous records showing the settlor's health, capacity and bona fide intention to structure assets and not to defraud heirs. For example, a recent medical report confirming the wealth holder's mental capacity accompanying a well-structured letter of wishes explaining that the purpose of the trust/foundation is to achieve long-term asset protection or protect and advance the financial wellbeing of the family, and not to avoid obligations under Shariah law, may assist in rebutting allegations of fraud on inheritance rights.

Practical guidance

To minimise the risk of any post-death challenges when making a Hibah onto trust/foundation it is recommended to:

- Execute transfers while the wealth holder is still in good health to avoid mard al-mawt arguments;
- Perfect the *Hibah*, ensuring clear declaration, acceptance and possession by the intended recipient;
- Document intention by recording that the purpose of making the Hibah is asset protection and preservation of the family's wealth, not circumvention of succession rules;
- Maintain fairness where possible, aligning gifts with fara'id proportions;
- Take advice, which may include advice from suitable Shariah scholars and offshore counsel; and
- Consider obtaining acknowledgments from Quranic heirs to mitigate the risk of future disputes, even if not legally binding.

Conclusion

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The interplay between Islamic inheritance principles and offshore wealth structuring continues to evolve, offering Shariah-compliant wealth holders the opportunity to leverage the flexibility of offshore private wealth structures while fully honouring their religious obligations.

In all cases, careful planning and structuring is required to ensure that the establishment of a private wealth structure does not offend Shariah law and principles and is secure under the governing law of the structure. Proper documentation, evidence of the settlor's health and capacity, and a clear record of intention will be important ways to minimise future disputes and achieve religious and legal certainty, and specialist advice should always be taken under both Shariah law and the governing law of the private wealth structure.

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Please contact a member of the team highlighted in the right-hand panel if you require any assistance in this area.

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