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Modern Muslim succession planning

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Many modern Middle Eastern families are looking offshore to avoid the forced-heirship provisions of Shari'a law.

Having lived and worked in the UAE for a number of years and now back practising in Guernsey, Collas Crill's Angela Calnan has significant experience in assisting Middle Eastern families with succession planning in the Channel Islands.

Here she talks about the spectrum of attitudes to compliance with Shari'a law and the use of Guernsey's anti-forced heirship provisions to assist Muslim clients who require flexible succession planning.

The Shari'a-compliant trust

The majority of new client meetings involving Muslim families in the UAE, and, indeed, the wider Gulf region – whether led by the family, their private banker or the family office – begin by considering a Shari'a-compliant trust when discussions turn to asset protection and succession planning.

However, in the vast majority of cases, it quickly becomes clear that the family requires something more flexible than the strict Shari'a inheritance provisions and investment policy hardwired into the trust or foundation documents.

That is not to say that Shari'a- compliant trusts are never adopted but, from experience, they are increasingly the exception and not the rule for the modern entrepreneurial family.

Trust structures for Middle Eastern families in Guernsey span a broad spectrum in terms of Shari'a compliance, as follows:

- Strict compliance, involving rigid adherence to the settlor's school, and with scholar sign- off and often very bespoke drafting.
- The middle ground, usually involving a flexible discretionary trust with a letter of wishes that the trustee should follow Shari'a principles when investing and distributing. This allows the trustee some flexibility to adapt to changing family circumstances during the structure's life.
- Fully flexible, where the patriarch wishes to entirely ring-fence assets outside of the Islamic world, with a view to departing from the application of Shari'a law to a proportion of his wealth.

The last case is usually brought into play to rebalance the distribution of wealth between male and female heirs.

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Increasingly, modern families will have daughters at university in London or the US who will return to the Middle East and North Africa region and play a key role in the often substantial family enterprise. In such cases, the patriarch may be keen to ensure that his daughters are provided for in the same way as his sons, and this can be achieved by putting assets offshore outside of the Islamic world, Guernsey being one such suitable jurisdiction.

Section 14 of the Trusts (Guernsey) Law, 2007 provides a useful anti-forced heirship measure to protect assets held in Guernsey trusts from attacks by the Shari'a courts. This legislative firewall was stress-tested in the Guernsey 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.

Final thoughts

The key point when dealing with succession planning and asset protection for Muslim families is obvious but still often overlooked: take the time to fully explore the family's objectives.

The family will often seek advice and request a Shari'a-compliant structure initially, but it is important to explore the patriarch's precise attitude to Shari'a compliance in order to deliver a structure that meets his needs.

This is a subtle process and can be difficult to handle without being culturally insensitive or confusing the client. However, when done properly, it is hugely satisfying.

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