

GUIDANCE NOTE ON ISLAMIC TRUST IN LABUAN INTERNATIONAL BUSINESS AND FINANCIAL CENTRE

1.0 Introduction

- 1.1 Islamic Trust refers to a trust created by the Settlor¹ during his lifetime for the benefit of the beneficiaries whereby its aims and operations are in compliance with Shariah principles. The assets are entrusted to the appointed trustee to be held for the benefit of the beneficiaries in accordance with Shariah principles and the objectives of the Settlor.
- 1.2 The Guidance Note on Islamic Trust serves to complement Labuan IBFC's Shariah-based wealth management and succession planning offerings by clarifying the requirements and providing market guidance on the establishment of Islamic Trust in Labuan IBFC.
- 1.3 The Guidance Note shall be read together with the following:
- (i) Labuan Trusts Act 1996; and
 - (ii) Guidelines on the Establishment of Labuan Trust and Islamic Trust.

2.0 Creation of Islamic Trust in Labuan IBFC

- 2.1 Islamic Trust is established under Section 105 of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA). All the provisions of the Labuan Trusts Act 1996 (LTA) shall apply unless otherwise provided.
- 2.2 Islamic Trust can be created by individuals and corporations who are residents and non-residents of Malaysia.

¹ Settlor means a person who makes a trust and includes a person who provides trust property or makes a testamentary disposition on trust or to a trust.

- 2.3 Islamic Trust can be created by a will (wasiyyah)² or other instrument in writing including a unilateral declaration of trust.
- 2.4 A unilateral declaration of trust is a declaration in writing by a trust company stating:
- (i) that it is the trustee of the Islamic Trust;
 - (ii) the name of the Islamic Trust;
 - (iii) the terms of the Islamic Trust; and
 - (iv) the names or information enabling the identification of all the beneficiaries.
- 2.5 Islamic Trust can be registered with Labuan FSA. The registration of Islamic Trust shall be effected by filing with Labuan FSA (through the Labuan trust company) the following:
- (i) a statement containing:
 - (a) the name of the Islamic Trust;
 - (b) the date of its creation;
 - (c) the name and address of the trust company acting as trustee;
 - (d) the address of the registered office of the Islamic Trust;
 - (e) the proper law of the Islamic Trust; and
 - (ii) a declaration by the trust company acting as trustee of the Islamic Trust that the trust satisfies the conditions of the LTA.
- 2.6 The Islamic Trust that opts for registration is required to pay a one-off registration fee amounting to RM750 to Labuan FSA.
- 2.7 The registered office of the Islamic Trust shall be the registered office of the Labuan trust company or Labuan managed trust company which has been appointed as trustee of the trust and shall be the address for service of any documents relating to the trust.
- 2.8 The accounting records and other records shall be kept at the registered office of the Islamic Trust.

² A Wasiyyah or will is a vow made at the time a person is still alive on his property or benefits of his property, to be executed for charitable purposes or any other purposes allowed by Islamic law, upon his death. Please refer to Section 7.0 on the creation of Islamic Trust by a will.

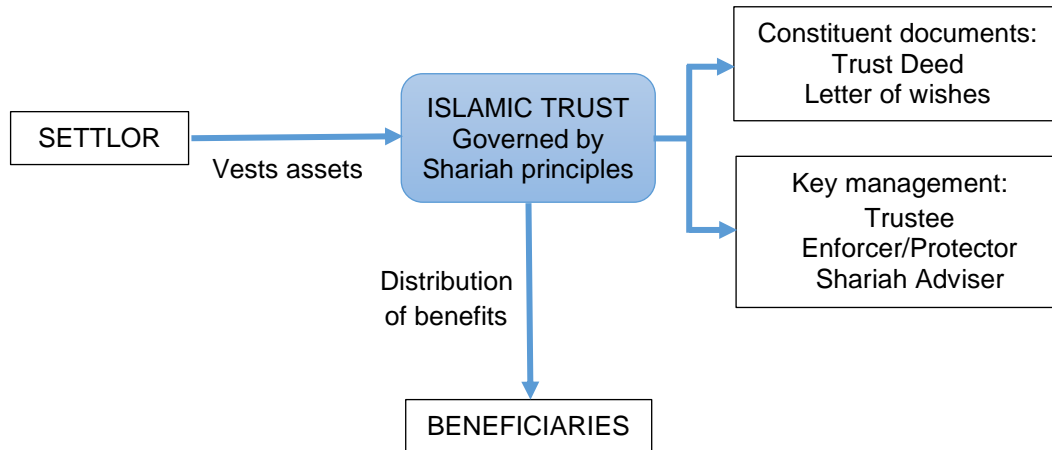
2.9 Islamic Trust can be created for different types of trust provided that it is in accordance with Shariah principles such as:

- (i) Charitable Trust – a trust created to fulfil a wide variety of philanthropic aims which includes:
 - (a) the relief and eradication of poverty;
 - (b) the advancement of education;
 - (c) the promotion of art, science and religion;
 - (d) the protection of the environment;
 - (e) the advancement of human rights and fundamental freedom; or
 - (f) any other purposes which are beneficial to the community.
- (ii) Purpose Trust – a trust established to meet a particular purpose, whether charitable or otherwise.
- (iii) Spendthrift or Protective Trust – a trust established to curb the threat of poor spending habits of its beneficiaries. The LTA provides that the terms of the trust may make the interest of a beneficiary in the trust property or in any income or capital of such property –
 - (a) liable to termination;
 - (b) subject to a restriction on alienation or disposal; or
 - (c) subject to diminution or termination in the event of the beneficiary becoming insolvent or any of his property becoming liable to seizure or to sequestration for the benefit of his creditors.
- (iv) Labuan Special Trust – a trust created by an individual or a family to hold shares in a Labuan company³ that may own assets such as cash, real estate, business and other valuable assets. The trustee of the trust will only hold the shares of the Labuan company, but will have no responsibility or power to manage the assets of the company. The directors of the company will be responsible to manage the assets. The Settlor can be involved in the management of the company by his appointment as the company's director.

³ Can also include partnership interests in a Labuan Limited Liability Partnership (LLP) structure.

3.0 Operations of Islamic Trust

3.1 The operational structure of Islamic Trust is illustrated in the diagram below:



- 3.2 The Settlor vests the assets and transfers the legal ownership of the assets to the appointed trustee⁴ of the Islamic Trust.
- 3.3 The legal ownership of the assets is held in trust by the trustee during the duration of the trust for the benefit of the beneficiaries.
- 3.4 The duration of the Islamic Trust can be perpetual or for a specified period of time as stipulated in the trust deed.
- 3.5 The Settlor must be the legal owner of the assets and has full authority over the assets as well as able to transfer the legal ownership of his assets.
- 3.6 The Settlor has the flexibility to fully ascertain the extent or amount he wishes to give as trust property, and to whom he chooses, provided that it does not contravene Shariah principles.
- 3.7 The aims, operations and management of Islamic Trust shall be in compliance with Shariah principles.

⁴ If it is the sole trustee of the LIT, it shall be the Labuan trust company or Labuan managed trust company, if there are many trustees, one of the trustees shall be the Labuan trust company or Labuan managed trust company.

Management of Islamic Trust

- 3.8 Key management of Islamic Trust consists of the workforce that runs the trust, which includes the trustee, Shariah adviser and enforcer or protector of the trust.
- 3.9 The trustee is responsible to hold the title to the trust property and administer the management of the Islamic Trust. Notwithstanding this, the trustee is obligated to act in the interest of the beneficiaries. The Islamic Trust shall have at least one trustee and one of which shall be a Labuan trust company.
- 3.10 The Settlor may be the trustee or beneficiary of the Islamic Trust provided that he is not the sole trustee.
- 3.11 The trustee of the Islamic Trust shall appoint or consult a qualified person⁵ as a Shariah adviser to advise the trustee on the management and operations of the Islamic Trust to ensure its compliance with Shariah principles.
- 3.12 The trustee has a fiduciary duty to ensure the Islamic Trust assets are managed and wisely distributed in the best interests of the beneficiaries. The 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, avoid conflict of interests and observe the utmost good faith.
- 3.13 The trustee shall keep the trust property distinct and separate from his own property and separately identifiable from any other property of which he is a trustee or to which he is beneficially entitled.
- 3.14 The assets of the Islamic Trust are to be utilised solely for the purpose and objectives stated in the trust deed.
- 3.15 The trustee shall strive to preserve and enhance the value of the trust property.
- 3.16 In exercising any power of investment, the trustee shall observe the standard investment criteria as follows:
- (i) the suitability of investments to the trust;

⁵ Please refer to the definition of “qualified person” under Section 2 of the Labuan Islamic Financial Services and Securities Act 2010.

- (ii) the need for diversification of investments of the trust as appropriate to the circumstances of the trust; and
 - (iii) ensure the investment is done in Shariah compliant manner.
- 3.17 The trustee shall determine the appropriate level of risk tolerance and actively identify, assess, monitor and manage the risks to safeguard the trust property and interests of the beneficiaries.
- 3.18 The Settlor or beneficiary of the Islamic Trust may give a letter of his wishes to the trustee or the trustee may prepare a memorandum of the wishes of the Settlor or beneficiary with regard to the exercise of any functions conferred on the trustee by the terms of the Islamic Trust. The trustee normally relies on this letter although it is not legally binding.

Beneficiaries of Islamic Trust

- 3.19 The beneficiaries of the Islamic Trust shall be recipients who are identified by the Settlor in the Islamic Trust Deed. The beneficiary shall be identifiable by name or ascertainable by reference to a class or to a relationship to a person unless it is a charitable trust.
- 3.20 Income derived from the management of the trust property or the trust property itself will be distributed to the named beneficiary.

4.0 Islamic Trust Deed

- 4.1 The Islamic Trust Deed sets out in detail the trust that has been made and the parameters within which the Islamic Trust should be governed and managed. The trust deed outlines, among others, the purpose of the trust, the rights and obligations of the trustees, the rules and regulations governing the operations of the trust and distribution of benefits to the beneficiaries.
- 4.2 The terms of the Islamic Trust shall define, inter alia:
- (i) parties involved, comprising the Settlor, trustee and beneficiary; and
 - (ii) trust property.
- 4.3 The terms of the trust stipulated in the Islamic Trust Deed shall be in compliance with Shariah principles as determined by the Shariah adviser.

- 4.4 The terms of the Islamic Trust may provide for the appointment of a protector of the trust who shall be consulted upon by the trustee in the exercise of all or certain specified powers as may be provided in the terms of the trust. The protector of the trust may also be the Settlor or a beneficiary of the Islamic Trust.
- 4.5 The terms of the Islamic Trust may confer the following powers on the protector to:
- (i) remove a trustee and to appoint a new or additional trustee. However, if the protector removes a trust company⁶ as a trustee, the protector shall appoint another trust company as a new trustee in its place;
 - (ii) determine the law of which jurisdiction shall be the proper law of the trust, in the event it is not provided in the trust deed or by the Settlor;
 - (iii) change the place of administration of the trust; and
 - (iv) withhold consent from specified actions of the trustees either conditionally or unconditionally.
- 4.6 For an Islamic Purpose Trust, the terms of the trust shall provide for the appointment of an enforcer to enforce the trust in accordance with its terms and purposes. The Settlor or his personal representatives may also be appointed as an enforcer of the Islamic Purpose Trust. No person shall at any time act as both trustee and enforcer of the same trust.
- 4.7 In the event that the Settlor decides to retain certain rights relating to the Islamic Trust, the reserve power of the Settlor shall be in accordance with Shariah principles and shall be clearly defined in the Islamic Trust Deed.
- 4.8 The reserve power of the Settlor during the period of the Islamic Trust may include to:
- (i) revoke, vary or amend the terms of the trust or powers arising wholly or partly under the trust;
 - (ii) advance, determine, pay or apply income or capital of the trust property or to give directions for the making of such advancement, determination, payment or application;
 - (iii) act as, or to give binding directions as to the appointment or removal of, a director or officer of any corporation wholly or partly owned by the trust;

⁶ Refers to the Labuan trust company or Labuan managed trust company.

- (iv) give binding directions to the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;
- (v) appoint or remove any trustee, enforcer, protector or beneficiary;
- (vi) appoint or remove an investment manager or investment adviser;
- (vii) change the proper law of the trust; and
- (viii) restrict the exercise of any powers or discretions of a trustee by requiring that the powers shall only be exercisable with the consent of the Settlor or any other person specified in the terms of the trust.

4.9 The terms of the Islamic Trust as specified by the Settlor may include:

- (i) the addition of a person as a beneficiary;
- (ii) the exclusion of a beneficiary from a benefit;
- (iii) the imposition on a beneficiary of an obligation as a condition for a benefit;
or
- (iv) the power to declare that any person shall cease to be a beneficiary.

4.10 Notwithstanding the terms of the Islamic Trust, a beneficiary may disclaim, either permanently or for a certain period of time as he may specify, the whole or any part of his interest under the trust whether or not the beneficiary has received any benefit from the interest.

4.11 Where the terms of the Islamic Trust so provided, a beneficiary may, in writing, sell, charge, transfer or otherwise deal with his interest in any manner in accordance with Shariah rules.

Revocation of Islamic Trust

4.12 The terms of the Islamic Trust shall define that, in the event that the Islamic Trust is revoked while the Settlor is still alive, and the revoked trust assets remains with the Settlor until his death, then upon the Settlor's death, the revoked trust assets shall be distributed to the Settlor's heirs of inheritance in accordance with Faraidh rulings.

4.13 For an Islamic Trust established for charitable purposes, the terms of the trust shall define that, if the Settlor gives the power to the trustee to revoke the trust after the

Settlor's death, the revoked trust assets shall be distributed to a similar trust⁷ or to charity.

5.0 Islamic Trust Assets

- 5.1 The assets vested to the Islamic Trust shall be Shariah-compliant assets.
- 5.2 The assets of the Islamic Trust shall be in the form of:
- (i) tangible or intangible⁸ assets;
 - (ii) movable or immovable assets;
 - (iii) shares; or
 - (iv) any other assets approved by the Shariah adviser.
- 5.3 The assets of the Islamic Trust must be in existence and owned by the Settlor.
- 5.4 Subsequent to the vesting of the trust assets, the Islamic Trust assets shall at all times be managed and invested in a manner that does not contravene Shariah principles as determined by the Shariah adviser.
- 5.5 If a certain asset becomes Shariah non-compliant after the establishment of the Islamic Trust, the trustee is required to dispose the Shariah non-compliant asset within a period of not more than one year. Notwithstanding this, the Shariah adviser may exercise his discretion if there is any circumstance with valid reason which require exemption to this rule.
- 5.6 The Islamic Trust assets can be non-Malaysian assets. For Malaysian assets, prior approval of Labuan FSA is required unless the trust is for charitable purposes.
- 5.7 The qualifying criteria for Labuan FSA approval shall include but not limited to the following:
- (i) obtain all necessary approvals from the relevant authorities in relation to the vesting of assets to the Islamic Trust;
 - (ii) assets to be vested shall be unencumbered unless necessary consents have been obtained; and

⁷ Similar trust refers to other Islamic trusts with similar objectives.

⁸ Intangible asset may include rights that can generate income (for example intellectual property rights).

- (iii) assets to be vested shall be obtained through lawful means.
- 5.8 Malaysian assets vested or to be vested to the Islamic Trust must include consent letters from the relevant authorities (where necessary) which may include the respective land office or local authorities such as Bank Negara Malaysia, Companies Commission of Malaysia and Securities Commission of Malaysia.
- 5.9 Malaysian settlors are allowed to vest Malaysian property to the Islamic Trust as permitted by Foreign Exchange Administration (FEA) rules issued by Bank Negara Malaysia. However, non-charitable Islamic Trust are required to provide in the trust deed that any subsequent conversion or transfer of the vested property for investment abroad would need to comply with FEA rules.

6.0 Faraidh Application on Islamic Trust

- 6.1 Where the Islamic Trust satisfies the following conditions, Faraidh principles and rulings shall not apply in connection to the distribution of the Settlor's assets, upon the demise of the Settlor⁹:
- (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.
- 6.2 Faraidh would also not apply where the Settlor is one of the trustees and a manager of the trust assets under the Islamic Trust.
- 6.3 Where the Settlor is one of the beneficiaries of the Islamic Trust, Faraidh would be applicable and relevant on the portion of the assets that the Settlor is entitled to.

7.0 Creation of Islamic Trust by Will

- 7.1 In the event that the Islamic Trust is created by a will, upon the death of the Settlor, Faraidh rulings will apply.
- 7.2 Only a maximum of one-third (1/3) of the assets of the Settlor after deducting all outstanding debts can be vested to the Islamic Trust. Notwithstanding this, the

⁹ Please refer to the Shariah Resolution of the Shariah Supervisory Council of Labuan FSA on Labuan Islamic Trust dated 15 November 2013.

Settlor can vest more than one-third of his assets with the consent of his heirs who are entitled to the Faraidh distribution.

- 7.3 The heirs of the deceased Settlor who are entitled to the Faraidh distribution shall not be beneficiaries of the Islamic Trust created by a will.
- 7.4 The conditions in paragraphs 7.1, 7.2 and 7.3 will also apply in the event that the Islamic Trust is created during maradh al-maut (illness that can lead to death) of the Settlor.

8.0 Benefits of Islamic Trust

- 8.1 Islamic Trust is an effective vehicle to be utilised for asset preservation, protection and income distribution.
- 8.2 The Settlor has the flexibility to give his assets to any person in accordance with his wishes provided that it does not contravene Shariah principles.
- 8.3 The Settlor is able to tailor the terms of the Islamic Trust to fulfil his requirements. The Settlor has control over the structure of his trust, the types of assets held, his trustees and the duration of his trust's life.
- 8.4 The Settlor can continue to receive benefits such as rental, dividends and other proceeds from the assets in the Islamic Trust.
- 8.5 The Islamic Trust provides wide reserve powers to the Settlor such as adding or removing trustees, protectors and advisers as well as powers of revocation.
- 8.6 The appointment of protectors and their roles are expressly recognised in the LTA.
- 8.7 The assets vested in the Islamic Trust are not considered as part of the Settlor's estate and cannot be claimed by other beneficiaries provided that the Islamic Trust satisfies the conditions for inapplicability of Faraidh in Section 6.0.
- 8.8 The appointment of a Labuan trust company as the sole trustee or one of the trustees of Islamic Trust will facilitate the safe and proper management of the trust assets in accordance with the terms of the trust.
- 8.9 The Settlor and the beneficiaries can benefit from the legal certainty accorded by the legal framework and guidelines issued by Labuan FSA as well as the rulings of the Shariah Supervisory Council of Labuan FSA which can be used as reference in the court of law.

- 8.10 The LTA provides for the lawful protection of the trust's assets against certain third-party claims.
- 8.11 Strong confidentiality protection is provided under the LTA which restricts the trustee, protector or any person with access to information from disclosing any information, unless otherwise required pursuant to section 8A (2) of the LTA.

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