

GUIDELINES ON THE ESTABLISHMENT OF LABUAN INTERNATIONAL WAQF FOUNDATION

1.0 Introduction

- 1.1 The Guidelines clarify the procedures for the registration and regulatory requirements for Labuan International Waqf Foundation (LIWF) in the Labuan International Business and Financial Centre.
- 1.2 LIWF is an Islamic foundation established to hold waqf properties with the objective of managing the waqf properties for identified beneficiaries and purposes based on Shariah principles on waqf (endowment in Islam).

2.0 Applicability

- 2.1 The Guidelines are applicable for LIWF registered under Section 107 of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

3.0 Legal Provision

- 3.1 The Guidelines are issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to clarify the provisions of Part III, IV, V and VI of the Labuan Foundations Act 2010 (LFA) and Part IX of the LIFSSA.
- 3.2 Any person who fails to comply with the Guidelines is guilty of an offence and may be punishable under Section 36B and 36G of the LFSAA.

4.0 Effective Date

- 4.1 The Guidelines shall come into effect on 1 March 2015 and would remain effective and applicable unless amended or revoked.

5.0 Establishment of LIWF

- 5.1 LIWF can be established under Section 107 of LIFSSA and all the provisions of LFA shall apply to LIWF unless otherwise provided.
- 5.2 LIWF can be established for different types of waqf for example:
 - 5.2.1 Charitable waqf (al-waqf al-khai'ri) where its income or usufruct is dedicated for a charitable purpose.
 - 5.2.2 Family waqf (al-waqf al-ahli) where the income or usufruct is reserved for family members and relatives. The income or usufruct of this waqf goes to a charitable purpose when none of these persons is existent.
 - 5.2.3 Joint waqf (al-waqf al-mushtarak) where the income or usufruct is shared accordingly between the family members and charitable purposes.
 - 5.2.4 Self-dedicated waqf (al-waqf ala al-nafs) where the founder (waqif) retains the income or usufruct of the waqf properties for him as long as he is alive, and indicates the charitable purpose which shall be entitled to the income or usufruct of the waqf after his death.
 - 5.2.5 Any other types of waqf in accordance with Shariah principles.
- 5.3 In this regard, the recipient of the charitable purpose of the waqf foundation shall be defined by the founder (waqif) and endorsed by the Shariah adviser of the waqf foundation.
- 5.4 LIWF can be established by a founder (waqif) by:
 - 5.4.1 Subscribing his name to the charter of the foundation;
 - 5.4.2 Complying with all the requirements of the LFA and LIFSSA; and
 - 5.4.3 Has received a certificate of registration from Labuan FSA.
- 5.5 The founder (waqif) shall, before the registration of a LIWF, appoint a registered Labuan trust company to be the secretary of the proposed waqf foundation.

- 5.6 Application for registration of the waqf foundation can be submitted to the Registrar of Company Unit of Labuan FSA using the following forms:
- 5.6.1 Form 8 – Application for Registration of a Labuan Islamic Foundation.
 - 5.6.2 Form 9 – Declaration by a Labuan Trust Company as Secretary.
- 5.7 The registration of the waqf foundation must be made by the secretary of the waqf foundation by submitting the following documents as required under Section 14 of LFA:
- 5.7.1 A statement on the particulars of the charter.
 - 5.7.2 An original copy of the charter.
 - 5.7.3 A list of names and addresses of the officer(s).
 - 5.7.4 A list of names and qualifications of the Shariah adviser(s).
 - 5.7.5 A statutory declaration of compliance by the secretary.

6.0 Operations of Labuan International Waqf Foundation

- 6.1 The endowment of the property into the LIWF is executed by way of waqf as defined by Shariah. The waqf property is preserved by the waqf foundation while only the income or usufruct of that property is to be distributed to the beneficiaries.
- 6.2 The waqf foundation shall act as the Trustee (Nazir or Mutawalli) of the waqf. The waqf foundation shall have a clearly executed legal transfer of ownership of the property from the founder (waqif) to the waqf foundation. Any property endowed to LIWF by way of waqf is owned legally and beneficially by the waqf foundation and is to be utilized solely for the purposes and objects stated in the charter (waqfiyyah) of the waqf foundation.
- 6.3 The duration of LIWF can be perpetual or for a specified period of time.
- 6.4 The aims, operations and management of a LIWF shall be in compliance with Shariah principles including Shariah principles on waqf.

Charter of LIWF (Waqfiyyah)

- 6.5 The charter (waqfiyyah) shall set out in detail the waqf that has been made, its purpose as well as the terms and conditions governing its use and management thereof.
- 6.6 The charter (waqfiyyah) of LIWF shall regulate and administer the waqf foundation in accordance with Shariah principles and Shariah principles on waqf.
- 6.7 The charter (waqfiyyah) shall state the conditions of the founder (if any). The founder has the right to make the waqf subject to all conditions in accordance with Shariah principles and Shariah principles on waqf. The conditions of the founder shall be as enforceable as Shariah conditions.
- 6.8 The charter (waqfiyyah) shall specify that the waqf foundation has a fiduciary duty to exercise the highest standard of care and loyalty in:
- 6.8.1 Preserving, protecting and developing the waqf property, maximising its benefits for the identified beneficiaries and honouring the conditions of the founder; and
- 6.8.2 Discharging its responsibilities in accordance with the charter (waqfiyyah) and the provisions of the law.
- 6.9 For family waqf or joint waqf where the waqf beneficiaries (mawquf 'alaih) are specifically named, the charter (waqfiyyah) shall specify the successors upon the death of the named beneficiaries. If in the event no successors have been identified, the charter (waqfiyyah) shall specify that the benefits of the waqf shall be distributed to charitable purposes as agreed by the Shariah adviser of the waqf foundation.
- 6.10 The charter (waqfiyyah) shall specify that, upon the death of the founder, no amendments are allowed to be made to the charter (waqfiyyah), beneficiaries and distribution of income/usufruct to the beneficiaries chosen by the founder (waqif).
- 6.11 If a change in the distribution of waqf income shall be required in the future, the proposed alternative distribution rules must be defined in the charter (waqfiyyah) by the founder (waqif). For example, the founder (waqif) can divert the waqf income to another beneficiary when the initial beneficiary identified by the founder (waqif) is already capable of sustaining his financial needs.

- 6.12 In the event where a waqf foundation is dissolved and there remains some waqf properties after its dissolution, the charter (waqfiyyah) shall specify the beneficiary who is entitled to receive the remaining waqf property. If no beneficiary has been identified, the charter (waqfiyyah) shall specify that the remaining waqf properties be distributed to charitable purposes as agreed by the Shariah adviser of the waqf foundation.
- 6.13 A non-charitable LIWF¹ with Malaysian property is required to provide in the charter (waqfiyyah) the condition specified in paragraph 10.6 of the Guidelines.

(A sample waqfiyyah is attached in the Appendix as a guide)

Waqf Property (Mawquf)

- 6.14 The properties endowed into the LIWF shall be Shariah-compliant properties.
- 6.15 The waqf property (mawquf) shall be known and the founder (waqif) shall be the owner of the property and has the right to dispose the property to the waqf foundation at the time of establishing the waqf.
- 6.16 The waqf property shall be in accordance with the Shariah principles on waqf which include:
- 6.16.1 Real estate together with permanent furniture and fittings;
 - 6.16.2 Movable assets, whether such movable assets are part of a real estate or independent;
 - 6.16.3 Money/Cash
The income generated from utilization of the money is to be spent on the waqf beneficiaries, while retaining the principal amount;
 - 6.16.4 Shares and Sukuk
The income earned by the shares or sukuk is to be spent on the waqf beneficiaries;

¹ For the purpose of this Guidelines, non-charitable LIWF refers to LIWF established for family waqf, joint waqf and self-dedicated waqf. Charitable LIWF refers to LIWF established for charitable waqf.

- 6.16.5 Rights that can generate income (for example intellectual property rights);
or
- 6.16.6 Any other properties accepted by Shariah for waqf.
- 6.17 Subsequent to the endowment of the waqf properties, the properties of the waqf foundation at all times shall be managed, developed and invested in a manner that does not contravene Shariah principles and Shariah principles on waqf.
- 6.18 If a certain waqf property becomes non-Shariah compliant after the establishment of the waqf, the trustee (nazir or mutawalli) is required to dispose the non-Shariah compliant property within a period of **not more than three years**.
- 6.19 The property of the LIWF can be non-Malaysian property. For Malaysian property, prior approval of Labuan FSA is required as specified in paragraph 10.0 of the Guidelines.

Beneficiaries (Mawquf 'alaih)

- 6.20 The beneficiaries (mawquf 'alaih) of LIWF shall be recipients who are identified by the founder (waqif) and endorsed by the Shariah adviser of the waqf foundation.

7.0 Governance and Management of LIWF

- 7.1 The waqf foundation shall manage, supervise and administer the waqf properties as well as wisely distribute the income or usufruct of those properties to the identified beneficiaries in accordance with Shariah principles, Shariah principles on waqf and the conditions of the founder (if any).
- 7.2 The waqf foundation shall ensure that the persons involved, directly or indirectly, in its management or operations are those with sufficient level of competency, integrity and credibility.
- 7.3 The waqf foundation shall be governed by a satisfactory code of ethical conduct. The code of ethical conduct shall address the need for the waqf foundation to act in good faith, with prudence and highest standard of care and loyalty, in the best interest of the founder and beneficiaries, maintain independence and objectivity as well as avoid conflict of interests.

- 7.4 The governance and management structure of LIWF shall include a supervisory person who shall act as a protector or guardian for the waqf foundation.
- 7.5 The supervisory person shall be a natural person who has supervisory powers over the council and officers of the waqf foundation to ensure that the objective of the waqf foundation is fulfilled in accordance with the charter and the law.
- 7.6 The supervisory role of the supervisory person shall be in accordance with the provisions of the charter and the terms and conditions that Labuan FSA may prescribe from time to time.
- 7.7 The founder of the waqf foundation may also be the supervisory person or the member of council or officer of the foundation at any one time.
- 7.8 The respective roles and responsibilities of the founder, supervisory person, council member and officer of LIWF shall be clearly defined and understood to ensure accountability, avoid overlaps and ensure efficiency.
- 7.9 The waqf foundation shall have a clearly defined succession procedure.
- 7.10 The waqf foundation, shall appoint an approved auditor for the purpose of auditing the financial records and statements of the waqf foundation. The accounts of the waqf foundation shall be audited at least once a year by the approved auditor.
- 7.11 The secretary of the waqf foundation shall maintain the list of founder(s) and beneficiaries at the registered office of the waqf foundation or at such other place in Labuan deemed fit and shall at all times be open to inspection if required.
- 7.12 The waqf foundation shall ensure compliance with the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

Investment of Waqf Property

- 7.13 The waqf foundation shall ensure that the investment of the waqf properties comply with Shariah principles including Shariah principles on waqf and the conditions of the founder (if any).
- 7.14 The investment strategy shall be suited to the type of waqf, as well as capable of actualizing the benefits intended by the founder. The strategy shall also ensure the perpetuity of the waqf and its benefits to the beneficiaries.

- 7.15 The waqf foundation shall determine the appropriate level of risk tolerance and actively identify, assess, monitor and manage the risks to safeguard the waqf properties and interests of the beneficiaries.
- 7.16 The waqf properties shall not be sold, mortgaged, given away as a gift or inherited. In the event that the substitution (istibdal) of the waqf properties is necessary or beneficial to the waqf, the waqf foundation shall obtain the approval of the Shariah adviser.

Shariah Adviser

- 7.17 The waqf foundation shall appoint a qualified person as a Shariah adviser who shall advise the waqf foundation on the aims, operations and management of the waqf foundation and ensure compliance with Shariah principles including Shariah principles on waqf.
- 7.18 The appointment of the Shariah adviser of the waqf foundation shall be in line with the circular² and directive³ issued by Labuan FSA dated 3 January 2014 and 6 August 2013, respectively.
- 7.19 The Shariah adviser of the waqf foundation shall conduct an internal Shariah compliance review/audit annually for verification that compliance with Shariah principles and Shariah principles on waqf has been satisfied. Any incident of non-compliance shall be addressed and rectified.

8.0 Faraidh Application on LIWF

- 8.1 Upon the demise of the founder (waqif), Faraidh shall not be applicable and relevant on the endowed properties in the LIWF provided that the endowment of the waqf property into the LIWF satisfies the following conditions:
- 8.1.1 The endowment must be done during the founder's lifetime;
- 8.1.2 The endowment must be made immediately and irrevocably;
- 8.1.3 The endowment must be made without any reserve power of the founder;

² Appointment of Internal Shariah Advisory Board or Shariah Adviser under Sections 129, 130 and 131 of Labuan Islamic Financial Services and Securities Act 2010.

³ Directive on Islamic Financial Business in Labuan IBFC.

- 8.1.4 The transfer of the ownership of the property is absolute; and
- 8.1.5 The transfer has been accepted by the LIWF.
- 8.2 The above would still be applicable where the founder manages the waqf property and receives remuneration for such management in the LIWF.
- 8.3 Where the founder is one of the beneficiaries in the LIWF, Faraidh would be applicable and relevant on the portion of the waqf income that the founder is entitled to.

9.0 Additional Requirements for Charitable LIWF

- 9.1 If the endowment of property(ies) is from a corporation, a charitable LIWF is required to submit a copy of the certified resolution from the corporation approving the endowment of the property(ies) to the foundation.
- 9.2 If the endowment of property(ies) is from an individual, a charitable LIWF is required to submit a copy of an undertaking to endow the property(ies) to the foundation.
- 9.3 A charitable LIWF that solicits donation from the public shall comply with the following **additional requirements**:
- 9.3.1 Appoint a council of at least three (3) persons;
- 9.3.2 The founder may be a council member. However, the majority of the council members shall be independent of the founder;
- 9.3.3 The persons involved, directly or indirectly, in the management or operations of the waqf foundation shall be fit and proper in accordance with the *Guidelines on Fit and Proper Person Requirements* issued by Labuan FSA;
- 9.3.4 Provide information memorandum or such other information document for the public which shall include but not limited to the following minimum information:
- a) Name of the foundation;
 - b) Purpose and object of the foundation;

- c) List of its founder, council members, supervisory person, Shariah adviser, officer and secretary, where applicable;
- d) Statement of its establishment under LIFSSA;
- e) Whether it has been accorded the status of an “approved institution or organization” under Section 44(6) of the Income Tax Act 1967 for donations made to the foundation to be tax deductible, where applicable;

9.3.5 Annual public disclosure of information on the management and investment activities of the waqf foundation, the financial performance of the waqf foundation and distribution to intended beneficiaries in accordance with international best practices. The annual public disclosure shall also include a Shariah compliance report by the Shariah adviser of the waqf foundation;

9.3.6 Submit a proposed general operating plan, which include the management of the property in regard to the utilization and distribution of the property, the strategy of the foundation including its investments and other related information; and

9.3.7 Submit annual audited accounts to Labuan FSA within six (6) months after the close of each financial year of the foundation.

9.4 All charitable LIWF are required to comply with the legal requirement(s) of the jurisdiction they intend to operate in.

10.0 LIWF with Malaysian Founder or Malaysian Property

10.1 All non-charitable LIWF that intend to include Malaysian property(ies) must seek prior approval from Labuan FSA. This does not apply to charitable LIWF.

10.2 The qualifying criteria for approval from Labuan FSA referred in paragraph 10.1 shall include but not limited to the following:

10.2.1 Obtain all necessary approvals from the relevant authorities in relation to the endowment of property(ies) to the waqf foundation;

10.2.2 Property(ies) to be endowed shall be unencumbered. For encumbered property(ies), consent should be obtained from the person(s) who encumbers the property(ies); and

10.2.3 Property(ies) to be endowed shall be obtained through lawful means.

- 10.3 All charitable and non-charitable LIWF that involve Malaysian founder or Malaysian property must obtain the necessary approvals from relevant authorities (where applicable).
- 10.4 The Malaysian property(ies) endowed or to be endowed to the LIWF must include consent letters from the relevant authorities (where necessary) to be submitted with application or within 60 days from the registration date of the endowment of the property(ies).
- 10.5 The relevant authority(ies) referred in paragraphs 10.3 and 10.4 may include the respective land office or local authority such as Majlis Agama Islam Negeri-Negeri, Bank Negara Malaysia, Companies Commission of Malaysia and Securities Commission of Malaysia.
- 10.6 Malaysian founders are allowed to endow Malaysian property to a LIWF as permitted by Foreign Exchange Administration (FEA). However, non-charitable LIWF are required to provide in the charter that any subsequent conversion or transfer of the endowed property for investment abroad would need to comply with FEA rules.

11.0 Payment of Fee

11.1 LIWF is required to pay to Labuan FSA the following fees:

11.1.1 One-off payment of registration fee	RM750
11.1.2 Annual fee on or before anniversary date	RM750
11.1.3 Processing fee for application of registration	RM300

12.0 Submission for Application and Enquiries

12.1 The submission of completed application for a LIWF may be forwarded to the address stated below:

Director
Business Management Department
17th Floor, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Federal Territory of Labuan
Malaysia

12.2 Any request for additional information or clarification pertaining to the guidelines may be directed to the following contact details.

Telephone no. : 087 591 200
Facsimile no. : 087 453 422 / 422 300
E-mail : roc@labuanfsa.gov.my

Labuan Financial Services Authority
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