

A GUIDE TO INTERNATIONAL WAQF FOUNDATION

INTRODUCING THE CONCEPT OF WAQF IN WEALTH AND ESTATE MANAGEMENT

Labuan International Business and Financial Centre (Labuan IBFC) is Asia's only midshore jurisdiction with conventional and Islamic wealth management solutions. Capitalising on this strength, the jurisdiction has introduced the concept of "Waqf" by private foundation, with the launch of the Labuan International Waqf Foundation (LIWF).

The concept of Waqf is a key aspect of Islamic wealth management. Historically, Waqf has been used to generate revenue towards supporting a myriad of charitable purposes such as education, welfare and even the building as well as management of public hospitals.

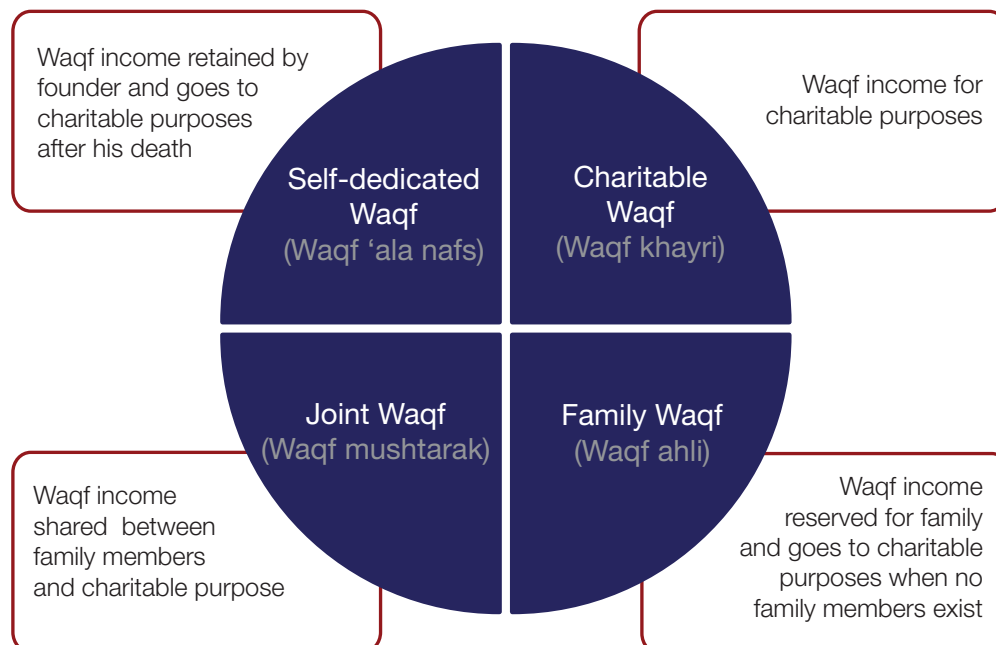
Waqf is a functioning element of the Shariah legal system, allowing ummah from around the world to have the peace of mind that their assets are used for good deeds.

In essence, LIWF is an Islamic private foundation which holds and manages properties for identified beneficiaries based on the Shariah principles on Waqf, while it adopts the legal form of a foundation, provided by the Labuan Foundations Act 2010.

A unique feature of LIWF is its flexibility, allowing it to be utilised as an Islamic wealth management vehicle and at the same time, providing for charitable purposes, which may be extended to promote financial inclusion.

The distinct advantage of establishing a Waqf using a foundation as its legal structure, is that it offers the founder (Waqif) legal certainty, thus allowing for proper control and management of the Waqf in accordance with his wishes.

LIWF can be established for different types of Waqf:



FREQUENTLY ASKED QUESTIONS

WAQF IN GENERAL

1) What is a Waqf and why is it important?

“Waqf” means holding a certain property and preserving it in order to ensure that its benefits continuously flow to a specified group of beneficiaries for religious, charitable or pious purposes as recognised by the Shariah for the pleasure of Allah SWT. The properties, after being declared as Waqf, no longer remain in the ownership of the donor. The beneficiaries of a Waqf can benefit from the proceeds of the dedicated property.

Waqf has tremendous potential to spur the economic growth and development of a nation. Historically, Waqf has been proven as one of the most effective mechanisms to support noble charitable purposes such as education, social welfare and healthcare in countries like Turkey and Egypt. Besides philanthropic considerations, Waqf can also be established for private wealth and estate management.

2) Why would I set up a Labuan International Waqf Foundation (LIWF)?

LIWF gives the founder (Waqif) a structure with legal certainty for the proper control and management of his Waqf in accordance with his wishes, provided it follows the Shariah principles of Waqf. LIWF gives the founder flexibility and exclusive control over how to structure and wisely manage his Waqf foundation, as well as how to distribute the benefits and preserve the assets for a long-term period.

WAQF FOUNDATION IN GENERAL

3) What is LIWF and how is it different from other Islamic structures?

LIWF is an Islamic foundation, in which all its activities must be in compliance with Shariah principles. LIWF has its own unique characteristics to hold Waqf properties (i.e. the properties that are endowed into the foundation by way of Waqf) with the objective of managing the properties for identified beneficiaries based on Shariah principles of Waqf.

4) What are the unique/ distinct advantages of LIWF?

LIWF has a distinct dimension of adhering to its specific purposes in preserving the Waqf property, in that it cannot be sold, mortgaged, given away as a gift or inherited. Only the income or usufruct can be distributed to the beneficiaries.

LIWF provides and honours the conditions of the founder in accordance with the Shariah principles of Waqf. When the beneficiaries are no longer in existence, the benefits of the Waqf shall be distributed to charitable purposes as agreed by the Shariah adviser of the Waqf foundation.

Specifically, LIWF provides for legal certainty as the LIWF is established based on legal guidelines issued by the Labuan Financial Services Authority (Labuan FSA). In addition, Shariah compliance is endorsed by Labuan FSA Shariah Supervisory Council (SSC), comprised of leading Islamic scholars and practitioners.

5) Are non-Malaysians and non-Muslims allowed to set up a LIWF and/ or benefit from it?

Yes, provided that the objectives and activities of the Waqf foundation do not contravene with the Shariah principles of Waqf.

6) Does Labuan IBFC offer private and public LIWF?

Yes.

7) Who are the parties eligible to endow the assets into a LIWF?

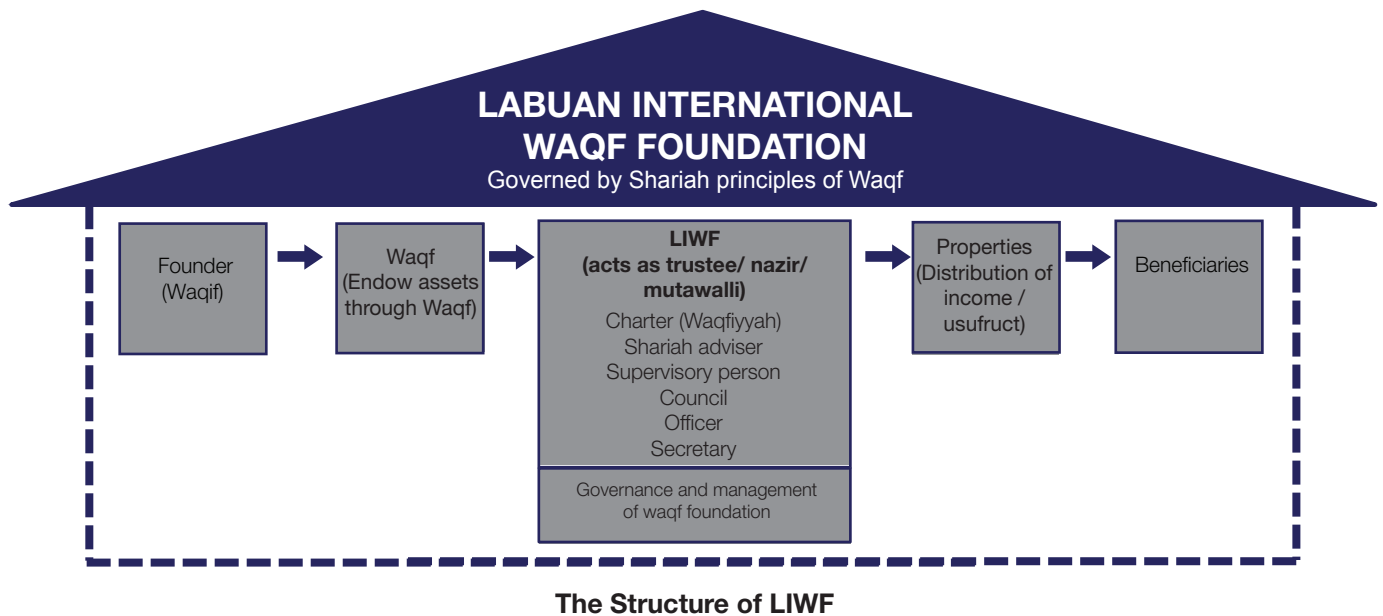
For private LIWF, the founder, who prescribed his/her name in the charter of the LIWF is eligible to endow assets into the Waqf foundation. In the case of public LIWF that solicits donations from the public, the endowment of assets can be done either by the founder or the public.

8) In setting up a LIWF, what would be the differentiating elements, as compared to a conventional Labuan foundation or even a Shariah-compliant foundation?

Unlike a normal Shariah-compliant foundation where the endowment of assets by the founder into the Islamic foundation may be facilitated by way of hibah or hadiah (gift), in the case of LIWF, the endowment of the property must be executed by way of Waqf as defined by Shariah principles. This can be done by indicating the intention of establishing the waqf in the charter (Waqfiyyah). LIWF shall then act as the trustee (nazir or mutawalli) of the Waqf.

The charter or Waqfiyyah of the LIWF shall form the basis to regulate and administer the LIWF in accordance with the Shariah principles of Waqf.

THE STRUCTURE OF LIWF



9) Can a LIWF be dissolved? If yes, under what circumstances? And what are the procedures?

LIWF can be dissolved in accordance with Section 67 of the Labuan Foundations Act 2010 and provisions of the charter as endorsed by the Shariah adviser. 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.

10) What are the allowances to provide for the dispute resolution of a LIWF?

LIWF may opt to be governed by Malaysian law or foreign law. In this regard, the charter (Waqfiyyah) of LIWF shall specify the dispute resolution mechanism and governing law provisions accordingly.

SETTING UP A LIWF

11) How does one set up a LIWF?

LIWF can be established through registration pursuant to Section 107 of the Labuan Islamic Financial Services and Securities Act 2010. The founder shall, before the registration of a LIWF, appoint a registered Labuan trust company to be the secretary of the proposed Waqf foundation.

12) Where can one access the guidelines and requirements for setting up a LIWF?

The guidelines and sample Waqfiyyah on LIWF are available on Labuan IBFC's website at www.libfc.com.

13) Who can help draw up a charter for a LIWF?

A legal counsel and/or Shariah adviser who is well versed in Shariah principles on Waqf would be able to assist.

14) Are the proceeds/ earnings from the endowment/ assets under the LIWF taxable? If yes, what is the taxation rate?

Any income derived from a Malaysian property is subject to tax under Malaysia's Income Tax Act 1967. Non-Malaysian property income shall be subject to tax under the Labuan Business Activity Tax Act 1990 (LBATA). Under LBATA, all non-trading income which includes income derived from investment holding activities are not taxable. Income from trading activities are taxed at 3% on its audited net profits or RM20,000 (upon election) per annum.

15) What is the tax implication on distributions by a LIWF in the hands of the beneficiary?

Distributions by LIWF to its beneficiaries who may be a resident or non-resident are exempted from Malaysian tax. The non-resident beneficiaries of the foundation will need to satisfy their own tax liabilities in their respective jurisdictions of tax residence.

16) Can a LIWF be redomiciled to other jurisdictions?

Yes, pursuant to Section 24 of the Labuan Foundations Act 2010.

17) What are the approvals required to endow the assets into a LIWF?

Pursuant to Section 5(2) of the Labuan Foundations Act 2010, approval from the Labuan FSA is required for an endowment of Malaysian property. In addition, LIWF that involves Malaysian founder or Malaysian property must obtain the necessary approvals from relevant domestic authorities where applicable.

18) Does a LIWF require the appointment of a Shariah Council? If yes, what is the minimum number of council members?

LIWF shall appoint a qualified person as a Shariah adviser who shall advise the Waqf foundation and ensure compliance with Shariah principles, including Shariah principles on Waqf. A LIWF may also appoint a Shariah Council. For LIWF with significant amount of assets or a charitable LIWF soliciting donations from the public, the appointment of a Shariah Council with an appropriate number of members as decided by the founder is highly encouraged.

19) Does the LIWF need to produce audited accounts?

Yes. The accounts of the Waqf foundation shall be audited at least once a year by approved auditors.

20) What are the types of costs incurred for setting up a LIWF?

The costs incurred in setting up a LIWF are:

- i) Statutory fees payable to the Labuan FSA, the yearly registration fee is RM750; and
- ii) Administration fees payable to a Labuan trust company.

21) Can the LIWF charter be amended upon the death of the founder? If yes, what are the processes? Who has the authority to make the changes?

The charter shall specify that, upon the death of the founder, no amendments are allowed to be made to the charter, beneficiaries and distribution of income/usufruct to the beneficiaries as chosen by the founder. This is to ensure that the objectives of the Waqf foundation remain intact as desired by the founder.

If a change in the distribution of Waqf income is required after the registration of the LIWF, rates and procedures of the change must be defined in the charter.



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