

**SAMPLE
WAQFIYYAH**

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LABUAN ISLAMIC FINANCIAL SERVICES AND SECURITIES ACT 2010

THE WAQFIYYAH (CHARTER)

OF

_____ LABUAN INTERNATIONAL WAQF FOUNDATION
(name of the Waqf Foundation)

And let there be [arising] from you a nation inviting to [all that is] good, enjoying what is right and forbidding what is wrong, and those will be the successful. (Qur'an 3:104)

When a person dies all good actions come to an end except three (a) continuous charity, (b) beneficial knowledge, and (c) pious children who pray for the deceased. (Hadith)

In the Name of Allah, the undersigned,
_____, with domicile at
_____, as Waqif (Founder) in
accordance with Labuan Islamic Financial Services and Securities Act 2010, hereby
establishes a Waqf Foundation solely for the pleasure of Allah SWT.

I) NAME.

The name of the Waqf Foundation is _____ LABUAN INTERNATIONAL WAQF FOUNDATION (hereinafter referred to as the "Waqf Foundation").

II) OBJECTIVES

The Waqf Foundation is established with the objectives of

[For example, in a Joint Waqf (Al-Waqf Al-Mushtarak), the objectives could be:

- a) To sustain the financial needs of the family members of the Founder; and
- b) To support the following charitable purposes:
 - 1- To extend assistance to deserving poor, orphan Muslim students and provide scholarships to develop good future Muslim leaders who can help to fulfil the needs of the Muslim Ummah; and
 - 2- To give financial assistance to Islamic institutions and support their noble activities to promote better understanding on Islam, etc.]

To achieve its objectives, the Waqf Foundation shall manage, supervise and administer the waqf properties (mawquf) as well as wisely distribute the income or usufruct of those properties to the identified beneficiaries **in compliance with Shariah principles and Shariah principles on waqf.**

III) WAQF PROPERTY (MAWQUF)

The initial waqf property shall be _____ The Founder or any other person may contribute additional waqf properties of any nature to the Waqf Foundation, at any given time, in accordance with Shariah principles and Shariah principles on waqf.

IV) INVESTMENT OF WAQF PROPERTY

The investment of the waqf properties shall comply with Shariah principles including Shariah principles on waqf and the conditions of the Founder. 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.

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 decision for substitution (istibdal) of the waqf properties shall be vested solely with the Council, and approved by the Founder and Shariah Adviser of the Waqf Foundation.

V) BENEFICIARIES (MAWQUF 'ALAIH)

The beneficiaries of this Waqf Foundation are:

(designated by the Founder)

[For example, the Founder may specify that 50% of the income of the waqf properties shall be given to his spouse and children while the remaining 50% of the income shall be distributed to the beneficiaries of the charitable purposes].

[Note: In cases where the waqf beneficiaries are specifically named, like in family waqf or joint waqf, the waqfiyyah shall specify the successors upon the death of the named beneficiaries. If in the event no successors have been identified, the charter shall specify that the benefits of the waqf shall be distributed to charitable purposes as agreed by the Shariah Adviser of the Waqf Foundation].

VI. GOVERNANCE AND MANAGEMENT

[Each of you is a guardian and each of you is questioned over his subjects. (Hadith)]

- (a) The Waqf Foundation shall act as the Nazir or Mutawalli (trustee) of the waqf and may, in the course of the management of the waqf property, do such things and exercise such powers as are necessary for the proper administration of the waqf property as well as engage in any acts or activities that are ancillary or incidental to the objectives of the Waqf Foundation.

PROVIDED such acts and activities are in accordance with Shariah principles and Shariah principles on waqf.

- (b) The Waqf Foundation has a fiduciary duty to exercise the highest standard of care and loyalty in:
- 1- Preserving, protecting and developing the waqf property, maximising its benefits for the identified beneficiaries and honouring the conditions of the Waqif; and
 - 2- Discharging its responsibilities in accordance with this Waqfiyyah and the provisions of the law.

COUNCIL

- (c) The Waqf Foundation Council (the “Council”) is the governing body of the Waqf Foundation.
- (d) The Council shall take such action as it deems necessary to ensure compliance by the Waqf Foundation and its Officers in fulfilling the fiduciary duty of the Waqf Foundation stipulated in VI(b). The Officers of the Waqf Foundation shall act in accordance with the instructions of the Council.

(e) The Council members may exercise any power conferred on the Council members under the Waqf Foundation provided that the said Council members shall not directly or indirectly benefit from the exercise of such powers. In the event a situation of conflict of interest arises, the said Council member shall abstain from voting or from exercising such powers.

(f) The Council member, with the consent of the Founder, may appoint, remove, suspend and pay personnel, clerks, agent, servants to perform such duties and/or services for the proper administration and management of the Waqf Foundation.

(g) The Council shall consist of at least three (3) natural persons.

(h) The Council members are:

(designated by the Founder)

(i) The Council's tenure of office is not limited to a set period of time, and members of the Council shall hold office until they are replaced by the Founder.

(j) The Founder may appoint additional Council member from time to time as well as appoint new Council member to fill vacancy(s). In the absence of the Founder, for any reason due to illness, legal incapacity or death, the right to appoint new Council members shall vest in the Supervisory Person.

(k) Resolutions of the Council shall be valid if all the members are duly notified of a meeting and the majority is present at such meeting. Resolutions of the Council shall be adopted by simple majority of the members that are present. Resolutions of the Council shall be incorporated into minutes to be signed by all the members present at a meeting. The Council shall meet by notice given by any of its members. As an alternative, resolutions may also be adopted in writing by unanimous consent without the need for a meeting.

OFFICER

(l) The Officers of the Waqf Foundation are:

(designated by the Founder)

- (m) The Founder may appoint additional Officer from time to time as well as appoint new Officer to fill vacancy(s).
- (n) The terms of appointment for an Officer shall be of unlimited period and shall cease upon death, legal incapacity, resignation or expulsion. In the absence of the Founder, for any reason due to illness, legal incapacity or death, the Council member shall have the right to appoint the Officer and decide on the terms of appointment of the Officer subject to the consent of the Supervisory Person.

SUPERVISORY PERSON

- (o) The Supervisory Person of this Waqf Foundation is:

(designated by the Founder)

- (p) The Supervisory Person shall act as a guardian and protector of the Waqf Foundation.
- (q) The Supervisory Person shall have the following rights, duties and obligations:
 - 1- To ensure that the Council carries out its functions and administers the Waqf Foundation in accordance with this Waqfiyyah;
 - 2- To safeguard the Waqf Foundations assets and to ensure that such assets are used for the objectives stated in this Waqfiyyah and the interests of the beneficiaries;
 - 3- To endorse actions taken by the Council pursuant to this Waqfiyyah or its articles; and
 - 4- To demand a rendering of account by the Council.

SHARIAH ADVISER

- (r) 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.
- (s) 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 reported to the Founder and Council, and shall be addressed and rectified.

VII. POWER OF FOUNDER (WAQIF)

The Founder reserve the rights:

- (a) To vary or amend the Waqfiyyah (Charter) and Articles of the Waqf Foundation, either wholly or partly;
- (b) To appoint, remove or replace any Supervisory Person, Council member or beneficiary and to give binding direction to the Council member of the Waqf Foundation;
- (c) To restrict the exercise of any powers or discretions of the Council member by requiring that the powers shall only be exercisable with the written consent of the Founder or any other person specified in the Waqfiyyah; and
- (d) To appoint or remove an investment manager or investment adviser (if any).

In the absence of the Founder, for any reason due to illness, legal incapacity or death, the Supervisory Person shall have the rights of the Founder and shall act on behalf of the Founder but does not have the right to amend this Waqfiyyah and/or to change the beneficiaries and distribution of income/usufruct to the beneficiaries chosen by the Founder. In the event that the Supervisory Person wishes to retire or resign from the Waqf Foundation, the Supervisory Person shall designate another person to be the Supervisory Person of the Waqf Foundation. In the event of legal incapacity or death of the Supervisory Person, the Council members shall appoint an independent person to be the Supervisory Person of the Waqf Foundation.

VIII. CONDITIONS OF FOUNDER (WAQIF)

The conditions of the Founder shall be honoured by the Council and Officers of the Waqf Foundation with regards to the investment, development and maintenance of the waqf properties as well as the distribution of income or usufruct to the desired beneficiaries of the Founder.

IX. ARTICLES

The Council can make any articles to support and achieve the noble objectives of the Waqf Foundation.

The articles may be made by unanimous consent of the existing members of the Council at the time that the articles are proposed, subject to countersignature by the Founder and endorsed by the Shariah Adviser of the Waqf Foundation.

X. REMUNERATION

No member of this Waqf Foundation is entitled to receive any pecuniary profit from the operations of the Waqf Foundation except compensation for services in effecting one or more of its objectives as may be specified by the Council member in the articles.

XI. ANNUAL ACCOUNTS

The accounts of the Waqf Foundation shall be audited at least once a year by an approved Auditor. The audit exercise shall include the detailed examination of the underlying accounting records of the Waqf Foundation. It shall also include all data that the Auditor deem appropriate as well as those which indicate that the financial transactions and investments of the Waqf Foundation carried out during the financial year are recorded adequately and appropriately.

XII. AUDITOR

The Founder, upon creation of the Waqf Foundation, shall appoint an approved Auditor for the purpose of auditing the financial records and statements of the Waqf Foundation. The Auditor shall hold office until the conclusion of the following annual general meeting of the Waqf Foundation at the remuneration to be fixed by the Council member and approved by the Founder.

The term of appointment is limited to one year and subject to re-election upon expiry of tenure and only cease upon death, resignation or expulsion.

The Founder may remove the Auditor by written notice to the Auditor and at the same time or soon thereafter may appoint a new Auditor to succeed him.

XIII. DURATION

This Waqf Foundation is established for an indefinite period and can only be dissolved by the Council, subject to countersignature by the Founder and endorsed by the Shariah Adviser, for the following reasons:

- (a) Achievement of the aims for which it was created or because their fulfilment becomes impossible.
- (b) Its insolvency, cessation of payments, or upon adjudication of bankruptcy.
- (c) Loss or total extinction of the Waqf Foundation's waqf properties.

XIV. DISSOLUTION AND LIQUIDATION

- (a) The Waqf Foundation may be dissolved by the agreement of an absolute majority of the Council members of the Waqf Foundation, subject to countersignature by the Founder and endorsed by the Shariah Adviser. The Council is authorized to appoint one or more liquidators if it is deemed necessary.
- (b) In the event the Waqf Foundation is dissolved, and after payment of all its debts or any obligations, the remaining properties of the Waqf Foundation shall be distributed to charitable purposes as agreed by the Founder, Council and Shariah Adviser of the Waqf Foundation.

XV. DOMICILE

The Waqf Foundation will be domiciled in the Federal Territory of Labuan, Malaysia. By agreement of the Council, countersigned by the Founder, the domicile of the Waqf Foundation can be transferred to another country or jurisdiction.

XVI. DISPUTE RESOLUTION AND GOVERNING LAW

This waqfiyyah and/or the establishment of this waqf shall be governed by the laws of _____ (for example Malaysia or any other laws of any jurisdiction that the parties of the Waqf Foundation may agree).

Any disputes, claims or proceedings between any relevant parties relating to any provisions of this waqfiyyah and/or in relation to the establishment of this waqf, such parties shall first endeavour to settle the dispute amicably.

In the event that the parties fail to resolve the matters amicably via discussion or negotiation, they may then submit the dispute to any mediation or arbitration centre in any jurisdiction as the parties may agree.

XVII. CHANGE OF JURISDICTION

The Waqf Foundation, as well as its properties can be transferred and be made subject to the laws and jurisdiction of another country, with the consent of the Founder and members of the Council.

XVIII. AMENDMENTS

Amendments to this Waqfiyyah shall only be made by the Founder. Upon the demise of the Founder, no amendments shall be made to this Waqfiyyah.

XIX. SEAL OF THE WAQF FOUNDATION

The Waqf Foundation may, if the Founder and Council should deem it expedient, adopt its own foundation seal exclusively for any lawful purpose of the Waqf Foundation.

XX. SECRETARY

The Secretary of the Waqf Foundation shall be _____ (a company registered as a Labuan trust company under Part V of the Labuan Financial Services and Securities Act 2010 [act 704]).

The registered address of the Waqf Foundation shall be _____ (address of the Secretary to the Waqf Foundation).

IN WITNESS WHEREOF, the Founder, Supervisory Person and the Council have hereunto set their hands for the purpose of forming a Waqf Foundation under the Labuan Islamic Financial Services and Securities Act 2010 on this _____ day of _____, 20____.

SIGNED by the _____
FOUNDER **(Founder)**

Signed by the _____
Supervisory Person (Supervisory Person)
and each member _____
of the Council (Member)

(Member)

(Member)

Before me

NOTARY PUBLIC