

Wealth Planning: The importance of Shariah compliance. What can Bermuda offer as an offshore jurisdiction?

Introduction

The Muslim population worldwide now stands at almost 2 billion people. The growing population of the Muslims underscores the urgency for financial institutions, legal practitioners, and policymakers to be well-versed in Shariah law and its applicability in wealth planning globally. Shariah' compliance has become an important question for many Muslims around the world. In the area of inheritance and trusts there is a growing demand for 'Trusts' to be Shariah complaint. What do we mean by Shariah compliance? How does this sit within offshore jurisdictions such as Bermuda?

Understanding Islamic jurisprudence

Muslims in the Middle-East are depicted in the western world as a religiously homogenous region, with all those living in it belonging to one group or one sect. A 2006 *New York Times* article found that "most American officials [who were] interviewed [didn't] have a clue" about the difference between *Sunnis* and *Shia* in the Middle-East. These findings reflect a general lack of knowledge and understanding of Middle Eastern religious makeup. It is therefore important to have an understanding of the religious background and how Islamic jurisprudence developed.

Islam, started in the seventh century in the city of Mecca, located in the Arabian Peninsula (currently in the Kingdom of Saudi Arabia). Due to difficulties with the tribes in Mecca, Prophet Muhammad (Peace Be Upon Him) (pbuh) migrated to Medina with his followers and established the first Islamic State, he wrote the first written constitution and gave law and order to the people of Medina whether Muslim or non-Muslims. Upon his death, Prophet Muhammad (pbuh) had no surviving sons to succeed him, and a major disagreement emerged in deciding who should be the next leader of the Muslim population.

After the death of Prophet Muhammad (pbuh), two groups emerged with different views as how they should appoint the next Caliph (Leader). The first group, comprising the majority of Muslims, claimed that the *caliph*—the deputy, or successor of Prophet Muhammad (pbuh)—should be chosen from the group of companions of Prophet Muhammad (pbuh). In this sense, the *Caliph* should be chosen based on his competency and knowledge of Prophet Muhammad's (pbuh) thoughts.

The second group, comprising the minority of Muslims, disagreed with the first group, arguing that blood and family kin should be the decisive factor in the selection of the *Caliph*. This second group (later known as the *Shia*) supported Ali's (Prophet Muhammad's cousin and son-in-law who married his daughter Fatima) candidacy relying on a statement made by Prophet Muhammad (pbuh) about Ali, saying "whoever has me as a master has him as a master." This minority of Muslims declared Ali as the rightful successor to Prophet Muhammad (pbuh), and gave him the title of "*Imam*", meaning the "leader of the community."

The laws of Inheritance and trusts concepts in different jurisdictions

Before considering the laws of inheritance and trusts in different Muslim jurisdictions, it is important to note the fine distinction between the *Sunni* and *Shiah* inheritance and trust laws.

i. Inheritance in accordance with the Sunni Law

Three groups of heirs shall be divided according to the law of Sunni Islam: 'Sharers, Residuaries' and 'Distant Kindred'¹. Beneficiaries are entitled to a certain portion of the deceased's property, while the 'Residuaries' shall take over his remaining assets once they have been allocated their shares.

The husband, mother, and father each receive one-sixth of the assets in equal shares. The woman is entitled to one-fourth of the inheritance if there are no children; if there are, she receives one-eighth. Depending on the number, daughters receive either half or two thirds of the estate. In addition, full sisters, consanguine sisters, uterine brothers, uterine sisters, and the son's daughter or daughters also receive either one-half or two-thirds shares, depending on the number of heirs in these categories. Additionally, one-sixth of the inheritance goes to each of the paternal grandparents.

ii. Inheritance in accordance with the Shia Law

Sabab (special clause) and Nasab (blood relation), which include both legal heirs and heirs by marriage, are the two primary categories of heir recognised by Shia Islamic law².

The woman receives an eighth of the descendant's possessions, while the husband receives a quarter. Each parent is entitled to one-sixth of the inheritance, including the mother. Depending on how many there are, daughters receive either a half or a third of the estate. According to the number of heirs in

¹ Shaik Reyaz, 'Muslim Law of Inheritance'

² Gurneet Singh Budhiraja, "INHERITANCE UNDER SHIA LAW: PRINCIPLES AND ITS ANALYSIS," Indian Journal of Integrated Research in Law, vol. II, issue I, ISSN 2583-0538, pp. 2-3

these categories, complete sisters, consanguine sisters, uterine brothers, and uterine sisters also inherit one-half or two-thirds shares.

The concept of Trusts in Shariah Law

Within the realm of legal systems, much emphasis has been placed on the concepts of trust and waqf. Despite their beginnings in distinct historical and cultural contexts, these legal entities have core aims such as asset protection and charitable support. Exploring the complexities of these principles within the framework of Shariah law can provide significant insights into their impact on financial and investment activity within Islamic world and Muslims globally.

i. Trust and Waqf: Origins and Evolution

The concept of trust first originated in the English legal system and was initially intended to protect crusaders' possessions while they were away. Waqf, on the other hand, originated in the Islamic world and served as a charitable contribution method to the Muslim community³. Although both trust and waqf share a common objective of asset protection, they emerged independently, reflecting the diverse legal principles and cultural values of their respective origins.

ii. Comprehending Trust: Separation and Accountability

In English law, a trust is a legal entity formed when a settlor distributes assets to a trustee with the intention of benefiting certain beneficiaries or achieving a particular objective. The separation of trust assets from the trustee's personal possessions, the formal registration of trust assets under the trustee's ownership, and the trustee's fiduciary obligation to handle the assets in accordance with the trust deed and relevant legal regulations are all important concepts within a trust. Trusts provide as a mechanism for asset protection, ensuring the protection of beneficiaries' interests.

iii. Unveiling the essence of Waqf: The Fusion of Charity and Divine Ownership

The concept of waqf in Islamic jurisprudence refers to the act of preserving assets with the intention of diverting its revenues or benefits towards charity or communal goals. These endowments are

³ Abdullah, M., "Waqf and trust: the nature, structures and socio-economic impacts" (2019) Journal of Islamic Accounting and Business Research, 10 (4).

divided into two types: 'Waqf-Khairi', which supports religious or public causes, and 'Waqf-Ahli', which supports a family's wellbeing⁴. Waqf is distinguished by its irreversible character and the notion that the assets belong only to God⁵. This spiritual ownership sets restrictions on the disposal and investment of waqf properties, making them difficult to use for financial or investment purposes.

iv. Embracing Financial Ethics: A Look into Shariah-Compliant Trusts

Shariah-compliant trusts encompasses three distinct approaches, each of which is aimed to comply to Islamic standards in its own specific way.

The first approach, known as "strict adherence," emphasises complete allegiance to Shariah law's standards and values. These trusts strictly adhere to the principles drawn from the 'Quran' and Hadiths (saying of Prophet Muhammad), avoiding any non-compliant investments or actions. This sort of trust assures a deeply principled approach to investments by emphasising transparency, ethical considerations, and preventing industries that conflict with Islamic principles⁶.

In contrast, "lesser adherence" approach allows for some flexibility while adhering to the core principles of Shariah law. It seeks to develop a balance between adhering to Shariah rules and allowing for modern financial activities. These trusts, while still following to core standards, offer a greater range of investment options unlike strict adherence trusts. Nevertheless, regular monitoring and ongoing evaluations takes place to ensure the entirety of the assets stays Shariah-compliant⁷.

Lastly, "departure trusts" adopt a proactive approach, pushing into unexplored territory while adhering to Islamic principles. They may interpret specific Shariah guidelines more freely, allowing for greater diversity and investment opportunities. These trusts aim a balanced blend of Shariah compliance and acceptance of modern financial practices, allowing investors to access growing markets without compromising Shariah compliance.

⁴ Azmy, Hussein M., 'Trust and Waqf: Comparative Overview through the Lenses of English and Islamic Laws' (2020).

⁵ Ibid.

⁶ Appleby, 'Wealth Planning for Sharia Law' (2018)

<<https://www.applebyglobal.com/publications/wealth-planning-for-sharia-law/>> accessed 01 August 2023.

⁷ Ibid.

Ensuring Shariah compliance: The vital significance of trust planning for wealthy families

As the Muslim population grows and wealth accumulates, it is of significance that families will wish to consider Shariah-compliant trust planning to protect their assets and uphold their religious values. These families may ensure that the distribution of their money coincides with Islamic ideals by establishing Shariah-compliant trusts, which include investment constraints and adherence to inheritance laws.⁸

There is a greater need for families to protect and secure their assets in the most ethical and shariah compliant way. Mohammed Al-Amoudi, a Saudi Arabian-Ethiopian billionaire who is the founder of a mining and oil company, and Azim Premji, an Indian business tycoon, are noteworthy examples of individuals who prioritise Shariah compliance in their business practices and wealth management. These individuals have actively incorporated Islamic principles into their charitable initiatives, demonstrating the rising acknowledgment and significance of linking wealth management methods with religious beliefs. These individuals have taken a proactive approach, demonstrating the effectiveness of Shariah-compliant trust planning in conserving wealth while maintaining ethical and spiritual integrity.

Inheritance and Trust laws in Pakistan

The Succession Act of 1925 and the Muslim Family Law Act of 1961 form the basis for inheritance law in Pakistan. Inheritance that complies with Shariah goes above and beyond the requirements of the laws that set up the framework for dispersing inherited property and assets. In order to ensure that wealth distribution is in accordance with Islamic principles, it has taken account of the teachings of religion.

The Succession Act states that only once all debt, such as 'Haq Mehr' or mortgages and other financial liabilities have been settled does the distribution of assets become possible for a deceased person. In addition, assets are distributed only to one third of the whole amount by means of a will.

⁸ DR Muhammad Yusuf Saleem, 'Succession Planning of Family Businesses from an Islamic Perspective' (Labuan (IBFC) International Business and Financial Centre, Malaysia)

Shariah-compliant inheritance offers a distinctive strategy that satisfies both legal and Islamic standards by putting religious concerns into inheritance legislation. This guarantees a more balanced and mindful distribution of wealth, fostering a stronger bond between people and their faith while safeguarding the financial security of their families.

i. Immovable and Mobile Property Management

The disposition of a person's immovable and movable property after death is determined by their domicile at the time of death. If an individual dies in Pakistan with movable property and there is no indication of another domicile, the property is subject to Pakistani law. Similarly, if a person dies overseas with movable property and there is no evidence of permanent residency in another country, the property is managed in accordance with Pakistani law (referenced from PLD 2015 Baluchistan 132).

ii. Safeguarding Women's Rights to Secure Their Shares

Section 498A of the Pakistan Penal Code imposes severe penalties on anyone who coerces a woman into giving up her legitimate share of succession in order to protect women's inheritance rights. Such offenders risk receiving a substantial fine in addition to a sentence of five to ten years in jail.

iii. Procedure

An Inheritance Certificate (Virasatnama) is required to legally transfer the deceased's assets to the legitimate heirs. According to Section 3 of the Sindh Letter of Administration and Succession Certificates Act 2021, the National Database and Registration Authority (NADRA) is responsible for navigating the application process for this certificate together with the Letter of Administration.

It is crucial to comprehend the nuances of inheritance laws according to Sunni and Shia schools of thought in Pakistan since it paves the way for a just and equitable distribution of property among legitimate successors. The junction of trust law and Shariah compliance is an intriguing place where moral and legal concepts converge.

Inheritance and Trust laws in Qatar

Qatar's inheritance law is primarily based on Islamic principles, specifically following the Sharia law. For Muslims, inheritance is determined by specific shares prescribed in Islamic law. The prescribed shares generally differ based on the relationship of the heir to the deceased. Crucially, the distribution of the estate follows a predetermined system, with fixed shares allocated to certain categories of heirs.

With the booming economy of Qatar, many non-Muslims reside in Qatar. With this in mind, there is a common misconception that Shariah law will apply to every deceased's assets in Qatar. This is incorrect. Articles 23 and 24 of the Qatari Civil Code Law 22 of 2004, provide that for non-Muslims, their home country's laws may apply to their inheritance if they have not specified otherwise in their will⁹. This is an essential aspect for expatriates residing in Qatar. Interestingly, this is also applicable to Muslims who are non-Qatari nationals. Qatari law will apply only if the deceased is Qatari national, or if an estate exists in Qatar which is left without any beneficiaries or heirs.

Additionally, individuals, both Muslims and non-Muslims, have the option to draft a will that adheres to their personal preferences. This allows them to deviate from the default inheritance distribution outlined by Sharia law.

Bermuda – Offshore Trusts

A Bermuda Trust offers individuals a tax free, flexible trust structure. A Bermuda Trust is governed by the following laws:

- a) The Trust Act 1989
- b) The Trustee Act of 1975 (amended in 1999, 2004 and 2014)
- c) Perpetuities Act 2009 (amended in 2015)
- d) The Trust Amendment Act – 2014

Bermuda trust provide for:

⁹ Hani Al Naddaf, 'Qatar: Estate Issues For Foreigners In Qatar' (2010) < <https://www.mondaq.com/inheritance-tax/117614/estate-issues-for-foreigners-in-qatar>> accessed 02 August 2023.

- a) Asset protection from future personal liabilities –
- b) Providing for spouses and dependents.
- c) Minimizing income tax, estate tax, inheritance tax and capital gains tax
- d) Preserving family wealth and family business continuity
- e) Ownership of assets
- f) Efficient distribution of assets upon the settlor's death; and
- g) Establishing employee benefit and pension plans.

Some of the benefits of a Bermuda Trust are:

- a) Complete Foreign Participants : The settlor, trustee, protector, and beneficiaries can all be foreign.
- b) Tax Free : Bermuda imposes no tax on their trusts.
- c) Flexibility: Several different types of trusts can be formed including purpose trusts; discretionary trusts and fixed interest trust.
- h) Asset Protection - Trust assets are owned by the trustee preventing future creditors and settlor and beneficiary from having any claims on them.
- i) Estate Planning - Bermuda trusts are perpetual allowing endless family estate planning benefits.
- d) Fast formation – Trust can be formed in one day.
- e) Privacy: trusts do not register with the government so no public records exists.

Conclusion

In conclusion, ensuring compliance of trusts with Shariah law has become a critical consideration, particularly in the context of the booming economies of many Muslim states. The increasing global interconnectedness and the surge of Islamic finance has opened up new opportunities for wealth management firms to cater the needs of Muslim clients worldwide. The adoption of Shariah-compliant trusts aligns well with the broader trend of sustainable and ethical investing. Shariah-compliant trusts promote social responsibility and contribute to positive societal change.

