

LABUAN OFFSHORE FINANCIAL SERVICES AUTHORITY

Our Reference :

30 January 2008

The Chairman
The Association of Labuan Trust Companies
Association of Offshore Banks Labuan
Distribution List

Dear Sirs,

EXPOSURE DRAFT : GUIDELINES ON SHARIAH COMPLIANT OFFSHORE TRUST IN LABUAN INTERNATIONAL BUSINESS AND FINANCIAL CENTRE (IBFC)

This Exposure Draft is issued to provide guidance on the requirements to be observed by all offshore trusts created under the Labuan Offshore Trusts Act 1966 (LOTA) and managed under the Shariah principles.

The Exposure Draft is to ensure that Shariah compliant offshore trusts created in Labuan IBFC are based on necessary requirements under LOTA and Shariah principles. It also provides some clarification for Shariah compliant trust as currently there is no legislation on Islamic financial business. In this regard, we would appreciate any feedback with respect to the following documents latest by **Friday, 15 February 2008** :

1. Exposure Draft : Guidelines on Shariah Compliant Offshore Trust in Labuan IBFC; and
2. Appendix II - Survey Questionnaires.

In particular, we would like to draw your attention to paragraphs 10 and 11 of the Guidelines. Your feedback on this would be appreciated.

In the meantime, please do not hesitate to liaise with the our Islamic Financial Service Unit at 087-591200 should you need further clarification.

Kindly be advised accordingly.

Yours sincerely,



Danial Mah Abdullah
Deputy Director General
3/34/7



**GUIDELINES ON SHARIAH COMPLIANT OFFSHORE TRUST
IN LABUAN INTERNATIONAL BUSINESS AND FINANCIAL CENTRE (IBFC)**

I Preamble

1. These Guidelines are issued pursuant to Section 4(5) of the Labuan Offshore Financial Services Authority Act 1996 and set out additional requirements to be observed by all offshore trusts created and recognised under Section 7 (1) of Labuan Offshore Trusts Act 1966 (LOTA) that are created and managed under Shariah principles. The Guidelines aim to ensure that Shariah compliant offshore trusts created in Labuan IBFC are created and managed based on prudent practices and necessary requirements under the Shariah principles at all times.

II Definition

2. The term “Shariah” refers to divine guidance and code of conduct derived from the Holy Qur’an and the Sunnah (Prophetic tradition) of Prophet Muhammad (peace be upon him) and embodies all aspects of the Islamic faith, including beliefs and practices that formed the sources of Islamic jurisprudence.

3. Unless the context otherwise requires, all other terms expressed in these Guidelines have the meaning assigned thereto by the LOTA. Should there be any inconsistency in the provision(s) stipulated herein this Guidelines with any provisions in the Labuan Offshore Trusts Act 1996 (the Act), the provision of the Act shall prevail.

III What is shariah compliant offshore trust ?

4. Offshore trust has the same meaning assigned to it by subsection 7(1) of LOTA. The formation of an offshore trust is generally for someone or a settlor to give specific property to a third party to be held for the benefit of others, including charities. The creation of a Shariah compliant trust is to provide an alternative for a settlor to exercise his rights in creating a trust in accordance with the Shariah principles.

5. In Labuan IBFC, the creation of a Shariah compliant trust can be initiated under LOTA and the creation of the trust shall be as per Section 8 of LOTA. The trust may include several types of offshore trusts recognised under LOTA including but not limited to discretionary trusts, fixed interest trusts, charitable trusts, life insurance trusts, trading trusts and testamentary trusts or any other forms of offshore trusts set out under provisions of LOTA that are in compliance with Shariah principles.

IV How to structure Shariah Compliant Offshore Trust in Labuan IOFC ?

6. The types of Shariah compliant offshore trusts may be structured or created as per Section 8 of LOTA to comply with the specific family requirements and principles of Shariah or Islamic law, particularly the Islamic law of inheritance or *faraidh*. The structures may be based on the Islamic concepts of Hibah, Sadaqah, Waqf, Wasiyyah or any other forms that are in compliance with Shariah principles as advised by the appointed Shariah Adviser of the trustee of an offshore trust.

V Who qualifies ?

7. The settlor or waqif can be any person as defined under Part I subsection 2(1) of LOTA. The settlor and beneficiary need not be a Muslim. The beneficiaries can be an heir, non-heir or a corporate entity or organization legally established or registered in any recognized jurisdiction. In addition to the provision in LOTA, the followings are to be satisfied in forming a Shariah compliant offshore trust in Labuan IBFC :

- a. The settlor (waqif) and all the beneficiaries must be non-resident of Malaysia;
- b. The trust property must not include any immovable property situated in Malaysia; and
- c. At least one of the trustees must be a trust company registered under the Labuan Trust Companies Act 1990 (LTCA).

8. Application shall be made by the settlor to LOFSA and subject to provision under Section 58 of the LOTA, the Minister may exempt the above requirements set out under Section 7 of LOTA.

VI How to establish a Shariah compliant offshore trust in Labuan ?

9. Depending on the types, purpose and the Shariah concepts of the trusts, an offshore trust may be established as follows :

- a. An individual settlor who is a non-resident of Malaysia appointing a trust company in Labuan IOFC that is registered under the LTCA as the trustee to manage the trust property as per terms of LOTA; or
- b. A special purpose vehicle (SPV) may be established to conduct activities and manage the trust property of a Shariah compliant trust. The SPV can be formed as follows :

- i. As an offshore trust registered under the LOTA; or
- ii. As an offshore company incorporated under Offshore Companies Act 1990 (OCA); or
- iii. As an offshore limited partnership under the Labuan Offshore Limited Partnership Act 1997 (LOLPA).

10. The shariah compliant offshore trust may continue to exist in perpetuity if the duration is stated in the terms of the trust. The trust shall also continue to exist for duration in accordance with the provisions under the LOTA or terminated in accordance to the terms of the trust or the provisions under the LOTA.

11. The settlor may reserve for himself certain discretionary powers provided that this does not affect the validity of the trust.

VII Shariah Compliance

12. Notwithstanding to the requirements under any guidelines issued by LOFSA to the trust company relating to the above, where a Shariah compliant offshore trust registers the trust pursuant to Section 12 of LOTA, the trust company is to ensure that the administration and distribution of the trust property under the offshore trust are in accordance within the ambit of the Shariah principles.

13. The above requirement would include but not limited to the appointment of a Shariah advisor to formulate and decide detailed regulations pertaining to the administration of the trust. This would include requirements to ensure that the investment of the trust property is channeled to Shariah approved business or activities.

VIII Registration of Shariah Compliant Trusts

14. Registration of Shariah compliant offshore trusts under LOTA is not mandatory although it is advised for it to be registered. If it is registered, the trustee is to fulfill the following additional requirements:

- a. To specify the types of assets/properties managed under the trust;
- b. To specify the exact location of the immovable properties;
- c. To specify the net asset value or market value of the assets or properties managed under the trust; and
- d. To incorporate a provision in the terms of a Shariah compliant offshore trust stating that the properties or assets held in trust shall be managed and administered in accordance with the Shariah principles as advised by a Shariah Advisor. The terms shall also provide the duties of the Trustee to ensure that the investment portfolio of the assets is in accordance with Shariah principles.

IX Governing Laws

15. Except as otherwise expressly provided under these Guidelines, the creation and recognition of Shariah compliant trusts and for matters connected therewith or incidental thereto is subject to the same governing laws under the LOTA.

X Implementation Date

16. The Guidelines shall take effect on 1 April 2008 and would remain to be effective and applicable unless otherwise amended or revoke.

APPENDIX II

Survey Questionnaires on Shariah Compliant Offshore Trust

Questions :

1. What are the most preferred types of Shariah compliant trusts in Labuan IOFC?

(Kindly list according to the highest number of Shariah compliant trusts created)

- e.g. i. *Waqf Trust*
 ii. *Hibah Trust*
 iii. *Wasiyyah Trust*
 iv. *Sadaqah Trust*
 v. *etc.,*

2. What are the types of assets typically managed under the Shariah compliant trusts ?

(examples : cash, immovable properties, other assets)

3. Origin of the trusts?

(registered in which jurisdictions)

4. Are the provisions of existing legislations (Labuan Offshore Trust Act 1996) are sufficient to cater for different types of Shariah compliant trusts?

(Kindly specify which provisions and how the provisions facilitate or hinder the formation or creation of different types of Shariah compliant trusts)

	Provisions under LOTA	Remarks
	Section xxx of LOTA	- facilitate the formation of hibah in terms of.....

5. Should the registration of Shariah compliant trusts be made mandatory ?

6. If yes to (5) above :

a. What are the required information to be submitted to LOFSA in addition to the lists of information to be submitted under Section 12 (3) of LOTA ?

b. What is the frequency of submission ?

7. Any other suggestions to further promote Shariah compliant trusts out of Labuan IBFC ?

Note :

1. *Kindly provide attachment for responses with further information in the form of soft copies or hard copies to LOFSA for compilation; and*
2. *LOFSA will use the information gathered from the responses in this Survey exercise to facilitate its understanding of the conduct of business structures and practices amongst Labuan offshore players, and to guide the LOFSA in its development of the market through issuance of guidelines to govern and facilitate the conduct of business of Labuan offshore players.*