

TRUST SERVICES FOR ISLAMIC CLIENTS

Introduction

Moore Stephens Jersey is able to provide Trust Services, which we believe will meet the requirements of Islamic clients. This involves the use of a Trust Deed that has been drawn up by a leading legal firm in Jersey who have a wealth of experience in this region.

Features of the Trust Deed

Not all Islamic clients insist on prescriptive wording in a conventional Jersey Trust Deed (particularly where the Trust merely represents the ownership of a single share or property). Some Shari'a Trust Deeds with "soft screening" require little more than the removal of references to interest bearing investments. Other clients do, however, require that the principles of the Islamic Shari'a be covered as a requirement of the Trust (in particular in respect of powers of investment).

In actual fact, most of the Trust Deeds in relation to Islamic products fall into the former category. They tend not to have any particularly prescriptive clauses relating to the provisions of Shari'a law. However it is recommended that the Trustee have continuing wide general and additional powers of investment so that the Trustee does not find itself in breach of trust for an inadvertent oversight. The changes made to a conventional type of Trust Deeds for particular Islamic products are often limited to removing particular reference in the investments sections to what are clearly non-Islamic rewards. These include removing references to interest and preventing the Trustee from investing in coupon bearing bonds and debentures.

The most frequent Shari'a screening process in such products is thus largely a self-regulating one on the part of the Trustee. Sharia'a law tends to be only obliquely referred to in the Trust Deed itself. It is however important that the Trustee must, in all circumstances, continue to be aware of its obligation to "so far as is reasonable preserve the value of the Trust property and so far as is reasonable enhance the value of the Trust property" in accordance with Article 17 of the Trust (Jersey) Law, 1984, as amended (unless this provision of the law has been specifically excluded in the Trust Deed). In this context, it can actually be useful to the Trustee (particularly where it may be investing in interest free bonds) to have specific statements about Shari'a priorities in the Trust Deed. These statements would partly mitigate what was "reasonable" in the preservation and enhancement of the Trust property.

The following clause has been used in the context of the powers of investment of the Trustee:

"The Trustees shall aim not to deal in any financing arrangement which is objectionable under the Islamic code of practice, and the Trustees shall conduct their operations in relation to the Trust in accordance with the principles of the Islamic Shari'a. To this end, the Trustees shall not only restrict their financial operations in relation to the Trust to transactions which are Islamically acceptable, but will aim not to acquire or invest in companies or acquire real property where the company or tenants (as the case may be) engage in business practices which would be deemed inappropriate under the principles of the Islamic Shari'a. This includes companies whose primary dealings are in armaments, companies dealing in pork products, any enterprise associated with alcohol or gambling, and any enterprise of an immoral or anti-Islamic nature".

Another alternative is for the Trust Deed to state:

"Without prejudice to the generality of the foregoing, the Trustees shall ensure that their investments are screened in accordance with the principles of the Islamic Shari'a".

This clause usually means, however, appointing a sympathetic Shari'a Supervisory Board or panel, which would have a defined review role (as set out below from another precedent). It is even possible to have an Islamic Scholar as the Protector of the Trust. (This, however, may involve the Islamic scholar in too much of the day-to-day running of the Trust and may be too expensive).

Suggested Shari'a Supervisory Board clause.

"To ensure compliance with Islamic Shari'a principles, all of the Trustee's investment opportunities / alternatives are pre-screened and approved by the Shari'a Supervisory Board. This Board will be made up of []. The Shari'a Supervisory Board is learned in the Islamic Shari'a and has both the capability and expertise necessary to evaluate categories of investments for conformity with Shari'a principles.

In particular, the Shari'a Supervisory Board shall give general advice to the Trustee regarding compliance with Islamic Shari'a; confirm that the investment activities of the Trustee as Trustee of the Trust comply with the principles and rules of Islamic Shari'a; determine a suitable criterion for the selection of companies in whose securities the Trustees may invest; advise on the use of instruments and techniques for efficient portfolio management and their compliance with the principles of Islamic Shari'a; and where appropriate advise on the separation of non Shari'a compliant profits of the Company and specify the charitable activities to which they will be directed".

Alternatively, if the Trustee does not object to very specific restrictions on its investments being written into the Trust Deed, the following (we believe) is a (Islamically) well respected definition of the general Shari'a parameters, which the Trustees would usually be required to comply with. This type of guideline list has been used for a number of investment projects, particularly where the investments are in equities.

Shari'a Guidelines for Investment

The Trustees will not invest in any company that is not within the Shari'a parameters as decided by Shari'a Supervisory Board. It must particularly avoid investing in any of the following:

1. Companies that produce, sell, distil or distribute alcoholic beverages and products.
2. Companies that produce, sell, distribute or slaughter pork and pork related products.
3. Companies engaged in gambling, casinos, lotteries and related games.
4. Companies whose principal activity is in the entertainment businesses (i.e. companies whose principal activity is in films, videos, theatres, cinemas etc).
5. Companies engaged in pornography and obscenities in any form.
6. Companies producing weapons.
7. Companies that produce tobacco and tobacco related products.
8. Companies engaged in products related to aborted human foetuses.
9. Companies engaged in human cloning.
10. Companies with bad and harmful environmental records (where there is publicly available evidence).
11. Companies with total interest bearing debt of more than 33% of total assets.
12. Conventional (non Islamic) banks, financial institutions and insurance companies.
13. Derivatives, options, futures, short selling and related investments

Distributions of Income and Capital

Many Trusts, particularly Discretionary Trusts, which are the most widely used type of Trust that have developed into a most powerful tax-planning tool, deliberately provide that "distributions shall be made at such times and in such amounts as the trustee determines in the trustee's sole discretion" or "distributions shall be made in the trustee's discretion for the support, maintenance, education and needs of the beneficiaries."

If the client wishes the Trust to be fully Shari'a compliant, such wide powers of distribution will most certainly be inappropriate. In these circumstances, the client would need to consider, and communicate to the trustees, their expectations, hopes and desires for the beneficiaries and how the assets in the trust will or should impact upon those expectations, and also consider the extent that such expectations are in accordance with Shari'a principles relating to inheritance. In this way, the trust distribution provisions within the Trust Deed can be tailored to meet those requirements.

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This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact Kathy Gillen:

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