

'Shari'ah compliant' trusts

'Shari'ah compliant' has become a popular term, especially in reference to financial products and services such as trusts. However, the term must be used with caution.

In Guernsey we recognise that no one standard trust can be regarded as being 'Shari'ah compliant' for all purposes. There is no uniform Shari'ah code but at least eight different schools of thought. Client requirements will depend on their nationality, branch of Islam and also what they want to achieve. We have service providers who are *experienced* and *skilled* at working with clients and Shari'ah advisers to establish bespoke structures that meet these needs.

Essentially, in Guernsey, we recognise the need and have the expertise – working in conjunction with an appropriate Shari'ah adviser – to craft tailor-made trusts that reflect the specific requirements of a client.

Of course, 'Shari'ah compliant' trusts, as with any trust, must be structured to meet the expectations of the settlor while also according with the laws of the jurisdiction which will govern it. This is usually, although not necessarily, the law of where the trustees are located. Settlers should therefore take great care in deciding upon a jurisdiction for establishing a trust.

Guernsey offers the advantages that it has: an established trust regime; mature yet modern legislation that is flexible enough to accommodate the application of principles from the Shari'ah; professional advisers familiar with the relevant laws and principles; and regulated trustees.

Certain jurisdictions new to the provision of trust services are eager to establish themselves as locations in which to set up fiduciary structures. Some of these are Islamic nations. It is understood that settlers may prefer to set-up trusts closer to where they are based, meaning that courts are on hand to deal with disputes and the language in which the trust is established will be familiar.

However, most trusts are written in English and for historic reasons the vast bulk of trusts jurisprudence, statutes, reported case law and academic articles are to be found in English.

Therefore there will be challenges for practitioners who are asked to prepare a trust in a language other than English and for a court which is asked to interpret trust legislation and documentation in another language. There may be difficulties for courts in 'new' trust jurisdictions when called on to apply this judicial learning in circumstances where the corresponding words or phrases may have a different meaning or emphasis.

A popular trust structure in Guernsey, when dealing with family wealth held in companies, is that of a Private Trust Company (PTC). Directors of such a company may include the settlor and members of his family. The directors control the company, which as trustee, is the legal owner of the trust assets.

The Island is constantly striving to ensure that local practitioners can offer clients the very widest range of products and services and that is why we are now working on introducing the concept of Foundations.

Why Guernsey?

- Service providers experienced and skilled at working with Shari'ah advisers to provide tailored trusts that meet client requirements
- Tried and tested trust regime
- Mature yet modern legislation
- New Trust Law, including Purpose Trusts and perpetual trusts
- Private Trust Companies (PTCs)
- Family Offices
- Foundations coming on-stream
- Regulated trustees
- English speaking
- In the same time zone as the UK, which is convenient for doing business
- Located close and with links to London, other UK cities and European markets