

## Ethical Structured Company

All countries understand what a company is. Not all have a place in their legal systems for trusts, foundations and waqfs, and this leaves them exposed to challenge.

The Ethical Structured Company is a special kind of company formed in the Isle of Man. Known locally as a **hybrid**, it resembles very closely trusts, foundations and waqfs, but unlike them is recognised worldwide.

### What is a Foundation?

Unlike a trust, which has no legal personality of its own (a trust exists in the relationship between the settlor, trustees and beneficiaries) a foundation is a legal entity, with the capacity, like a corporation, to govern itself. Unlike a corporation, it has no shareholders or other form of participation, but, in common with a trust, has beneficiaries.

### What is a Waqf?

A waqf (Arabic: **وقف**) is an inalienable charitable endowment under Islamic law, which typically involves the waqif (donor) donating assets for Muslim religious or charitable purposes with no intention of reclaiming the assets.

### A Hybrid company is uniquely limited by both shares and by guarantee.

- The Shareholders' rights and the powers of the Directors combined can be likened to the powers of the administrator (nazir, mutawalli, kayyim) of a waqf.
- The Guarantee Members may be entitled to receive distributions from the Company in a similar way to beneficiaries of a waqf.

### What is the difference between a shareholder and a guarantee member?

- Shareholders are required to acquire shares and their liability is limited to the value of the shares.
- Guarantee members undertake to pay a certain amount (say £100) on an insolvent liquidation or winding up of the Company.

### How is Shariah compliance assured?

- The Articles of Association of the hybrid include provision for a separate supervisory board which, though its members are not Directors and are not entitled to manage or control the company in any sense, provide the Company's 'conscience' as policy advisers and policy compliance auditors to the Board of Directors.
- This is the Sharia Supervisory Board which is well known in institutions which offer Islamic financial services.
- The Shariah Supervisory Board follows the well-established and highly respected Guiding Principles on Shariah Governance Systems issued by the Islamic Financial Services Board in December 2009.

## How are the Guarantee Members appointed and can they be removed?

- A separate, tailor made Members Agreement between the Shareholders, Guarantee Members and the Company is put in place. This remains a private document, not available to the public.
- The Members Agreement can be drafted to suit your requirements but usually includes:
  - Definition of the business of the Company with any restrictions required;
  - Identifying Company decisions which would require Guarantee Member consent;
  - Guidelines on how Company's affairs will be run, including procedures in the event of disagreement between the Shareholders and the Guarantee Members;
  - Procedures for the appointment and removal of Guarantee Members;
  - Details of the future Guarantee Members in the event of the death or incapacity of a Guarantee Member;
- A strategy to ensure that future Shareholders and Guarantee Members agree to the terms of the Members' Agreement.

MannBenham will guide you through the initial legal processes around establishment, whilst Boston Limited will provide ongoing corporate services and corporate governance. Should you wish to know more detail around the Shariah Establishment please contact us.



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