

## Frequently Asked Questions (FAQ) on Islamic Estate Planning

### 1- *Hibah*

No	Question	Answer
1.	What is <i>Hibah</i> ?	<i>Hibah</i> refers to a transfer of ownership of an asset from a donor ( <i>wahib</i> ) to a recipient ( <i>mawhub lahu</i> ) without any consideration. This is usually a gift from one to another with love and affection.
2.	What are the Shariah principles of <i>Hibah</i> ?	<i>Hibah</i> shall consist of the following components: i. Donor; ii. Recipient; iii. <i>Hibah</i> asset; iv. Offer ( <i>ijab</i> ) of <i>Hibah</i> ; v. Acceptance ( <i>qabul</i> ); and vi. Taking possession by recipient ( <i>qabd</i> ).
3.	How much can I give for <i>Hibah</i> ?	No specific allocation for <i>Hibah</i> . You may offer any amount, or any asset amounting to any amount, to any other person(s) during your lifetime.
4.	Can I give <i>Hibah</i> to non-Muslims?	Yes.
5.	Can a non-Muslim use <i>Hibah</i> to distribute his/her wealth?	No, <i>Hibah</i> can be contractually created by a Muslim only because <i>Hibah</i> is governed by Shariah Law, which governs Muslims' matters.
6.	Who is recommended to use <i>Hibah</i> to distribute his/her wealth?	All Muslims can use <i>Hibah</i> to distribute their wealth. It is highly recommended for the following person(s) to use <i>Hibah</i> : i. Person with no children and no legal heirs; ii. Parents have daughter(s) only without son(s); iii. Parents with disabled children; iv. Persons who intend to transfer the property to their spouse; v. Persons who intend to distribute an equal portion of wealth to respective legal heirs during lifetime.  Note: this list is non-exhaustive. Please consult a Maybank Islamic Financial Planner (or please state something equivalent) for your needs or concerns.
7.	Who cannot create <i>Hibah</i> ?	A <i>Hibah</i> contract can only be created by Muslims with legal capacity and sound mind; and must not be created by a minor or a Muslim who is mental incapacitated.

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8.	Is verbal <i>Hibah</i> acceptable?	Generally, a <i>Hibah</i> contract is acceptable verbally, in writing and through actions. However, it is highly recommended to document this in writing to ensure clarity to the contracting parties as well as peace of mind that the document constitutes the donor's wish and is executable in favour of the intended recipient(s).
9.	Can I <i>Hibah</i> my house which is still under the Bank's financing?	You may <i>Hibah</i> your house that is still under finance subject to the Bank's consent and fulfilment of the conditions imposed. This type of <i>Hibah</i> is referred as <i>Hibah</i> on an encumbered house/property.
10.	What type of asset(s) are allowed to be transferred as <i>Hibah</i> ?	All assets that meet the following criteria are qualified for <i>Hibah</i> distribution: <ul style="list-style-type: none"> <li>i. recognized by Shariah, valuable, identifiable and deliverable including tangible or intangible, moveable or immovable.</li> <li>ii. in existence and owned by the donor.</li> </ul>
11.	When the <i>Hibah</i> will take effect?	The <i>Hibah</i> takes effect immediately upon the completion of <i>Hibah</i> contract which include <i>Qabd</i> (taking possession of the <i>Hibah</i> asset by recipient) or fulfilment of the condition(s) in the <i>Hibah</i> arrangement.
12.	Is the donor allowed to revoke <i>Hibah</i> during his/her lifetime?	The donor is allowed to revoke <i>Hibah</i> in the following conditions: <ul style="list-style-type: none"> <li>i. Prior to the recipient(s) taking possession of the <i>Hibah</i> asset; or</li> <li>ii. Prior to fulfillment of the conditions in the <i>Hibah</i> arrangement.</li> </ul> <p>In other words, the <i>Hibah</i> is revocable prior to the completion of <i>Hibah</i> contract.</p> <p>Notwithstanding, <i>Hibah</i> granted by parents/grandparents to children/grandchildren is revocable anytime except in the following circumstances:</p> <ul style="list-style-type: none"> <li>1- ownership of <i>Hibah</i> asset has been transferred to a third party;</li> <li>2- the <i>Hibah</i> asset is encumbered or subject to claims by a third parties.</li> </ul>
13.	Can the donor place condition(s) to the recipient(s) prior to the acceptance of <i>Hibah</i> ?	Yes, <i>Hibah</i> with condition is allowed so long as the condition(s) is executable and in line with Shariah. However, any conditions that limit the period of a <i>Hibah</i> shall be void and must not affect the validity of the <i>Hibah</i> .

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14.	Is the donor allowed to make a condition that the <i>Hibah</i> will be effected upon his demise?	The donor is allowed to make the <i>Hibah</i> conditional upon his demise. However, this type of <i>Hibah</i> will take the ruling of <i>Wasiyah</i> .
15.	Should a person obtain permission from his/her legal heirs to create <i>Hibah</i> ?	No permission is required from legal heirs to create <i>Hibah</i> . Any person of legal age, sound mind and legally capable is allowed to give <i>Hibah</i> of his/her own asset at his/her discretion.

## Frequently Asked Questions (FAQ) on Islamic Estate Planning

### 2- *Wasiyah*

No	Question	Answer
1.	What is <i>Wasiyah</i> ?	<i>Wasiyah</i> is a declaration of a person (Testator) made during his/her lifetime with respect to his/her property or benefit thereof, to be carried out for the purpose of charity or for any purpose permissible by Islamic law, after death.
2.	Who can create the <i>Wasiyah</i> ?	Anyone who meets the following Shariah requirements is allowed to create <i>Wasiyah</i> : <ul style="list-style-type: none"> <li>i- a Muslim who has attained 18 years of age;</li> <li>ii- sound mind and mental health;</li> <li>iii- voluntarily and without any coercion; and</li> <li>iv- has capacity to administer his/her wealth.</li> </ul>
3.	Can I give <i>Wasiyah</i> to my legal heirs ( <i>Faraidh</i> recipients)?	The instrument of <i>Wasiyah</i> is meant for charitable purposes for non-legal heirs (non-recipients of <i>Faraidh</i> ). Hence, legal heirs shall not be receiving <i>Wasiyah</i> except with the consent of all legal heirs, which shall be obtained upon the demise of Testator.  Note: please refer below on the concept of <i>Faraidh</i> .
4.	How much property can be bequeathed in a <i>Wasiyah</i> ?	The maximum threshold of <i>Wasiyah</i> is one-third (1/3) of the Testator's net estate. However, the <i>Wasiyah</i> can be more than the maximum threshold, subject to the consent of the Testator's legal heirs.
5.	In what forms can a <i>Wasiyah</i> be made?	In any form recognized in the eyes of Shariah Law be it verbal, in writing and through actions deemed legally acceptable. However, it is advisable to have a written <i>Wasiyah</i> to avoid legal complications.
6.	Can a <i>Wasiyah</i> be revoked?	Yes. The <i>Wasiyah</i> could be revoked by the Testator during his/her lifetime.
7.	Can a <i>Wasiyah</i> be challenged after my death?	Any <i>Wasiyah</i> may be subject to legal scrutiny in the Shariah court if it does not adhere to <i>Wasiyah</i> principles. This could be due to <i>Wasiyah</i> portions exceeds 1/3 of the total inheritance assets, or the <i>Wasiyah</i> assets being channeled to <i>Faraidh</i> heir(s) without consent from all <i>Faraidh</i> heirs.

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### 3- *Faraidh*

No	Question	Answer
1.	What is <i>Faraidh</i> ?	<i>Faraidh</i> refers to the determination of the rights and the heirs' portion of a deceased's inheritance based on the provisions of Shariah Laws.
2.	Can the deceased's assets be distributed equally without following <i>Faraidh</i> law?	Yes, the assets can be distributed equally subject to the mutual consent of the eligible legal heirs, after the disclosure of the rightful portions according to <i>Faraidh</i> law. This consent can only be validly obtained upon the demise of the Testator.
3.	Can investments (e.g. company shares), unit trust and jewelry constitute estate of the deceased?	Each and every Shariah compliant asset under the deceased's name at the time of death shall be regarded as the deceased's estate until proven otherwise. Having said that, investments including but not limited to company shares, unit trust and jewelry shall form an integral part of a deceased's estate.

## Frequently Asked Questions (FAQ) on Islamic Estate Planning

### 4- *Waqf*

No	Question	Answer
1.	What is <i>Waqf</i> ?	<p><i>Waqf</i> refers to the perpetual dedication of any property from which its benefit may be used for any charitable purpose, whether as:</p> <ol style="list-style-type: none"> <li>i. general <i>Waqf</i> (any <i>Waqf</i> that is created for a general charitable purpose according to Islamic law); or</li> <li>ii. special <i>Waqf</i> (a <i>Waqf</i> that is created for a specified charitable purpose according to Islamic law); or</li> <li>iii. <i>Waqf ahli</i> refers to a <i>Waqf</i> determined by the <i>waqif</i> (a person create <i>Waqf</i>) for his family members for charitable purposes.</li> </ol>
2.	What are the advantages of <i>Waqf</i> ?	<p>Consistent with <i>Waqf</i> characteristics which are meant to be perpetual, <i>Waqf</i> assets are preserved as a social, economic and educational tools to support the development of <i>ummah</i>. Given its communitarian nature, <i>Waqf</i> is often used to fund social projects such as building the educational institution, hospital or any charitable purposes.</p>
3.	What are the conditions that allow a person to create <i>Waqf</i> ?	<p>The person must be an independent, mature and of sound mind. People who are categorized as insane or bankrupt are not allowed to endow property.</p> <p>The person also must create the <i>Waqf</i> voluntarily. The <i>Waqf</i> of a person who is forced is not valid because the voluntary condition is one of the conditions of <i>taklif</i> (obligation).</p>
4.	What are the Shariah requirements for <i>Waqf</i> asset?	<p>There are four conditions for a <i>Waqf</i> asset which are</p> <ol style="list-style-type: none"> <li>i- benefits can be derived from the <i>Waqf</i> asset,</li> <li>ii- the <i>Waqf</i> asset is valuable,</li> <li>iii- the <i>Waqf</i> asset must be completely owned by the founder, and</li> <li>iv- the <i>Waqf</i> asset does not violate any Shariah principles.</li> </ol>
5.	Can I create a <i>Waqf</i> with cash?	<p>Yes, cash <i>Waqf</i> means <i>Waqf</i> using cash collected in a trust fund under the management of <i>Mutawalli</i> (authority body) who is entrusted to manage this <i>Waqf</i> fund. Recently, cash <i>Waqf</i> is developed with two (2) different approaches;</p> <ol style="list-style-type: none"> <li>i. the cash will be converted into physical assets; with the cash remaining as the <i>Waqf</i> assets, not the physical assets; or</li> <li>ii. the cash is deemed as <i>Waqf</i> asset will be preserved and managed to generate dividend for charitable purposes.</li> </ol>

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6.	Can I create <i>Waqf</i> with the intention to give rewards ( <i>pahala</i> ) to a deceased person?	Yes.

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### 5- *Sadaqah*

No	Question	Answer
1.	What is <i>Sadaqah</i> ?	<i>Sadaqah</i> is an act of giving something without seeking something in return and with the intention of pleasing Allah.
2.	How is <i>Sadaqah</i> different to Zakat?	<i>Sadaqah</i> is voluntary charity without any obligation and with no specific time; while Zakat is an obligation for those who are financially stable to give charity to the less fortunate.
3.	Can I give <i>Sadaqah</i> with the intention to give rewards ( <i>pahala</i> ) to a deceased person?	Yes.
4.	What is the most virtuous <i>Sadaqah</i> according to Quran and Sunnah?	It must be done for the sake of Allah from legitimate sources of wealth and free from any <i>syubhah</i> (uncertain sources).
5.	What kind of <i>Sadaqah</i> brings the greatest rewards?	Allah will grant reward to all genuine <i>Sadaqah</i> regardless of the amount. The most preferred <i>Sadaqah</i> in the eyes of Allah is the one that is given during hardship and the best from the person's assets.
6.	Can I give <i>Sadaqah</i> from non-halal income?	No, the non-halal portion from the income cannot be source of <i>Sadaqah</i> based on a hadith " <i>Allah is pure and accepts only that which is pure</i> ". Therefore, the non-halal portion shall be purified to <i>baitulmal</i> under States Religious Council.