

JULY. 2018, EDITION 1

# PACIFIC TRUSTEES TRUST NEWSLETTER

TRUST COMPANY TRUSTED BY EVERYONE, EVERYWHERE

## OPENING STATEMENT

*DEAR VALUED CUSTOMERS & ASSOCIATES OF  
PACIFIC TRUSTEES.*

Christmas to many is a day of meaning and traditions - it marks the start of hope, belief and trust.

Christmas is also a special day where families and friends gather to share warmth, joy and laughter.

As we approach the end of the year 2019, we at Pacific Trustees would like to wish everyone a "Blesses Merry Christmas and Happy New Year" especially to fellow Christian friends and partners who are celebrating this very joyous occasion.

Pursuant to this, we are extremely honoured and excited to share with you, our 4th Edition Newsletter



## WHAT'S INSIDE THIS ISSUE:

*soon i will add on same  
like edition 4*

# DIGITISATION OF FINANCIAL TRANSACTIONS FOR MALAYSIA

BY : PACIFIC TRUSTEES BERHAD

Under the Malaysia Financial Sector Blueprint 2011 – 2020, Malaysia is targeting to increase the number of electronic payments per capita from 44 in the year 2010 to 200 by the year 2020, which is comparable to the e-payment transactions per capita of the more developed countries.

According to the study in 2016, cashless transaction in Malaysia is still in early stage compared to Singapore which registered a 61% cashless transaction in year 2016. The huge gap has to do with efforts by the banking and payment industry introducing the electronic payments to the population affecting changes to the most common payment instruments such as credit, charge and debit cards for biggest impact.

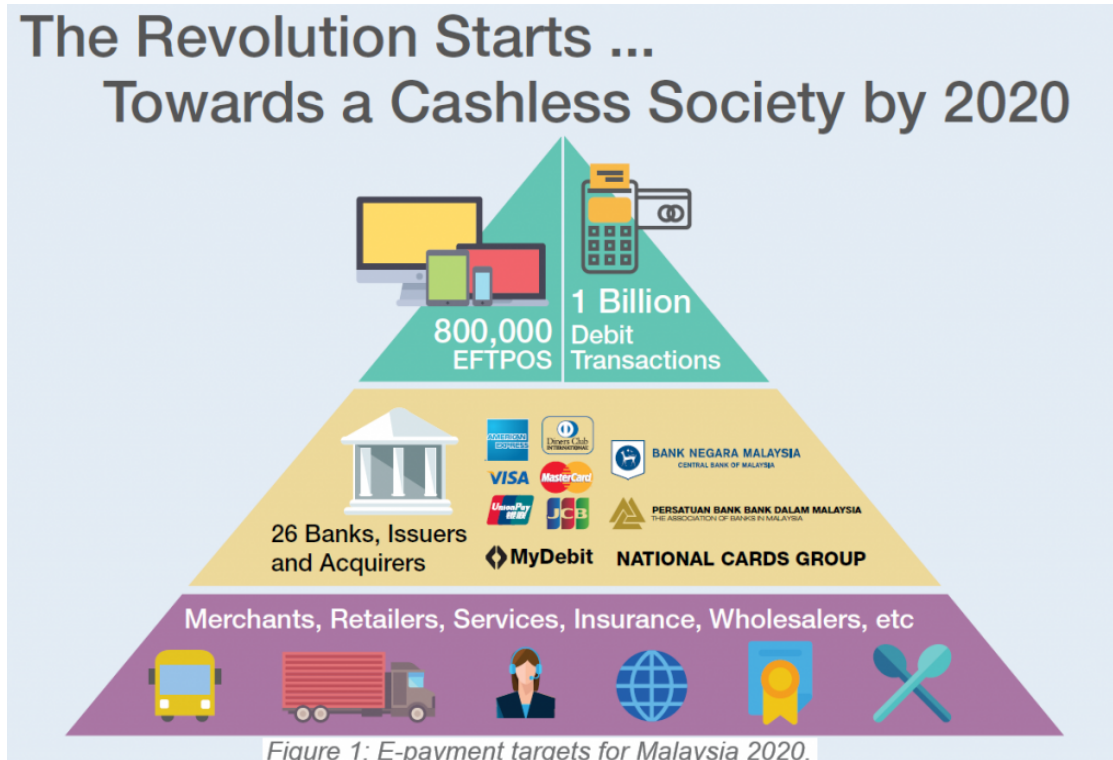


Figure 1: E-payment targets for Malaysia 2020.

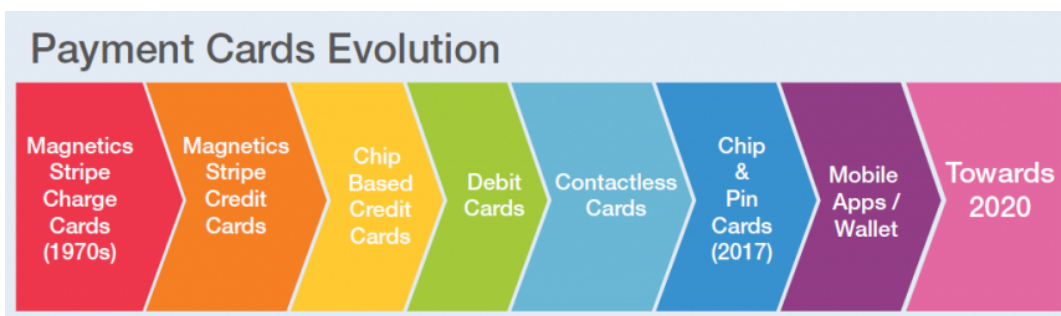


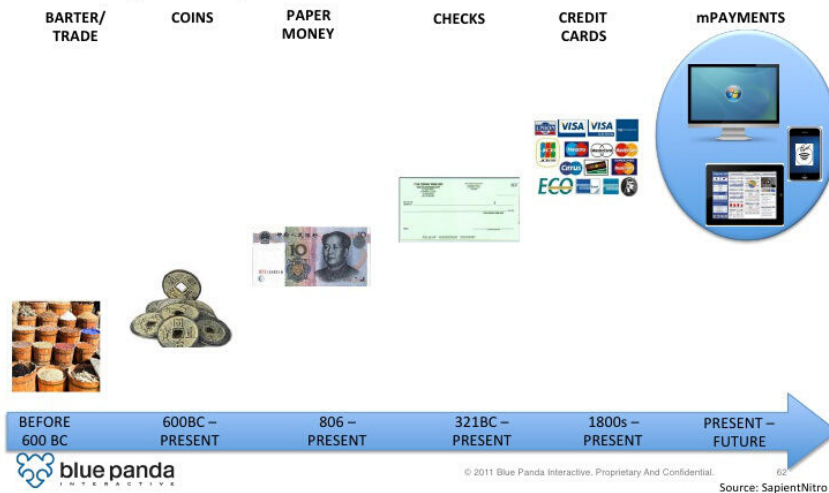
Figure 2 : Payment instruments Towards 2020  
Source : Perry Ong, National Card Group

By turning Malaysia into a cashless and cardless society, Bank Negara Malaysia (“BNM”) governor Tan Sri Muhammad Ibrahim had said the online banking instant transfer fee of 50 sen will be waived for up to RM5,000 per transaction, effective from July 1, 2018. On the other hand, beginning Jan 2, 2021, the cheque processing fee would be doubled to RM1 from 50 sen as a sign of higher processing cost.

Besides, there is an increasing number of digital players launching their e-payment platforms, the new mode of payment has received good response by the local retail ecosystem and banking industry. Various partnership among operators such as the deal with China’s leading financial technology company, Ant Financial Services Group is also an importance milestone to ensure the development in digital payment.

## History of Payments From Barter to Frictionless Finance

There has been more transformation in the payments space in the past 5 years than the prior 2,500 years.



Digital payment, or e-wallet, is essentially a form of electronic payment that has the capacity to expedite the traditional payment process through the transaction of e-money.

According to BNM's definition "Electronic Money (E-Money) is a payment instrument that contains monetary value that is paid in advance by the user to the E-Money issuer. The user of E-Money can make payments for purchase of goods and services to merchants who accept the E-Money as payment. In a simplify explanation, the cash and coins but in an electronic or virtual form which it exists in the form of a card or digital form in the Internet.

For example, Touch'N Go card is an example of "E-Money". Each card has a stored value, which refer to the amount of money kept in the card, for example RM10. Every time you drive or taking public transport services around Klang Valley, it deducts money from the card.

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E-Wallet is a short form for electronic wallet. An E-Wallet usually refers to a mobile application that can be installed on your smartphone to track your payment instruments. Payment instruments could include E-Money but may also include credit cards or debit cards. An E-Wallet usually provides more features for the benefit of the user. Although commonly people refer them as mobile wallets or digital wallets, they often mean the same thing.

E-Money is a licensed payment instrument under the care of Bank Negara Malaysia. The service providers that provide this are called E-Money Issuers. They are responsible to provide E-Money facilities either via the form of a card (e.g. Touch'N Go) or App (e.g. vcash). According to BNM, e-money is a payment instrument containing monetary value that is paid in advance by the user to the e-money issuer and can be issued in different forms – such as card-based and network-based – which is accessible via the Internet or other devices. At present, the central bank has approved five banks and 26 non-bank operators as e-money issuers. E-Money Issuers have to comply with BNM's rules and regulations to ensure safety and confidence in the usage of E-Money. Unlike E-Money, there is no specific list by BNM for E-Wallet in Malaysia. This means that most service providers claiming to provide an E-Wallet are piggy-backing on a licensed payment instrument such as credit cards or E-Money.

### Can anyone provide E-Money?



As each provider has various ways of introducing its e-wallet with ancillary products to attract users, the payment methods all carry a common concept which involves users scanning a quick response (QR) code provided at the payment counter via the provider's mobile application.

## Governance mechanism for E-Money?

E-Money Issuers are required to comply with the Guideline on Electronic Money (E-Money) issued by BNM in 2008 ("Guideline"). The Guideline sets out the broad principles and minimum standards to be observed by electronic money issuers in their operations. Breach of the guideline can result in BNM revoking its approval to the issuer for its electronic money business. Within the Guideline, E-Money Issuers can be classified as Small E-Money Scheme or Large E-Money Scheme. E-Money Issuers, who is issuing Small E-Money Scheme (i) with the purse limit not exceeding RM200; and (ii) outstanding E-Money Liabilities of less than RM1 million.

Under the Guideline, an E-Money Issuer of a large E-Money Scheme should deposit the funds collected in exchange of the E-Money issued in a trust account with a licensed institution in accordance with the Trustee Act 1949 in a timely manner. We Pacific Trustees Berhad will be able to act as the Trustee on behalf of the E-Money Issuers for the E-Money arrangement as we are a qualified and duly registered trust company as per section 4 of the Trust Companies Act 1949, incorporated under the Companies Act 1965 (which was repealed by the Companies Act 2016).

E-Money Issuers, who is issuing Large E-Money Scheme (i) with the purse limit exceeding RM200 with the maximum purse limit for large scheme is capped at RM1,500 or any amount as approved by BNM (purse limit means the maximum monetary value that can be stored in an E-Money instrument); and (ii) outstanding E-Money Liabilities for 6 consecutive months amounting to RM1 million or more.

In summary, 80% of the transactions in the country are currently still by cash, while 20% are done via online banking and credit cards. The e-wallet is going to replace this 80% portion. It covers consumers from a very broad spectrum, as it can be from corporate consumers, down to hawkers in any neighbourhood area. The moment e-wallets can accept payment from a wide spectrum of merchants, we will no longer need cash.





# REVOCABLE AND IRREVOCABLE TRUSTS - HOW TO CHOOSE BETWEEN THEM

BY : PACIFIC TRUSTEES BERHAD

In establishing a trust, one will inevitably decide whether it should be a revocable trust or an irrevocable one. The primary difference between the two is simple enough.

A revocable trust allows the person making the trust (settlor) to terminate or make changes to the terms of the trust deed if he wishes to do so even after the he signs it. This is done by including a clause within the trust deed which states that the settlor reserves his right to revoke the trust.

In contrast, an irrevocable trust does not afford the settlor the same flexibility. Once the trust deed is executed, it is set in stone. Hence, although the settlor relinquishes his legal ownership of the relevant assets in both instances to his trustee, in the case of a revocable trust, he has the option of regaining legal ownership of the assets. Not so if the settlor established an irrevocable trust.

This article will address two aspects concerning revocable and irrevocable trusts, namely the degree of creditor protection each affords and how the assets held in them will be treated if the settlor passes away.

## **1. Asset protection against creditors**

## **2. Avoidance of the lengthy processes of the law**



# 1. ASSET PROTECTION AGAINST CREDITORS

As a general rule, where a creditor obtains a judgment against a debtor for monies owed, the debtor's personal assets (i.e. assets where he has legal ownership) would be at risk of falling in the hands of the creditor to settle the judgment debt.

As highlighted earlier, a person is no longer the legal owner of his assets after he transfers them into a trust. Does this then mean that in a scenario where he becomes a judgment debtor, the assets in his trust are out of reach of his judgment creditors?

## Irrevocable Trust

*How assets within an irrevocable trust will be treated depends on the following 3 potential scenarios:*

### Scenario 1:

The settlor becomes bankrupt within 2 years from the date he transferred his assets to the trustee

In this scenario, the transfer of assets into the trust shall be absolutely void.

### Scenario 2:

The settlor becomes bankrupt between 2 to 5 years from the date he transferred his assets to the trustee

In this scenario, the transfer of assets into the trust shall also be void unless the following can be proven:

- the settlor was at the time of making the transfer able to pay all his debts without the aid of the property comprised in the transfer;
- the interest of the settlor in such property had passed to the trustee of such transfer on the execution thereof.

If the creditors do not resort to bankruptcy proceedings, the assets within the debtor's trust, whether it is revocable or irrevocable, are safe. Simply put, for non-bankruptcy proceedings, creditors will only have access to assets owned by their debtors.

However, if the creditor commences bankruptcy proceedings, whether the creditor has access to the assets within the trust depends on the following:

- whether the trust is revocable or irrevocable;
- and the time period between the settlor's transfer of assets into the trust fund and when he becomes a bankrupt



### Scenario 3:

The settlor becomes bankrupt after 5 years from the date he transferred his assets to the trustee

In this scenario, the transfer of assets into the trust is valid. This is where the assets in the trust becomes creditor-proof. As true protection from creditors only takes effect after the 5-year mark, it is advisable for settlors to establish an irrevocable trust when they are steady financially.

Notwithstanding the above, the question remains: Why should a settlor establish an irrevocable trust when he can establish a revocable one instead which affords him the flexibility to revoke or amend the trust?

## Revocable Trusts

A convenient way to understand revocable trusts is this:

If a settlor establishes one, two things are involved: The trust itself and the right to revoke or amend the trust.

If a settlor of a revocable trust is made a bankrupt after 5 years had lapsed from the date of the transfer of assets, the assets within the trust is secure in it – similar to an irrevocable trust.

The crucial difference lies in the right of the settlor to revoke or amend the trust.

Section 55 of the Insolvency Act 1967 (previously known as the Bankruptcy Act 1967) states that where a bankrupt's property consists of "property transferable in the books of any company, office or person", the Director General of Insolvency may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.



"Property transferable in the books of any company, office or person" arguably includes the property that a settlor has transferred to his trustee that the trustee deems to be potentially subject to future transfer (i.e. the scenario of a revocable trust). Hence, where a bankrupt's property includes his property held by a trustee in a revocable trust, the DGI may step in his shoes and exercise that bankrupt's right to revoke or amend the trust (i.e. right to transfer the property).

If the DGI does in fact exercise the right to transfer the property within a revocable trust, that property may be used to settle the settlor's debts to his creditors.

For this reason, revocable trusts may not be creditor-proof. It is then up to the settlor to decide whether this inferior degree of asset protection is worth the flexibility offered by a revocable trust.

## 2. AVOIDANCE OF THE LENGTHY PROCESSES OF THE LAW

A common consideration in estate planning is how one's family members will be financially provided for pending the extraction of the documents required to administer the estate, be it the grant of probate (where there is a will) or the letter of administration (where there is no will). As either process can take years depending on circumstances, it is prudent to plan ahead and establish a trust to sustain the needs of one's loved ones in the meantime.

Despite the differences between revocable and irrevocable trusts highlighted above, the assets placed in either will not be subjected to the lengthy processes of the law. Instead, the settlor's loved ones may immediately have access to the assets upon his death in accordance to the trust deed.



### Conclusion

With the comparison between irrevocable and revocable trusts in mind, careful consideration is necessary in deciding which of the two to elect when preparing a trust deed. While retaining ownership and control through a revocable trust may be more appealing than the inflexibility of an irrevocable trust, it may still be prudent depending on your circumstances and exposure to creditors.

**[1] Section 52, Insolvency Act 1967**

**[2] Section 4, Bankruptcy (Amendment) Act 2017**

**[3] In the case of *Jaya Letchumi a/p KK Kuttan Iwn Pengarah Negeri Jabatan Insolvensi Malaysia (cawangan Negeri Sembilan) (No 2) [2015] 10 MLJ 545*, the High Court held that pursuant to Section 55 of the Bankruptcy Act 1967 (since then renamed as the Insolvency Act 1967), the DGI may direct any third parties in possession of a bankrupt's property to surrender the assets to the DGI.**





# HOW DO REAL ESTATE INVESTMENT TRUST (REIT) BENEFIT INVESTORS, SPONSORS AND OTHER PARTIES?

BY; PACIFIC TRUSTEES SINGAPORE

The current financial markets in Asia are typically awash with a plethora of diverse investment products that all seek the attention of market players and market makers. In South East Asia alone, the aggregated size of investments in 2018 for the Malaysia and Singapore REIT sector is in the region of RM40.7 Billion and SGD76.8 Billion respectively; this is not counting the mega Chinese market in this proximate region of intense business and financial growth.

Deliberate government initiatives to innovate and implement effective regulatory measures and controls have clearly helped market industries and leaders to find their footing in an increasingly crowded financial landscape.

Therefore, finding a structured vehicle/product that can meet the market requirements and, perhaps even more importantly, its expectations can often be akin to the proverbial saying of 'looking for a needle in a haystack'.

Generally, there are 3 distinct market lifespan stages for any given market instrument; the first being the sunset products, the staple (evergreen) products and the sunrise products. While it is beyond the scope of this article to dwell into all of them, for this series of articles, let's begin by examining a the star product like Real Estate Investment Trust, which is typically and more commonly goes under the acronym of "REITs".



**Pacific Trustees**  
(Singapore) Ltd.  
The Trust Company

So what exactly then are REITs? Simply put, they are investment instruments that focus the core of its investment activities in real estate class assets. Also, the instrument is structured to exist within an actual legal trust that is then actively managed by two key parties, namely the REIT Trustee and the REIT Management Company (“the REIT Manager”).

### The Role of REIT Trustee

The REIT Trustee is required to be a licensed and approved corporate Trustee by the respective regulatory authorities in trust compliant jurisdictions (eg Monetary Authority Singapore (“MAS”) in Singapore and Securities Commission Malaysia (“SC”) in Malaysia).

While custody and control of the REIT investments could be held by the REIT Managers, they have now been placed squarely on the shoulders of Corporate Trustees like Pacific Trustees. Under existing Trust laws, the key distinction and benefit for placing REIT investments under a Corporate Trustee is to provide assurance and confidence to REIT Investors (aka Unitholders).

The REIT Trustee is given the task and responsibility (i) to establish proper governance, (ii) to ensuring the effective segregation of the REIT investment from the parties having custody and management of the REIT, and (iii) carrying out of its duties and functions at the highest fiduciary levels that exceed mere contractual obligations. All these three (3) core requirements provide long term stability to the REIT and ensure full accountability to the Unitholders.

### The Benefit to Sponsors

Most REITs began their life with sponsors having a portfolio of real estate properties that have not been sold off, whether due to oversupply and/or deliberate retention of such assets for its yield generation capabilities. Whatever are the reasons, in either situation, sponsors are ‘burdened’ with their capital being locked up in these assets. What then if sponsors want to ‘unlock’ such capital and why would they want to do this? There are of course a myriad of reasons but common ones include de-gearing their companies (to attract more investors or better borrowing rates) or just simply raising funds necessary for the next mega project which cannot or should not be missed!

REITs offer the ideal mechanism to accept a large portfolio of real estate properties (having the appropriate track record of income generation) to be settled into a REIT and be offered up to unitholders. The injection of such assets are done at market valuation which tend also to hold up values well when properties are disposed off on an en bloc basis as opposed to individual sub-units.



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Another notable benefit to sponsors will be the possibility to structure the REIT setup that will allow for the sponsors to 'retain' indirect control over the assets disposed off into the REIT. Typically, Investment Bankers will structure the REIT to give the sponsors the right to acquire significant units in the REIT and hence the 'control' that will come with the majority holding. REITs will require for a REIT Manager to be appointed to manage and ensure that the REIT assets are properly managed at all times; all of which are critical to ensuring the projected returns are achieved on a consistent basis. The REIT Manager, together with the REIT Trustee, takes on the joint responsibility to safeguard and protect the rights and interest of the unitholders.

## The Benefit to Investors

Investors in the modern financial landscape of looking to ever increasing returns of investments while keeping risk low or at least to an acceptable level. So are REITs the magical investment that fits the bill?

From the onset, REITs offer a diversification of risk for investors who want to invest in real estate properties. REITs make this possible by packaging a portfolio of high value assets that are offered to a group of investors via the issuance of units. There is absolutely no need for any transfer of the legal title and ownership at the unitholders' level as the REIT Trustee will hold them on behalf of these investors. Hence, viable real property assets that, previously are out of reach of many ordinary non-financial investors, can now be easily and readily acquired.

Another important benefit that REITs enjoy is the special tax treatment given by the tax authorities and that is if 90% or more of the income of the REITs are declared as dividend, such REIT income will be tax exempted. Investors obviously gain as the net returns to them are no longer subject to corporate tax rates which presently are 24% and 17% for Malaysia and Singapore respectively!

One more benefit that REIT investors receive, though not immediately obvious over private real estate investors, is the elimination of transaction cost. This can be hefty as they involve legal fees, estate agent fees and bank loan financing cost when investors do decide to acquire the real property assets directly. Under a listed REIT, all investors need to do is open and operate their CDS (for Malaysia) or CDP (for Singapore) accounts (assuming they don't yet already have one). And the acquisition and disposal of REIT units is simply a matter of instructing their brokers to do the necessary. So how much easier can that be?



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## LABUAN INTERNATIONAL BUSINESS AND FINANCIAL CENTRE (LABUAN IBFC), A JURISDICTION FOR WEALTH

Over the last 25 years, Labuan IBFC has developed and strengthened its position as a leading business and financial centre in Asia Pacific, striking the ideal balance between client confidentiality and compliance with international best standards and practices

Labuan Financial Services Authority ("Labuan FSA"), the regulator of Labuan IBFC, has enforcing a modern and internationally-recognised legal framework with simple and attractive tax system to this jurisdiction.



Its business-friendly environment allows Labuan IBFC offers a plethora of wealth creation and preservation structures in conventional and Islamic forms. These comprehensive private wealth management vehicles range from common law trusts to civil law foundations.

## What are Labuan Foundations?

A Labuan Foundation is governed by the Labuan Foundations Act 2010. The foundation structure is a corporate body with a separate legal entity, established to manage its own property for any lawful purpose, be it for charitable or non-charitable purposes. It provides a strong statutory firewall that protects the foundation with clarity in its functioning.

As a separate legal entity itself, the foundation is distinct from its founder, officers, and council.

The features of the foundation provides a channel for wealth planning and inheritance management protected within a tax-efficient legal entity. There is no minimum initial asset required for its establishment and the foundation can exist for a fixed or perpetual duration

Facts about Labuan Foundations	
Minimum Endowment	No Minimum
Privacy	Only registration required. Founder has extensive control
Confidentiality	Foundations articles have to be registered with the regulator. End beneficiaries may remain anonymous
Nationality Requirements	Capital can be transferred after registration of foundation
Appeal by creditors	Creditors can appeal against transfer within the first two years of registration of the foundation. If transfers takes place later. No appeal is possible
Appeal Against Inheritance Provisions	No appeal possible, all that is required is that an English translated copy is provided
Shariah Compliant	Possible
Re-domiciliation	Yes
Requirement for an independent council member	No

## What are Labuan Foundations?

There are three general types of trust structures commonly offers by Labuan IBFC as below:

### Charitable Trust

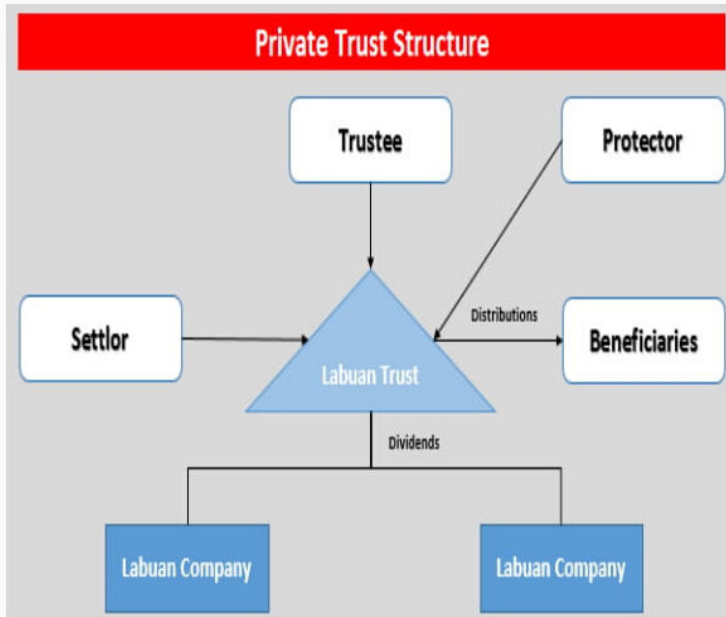
A charitable trust may be created for a wide variety of philanthropic purposes including relief and eradication of poverty, advancement of education, promotion of art, science and religion, advancement of human rights and fundamental freedom.

### Purpose Trust

A purpose trust has no beneficiaries, instead it exists for the advancement of a charitable or non-charitable purpose of some kind. It may also be set up for a specific purpose or objective or a person.

### Special Trust

The Labuan Special trust is ideal for succession planning. It enables a trust of company shares to be established under which the shares can be retained indefinitely and the management of the company may be carried out by its directors without any powers of intervention by the trustee.





### What Is A Labuan Private Trust Company?

A Labuan Private Trust Company, is also a separate legal entity and is established via the Labuan Financial Services and Securities Act 2010 (LFSSA) and registered with the Labuan FSA. The trust company is permitted to provide all trust company services accorded to LFSSA.

Malaysian and non-Malaysian residents who own international as well as Malaysian properties may inject them into the trust or a foundation; however where Malaysian properties are involved, prior approval from Labuan FSA is required.

A family office can also be established via the Labuan Private Trust Company or Labuan foundation, attributing to the uniqueness of Labuan IBFC being a jurisdiction that can offer a flexible yet well-regulated and cost-efficient environment.

In summary, both Labuan Foundation and Labuan Trust allow the founder/settlor to retain sufficient control over the affairs of the entities without compromising the validity of the foundation. They are given flexibility on the formation of the board of directors or council, comprising of family members or trusted advisors of the family. This allows both wealth management structures to be privy to the requisite knowledge of the family affairs, as well as better understand the needs of the intended beneficiaries.

High net worth individuals would find Labuan IBFC a well-regulated yet business-friendly location for a wide range of private wealth management vehicles.

In addition, the availability of Private Trust Companies will appeal to individuals and families who wish to retain control of the management of assets and businesses, including the flexibility to be involved in the day-to-day administration of those assets.





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A local Trust Company

TO FIND OUT MORE.

CHECK US OUT ON  
OUR WEBSITE @  
[WWW.PACIFICTRUSTEES.COM](http://WWW.PACIFICTRUSTEES.COM)

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