

My Labuan

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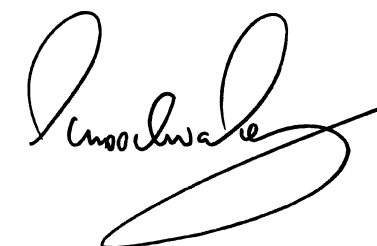
Foreword

My Labuan seeks to provide a general overview of the main features of Labuan and the relevant legislative provisions designed to promote Labuan as an international business and financial centre.

The recent changes in the Labuan legislation have made it necessary for My Labuan which was last revised in 2007, to be updated, resulting in the present 3rd edition.

I hope you will find this 3rd edition of My Labuan useful and informative.

The information in this guide is based on legislation as at 30 September 2010 and should not be acted upon without professional advice. Do contact us for any assistance or clarification that you may require.



Khoo Chuan Keat
Senior Executive Director
PricewaterhouseCoopers
September 2010

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1. Overview and Background

About Labuan

Labuan which is a Federal Territory of Malaysia was established on 1 October 1990 as an international offshore financial centre to provide for the development of offshore activities in the areas of offshore banking and insurance, trust and fund management, offshore investment holding and other offshore activities carried on by multinational companies.

In a rebranding exercise, the name was changed to Labuan International Business and Financial Centre (Labuan IBFC) in January 2008 to reflect the jurisdiction's growing international status. In the same year, a new entity, the Labuan IBFC Incorporated Sdn Bhd (Labuan IBFC Inc.), wholly owned by the Labuan Offshore Financial Services Authority, was established as the official agency for the promotion and marketing of Labuan as the premier international business and financial centre in Asia Pacific.

Climate and Location

Labuan has a tropical climate, warm and humid throughout the year with the day temperatures averaging 80 °F (30°C). It is located off the coast of Sabah on the north west side of Borneo, and covers an area of 92 square kilometers. It is located on the major shipping and air routes of the ASEAN region. Its strategic location between the giant economies of India and China, and in the same time zone as Singapore and Hong Kong makes it well-placed to tap the many investment opportunities in Asia and beyond.

Population

Labuan has a population of approximately 87,000 inhabitants comprising mainly Malays and Chinese, with a sizeable population of foreigners.

Political System

Labuan was declared a Federal Territory of Malaysia on 16 April 1984 and is under the administration of the Federal Government in Kuala Lumpur. Malaysia adopts a democratic system of government under a constitutional monarchy. Elections since independence in 1957, have been held every 5 years.

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Infrastructure

Labuan has adequate road and port facilities, with a shipyard and gas complex as well as sufficient residential and commercial space based on current requirements. In the light of its status as an international business and financial centre, Labuan's infrastructure facilities are being continuously improved. The prestigious RM400 million Financial Park complex and RM70 million Marina Centre are two of the more notable projects in Labuan. The Financial Park complex houses most of the Labuan offshore banks and other financial services entities.

Labuan's state of the art satellite communication system connects Labuan via voice, text, video and data to major global communication networks around the world and provides a full range of telecommunication facilities, including teleports and fibre optic communication highway.

Labuan is easily accessible by air, with daily flights from Kuala Lumpur, Kuching and Kota Kinabalu. The airport costing RM 138.2 million was opened on 15 June 1999 and is located 3 kilometers from the town centre. The island is a free port and also boasts of an excellent golf course of international standard.

Labuan Financial Services Authority

The Labuan Financial Services Authority (Labuan FSA), formerly known as Labuan Offshore Financial Services Authority (LOFSA) is an agency established on 15 February 1996 under the Labuan Offshore Financial Services Authority Act 1996, to be the supervisory authority in charge of regulating and supervising the industry in Labuan. Their role includes drawing up plans for further growth and greater efficiency of the Labuan IBFC. Labuan FSA is located at:

Level 17, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Federal Territory of Labuan

What are the objectives of Labuan FSA?

The objective of Labuan FSA is to act as a one-stop agency to realize the government's vision to develop Labuan as a premier IBFC by ensuring the highest level of integrity, commitment and professionalism.

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What are the functions of Labuan FSA?

As the single regulatory agency responsible for the development of Labuan IBFC, Labuan FSA's functions include the following:

1. to be responsible for setting national objectives, policies and priorities for the development and administration of Labuan IBFC.
2. to be responsible for the promotional and development aspects of Labuan IBFC;
3. to supervise the activities and operations of the Labuan financial services industry, and to process applications to conduct business in the Labuan IBFC specifically in Labuan banking, insurance and insurance related business, trust and fund management, incorporating and registration of Labuan companies as well as for the setting up of Labuan trust companies; and
4. to administer and enforce the Labuan financial services legislation.

Through a recent rebranding exercise, Labuan has liberalized its regulatory framework and revamped its legislation. Labuan IBFC introduced 4 new Acts and retained 4 existing Acts with amendments made.

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Summary of the changes are as follows :-

(i) Amendments to existing Labuan Acts

Acts	Main Amendments
Labuan Financial Services Authority Act 1996	<ul style="list-style-type: none"> • Amendments relate to the functions and powers of the Labuan FSA. • Widening the authority in terms of regulating and supervising the financial institutions and entities operating in the jurisdiction.
Labuan Business Activity Tax Act 1990	<ul style="list-style-type: none"> • Amendments have been made due to the rebranding of Labuan as a new Labuan IBFC and to ensure consistency with other legislation relating to Labuan's financial services. • Broadening the scope of Labuan business activity to include shipping operations.
Labuan Companies Act 1990	<ul style="list-style-type: none"> • Removal of the requirement to obtain approval for dealings between Malaysian residents and Labuan companies. • Allow a Labuan company to issue shares which may be divided into one or more classes and also to issue fractions of its shares. • Introduction of provisions for the creation of treasury shares and protected cell company.
Labuan Trusts Act 1996	<ul style="list-style-type: none"> • Amendments on the provisions to improve the management of trusts in Labuan. • Allow a resident or non-resident to set up a Labuan Trust with non-Malaysian property/Malaysian property. • Introduction of provisions for the creation of Labuan Purpose Trust, Charitable Trust and Special Trust.

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(ii) New Labuan Acts

Acts	Main Provisions
Labuan Limited Partnerships & Limited Liability Partnerships Act 2010	<ul style="list-style-type: none"> • This Act provides for the establishment, regulation and dissolution of Labuan limited partnerships and Labuan limited liability partnerships. • Introduction of provisions for the conversion of Labuan limited partnership to Labuan limited liability partnership. • The Labuan Offshore Limited Partnerships Act 1997 is repealed.
Labuan Foundations Act 2010	<ul style="list-style-type: none"> • This Act provides for the establishment, regulation and dissolution of foundations set up in Labuan.
Labuan Financial Services and Securities Act 2010	<ul style="list-style-type: none"> • This Act is an Omnibus Act which repealed and consolidated the following existing Acts : <ul style="list-style-type: none"> » Labuan Trust Companies Act 1990, » Offshore Banking Act 1990, » Offshore Insurance Act 1990, and » Labuan Offshore Securities Industry Act 1988. • Provides relevant provisions in relation to fund raising activities (i.e. securities, mutual fund and market intermediaries).
Labuan Islamic Financial Services and Securities Act 2010	<ul style="list-style-type: none"> • This Act provides for the provisions on Shariah governance, licensing requirements for Islamic banking, takaful and retakaful activities as well as for Islamic trusts and foundations.

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2. Frequently Asked Questions

2.1 Labuan Companies

The **Labuan Companies Act 1990** (LCA) provides for the incorporation, registration and administration of Labuan and foreign Labuan companies in Labuan. Such companies will not come within the provisions of the principal Companies Act 1965 which governs companies operating in Malaysia domestically. The provisions of the LCA are largely similar to those of the Companies Act 1965.

How is a Labuan company formed?

A Labuan company is formed either through:

- incorporation under the LCA; or
- registration under the LCA of a foreign company incorporated outside Malaysia as a foreign Labuan company.

How to incorporate a Labuan company under LCA?

The incorporation of a Labuan company would involve the following procedures:

- appointment of a Labuan trust company as agent for registration of the applicant. The trust company must conduct its own due diligence on the prospective applicant;
- application for reservation and approval of name;
- after reservation and approval of name, various documents must be lodged for registration including the memorandum and articles of association; and
- payment of the incorporation fee of RM1,000 to RM5,000 depending on the value of nominal capital, as well as other administrative fees

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How does one register a foreign company incorporated outside Malaysia as a foreign Labuan company under LCA?

The registration of foreign Labuan companies involves the lodgment of various documents including certified copies of the certificate of incorporation, memorandum and articles of association, a list of its directors and officers, and the payment of the prescribed fee of RM6,000. A trust company must be appointed as the authorised agent of the foreign company. Upon registration, a certificate would be issued as evidence of compliance with the registration requirements.

The LCA contains provisions allowing the transfer of the place of incorporation of foreign companies to Labuan. The following issues would be relevant to effect the transfer of domicile:

- the laws of the place of incorporation must permit the transfer; and
- consent of the shareholders, debenture holders and creditors as well as the proper officer of the relevant authority of the place of incorporation must be obtained.

On registration of the transfer, the foreign company would be deemed to be incorporated and domiciled in Labuan.

What are the capital requirements for a Labuan company?

A Labuan company may be limited by shares, limited by guarantee or an unlimited company. There is no minimum capital requirement other than for Labuan companies formed to carry on the business of Labuan banking or Labuan insurance. Various classes of shares and different rights may be issued. A Labuan company has the power to issue different classes of shares valued in a currency other than Malaysian Ringgit.

Can a Labuan company hold shares in a Malaysian domestic company?

Under the LCA, a Labuan company is allowed to invest in domestic companies (including 100% owned subsidiaries), as well as given approval to carry on certain business with domestic companies, subject to the condition that notification must be submitted to Labuan FSA within 10 days of the respective transactions. Certain activities with Malaysian residents are not required to be notified and these include maintaining deposits with a person carrying on a business within Malaysia, maintaining professional contact with any counsel, attorney, accountant, bookkeeper, etc.

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What are the management and administration requirements of a Labuan company?

Every Labuan company is required to appoint a trust company to attend to their company secretarial matters (i.e. secretary) and shall at all times have a registered office in Labuan which must be the principal office of a trust company. With effect from 1 June 2009, a Labuan company can also apply to Labuan FSA to establish their operational and management office in Kuala Lumpur under specific circumstances.

A Labuan company is required to have at least one director who may be a resident director and at least one resident secretary. Both the resident director and resident secretary of a Labuan company must be:

- officers of a Labuan trust company approved by Labuan FSA;
- a domestic company wholly owned by the trust company; or
- an officer of a licensed or registered domestic company who holds shares in a Labuan company.

The register of directors and secretaries must be maintained at the registered office. The details to be recorded in the register include the full name and usual residential address of each director or secretary. The register is open for inspection by any director, member or auditor of the company without charge.

Particulars of any change or alteration of the documents and information lodged in respect of a foreign Labuan

company with Labuan FSA must be furnished to Labuan FSA within one month after the change or alteration. This includes a change or alteration to the memorandum and articles of association, directors of the company, address of registered office, etc.

Must Labuan companies have their accounts audited?

Except for certain licensed activities such as Labuan banks, Labuan insurance companies and Labuan companies which invite the public to subscribe for their shares, Labuan companies may, by agreement of its members in meeting, resolve not to appoint auditors and its accounts need not be submitted to Labuan FSA.

However, if the Labuan company intends to pay tax at 3% on its Labuan trading activity, audited accounts would be required.

If the Labuan company decides to elect for its income to be taxed under the Income Tax Act, 1967, the requirements of the tax authorities relating to the taxation of companies would have to be complied with, including the requirement for computation of chargeable income based on audited accounts.

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What are the annual return and accounting requirements of an incorporated Labuan company?

A Labuan company is required to maintain proper accounting and other records in Labuan. Such accounting and other records should be open at all times for inspection by any director.

A Labuan company is also required to make an annual return in the prescribed form and lodge the return with Labuan FSA once every calendar year, not later 30 days prior to the anniversary of the date of its incorporation.

The annual return is required to be accompanied by a certificate from an approved auditor (if applicable) and a certificate from a director. An auditor need not be an approved company auditor under the Companies Act 1965 and can be any person authorised by any jurisdiction to conduct an audit. However, before the auditor can be appointed, he must be approved and registered by Labuan FSA.

The directors are required to present the audited accounts together with the auditor's report or unaudited accounts, as the case may be, at a meeting of members not later than 9 months after the date to which the audited accounts or unaudited accounts are made up. A copy of the audited accounts or unaudited accounts is to be lodged with Labuan FSA within 1 month after the members' meeting at which the accounts were approved.

What are the annual return and accounting requirements of a foreign Labuan company?

A foreign Labuan company is not required to maintain its accounting and other records in Labuan. It must submit an annual return in the prescribed form once every calendar year, not later than 30 days prior to the anniversary of the date of registration.

Can a Labuan company migrate?

A Labuan company may migrate, subject to the approval of Labuan FSA, apply to the relevant authority of another country or jurisdiction to transfer its incorporation from Labuan to that country or jurisdiction. Certain conditions must be fulfilled before Labuan FSA grants approval.

Can a Labuan company operate from anywhere else other than Labuan?

With effect from 1 June 2009, a Labuan Holding Company is allowed to establish an operational and management office in Kuala Lumpur (co-location). Approval must be obtained from Labuan FSA before setting up the office, and is subject to conditions, including a requirement for the Labuan company to make an irrevocable election for it to be taxed under the Income Tax Act, 1967 instead of the Labuan Business Activity Tax Act, 1990. (See "Taxation System in Labuan") An annual fee of RM 7,000 is charged upon approval, and for every subsequent year during which the approval is valid.

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As of 19 January 2010, a Labuan bank can now open one or more co-located offices in any part of Malaysia. However, it must maintain its office and operations on Labuan.

Labuan companies may apply to the Labuan FSA through the trust companies, to establish a marketing office in Kuala Lumpur or Johor Bahru for client relationship or marketing type activities (e.g. facilitate meetings with clients or to establish contacts with potential clients of the Labuan company). No maintenance of books and records (including trading activities) shall be done through, from or in the marketing office. An annual fee of RM 5,000 is charged upon approval, and for every subsequent year during which the approval is valid.

Are there any prohibited activities for a Labuan company?

Under the amended LCA, Labuan companies are now permitted to carry on shipping operations but are limited to those carried out in Labuan or outside of Malaysia. Transactions in Ringgit are generally prohibited except for:-

- defraying administrative expenses and statutory expenses,
- holding of investments or debt obligations in a domestic company,
- payment for professional services from Malaysian service providers and,
- where permitted by the Labuan Financial Services and Securities Act, 2010 (LFSSA) or Labuan Islamic Financial Services Act, 2010 (LIFSA)

What types of transactions with residents are permitted to be carried out by Labuan companies ?

The Labuan company is required to notify the Labuan FSA of any transactions between the Labuan company and the resident within the ten working days of such transactions.

The LCA also provides for certain transactions to be carried on with a resident of Malaysia where the Labuan company would not be required to notify the Labuan FSA. Such transactions include, maintenance of books and records in Malaysia, the making or maintenance of deposits with a person carrying on business in Malaysia, leasing or acquisition of properties in Malaysia for operational purposes or accommodation of its employees, and the holding of shares in an offshore company by a resident of Malaysia.

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What type of confidentiality/protection is available to Labuan companies?

The secrecy provisions under the LCA provide for:

- prohibition from disclosure (other than in compliance with the LCA) regarding any record, book, register, correspondence, document, material or information relating to the business and affairs of a Labuan company; and
- hearing of court proceedings (other than criminal proceedings) against the offshore company in camera.

However, a person may still be required to produce documents or give evidence in any proceedings before any Court where the evidence is relevant to those proceedings. It is also important to note that the secrecy provisions will not be applicable where the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 is concerned. The tax authorities are also given power to require the Labuan entity to furnish any information or particulars for compliance with any double taxation agreements entered into by Malaysia.

How does one incorporate or convert to a Labuan protected cell company?

A protected cell company may be incorporated as a Labuan protected cell company. An existing Labuan company may, if authorised by its articles and by special resolution, be converted into a Labuan protected cell company. A Labuan protected cell company may establish one or more cells for the purpose of segregating

and protecting cell assets. Cell assets are the assets which can be attributable to the Labuan protected cell company's cells. This allows specific assets to be tagged to specific cells.

The incorporation or conversion of a Labuan protected cell company shall be made by filing to the Labuan FSA the memorandum or articles, written approval by authority, other relevant documents and information together with a prescribed fee.

A Labuan protected cell company must maintain separate records for cell assets held by each cells and must identify clearly the cell assets and general assets, and specify the particular of cell(s) to which an account of a shareholders relates to.

The share capital of a Labuan protected cell company's general assets must not be less than the cell capital of any cell assets. A particular cell asset can only be used to satisfy the liability attributable to that cell. A liability arises which is not attributable to a particular cell shall be satisfied solely by the company's general assets.

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2.2 Labuan Trusts

What is a Labuan trust?

A trust is recognised as a Labuan trust where:

- a. the settlor and the beneficiaries may be resident or non-resident;
- b. the trust property does not include any immovable property situated in Malaysia, unless otherwise allowed by Labuan FSA; and
- c. at least one of the trustees is a trust company.

A Labuan trust is not regarded as validly created unless it is created by a will or trust deed in writing. The Labuan Offshore Trusts Act 1996, provides for the creation and recognition of Labuan trusts in Labuan.

Where the trust property held by a Labuan trust includes any Malaysian property, any income derived from the trust property shall be subject to income tax under the Malaysian Income Tax Act, 1967. However, if the trust property does not include Malaysian property, any income derived should be subject to LBATA.

Must a Labuan trust be registered?

Registration of a Labuan trust is optional.

A Labuan trust validly created under the Act may be registered with Labuan FSA. The trustee is responsible for registering the offshore trust and any subsequent changes, must be registered within one month of the change.

What is the duration of a Labuan trust?

A Labuan trust may continue to exist for an unlimited period (unless otherwise specified in the terms of the Trust). However, it may be terminated at any time in accordance with the provisions of the law. A Labuan trust may have terms authorising the trustee to appoint a fixed duration, convert from a fixed duration to unlimited period or alter the duration of a Labuan trust.

Are there any conditions/restrictions for the beneficiaries and trustees of the Labuan trust?

The Labuan trust's beneficiary(ies) must be identifiable by name or ascertainable by reference to a class or to a relationship to some person. Otherwise, the Labuan trust is not regarded as valid.

Trustees must be appointed under the trust deed and are not restricted in number. However, at least one of the trustees must be a trust company.

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What type of confidentiality/protection is available to a Labuan trust?

The law provides that a trustee or any other person is not required to disclose information pertaining to the trust or the settlor, and the exercise of his functions as trustee or accounts of the trust except when a request is made by a beneficiary of the trust for disclosure of information or document relating to the accounts of the Trust. This rule is also subject to the terms of the Trust and to any order of the Court given on special and exceptional grounds.

Is any asset protection available for a Labuan trust?

Any claim against the trust property of a Labuan trust which is made according to the law of a foreign jurisdiction, is unenforceable unless it is proved that the trust was created to defraud creditors of the settlor.

Can a Labuan trust migrate from Labuan?

Migration of Labuan trusts from Labuan is permitted under the **Labuan Trust Act 1996 (LTA)** subject to the terms of the Trust and provided they originate from a recognised jurisdiction.

What is a Labuan special trust?

Labuan special trust is a trust of company shares which established to retain the company shares indefinitely and the directors of the company can carry out the management of the company without intervention of the trustee.

The designated shares shall be held by the trustee on trust. The trustee must not be a director of the company. The trustee does not have any voting rights or power to interfere in the management of the company unless the beneficiary or any other interested person has, complaints concerning the conduct of the company, made an intervention call for a trustee to intervene in the affairs of a company.

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2.3 Labuan Foundations

What is a Labuan Foundation?

The Labuan Foundations Act 2010 (LFA) provides for the establishment, regulation and dissolution of foundations set up in Labuan.

A Labuan foundation can be created by any person by subscribing his name to a charter of a Labuan foundation as the founder. A Labuan foundation is a foundation where:

- the founder and the beneficiaries may be a resident or non-resident;
- the properties do not include any property situated in Malaysia unless otherwise approved by the Labuan FSA or it is a foundation for charitable purposes;
- the main purpose shall be the management of property, and may not include any purpose which is unlawful, immoral or contrary to Malaysian public policy;
- must have a charter which shall be duly signed by the founder

Where the property of a Labuan foundation includes any Malaysian property, any income derived therefrom shall be subject to income tax under the Malaysian Income Tax Act, 1967. Any income derived from property which is not Malaysian property is subject to tax under the LBATA.

How to register a Labuan Foundation?

The secretary of the Labuan foundation shall be responsible in registering the Labuan foundation with the Labuan FSA. The registration of a Labuan foundation involves the following procedures:

- application to Labuan FSA together with payment of a prescribed fee and documents specified by the Labuan FSA; and
- submission of a statement signed by the secretary containing particulars such as the name of the foundation, date of the charter, purpose and objects of the foundation, name and address of the secretary, address of the registered office, duration, name and address of the officers, etc and a statutory declaration by the secretary.

A certificate is issued by Labuan FSA as evidence of registration. A register of the foundation must be maintained by the Labuan FSA. Labuan FSA must be notified by the secretary of any changes to the foundation within 30 days.

Every Labuan foundation is required to have a registered office in Labuan which is the address of the secretary. Notice of a change in the address of its registered office must be submitted to Labuan FSA for registration.

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Can a Labuan Foundation be dissolved?

A Labuan foundation shall be dissolved upon the declaration by the officer after the occurrence of the following event:

- the duration of the Labuan foundation has expired;
- the purpose of the Labuan foundation is fulfilled or become incapable of fulfilment; or
- provided in the charter of the Labuan foundation.

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2.4 Labuan Limited Partnerships & Labuan Limited Liability Partnerships

The **Labuan Limited Partnerships and Limited Liability Partnerships Act 2010** (LLPA) provides for the establishment, regulation and dissolution of Labuan limited partnerships and Labuan limited liability partnerships in Labuan. Labuan limited partnership and Labuan limited liability partnership are not permitted to carry on any business in Labuan which a Labuan company is prohibited to conduct, unless expressly permitted under LLPA. The provisions of the Partnership Act 1961, which governs partnerships operating in Malaysia, will not apply to a Labuan limited partnership and Labuan limited liability partnership.

What is a Labuan limited partnership?

A Labuan limited partnership may consist of at least two but not more than fifty partners, with a minimum of one general partner and one limited partner. A person can be both a general partner and a limited partner in the same Labuan limited partnership. There must be at least one general partner and one limited partner.

Where a Labuan limited partnership is established solely to carry on any professional practice, it shall obtain professional indemnity insurance policy with coverage of not less than the prescribed amount approved by Labuan FSA. The partners must not be corporations.

What is a Labuan limited liability partnership?

A Labuan limited liability partnership may consist of two or more partners. An individual or a corporation may be a partner in a Labuan limited liability partnership.

A Labuan limited liability partnership is a body corporate and has legal personality separate from its partners.

What are the procedures for registering a Labuan limited partnership and Labuan limited liability partnership?

Application must be made in a prescribed form and submitted to Labuan FSA together with payment of the prescribed fee and documents specified by Labuan FSA.

Registration involves submission of the partnership agreement executed by each partner. The agreement would contain particulars such as the name of the offshore limited partnership, intended address of its registered office, the full name and address of each general partner, etc.

A certificate will be issued by Labuan FSA as evidence of registration. A prescribed annual fee must be payable to Labuan FSA on or before each anniversary of the date of registration.

Labuan FSA must be notified of changes to the partnership within 30 days.

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What are the management and administration requirements ?

Every Labuan limited partnership and Labuan limited liability partnership is required to have a registered office in Labuan which is the registered office of a trust company. Notice of a change in the address of its registered office must be submitted to Labuan FSA for registration.

A register of limited partners and other documents including the partnership agreement and statement of contribution by partners must be maintained at the registered office.

Contributions made by limited partners to the Labuan limited partnership may be in the form of money in any currency, any other property, or services. In situations where a contribution is provided by a limited partner other than in cash, a statutory value must be assigned to that contribution.

What are the rights and obligations of general partners?

The rights of a general partner in a Labuan limited partnership are similar to those of a partnership. There are however, restrictions to his authority to carry out certain acts or activities, which require the written consent or approval by all limited partners of the Labuan limited partnership.

Any debt or obligation incurred by a general partner in the course of the activities of a Labuan limited partnership is a liability of the Labuan limited partnership.

What are the rights and obligations of limited partners?

A limited partner has the right to a share in the Labuan limited partnership profits. Profits will be allocated by reference to the percentage of contributions.

A limited partner is allowed to lend and borrow money to, borrow money from and enter into transactions with the general partner on behalf of the Labuan limited partnership.

A limited partner shall not be liable for any debts or obligations of the Labuan limited partnership except to the extent of his contribution as specified in the statement of contribution. However, this limitation will not apply if the limited partner participates in the management of the Labuan limited partnership under certain prescribed conditions.

Who can convert to Labuan limited liability partnership?

A Labuan limited partnership may convert to a Labuan limited liability partnership provided the Labuan limited liability partnership comprises only all the existing partners of the Labuan limited partnership.

A Labuan company may also convert to a Labuan limited liability partnership if none of the assets were pledged as security and the Labuan limited liability partnership comprises only all the existing shareholders of the Labuan company and no one else.

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How can a Labuan limited partnership be dissolved?

The dissolution of a Labuan limited partnership is not effected until a notice of dissolution of a Labuan limited partnership is signed and filed with Labuan FSA by a general partner. Labuan FSA may revoke the registration of the partnership when a notice of dissolution is filed.

Special circumstances under which a Labuan limited partnership must be dissolved immediately and wound up would include the occurrence of any of the following events:

- where the sole or last remaining general partner is an individual, upon his death, legal incapacity, bankruptcy, retirement or withdrawal from the offshore limited partnership; or
- where the sole or last remaining partner is a body corporate, upon its dissolution, bankruptcy or withdrawal from the offshore limited partnership.

However, the requirement to wind up can be avoided if, within 60 days of the dissolution, the limited partners elect one or more general partners to carry on the activities of the Labuan limited partnership.

A dissolution of the Labuan limited partnership can also be made by way of a court order.

How can a Labuan limited liability partnership be dissolved??

The provisions under Companies Act 1965 and the Companies (Winding-Up) Rules 1972 related to a company limited by shares will apply for the dissolution of Labuan limited liability partnership by way of receivership or winding-up.

Alternatively, a Labuan limited liability partnership can be voluntarily wound up by applying to the Labuan FSA for a declaration of dissolution of the Labuan limited liability partnership. A notice of dissolution must be published to the public prior to the application. If there is no objections by the partners or creditors on the dissolutions of the Labuan limited liability partnerships, Labuan FSA will declare by notice in writing that the Labuan limited liability partnership is dissolved. The Labuan limited partnership shall then distribute its surplus assets among its partners according to their respective rights and interests.

The dissolution of a Labuan limited liability partnership may be revoked within two years if :

- a. at the time of the dissolution, the Labuan limited liability partnership was in operation;
- b. the Labuan limited liability partnership had not discharged all its debts and liabilities; or
- c. the High Court thinks that it is just and reasonable to do so.

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2.5 Labuan Banks

What is a Labuan bank?

A Labuan bank is a company incorporated or registered as a Labuan or foreign Labuan company under the LCA, or a Malaysian bank, with the sole and exclusive purpose of carrying on Labuan banking or Labuan investment banking business. Such banking activities are required to be licensed in Labuan.

Labuan banking as well as Labuan financial business activities conducted in, from or through Labuan by Labuan banks are governed by the LFSSA. (The Banking and Financial Institution Act 1989 (BAFIA) which regulates financial institutions in Malaysia does not apply to Labuan banks).

What are the licensing requirements for Labuan banks?

An application for a Labuan banking licence would be made to the Minister of Finance through the Labuan FSA. Certain documents, guarantee and undertaking would need to be submitted with the application. The annual licence fee is RM80,000 or its equivalent in any currency. This is to be paid to Labuan FSA no later than 15 January of each year.

Approval of the licence would not be granted unless the Labuan bank has paid up capital and reserves (unimpaired by losses) of not less than RM10 million or its equivalent

in foreign currency. The bank must at all times, ensure that such capital adequacy ratio is met and reflect the risk weighted ratio as specified by the Labuan FSA.

What is Labuan banking business?

Labuan banking business means the following activities in any currency (including Malaysian Ringgit where permitted by the Exchange Control Act 1953 and other relevant laws in force) :

- a. receiving deposits (e.g. deposits on current account, deposit account, savings account or other specified accounts);
- b. Labuan investment banking business;
- c. Labuan financial business
- d. Labuan Islamic banking business; or
- e. such other business as Labuan FSA may specify with the approval of the Minister of Finance.

A Labuan Islamic bank must ensure compliance with Shariah principles and must establish an internal Shariah advisory board to advise the operations of its business. The members of the Shariah advisory board must be qualified persons. The internal Shariah advisory board have to conduct an internal review of the businesses and operations to ascertain that such business is in compliance with Shariah principles.

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What is Labuan investment banking business?

Labuan investment banking business means the following business activities in any currency (including Malaysian Ringgit where permitted by the Exchange Control Act 1953 and other relevant law in force):

- providing credit facilities;
- providing consultancy and advisory services relating to corporate and investment matters (including dealing in securities) or making and managing investments on behalf of any person;
- undertaking foreign exchange transactions, interest rate swaps, dealings in derivative instruments or derivative financial instruments or any other similar risk management activities;
- Labuan Islamic investment banking business;
- Labuan financial business; or
- such other business as Labuan FSA, with the approval of the Minister of Finance, may specify.

What is Labuan financial business?

Labuan financial business means

- building credit business
- credit token business
- development finance business
- leasing business
- factoring business

- money broking business
- Labuan Islamic financial business; or
- such other financial business as specified by Labuan FSA, with the approval of the Minister of Finance.

These activities can be conducted in any currency (including Malaysian Ringgit where permitted by the Exchange Control Act 1953 and other relevant law in force)

A Labuan company carrying on Labuan financial business must be registered with the Labuan FSA.

Must all transactions be in foreign currencies?

Transactions can be in any currency (including Malaysian Ringgit where permitted by the Exchange Control Act 1953 and other relevant law in force).

Are there any prohibitions for a Labuan bank?

A Labuan bank is not permitted to accept any monies on deposit or loan which is repayable on demand. This prohibition was imposed to avoid the need to establish a cheque clearing facility for cheques issued in foreign currencies from such current accounts.

A Labuan bank is prohibited from opening accounts for unidentified customers. Essentially, whilst the provisions governing the business of Labuan banks are relatively relaxed as compared to BAFIA, measures have been introduced to prevent Labuan from being turned into a centre for illegal activities such as laundering of funds.

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A Labuan bank can now have one or more co-located offices in any part of Malaysia. However, it must still maintain its office and operations in Labuan.

Labuan investment banks are not allowed to accept deposits.

What are the accounting and auditing requirements of Labuan banks?

A Labuan bank licensee must comply with the statutory requirement and submit to the Labuan FSA audited accounts and other statistical information required by the Labuan FSA in relation to prudential information, general business conduct and volume of business in Labuan. The audited accounts have to be submitted to the Labuan FSA within six months after the financial year end.

The Labuan FSA may from time to time, examine and inspect the books, documents, accounts and transactions of the Labuan banks.

What are the standards of corporate governance which are expected of Labuan banks?

Labuan FSA has issued Guidelines on Corporate Governance for Offshore Banks which are effective from 1 January 2009. The Guidelines set out regulatory expectations on the Labuan banks. In implementing practices for governance and risk management, the Labuan banks must adopt the standards relevant and appropriate to their activities. In this regard, Labuan banks are encouraged to observe higher regulatory and prudential

standards and ensure that the observed standards are in line with internationally accepted standards and best practices.

What type of confidentiality/protection is required?

There are secrecy provisions under LFSSA which prohibits any person from giving, revealing, publishing or disclosing the information of a customer of Labuan bank to another person.

However, Labuan FSA is empowered to direct, on the application of any person, supervisory authority, domestic law enforcement agency or by court order, that any information furnished to Labuan FSA by any Labuan bank shall not be held in confidence and be disclosed to the applicant.

It is also important to note that the secrecy provisions will be subject to any other requirements under the Exchange Control Act 1953, Anti-Money Laundering and Anti-Terrorist Financing Act 2001 and Labuan Business Activity Tax Act 1990, for compliance with any double taxation agreements entered into by Malaysia.

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2.6 Labuan Insurance Companies

Which companies can carry on Labuan insurance business?

A Labuan company, a foreign Labuan company or a branch of a Malaysian insurer or Malaysian Takaful operation, who holds a valid licence, is allowed to carry on Labuan insurance or Labuan Takaful business.

What are the types of Labuan insurance activities regulated under the LFSSA?

The range of Labuan insurance activities regulated under the Act includes insurance and reinsurance, takaful and retakaful business, captive insurance, and such other offshore insurance business as may be approved by Labuan FSA.

Labuan captive insurance business means Labuan insurance business where the insured is a related company or associate corporation of the Labuan insurer or such person as authorized by Labuan FSA.

Labuan Islamic Takaful operators must ensure compliance with the Shariah principles and must establish an internal Shariah advisory board to advise the operations of its business.

What are the licensing requirements for Labuan insurance companies?

Applications for licences must be submitted to the Minister of Finance through Labuan FSA. The application procedure would involve submitting various documents to Labuan FSA, including the memorandum and articles of association, resolutions of the board and general meetings, audited accounts, etc; and setting out the types of insurance to be undertaken and the business plans of the company. Depending on the type of insurance activity carried out and the type of insurance license applied for, the annual license fee ranges from RM10,000 to RM30,000 or its equivalent in foreign currency.

An application for a licence to undertake the Labuan insurance-related business, such as Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker should be made to Labuan FSA. The following entities are eligible to apply:

- a Labuan company or a foreign Labuan company established or registered under the Labuan Companies Act 1990; or
- a branch of a Malaysian insurer;

With respect to the licence to carry on offshore insurance-related activities, the requirements relating to fit and proper persons filling the positions of controller, director and chief executive officer as well as maintenance of sufficient funds to cover expenses of operations and management in Labuan for at least 6 months, must be met. In addition, a Labuan insurance manager, Labuan underwriting manager,

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or Labuan insurance broker must obtain professional indemnity insurance coverage throughout the period of operation in Labuan. The procedure involved in the application is substantially the same as for the Labuan insurance business.

Two main requirements must be complied with by a Labuan insurer namely, capitalisation requirement (stipulating the minimum working funds for each type of insurance business) and the solvency margin, which varies according to the type of insurance business. Minimum levels of working capital required to be maintained ranges from RM300,000 to RM10 million or its equivalent currency.

Accounts and funds in respect of the Labuan insurance business must be maintained separately from other funds. There must be similar separation of accounts and funds between life and general insurance businesses.

What is the scope of activities of Labuan insurance companies?

Labuan insurance business means insurance business which is not domestic insurance business and which is transacted in foreign currency. However, the Labuan insurer may carry on reinsurance of domestic insurance business including that transacted in Malaysian ringgit and such other approved business by Labuan FSA.

A Labuan insurer is also prohibited from acting as a Labuan insurance manager or Labuan underwriting manager for another Labuan insurer unless licensed to undertake such activities.

The duties of a licensed Labuan insurance manager is restricted to the provisions of administrative services while for the licensed Labuan underwriting manager, to underwriting services only. The licensed Labuan underwriting manager is prohibited from providing services in or from Labuan to any person not licensed under the LFSSA or to any business carried on by an insurer registered under the Insurance Act 1996 or Takaful Act 1984.

A Labuan insurance broker is not permitted to act as broker in respect of domestic risks.

What are the financial reporting requirements of Labuan insurance companies

Labuan insurers are required to submit, within six months after the close of each financial year-end, four copies each of their audited annual balance sheet, profit and loss account, revenue account and, in the case of life insurance business, also an actuarial valuation report.

A foreign insurer established as a branch in Labuan is also required to submit the latest audited annual balance sheet of its parent company.

In the case of other insurance-related entities, they are only required to submit four copies each of their audited annual balance sheet and profit and loss account.

All licensees are required to provide statistics and information in relation to prudential regulation and business operations to Labuan FSA from time to time.

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What are the disclosure prohibitions for offshore insurance companies?

There are secrecy provisions under LFSSA which prohibits any person from giving, revealing, publishing or disclosing the information of a policy owner of Labuan insurance to another person.

However, Labuan FSA is empowered to direct, on the application of any person or supervisory authority that any information furnished to Labuan FSA by any Labuan insurance shall not be held in confidence and be disclosed to the applicant.

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2.7 Funds and Fund Management Companies

What is a mutual fund?

A mutual fund is a company, partnership, protected cell company, foundation or unit trust which engages in the following activities:

- a. collects and pools funds for the purpose of collective investment; and
- b. issues interests which entitle the owner to redeem his investments within a specified period that is agreed upon the parties, and receive an amount corresponding to the owner's proportionate interest in the assets of the fund.

The rules relating to the establishment and the administration of mutual funds in Labuan is set out under LFSSA.

For the purpose of the LFFSA, mutual funds are classified into private funds and public funds.

What is a private fund?

A private fund means a mutual fund whose shares are not offered to the general public. Private funds are restricted by the number of investors (not more than 50 where the first time investment of each investor is not less than RM250,000 or its equivalent in foreign currency; no restriction on number of investors if minimum investment is RM500,000 or its equivalent in foreign currency).

What is a public fund?

A public fund means a mutual fund other than a private fund. Normally, a public fund would offer its shares for sale or subscription to the general public by means of a prospectus or any other means.

What are the regulatory requirements of a mutual fund?

Under the LFSSA, private funds have been de-regulated and they are only required to submit an information memorandum or other such document containing details (e.g. description, scope and nature of its business). This information should be submitted to Labuan FSA who will enter them into a register.

A public fund must be granted registration and approval by Labuan FSA for a similar purpose. A grant registration may be made subject to terms, conditions or other restriction. All public funds must appoint a trustee, custodian, administrator, and fund manager that is approved by Labuan FSA. The fund must maintain a registered office in Labuan.

A mutual fund which is lawfully registered under the laws of any recognised country need not be registered as a public fund in Labuan so long as it is administered or managed in Labuan by a licensed or registered fund administrator, a custodian, a trustee or a fund manager approved by the Labuan FSA.

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No person shall carry on business in or from within Labuan as:

- a trustee of a public fund, unless that person is a Labuan trust company; or
- a custodian of a public fund, unless that person is a bank licensee or a Labuan trust company.

What is a fund management company or manager?

A fund management company or manager is a person who for valuable consideration provides management services alone, or with investment advice or administrative services in respect of securities for the purpose of investment, including dealing in securities, or such other activity as may be prescribed by Labuan FSA.

Who are eligible to act as fund managers?

The following are eligible to act as fund managers of a Public Fund :

- A Labuan company who has been granted a license by Labuan FSA,
- A bank licensee, or
- Licensed fund management companies from recognised jurisdictions, or any company set up by individual fund managers who are licensed by the relevant home supervisory authorities may be permitted, provided they receive written approval from Labuan FSA.

A fund manager for a private fund need not be formally licensed under LFSSA.

What are the licensing and registration requirements to act as fund managers?

Application for a licence to act as manager or for registration as administrator is made to Labuan FSA. The applicant should have a minimum paid up capital of RM 300,000 or its equivalent in any foreign currency.

How much is the annual licence fee?

The annual licence fee is:

- for companies which operate from outside Labuan - RM10,000
- for companies which operate in Labuan - RM5,000

What are the audit and reporting requirements of a public fund?

Every registered public fund is required to keep accounts and records based on which annual statements of accounts are to be prepared. These statements, which include the Balance Sheet and an account of income and expenditure, are required to be audited within 3 months of the financial year-end.

These statements together with the Auditor's Report on the Accounts must also be made available for inspection by all investors of the fund.

Labuan FSA, or any person authorised by Labuan FSA, is also authorised to inspect the fund's statements of accounts as well as the accounting records at the fund's place of business in Labuan.

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What are the rights of an investor of a mutual fund?

An investor who has invested in a mutual fund pursuant to a prospectus published by the fund, is deemed to have relied upon the prospectus. If the prospectus contains any misrepresentation, the following rights of action are available to the investor:

- rescission of the purchase; or
- action for damages against the fund and signatories to the prospectus, who had consented to its publication while aware of the misrepresentation.

What type of confidentiality/protection is available to a mutual fund?

There are secrecy provisions in Labuan which prohibits any person from giving, revealing, publishing or disclosing the information of a mutual fund to another person.

However, Labuan FSA is empowered to direct, on the application of any person or supervisory authority that any specified general information and statistics furnished to Labuan FSA by any mutual fund shall not be held in confidence and be disclosed to the applicant.

Based on the Labuan Business Activity Tax Act, 1990, the tax authorities are also given power to require the Labuan entity to furnish any information or particulars for compliance with any double taxation agreements entered into by Malaysia.

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2.8 Labuan Trust Companies

What is a trust company?

A trust company is a company incorporated or registered as a Labuan company under the LCA to carry on Labuan trust company business and in accordance with the provisions of the LFSSA.

Trust company business includes share registration office, administering, managing or dealing with property as agent, legal personal representative or trustee, provision of management and accounting service, provision of directors, secretaries, registered office, etc.

What are the requirements for a trust company?

A trust company must have a minimum capital or working funds of RM150,000 (or its equivalent in any foreign currency), and maintain a security deposit of RM100,000 with Labuan FSA. As an alternative to maintaining the security deposit, it may obtain professional indemnity insurance policy with a coverage of not less than one million ringgit or its equivalent in any foreign currency or such other amount as may be determined by the Registrar, and remain indemnified under such policy throughout its operation as a trust company. It must have a functional office in Labuan, with at least two approved Trust Officers, one of whom must be domiciled in Labuan.

What are the powers of a trust company?

Generally, a trust company can :-

- act as executor and apply for probate of any will;
- acting as administrator and applying for a grant of letters of administration of the estate of a deceased person;
- being appointed as an agent or trustee under any settlement or instrument creating a trust, to do and discharge all the acts and duties of a trustee as fully and effectively as any other trustee

A trust company may be appointed as sole trustee or act as joint trustee, executor or agent with another trust company.

These powers would enable the trust company to perform activities involving, share transfer and registration, provision of management and accounting services or provision of directors, secretaries and registered offices for Labuan companies and foreign Labuan companies, acting as lodging agent, and incorporating or registering of companies under the LCA.

In acting as a trustee, the trust company shall hold in trust separate from its own money, all monies received pursuant to any instrument creating a trust.

A trust company may provide services to a resident, subject to conditions under the LCA. Trust companies registered in Labuan can operate marketing offices in Kuala Lumpur to expand their market reach.

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What are the disclosure prohibitions for trust companies?

There are secrecy provisions under LFSSA which prohibits any person from giving, revealing, publishing or disclosing the information of any customer of Labuan trust companies to another person.

However, Labuan FSA is empowered to direct, on the application of any person or supervisory authority that any information furnished to Labuan FSA by any Labuan insurance shall not be held in confidence and be disclosed to the applicant.

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2.9 Labuan International Financial Exchange

What is the Labuan International Financial Exchange?

The Labuan International Financial Exchange (“LFX”) was launched on 23 November 2000. Authority for the establishment of the Exchange is vested with the Minister of Finance. LFX is an offshore financial exchange, whose goal is to facilitate the influx of funds through the listing and trading of financial instruments such as equities, investment funds, debt instruments, insurance instruments, etc.

LFX caters for the listing of a multitude of multi-currency financial instruments, including equities, investment funds, debt instruments, insurance related instruments and intellectual properties. These products can be based on both conventional and Islamic principles.

Transactions on LFX are not subject to any Exchange Control measures.

Who can participate in the activities of the LFX?

Activities of the Exchange include both listing and trading activities. Therefore the following can participate:

- Issuers of financial instruments to be listed
- Listing sponsors
- Investors
- Trading agents

Who regulates the LFX?

Labuan FSA is the statutory regulator for the Exchange.

For the purpose of the proper conduct of the Exchange, Labuan FSA is authorised to:

- investigate or enquire into any transaction involving the purchase or sale of securities where there is possible employment of dishonest or unethical devices or trading practice;
- require any person to furnish detailed information of such transactions, or produce for inspection or for purpose of making copies, documents relating to specified matters.

There are penalties imposed under LFSSA for non-compliance of the above matters.

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3. Taxation System in Labuan

3.1 CORPORATE TAXATION

Labuan entities normally come under the purview of the Labuan Business Activity Tax Act 1990 (“LBATA”). With effect from the year 2008, Labuan entities may now elect to be taxed under the Malaysian domestic Income Tax Act 1967.

A. Tax treatment under the Labuan Business Activity Act 1990

Why is Labuan said to have preferential tax treatment?

Generally, Labuan entities are accorded with preferential tax treatment under the Labuan Business Activity Tax Act 1990 (“LBATA”) and subject to Nil or low income tax (i.e. 3% of net audited profits or RM20,000) depending on the type of activity conducted in Labuan.

Is the preferential tax treatment available to all companies in Labuan?

The preferential tax treatment under the LBATA is granted to Labuan entities conducting Labuan business activities in Labuan.

What is a “Labuan business activity?”

Labuan business activity is defined as a Labuan trading or Labuan non-trading activity carried on, in, from or through Labuan in a currency other than the Malaysian ringgit by a Labuan entity with non-residents or another Labuan entity.

LBATA has been amended to include shipping operations as a Labuan business activity (so long as the operations are carried out in Labuan and outside of Malaysia)

What is a Labuan trading activity?

Labuan trading activities include banking, insurance, trading, management, licensing, shipping operations or any other activities not considered as a Labuan non-trading activity.

A Labuan entity carrying on a Labuan trading activity is taxed at the rate of 3% of net profits as per the audited accounts, or at a fixed sum of RM20,000, upon annual election. As an alternative, Labuan entities can also pay zakat (obligatory charity for Muslims) instead and such zakat will be provided as a rebate against the taxes payable. However, any excess of the amount of the rebate over the tax payable would not be made available as a tax refund or a tax credit.

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What is a Labuan non-trading activity?

Labuan non-trading activities refer to the holding of investments in securities, stocks, shares, loans, deposits or any other by a Labuan entity on its own behalf.

The income of a Labuan company from a Labuan non-trading activity is not subject to tax.

What is the tax treatment if a company carries on both Labuan trading and non-trading activities?

A Labuan entity carrying on both Labuan trading and non-trading activities is deemed to be carrying on Labuan trading activities. This means that the all the income from the Labuan activities will be charged to tax at the rate of 3% of net profits or at the fixed sum of RM20,000, upon election.

What is the tax treatment for capital gains?

For a Labuan entity carrying on a Labuan trading activity, the gains would be reflected as part of the net profits and hence subject to the 3% tax. If an election is made to pay the fixed sum, the tax would be restricted to RM20,000.

If a Labuan non-trading activity is undertaken by the Labuan entity, any capital gains would be tax free since the Labuan company is not subject to tax.

Is there any indirect tax in Labuan?

Labuan is a free port, which means that no indirect tax such as sales tax, import duties, surtax, excise duties and export duties are levied.

Is there any stamp duty in Labuan?

Instruments made in connection with a Labuan business activity by a Labuan company will not be subject to stamp duty.

Is there any estate tax in Labuan?

There is no estate tax in Malaysia.

What are the tax return requirements for companies?

A statutory declaration and return of profits in the prescribed form must be filed by 31 March (or such extended period as approved by the Director General of Inland Revenue) of each year of assessment.

Where a Labuan company conducting trading activities makes an election to pay RM20,000 in a given year of assessment, an election form must be completed in addition to the prescribed statutory declaration form.

Where the Labuan company conducts non-trading activities, only a statutory declaration in the prescribed form is required to be filed.

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When is payment of tax due?

Full payment of the tax must be made at the time of filing of the return. A 10% penalty would be imposed on the outstanding balance for any late payment.

Are there any tax exemptions on withholding tax in Labuan?

Under specific tax treatment, royalties, interest and technical or management fees paid by a Labuan company to a non-resident or another offshore company are exempt from income tax and hence not subject to withholding tax. However, this tax exemption is not available to interest received by domestic licensed financial institutions (i.e. licensed to carry on a business under the BAFIA 1989, Islamic Banking Act 1983, Takaful Act 1984 or Insurance Act 1996 in Malaysia). Rental of moveable property paid to a non-resident person or another Labuan company is exempted if the payments are made by Labuan banks or Labuan companies carrying out leasing business.

Also, any gains or profits falling under paragraph 4(f) of the Income Tax Act 1967* received by a non-resident from a Labuan company would not be subject to the withholding tax under section 109F.

**Section 4 of the Income Tax Act 1967 reads as follows:
“ Subject to this Act, the income upon which tax is chargeable under this Act is income in respect of-*

- a. gains or profits from a business*
- b. Gains or profits from an employment;*
- c. Dividends, interest or discounts;*
- d. Rents, royalties or premiums;*
- e. Pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs;*
- f. Gains or profits not falling under any of the foregoing paragraphs.”*

What are the tax implications of dividends paid by Labuan companies?

As long as the Labuan company has profits, dividends can be paid. Such dividends are not subject to the availability of tax franking credits. Dividends paid or distributed by a Labuan company out of income derived from a Labuan trading activity or out of exempt income, are exempt from income tax in the hands of shareholders. Shareholders of a Labuan company which are Malaysian domestic companies can distribute exempt dividend to its own shareholders out of exempt dividends received from the Labuan company.

There is no Malaysian withholding tax on Labuan dividends.

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What is the tax treatment for dividends received by Labuan companies?

Where the Labuan company is carrying on Labuan trading activities, the dividends will be reflected as part of the net profits and hence subject to a 3% tax. Where an election to pay the fixed sum has been made, the tax would be restricted to RM20,000.

Where the Labuan company is carrying on Labuan non-trading activities, there will not be any tax payable.

Since the dividends received by a Labuan company is not subject to domestic income tax, no refund or set off will be provided for any Malaysian tax credits attached to Malaysian dividends received.

B. Tax treatment under the Income Tax Act, 1967

Why was the option given for Labuan companies to elect to be taxed under the Income Tax Act, 1967?

The Malaysian government 's intention is to provide the flexibility for Labuan entities who may prefer to be taxed under the domestic Malaysian tax legislation. This is to facilitate international tax situations where the Labuan entity has preference to be taxed under the domestic tax regime. The election to be taxed under the Income Tax Act, 1967 is an irrevocable election.

What is the procedure for making an election?

The election must be furnished to the IRB within 3 months of the beginning of the basis period for a year of assessment and would be effective for the year of assessment for which election was made and subsequent years of assessment.

What are the requirements placed on the Labuan company if election is made?

This would mean that the company will have to adhere to all the provisions of the Income Tax Act, 1967 including administrative procedures, such the requirement to furnish estimates of tax payable for each year of assessment, payment of tax by installments, settlement of the final tax liability by the seventh month after the date of closing of the company's accounts and requirements relating to the keeping of records for the purpose of ascertaining chargeable income of the company.

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3.2 INDIVIDUAL TAXATION

How are individuals taxed in Labuan?

Individuals resident in Labuan (which is part of Malaysia) are subject to tax under the principal Act, i.e. the Income Tax Act 1967. Thus, income accruing in or derived from Labuan are taxable and foreign sourced income would only be taxed if received in Labuan by a resident individual. The rate of tax ranges from 0% to 26% (from year of assessment 2010) for resident individuals and a flat rate of 26% (from year of assessment 2010) for non-resident individuals.

Any tax exemptions available for individuals in Labuan?

A non-citizen director of a Labuan company is exempt from tax on fees received in his capacity as director for the years of assessment 2002 to 2006. The exemption is extended for a further period commencing from the year of assessment 2007 to 2010.

Income tax exemption is also available for a non-citizen individual on 50% of his gross income from the exercise of an employment in a managerial capacity:

- in a Labuan company, from the year of assessment 2005 to 2010.
- In a Labuan trust company, from the year of assessment 2006 to 2010.

A citizen is exempt from income tax on 50% of the gross housing and Labuan Territory allowances received by that person from an employment in Labuan with the Federal or State Government, a statutory body or a Labuan company from the year of assessment 2006 until the year of assessment 2010.

Income of any person from the provision of qualifying professional services rendered in Labuan to a Labuan company is exempt from tax to the tune of 65% of the gross amount of that income for the year of assessment 2005 to 2010. "Qualifying professional services" means legal, accounting, financial or secretarial services and includes services provided by a trust company. If such exempt income is received by a company, dividends paid out of such exempt income will be exempt in the hands of the shareholders of that company.

What are the tax return requirements for individuals?

Individuals are required to file returns on an annual basis. Wages/salaries from employment are generally subject to the Schedular Tax Deduction Scheme.

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3.3 TAX TREATY ARRANGEMENTS

Which countries have concluded double tax treaties with Malaysia?

Malaysia has an extensive network of tax treaties with more than 72 countries.

Countries which have concluded double tax treaties with Malaysia are:

Albania, Republic	Morocco
Argentina (Note 1)	Mongolia
Australia	Myanmar
Austria	Namibia
Bahrain	Netherlands
Bangladesh	New Zealand
Belgium	Norway
Bosnia and Herzegovina *	Pakistan
Brunei	Papua New Guinea
Canada	Philippines
China, Peoples' Republic	Poland
Chile	Qatar
Croatia	Romania
Czech Republic	Russian Federation
Denmark	San Marino *
Egypt	Saudi Arabia
Fiji	Senegal
Finland	Seychelles Republic

France	Singapore
Germany	Sri Lanka
Hungary, People's Republic	South Africa
India	Spain
Indonesia	Sudan
Iran	Sweden
Ireland	Switzerland
Italy	Syria
Japan	Thailand
Jordan	Turkey
Kazakhstan	Turkmenistan
Korea, Republic of	United Kingdom
Kuwait	United Arab Emirates
Kyrgyz Republic	United States of America (Note 2)
Lebanese Republic	Uzbekistan
Luxembourg	Vietnam
Malta	Venezuela
Mauritius	Zimbabwe*

* Treaties pending ratification.

Notes:

1. The treaty with Argentina is restricted to sea and air transport operators only.
2. The treaty with the USA is restricted to air and sea transport operations only.

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Which tax treaties exclude Labuan companies?

The following countries have excluded Labuan from treaty benefits in the respective Double Taxation Agreement with Malaysia:

Australia	Luxembourg
United Kingdom	Chile
Netherlands	Seychelles Republic
Japan	Indonesia
Sweden	South Africa
	Spain

In addition, South Korea has designated Labuan as a Foreign Jurisdiction such that the receipt of Korean sourced income will be subject to Korean withholding tax regardless of whether the company is resident of a country that has signed a Double Taxation Agreement with South Korea.

Currently, Malaysia is on the white list issued by the OECD.

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3.4 EXCHANGE CONTROL REGIME

What is the exchange control regime?

Malaysia maintains a system of exchange controls, which is applied uniformly in transactions with all countries, except Israel, for which special restrictions apply. The existing exchange control measures are aimed at monitoring the settlement of payments and receipts, and encouraging the use of the country's financial resources for productive purpose in Malaysia.

How does the exchange control regime apply to Labuan entities ?

Specific rules relating to Labuan under the Exchange Control Guidelines are contained under Exchange Control of Malaysia Notice 15. Generally, Labuan companies will not be subjected to the exchange control requirements which domestic companies in Malaysia are subjected to under the Exchange Control Guidelines of the Central Bank of Malaysia.

Therefore, transactions between non-residents and Labuan companies in foreign currencies are free from exchange control.

Labuan companies are not permitted to transact in Ringgit Malaysia, with the exceptions as provided in other Labuan legislations.

Is there any exchange control restrictions for Labuan banks?

A Labuan bank, in designated as “non-resident” under the Exchange Control Act 1953, and would be allowed by the Controller of Foreign Exchange to accept deposits from and grant loans in foreign currencies to non-residents and other Labuan banks. Thus transactions between non-residents and a Labuan bank in foreign currencies are free from exchange control.

Certain Ringgit transactions are permitted for Labuan Banks within the Exchange Control guidelines.