

# A Guide to Labuan Asset Leasing

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**ASSOCIATION**  
**OF**  
**LABUAN**  
**TRUST COMPANIES**  
**M A L A Y S I A**



# Presentation Outline

1. Definition of Labuan Leasing
2. Advantages and Benefits of Labuan Leasing
3. Characteristics of Labuan Leasing Companies
4. Who can set up Labuan Leasing Companies?
5. Labuan Leasing Structures
6. Labuan Leasing – Approval Requirements
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8. Labuan Leasing – Operational Requirements
9. Labuan Leasing – Reporting Requirements
10. Fees Payable
11. Tax Residency
12. GST





# 1. Definition of Labuan Leasing



# 1. What is Labuan Leasing?

- Section 86 of LFSSA, Labuan leasing business falls under the definition of Labuan financial business.
- Defined as the “business of **letting or sub-letting property on hire** for the purpose of the **use of such property** by the hirer, regardless whether the letting is **with or without an option to purchase** the property, including **charters of ships**, and for the purpose of this definition”.
- “**Property**” includes any **plant, machinery, equipment** or other chattel attached or to be attached to the earth
- “**Charter of Ships**” means **bareboat charters** only and **DOES NOT** include the transportation of passengers or cargo by sea or the charter of ships on a voyage or time charter.





## 2. Advantages and Benefits of Labuan Leasing



## 2. What are the Advantages and Benefits?

- **Exemption from stamp duty** on all instruments created related to offshore business activities, share transfer & M&A of LC
- Election of tax (flat rate of **MYR20,000 OR 3% of net audited profits**)
- **Tax exemption on dividends** paid to shareholders;
- LC subjected to prior approval from Labuan FSA and a license fee of MYR60,000 per year and MYR20,000 only for each subsequent transaction with a **Malaysian Resident and Non-Resident**





### 3. Characteristics of Labuan Leasing Companies



### 3. Characteristics of Labuan Leasing Companies

- Leasing of vessel is on a “**bareboat**” basis
- Approval takes at least 21 working days (normal application) or 5 working days (fast track) to process subjected to complete documentation
- No limit on the leasing transaction per company.





## 4. Who can set up Labuan Leasing Companies?

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- **Malaysian companies** who wish to do leasing with foreign companies
- **Foreign companies** who wish to charter their equipment/product to Malaysian companies
- **Malaysian companies** who wish to conduct leasing for **their foreign business outside Malaysia** (out-out business)
- **Foreign companies** who wish to conduct leasing through Labuan **for their business outside Malaysia.**



## 5. Labuan Leasing Structures

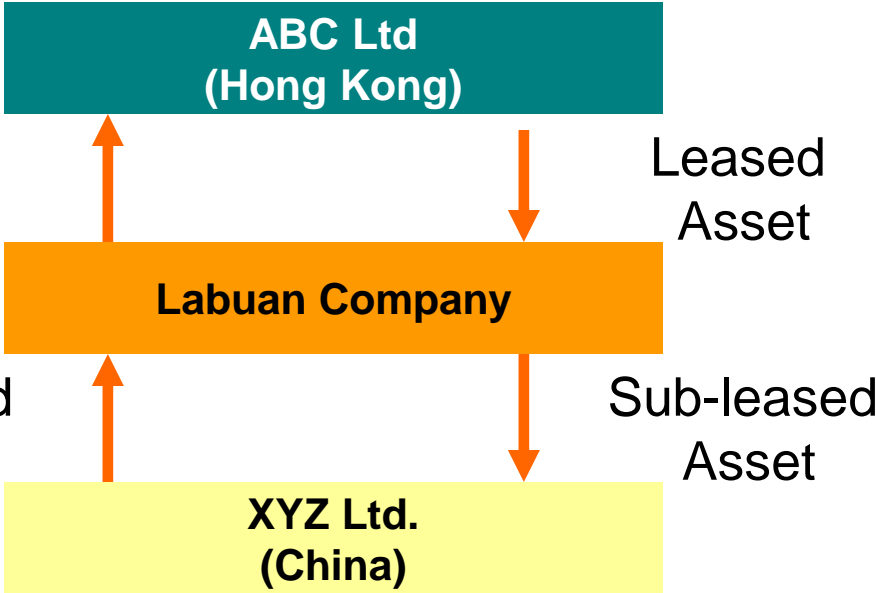
- A. Out-Out Leasing
- B. Out-Out Ownership
- C. Out-In Leasing
- D. 100% Foreign Ownership

# 5. Types of Labuan Leasing Structures

## A. Labuan Leasing (Out-Out Transaction)

Lease rental exempted from Withholding Tax (E.O (No.2) Order 1998)

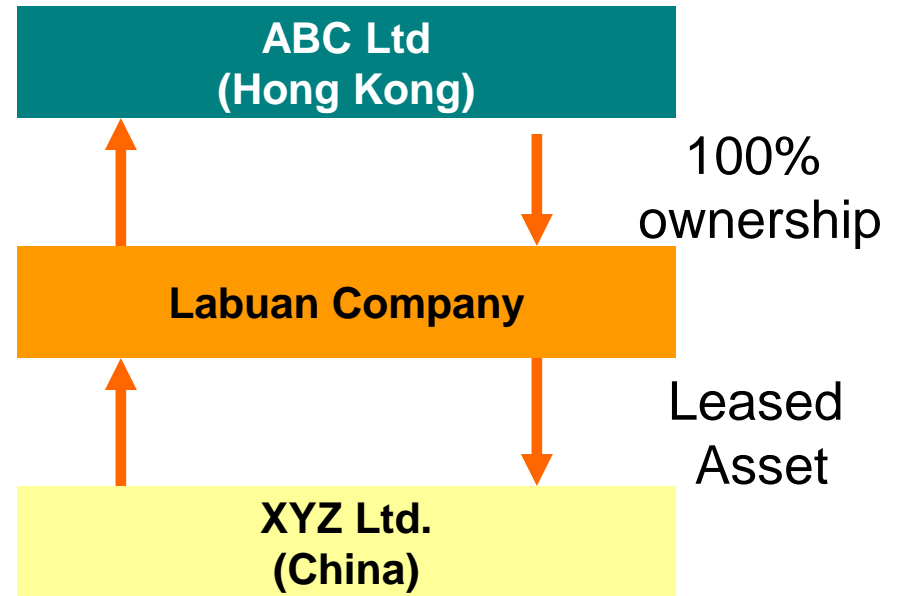
Withholding Tax on lease rental limited to 10% (DTA)



## B. Labuan Leasing (Out-Out Ownership)

Dividend paid to ABC  
- No W/holding tax payable  
(E.O. no. 22 Order 2007)

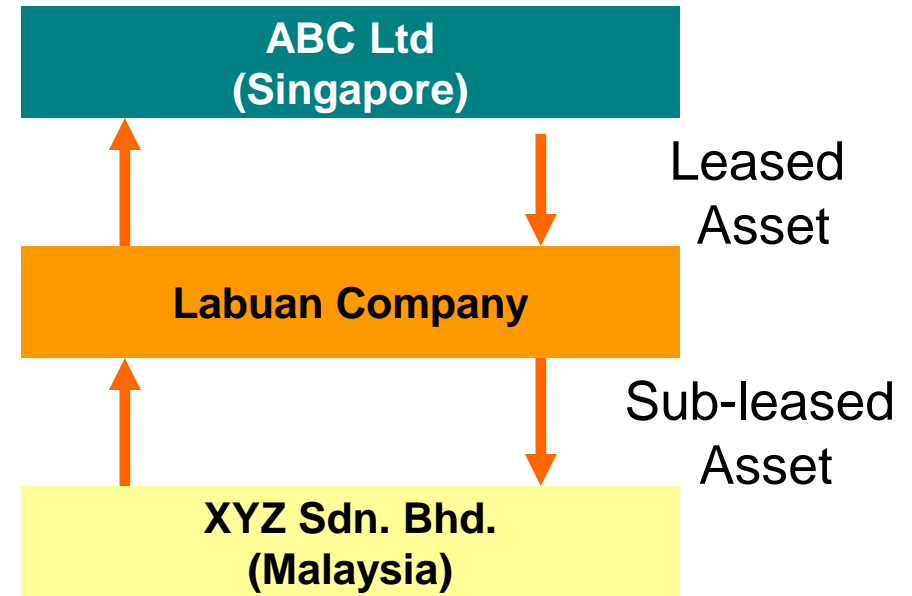
Withholding Tax on lease rental  
limited to 10% (DTA)



## C. Labuan Leasing (Out-In Transaction)

Lease rental exempted from  
Withholding Tax  
(E.O (No.2) Order 1998)

Lease rental exempted from  
Withholding Tax  
- Section 109B of ITA does not apply  
(Resident pays to Resident)



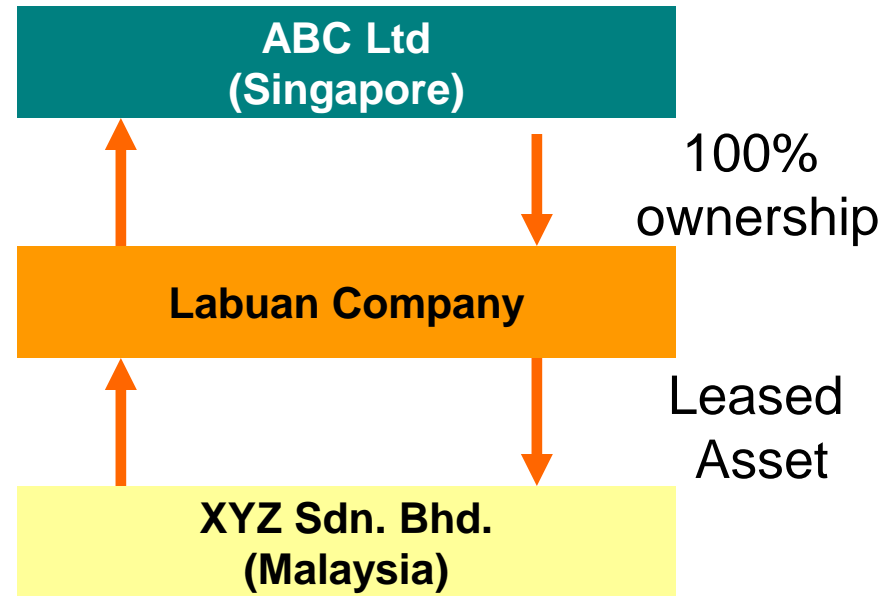
## D. Labuan Leasing (100% Foreign Ownership)

Dividend paid to ABC

- No W/holding tax payable (E.O. no.22 Order 2007)

Lease rental exempted from Withholding Tax

- Section 109B of ITA does not apply (Resident pays to Resident)





## 6. Labuan Leasing – Applicable Laws





## 6. Labuan Leasing – Applicable Laws

- Reporting Authority – Labuan FSA
- Leasing Approval – Labuan Financial Services and Securities Act 2010
- Labuan Company Incorporation – Labuan Companies Act 1990
- Dealing with Malaysian Resident – Section 7(6) – Labuan Companies Act 1990
- Name search before application and incorporation on upon licensing approval
- Operation may commence on issuance of conditional approval issued by Labuan FSA
- Penalties – MYR10 million or imprisonment 5 years or both, daily fine MYR10,000 per day PLUS Administrative Penalty of MYR500 per day.





# 7. Labuan Leasing – Application Requirements



## 7. What are the Application Requirements?

- An applicant is required to submit an application that includes the following:
  - **Form LFB and Form LFB/2**
  - **Group corporate shareholding structure;**
  - **Diagram of leasing transaction;**
  - Any other documentation and information that may be relevant to the application as per Form LFB and Form LFB/2





## 8. Labuan Leasing – Operational Requirements



# 8. What are the Operational Requirements?

## The Leasing Company:

- is required to **establish substantial activities and perform strategic functions in Labuan**. In this regard, the substance requirements should include but not limited to the following factors:
  - i. Physical presence:* Maintain an **operational office in Labuan**. The operational office should be used for business purposes only and must be appropriately furnished with office equipments;
  - ii. Key leasing activities:* The core income generating activities are expected **to be carried out from the Labuan office**. Typically, the activities may include **identifying and acquiring of assets to be leased, negotiating leasing terms, soliciting lessees, management of leased assets and financing the acquisition of assets**;
  - iii. Employment:* Have **adequate number of full-time employees** with necessary qualification, skills or experiences in the relevant fields related to the leasing business; and
  - iv. Annual business spending:* Have **incurred adequate business spending** in Malaysia including Labuan in undertaking the Labuan leasing business.



## 8. What are the Operational Requirements?

- Have **sufficient and positive capital or working funds** that commensurate with the Labuan leasing business at all times. Labuan FSA may exercise its discretion to require a Labuan leasing company to inject additional capital, taking into account its business profile as well as nature, scale, complexity and diversity of their business activities.
- Ensure that the **directors and officers** responsible for the management of the company **meet the Fit and Proper Person requirements** as specified in the Guidelines on Fit and Proper Requirements issued by Labuan FSA.
- Establish an adequate set of **internal policies and controls for its operations, compliances, corporate governance and risk management**. These need to be regularly reviewed to ensure that they remain appropriate, relevant and prudent.
- Ensure that all its **leased assets are adequately insured**. In this regard, Labuan leasing companies are encouraged to primarily secure the insurance coverage for their leased assets/properties from Labuan-based insurance companies and takaful operators prior to securing the services of other insurance players elsewhere.

## 8. What are the Operational Requirements?

- Maintain **adequate and proper records and books of accounts in Labuan** in line with the Directive on Accounts and Record-keeping Requirement for Labuan Entities issued by Labuan FSA. Its name and company number must be clearly indicated on its letterhead, stationery and other documents.
- **Maintain bank account(s) under its name preferably in Labuan IBFC and/or Malaysia** to facilitate the leasing operations including any lease remittances/lease rental payment transactions.
- The **lease agreement shall be stamped and endorsed** by the Collector of Stamp Duties, **at the Stamp Duty Office of Inland Revenue Board of Malaysia, Labuan branch.**
- Ensure that all leasing **transactions with any of its related party are conducted at arm's length basis** and are subjected to the transfer pricing rules and guidelines issued by the relevant authorities.

## 8. What are the Operational Requirements?

Obtain **prior approval** from Labuan FSA for:

- i. **each new and subsequent leasing transactions.** In this regard, no leasing transaction shall be undertaken prior to Labuan FSA's approval;
- ii. **establishment of office outside Labuan** and establishment or acquisition of **subsidiary**;
- iii. **change of lessee and leased asset**;
- iv. **change of shareholders** of more than ten per centum; and
- v. **appointment of directors.**





## 8. What are the Operational Requirements?

- **Notify Labuan FSA within 30 days** pertaining to the following matters:
  - i. resignation of directors;**
  - ii. any change** of information with regard to the **place of business or office in Labuan;**
  - iii. any changes to the constituent documents** and **business plan** which is not tantamount to the change of lessee and leased asset. This may include the change of its company name; and
  - iv. termination / extension of any leasing transactions.**
- **Comply with applicable laws, rules and regulations** relevant to the leasing business, including relevant **guidelines issued by Labuan FSA** and regulatory **requirements of the jurisdictions where Labuan leasing business is authorised to operate in** (where applicable). Labuan leasing company is **expected to obtain necessary approvals from the relevant authorities in the market it intends to operate** prior to commencing its business in those respective markets and provide a copy of the approvals to Labuan FSA.



## 9. Labuan Leasing – Reporting Requirements



## 8. What are the Operational Requirements?

A Labuan leasing company is required to:

- i. **appoint an approved external auditor** to undertake an audit in respect of its accounts and business operations;
- ii. submit **one (1) hardcopy and one (1) softcopy of its audited financial statements to Labuan FSA within six (6) months** after the close of each financial year; and
- iii. **provide statistics and information** as may be required by Labuan FSA from time to time.





# 10. Fees Payable



## 9. Fees Payable

Type of Fee	Ringgit Malaysia
Annual Fee	60,000
Each Subsequent Leasing Transaction	20,000 (one-off)

- Annual license fee to be paid **on or before 15 January each year.**
- Subsequent transaction means any new or additional leasing agreement other than the original agreement entered by the lessor with existing lessee or others.





# 11. Tax Residency



# 11. Tax Residency

- Section 8(1)(b), Income Tax Act 1967 (“ITA”) provides that a company is resident in Malaysia for a basis year for a year of assessment if at any time during that basis year the **management and control** of its business or of any one of its businesses **are exercised in Malaysia**. This generally means **that the place where the board of directors meets to make decisions is the place of residence of a company.**
- **A Labuan company** which is approved as a licensed leasing company by the Labuan Financial Services Authority to carry on leasing businesses (e.g. leasing of aircraft, high value equipment and specialised equipment) to domestic companies **should also ensure that it is a tax resident in Malaysia. This is to avoid the domestic company being liable to pay withholding tax to the IRB under Section 109B(1) of the ITA** when paying the leasing charges to the Labuan company.





# 12. Goods and Service Tax (GST)





## 12. GST

### Situation 1

Labuan leasing entity leases the Plant, Machinery and Equipment (PME) from foreign company and re-leases the PME to a foreign company.

In this situation, the Labuan leasing entity is considered as providing an **out of scope supply and GST is not applicable**. The Labuan leasing entity does not have to be registered under GST Act.



## 12. GST

### Situation 2

Labuan leasing entity leases the PME from foreign company and re-leases the PME to a Malaysian resident and the PME to be removed from Designated Area (DA) to Principal Customs Area (PCA)

Under this situation, the Labuan leasing entity is **considered as importing services into DA and exportation of goods to PCA** [under Section 156(a)]. **Importation of services into DA is not subject to GST. The Labuan lessor would have to be registered and charge GST on the transacted of the leasing agreement to the Malaysian lessee.** The lessor has to **make a declaration under Form K1 at the point of exit and collection of tax due and payable shall be made in the office of RMCD in a DA** before exiting (Section 158 and Section 159). However, **the lease payments are not subject to GST.**



## 12. GST

### Situation 3

Labuan leasing entity leases the PME from foreign company and re-leases the PME to a Malaysian resident and the PME is already in PCA.

Under this situation, the Labuan leasing entity is **considered as importing services into DA and exportation of services under a lease agreement with tangible assets to PCA** (under Section 157). **Importation of services into DA is not subject to GST. The Labuan lessor would have to be registered and charge GST based on the monthly lease rental of the leasing agreement to the Malaysian lessee. It has to account for the output tax and input tax monthly or quarterly as the case may be in the GST return.**

# 12. GST

## Situation 4

Labuan leasing entity owns the PME and leases the PME to a foreign company.

Under this situation, the Labuan leasing entity is **considered as conducting exportation of services which is a zero rated supply**. Under the GST Act any person who is making **taxable supply** (standard rated and zero rated supplies) **exceeding MYR500,000** in a taxable year would **have to register and account for GST** to the Royal Malaysian Customs Department (RMCD). However, if the entity is making wholly zero-rated supply, it can apply for exemption from registration to the RMCD.



## 12. GST

### Situation 5

Labuan leasing entity owns the PME and leases the PME to a Malaysian resident in the PCA and the PME to be removed from DA to PCA.

Under this situation the Labuan leasing entity is **considered as exportation goods** and the lessee is considered as importation of goods from DA to PCA [under Section 156(a)]. The **Labuan lessor would have to be registered and charge GST on the transacted value** [calculated as per Para 10.11 (a)(iii) above] of the leasing agreement to the Malaysian lessee. **The lessor has to make a declaration under Form K1 at the point of exit** and collection of tax due and payable shall be made in the office of RMCD in a DA before exiting (Section 158 and Section 159). However, **the lease payments are not subject to GST.**

## 12. GST

### Situation 6

Labuan leasing entity owns the PME and leases the PME to a Malaysian resident in the PCA and the PME is already in PCA.

Under this situation, the Labuan leasing entity is **considered as exportation of services under a lease agreement with tangible assets to PCA** (under Section 157). The **Labuan lessor would have to be registered and charge GST based on the monthly lease rental** of the leasing agreement to the Malaysian lessee. It has to **account for the output tax and input tax monthly or quarterly** as the case may be in the GST return.





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# THANK YOU

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