

# A GUIDE TO LABUAN IBFC

The Labuan International Business and Financial Centre (Labuan IBFC) was established more than 25 years ago to complement:

- The activities of the domestic financial market in Kuala Lumpur; and
- The development of economic activities in Labuan, a federal territory in Malaysia.

The Labuan Financial Services Authority (Labuan FSA) is the one-stop regulator for the jurisdiction while its wholly-owned subsidiary, Labuan IBFC Inc Sdn Bhd, promotes and markets Labuan IBFC as the preferred international business and financial centre in Asia Pacific.

Labuan IBFC offers a wide range of structures and solutions. The diagram below illustrates the main areas of focus:



## **THE LABUAN LEGISLATION**

Four Acts were enacted in 2010 by the Malaysian Parliament and comprehensive amendments were made to four existing Acts during the same year.

As a result, Labuan IBFC is now governed by the following legislations:

- Labuan Companies Act 1990
- Labuan Business Activity Tax Act 1990
- Labuan Trusts Act 1996
- Labuan Foundations Act 2010
- Labuan Limited Partnerships and Limited Liability Partnerships Act 2010
- Labuan Financial Services and Securities Act 2010
- Labuan Islamic Financial Services and Securities Act 2010
- Labuan Financial Services Authority Act 1996

## **THE LABUAN TAX FRAMEWORK**

The tax laws relating to Labuan entities are set out in the Labuan Business Activity Tax Act 1990 (LBATA).

According to Section 4(1) of LBATA, tax shall be charged at a rate of 3% a year on the net audited profits of a Labuan entity carrying on a trading activity.

In the instance of a Labuan entity carrying on a non-trading activity, no tax will be applied for that assessment year. A Labuan non-trading activity is defined as activity relating to the holding of investments in securities, stocks, shares, loans, deposits or any other properties situated in Labuan and held by a Labuan entity on its own behalf while a Labuan trading activity includes banking, insurance, trading, management, licensing, shipping operations or any other activity.

The concessionary tax treatment offered by LBATA is also complemented by Statutory Orders exempting Labuan companies from taxation, withholding taxes and stamp duty as well as partial exemption from salary taxes in certain cases.

Foreign exchange control rules, foreign ownership limitations, capital gains tax, estate or inheritance taxes and indirect taxes which may apply in Malaysia, do not apply to Labuan companies or structures.

Should a Labuan company or structure prefer not to be taxed under LBATA, it may make an irrevocable election to be taxed under the Income Tax Act 1967 (ITA). The Malaysian Inland Revenue Board has issued guidelines on the tax treatment (including compliance requirements) for Labuan entities that elect to be taxed under the ITA.

The advance ruling provisions provided by the Inland Revenue Board is also available to Labuan entities under LBATA.

Description	Tax Treatment
<b>Labuan Non-Trading Activity</b> Holding of investments in securities, stock, shares, loans, deposits or any other properties situated in Labuan and held by a Labuan entity on its own behalf	Not subject to tax
<b>Labuan Trading Activity</b> Includes banking, insurance, trading, management, shipping operations, licensing or any other activity which is not a Labuan non-trading activity	3% of net profits per audited accounts
<b>Carrying out both Labuan Trading and Non-trading activities - Deemed to be Labuan Trading Activity</b>	Same tax treatment as Labuan Trading activity, i.e.: 3% of net profits per audited accounts
<b>Non-Labuan Business Activities</b>	Tax under domestic income tax act – 24%

## LABUAN COMPANIES OPERATING IN MALAYSIA

A Labuan company may apply to Labuan FSA to establish marketing offices in Kuala Lumpur or Iskandar Malaysia to carry out its marketing activities without losing its Labuan business activity status.

Labuan banks and Labuan insurance companies, subject to Labuan FSA's approval and conditions, may also set up co-located offices in any part of Malaysia to carry out permissible Labuan business activities.

A Labuan holding company may apply to Labuan FSA to co-locate its operational and management office in Kuala Lumpur, provided it makes an irrevocable election to be taxed under the ITA instead of LBATA.

The co-located office is allowed to provide management services, management of surplus funds and provision of credit facilities, and trading or invoicing activities. Depending on the nature of the activities, the services can be extended to related companies in and outside of Malaysia and to non-related companies outside of Malaysia.

## DOUBLE TAXATION AGREEMENTS (“DTAS”)

Malaysian tax-paying residents have access to an extensive double taxation agreement (DTA) network, which contributes to a dynamic and conducive business environment. Labuan entities with Malaysian tax residency status may also access the majority of Malaysia's DTA network.

Where a Labuan company elects to be taxed under the ITA, this election may, in some cases, facilitate access to the benefits offered under some of the DTAs.

The current tax treatment under the ITA exempts foreign sourced income from tax with the exception of companies undertaking banking, insurance, sea or air transport businesses. This would give Labuan entities more flexibility to structure their business transactions efficiently while giving investors a more liberal business and exchange control environment.

The provision of the Labuan Acts, in addition to the Organisation for Economic Co-operation and Development's recognition that Malaysia complies with the international standards for transparency and exchange of information between countries have strengthened Labuan IBFC's position as a major regional and global international business and financial centre.

## FOCUS AREAS

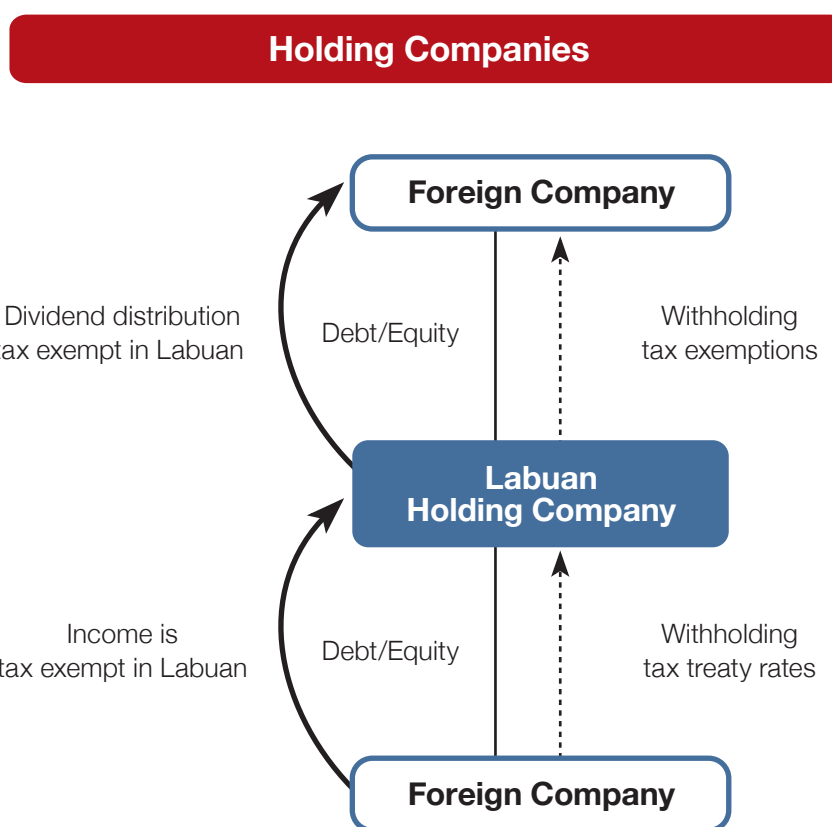
### INCORPORATION OF COMPANIES

#### HOLDING COMPANIES

The favourable investment and tax regime in Labuan IBFC, coupled with Malaysia's extensive DTA network and a modern approach to company law, make the jurisdiction an attractive location to hold investments. Its well-established banking and financial system, modern communication and infrastructure make it an attractive location to establish a holding company.

A Labuan holding company that derives its investment income from a non-trading activity is not subject to tax under LBATA. These tax positions are enshrined in the LBATA and readily accessible. Payments of dividends, interest, service fees and royalties by the Labuan company to non-residents are also exempt from Malaysian withholding tax.

A typical holding company structure using a Labuan entity and its corresponding tax profile is shown in the diagram below.



#### Tax Profile:

- Income from investments is not subject to tax in Labuan
- Able to enjoy certain tax exemptions (e.g. no withholding tax on dividends/ interest/royalty payments from Labuan holding company to foreign company)
- Liberal exchange control environment in Labuan
- No stamp duties on instruments executed by Labuan holding company
- Access to benefits under Malaysia's DTAs

## FOCUS AREAS

### INCORPORATION OF COMPANIES

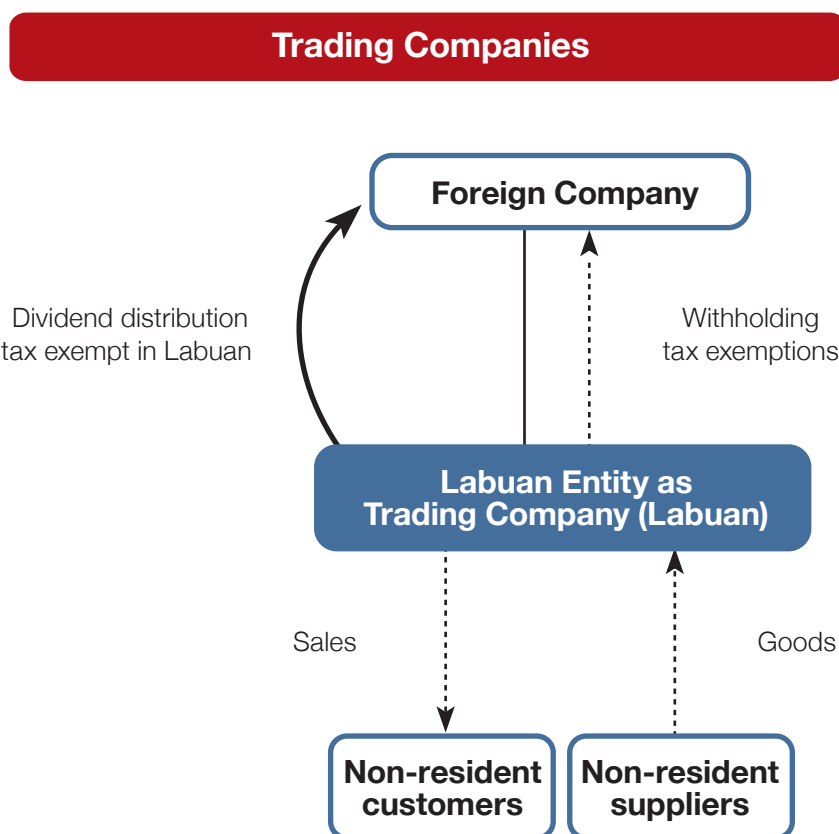
#### TRADING COMPANIES

The diverse activities and ownership structure of Labuan entities is testimony of Labuan IBFC's appeal as a leading international business and financial centre in the region. Labuan IBFC is committed to strengthening its position as a jurisdiction of choice within Asia Pacific for international trading companies.

Strategically situated in the Asia Pacific region, sharing a common time zone with many large Asian cities and a member of the ASEAN trade bloc, Labuan IBFC provides an ideal business environment for trading companies.

Labuan trading companies may mitigate the risk of creating a taxable business presence in other countries through the Permanent Establishment Article of Malaysia's DTAs.

A typical trading company structure using a Labuan entity and its corresponding tax profile is shown in the diagram below.



#### Tax Profile:

- The Labuan entity can enjoy minimum tax under LBATA
- Able to enjoy certain tax exemptions (e.g. no withholding tax on dividends/ interest/royalty payments from Labuan entity to foreign company)
- Liberal exchange control environment in Labuan
- Access to benefits under Malaysia's DTAs, in particular Permanent Establishment Protection

## FOCUS AREAS

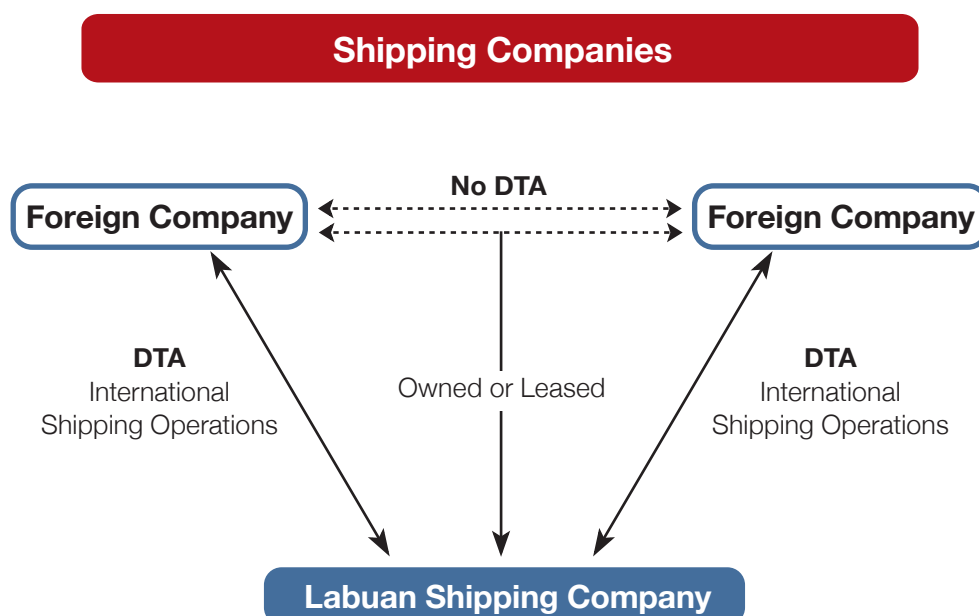
### INCORPORATION OF COMPANIES

## SHIPPING COMPANIES

Labuan companies are allowed to undertake shipping operations. “Shipping operations” are defined as the transportation of passengers or cargo by sea or the letting out of a charter of ships on a voyage or time charter basis. Labuan shipping operations must either be carried out of or in Labuan, or outside of Malaysian waters.

There are a number of tax benefits for a ship owner operating out of Labuan IBFC; in particular, the Labuan shipping company can enjoy tax efficiencies under the LBATA. Further, under Malaysia’s DTAs and limited shipping agreements, a Labuan registered vessel may benefit from paying reduced or even no tax in the jurisdictions it visits.

The diagram below illustrates how a shipping company might typically operate through a Labuan company.



- Shipping Operations:**
- Transportation of passengers and cargo
  - Time, voyage and bare-boat charter\*

*\*Bare-boat charter is a financial activity that requires licensing from Labuan FSA*

### Tax Profile:

- The Labuan shipping company can enjoy minimum tax under LBATA
- Enjoys certain tax exemptions (e.g. no withholding tax on dividends/ interest/royalty payments from Labuan entity to foreign company)
- Liberal exchange control environment in Labuan
- Access to benefits under Malaysia’s comprehensive DTAs and limited shipping agreements

## FOCUS AREAS

### RISK MANAGEMENT

Labuan IBFC is an ideal location to establish captives, or conduct insurance, reinsurance, takaful and retakaful operations. The jurisdiction offers an extensive suite of legislative provisions and guidelines that support the risk management industry.

### CAPTIVES

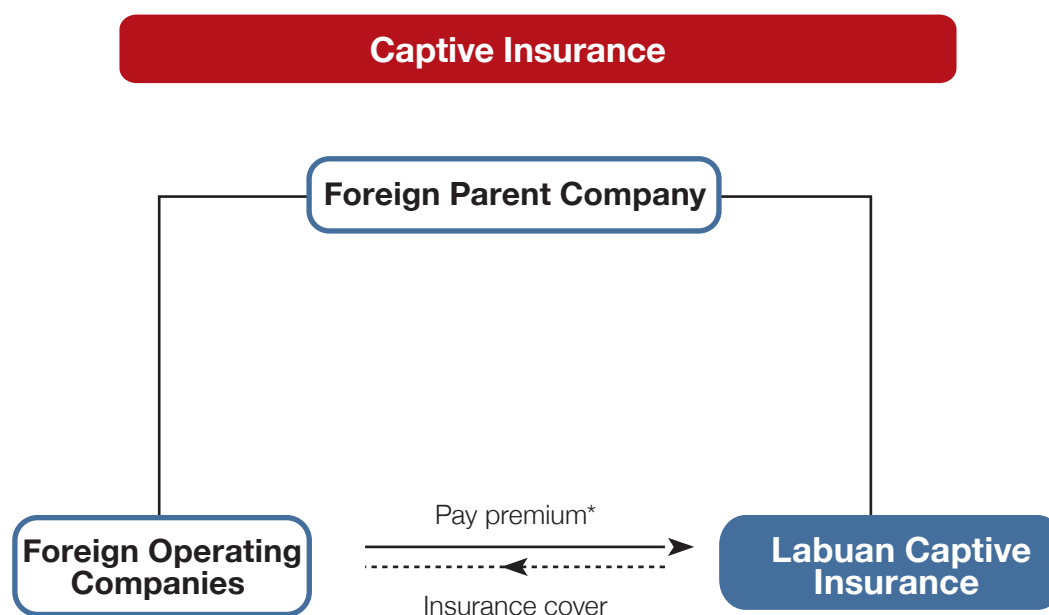
A Labuan captive insurance business is defined as a Labuan insurance business where the insured party is a related corporation or associate corporation of the Labuan insurer. Third-party risks may also be insured provided it is approved by Labuan FSA.

A captive insurer may act as either a direct insurer or a reinsurer. The captive insurer may also underwrite property and casualty businesses as well as contingency coverage. Where a captive insurer wishes to underwrite life insurance, a separate company must be established. Captive insurers can access the reinsurance market at wholesale rates.

A Labuan-domiciled captive insurer may obtain reinsurance cover from any insurance company irrespective of whether or not it is licensed under the Labuan Financial Services and Securities Act 2010.

Captives may be established under a conventional insurance structure or under a takaful structure.

The general tax profile of a Labuan captive is shown in the diagram below.



#### Tax Profile:

- Captive housed in Labuan can enjoy minimum tax under LBATA
- Captive to parent company – no withholding tax on dividends/interest/royalty payments
- Liberal exchange control environment in Labuan
- Access to benefits under Malaysia's comprehensive DTAs
- No stamp duties
- Premiums on insurance and reinsurance through Labuan should be 100% deductible
- \*Fronting company may be required for certain Malaysian captives

## INSURANCE AND REINSURANCE

A Labuan insurance business is a business transacted in a foreign country (i.e. not in Malaysia) and in a foreign currency. Labuan insurers may offer reinsurance support to domestic Malaysian businesses pending approval from Labuan FSA.

Labuan insurance and reinsurance businesses offer coverage for a wide range of products; i.e. life, general, reinsurance. They also carry out other related functions such as that of insurance manager, underwriting manage and insurance broker.

## TAKAFUL AND RETAKAFUL

Malaysia is a pioneer in Islamic finance and is globally recognised as a key centre for takaful and retakaful businesses. The principal models commonly in use are:

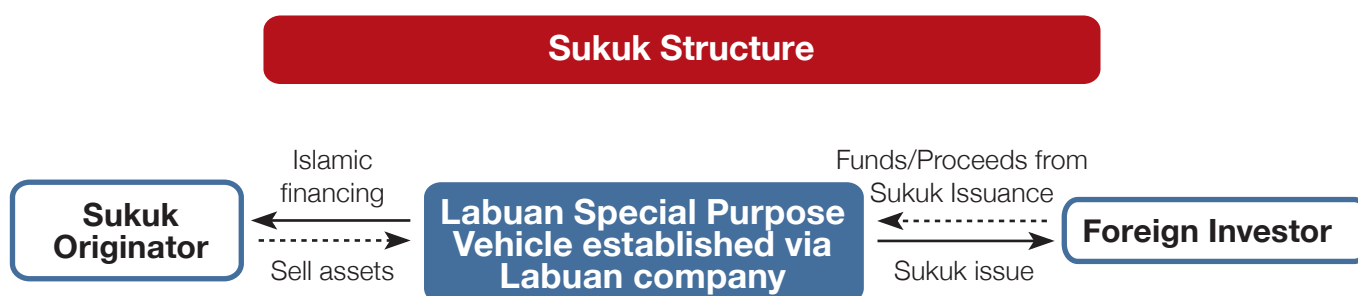
- (a) The Wakalah (agency) model; and
- (b) The Mudharabah (profit sharing) model.

Other Shariah-compliant models may also be adopted as and when it is approved by the takaful/retakaful operator's Shariah Supervisory Advisory Board.

Labuan IBFC allows various types of insurance and captive insurance opportunities to be conducted via a Labuan company or a protected cell company (PCC). Under the PCC, the assets of each cell are statutorily protected from the creditors of another cell. For those engaged in takaful and retakaful, the PCC can be structured to adhere to Shariah principles.

## ISLAMIC FINANCE

Labuan IBFC is well-placed to promote Islamic financial products and services to an international audience. Labuan IBFC's legislation in Islamic financial services provides a facilitative and flexible framework, creating room for the industry to be innovative and structure new products for their clients. This approach is the cornerstone of Labuan IBFC's success as an Islamic financial centre. An example of Islamic Financing Structure utilised by Labuan Entities is Sukuk Structure as illustrated in the diagram below.



### Tax Profile:

- The Labuan special purpose vehicle can enjoy minimum tax under LBATA
- No withholding tax on dividends/royalty payments from Labuan special purpose vehicle to foreign investors or shareholders
- Liberal exchange control environment in Labuan



## FUND MANAGEMENT

Labuan IBFC caters to fund managers, private equity firms and individuals looking for a tax efficient jurisdiction to domicile their investment funds.

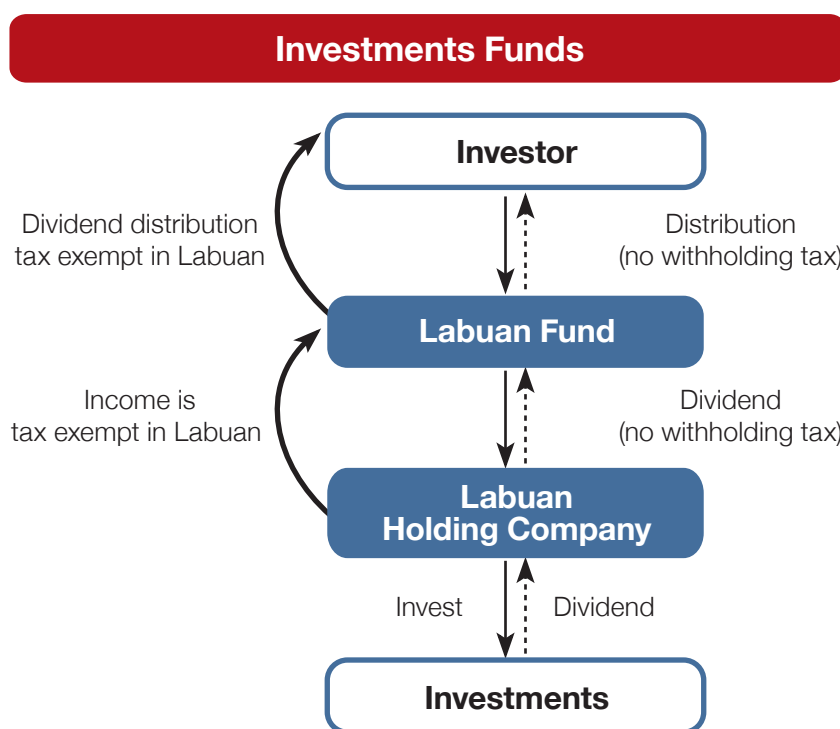
With a focus on funds and asset management businesses, continuing efforts are being made to enhance the growth of this sector.

The private funds sector has been liberalised and these funds need no longer register with Labuan FSA; instead, notification of the fund is sufficient.

Protected cell companies can also operate as a vehicle for investment funds. As each cell's assets and liabilities are segregated from other cells and "ring-fenced", each cell may represent different groups of investments for which distinct classes or series of shares may be offered to the fund's investors.

Alternatively, fund managers may consider using a limited partnership structure as the fund's vehicle. In such a structure the fund manager will act as the general partner while investors are accorded protection as limited partners.

A typical investment fund structure using a Labuan entity and its corresponding tax profile is shown in the diagram below.



### Tax Profile:

- The Labuan fund and Labuan holding company can enjoy minimum tax under LBATA
- No withholding tax on distributions from Labuan fund to investors
- No withholding tax on dividends/interest/royalty payments from Labuan holding company to Labuan fund
- Liberal exchange control environment in Labuan
- Access to benefits under Malaysia's DTAs

## PRIVATE WEALTH MANAGEMENT

High-net-worth individuals will find Labuan IBFC to be a well-regulated jurisdiction offering a range of private wealth management vehicles such as trusts, foundations, limited partnerships or companies limited by guarantee. In fact, Labuan IBFC is one of the few jurisdictions in Asia offering private foundations for wealth management.

With the availability of an array of trusts and foundations, Labuan IBFC offers flexibility in structuring wealth management vehicles that suit both the common and civil law jurisdictions within Asia and beyond.

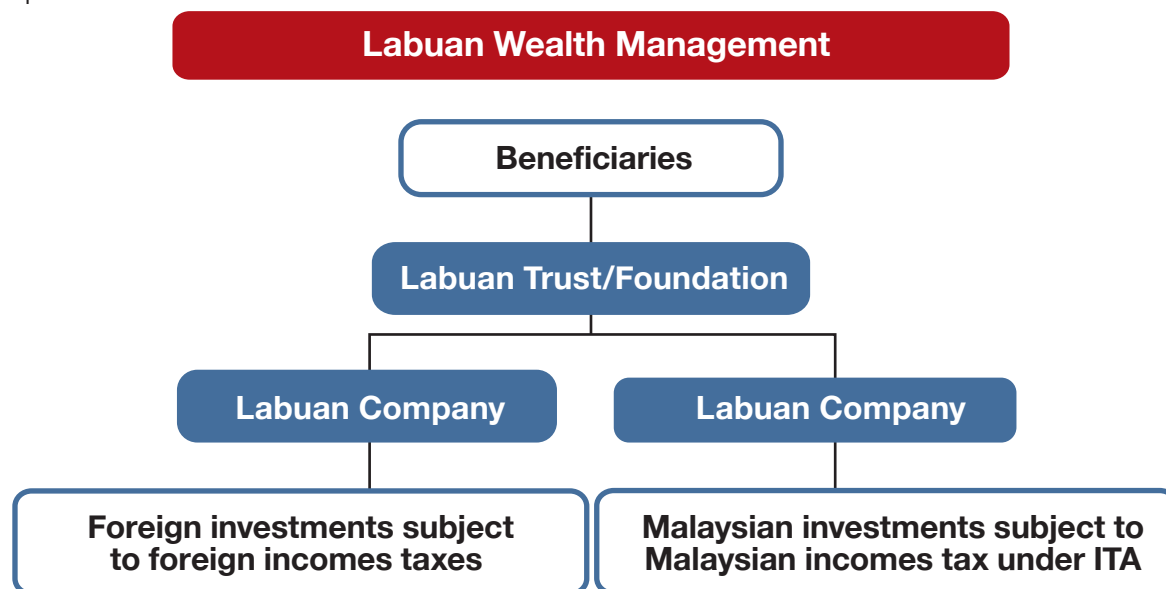
In addition, the availability of private trust companies will appeal to individuals and families who wish to retain control of the management of their assets and businesses, including awarding them the flexibility to be involved in the day-to-day administration of those assets.

These wealth management vehicles can be considered along with the Labuan Trusts Act 1996 which provides for a variety of trusts, ranging from purpose to charitable trusts. A notable feature of the Act is the provision of the Labuan special trust, which can be used to hold shares in a Labuan holding company that may in turn own assets including cash, real estate, art, securities, businesses and insurance policies.

Malaysian and non-Malaysian residents who own international as well as Malaysian properties may inject them into a trust or a foundation. However, where Malaysian properties are involved, prior approval from Labuan FSA is required. In addition, income from Malaysian properties is subject to tax under the ITA, whilst income from non-Malaysian properties is taxed under LBATA.

There is no estate or inheritance tax in Labuan IBFC.

An example of a Labuan trust/foundation is shown below.



### Tax Profile:

- The Labuan company and Labuan trust/foundation can enjoy minimum tax under the LBATA
- No withholding tax on dividends/royalty payments from Labuan company to Labuan trust/foundation
- No withholding tax on distributions from Labuan trust/foundation to beneficiaries
- Liberal exchange control environment in Labuan
- Access to benefits under Malaysia's DTAs by the Labuan company may be available

## **GLOBAL INCENTIVES FOR TRADING (GIFT)**

Targeted specifically at international and domestic traders, GIFT is a result of Malaysia's policy to encourage commodity traders and trading houses to use Malaysia as their Asia Pacific base for operations and trading, servicing clients in the region and around the world or even to operate their proprietary trading desk from.

The GIFT programme is housed in Malaysia via a Labuan International Trading Company (LITC), which is then licensed to benefit from preferential allowances under this programme.

The types of commodities that are eligible under the GIFT programme are petroleum and petroleum-related products including liquefied natural gas (LNG).

Under the GIFT programme, an LITC must be established and licensed by Labuan FSA. An LITC is allowed to establish its operational office(s) anywhere in Malaysia, including Kuala Lumpur.

LITCs will enjoy a corporate tax rate of 3% on chargeable profits as reflected in the audited accounts under LBATA as per the relevant exemption order. As part of the programme, LITCs enjoy the following benefits:

- 100% exemption on director fees paid to non-Malaysian directors
- 50% exemption on gross employment income of non-Malaysian professionals and managerial staff, including traders
- Exemption on dividends received by or from the LITC
- Exemption on royalties received from the LITC
- Exemption on interest received by residents or non-residents from the LITC
- Stamp duty exemption on all instruments for Labuan business activities, mergers and acquisition of a Labuan company and transfer of shares.



FOR MORE INFORMATION, LOG ON TO [WWW.LABUANIBFC.COM](http://WWW.LABUANIBFC.COM)

**LABUAN IBFC INCORPORATED SDN BHD (817593D)**

SUITE 3A-2, LEVEL 2 BLOCK 3A  
PLAZA SENTRAL, JALAN STESEN SENTRAL  
KL SENTRAL, 50470 KUALA LUMPUR  
MALAYSIA

TEL +6 03 2773 8977

FAX +6 03 2780 2077

EMAIL [info@libfc.com](mailto:info@libfc.com)

Labuan IBFC Incorporated Sdn Bhd, the official promotion and marketing agency for Labuan International Business and Financial Centre, Malaysia

**Disclaimer:**  
This document provides general information on Labuan IBFC and should not be relied upon when formulating business decisions, nor should it be treated as a substitute for professional advice pertaining to particular business circumstances. While all information herein has been prepared in good faith, no representation or warranty, expressed or implied, is made and no responsibility or liability will be accepted by Labuan IBFC Incorporated Sdn Bhd or Labuan Financial Services Authority as to the accuracy or completeness of this document. Further, this document does not include any statement or opinion with regard to the laws governing Labuan IBFC or Malaysia and specific legal advice should always be sought from qualified lawyers and/or professional advisors. In addition, this document is not directed to any person in any jurisdiction where (by reason of that person's nationality, residence or otherwise) this publication or availability of any services offered within it, is prohibited and deemed unlawful. Please note that information contained herein is subject to change without prior notice.