



# *Labuan International Business and Financial Centre, Malaysia*





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# Overview and background

## About Labuan

Labuan which is a Federal Territory of Malaysia was originally established on 1 October 1990 as an international offshore financial centre to provide for the development of activities in the areas of banking and insurance, trust and fund management, investment holding and other activities carried on by multinational companies. In a strategic restructuring exercise, Labuan Offshore Financial Centre was renamed to Labuan International Business and Financial Centre (Labuan IBFC) in January 2008 to reflect the jurisdiction's growing international status and direction. In the same year, a new entity, the Labuan IBFC Incorporated Sdn Bhd (Labuan IBFC Inc.), wholly owned by the Labuan Financial Services Authority (LFSA), 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 88 °F (31°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 an estimated population of over 100,000 inhabitants comprising mainly Malays and Chinese, with a sizeable population of foreign nationals.

## 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 once every 5 years.

## Infrastructure

Labuan has modern and adequate road and port facilities, with a shipyard and gas complex as well as sufficient residential and commercial space based on current requirements. In line with its status as an international business and financial centre, Labuan's infrastructure facilities are being continuously improved. The prestigious MYR400 million Financial Park complex and MYR70 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 highways.

Labuan is easily accessible by air, with daily flights from Kuala Lumpur, Kuching and Kota Kinabalu. The airport costing MYR138.2 million was opened on 15 June 1999 and is located 3 kilometers from the town centre. The island is a free port and also has an excellent golf course of international standards.

## Labuan Financial Services Authority

The Labuan Financial Services Authority (Labuan FSA) is a statutory body established on 15 February 1996 under the Labuan Financial Services Authority Act 1996 to be responsible for the development and administration of the Labuan IBFC. Its 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

## **Objectives of Labuan FSA**

The objectives of Labuan FSA include the following:

- to promote and develop Labuan as an international centre for business and financial services;
- to develop national objectives, policies and priorities for the orderly development and administration of international business and financial services in Labuan; and
- to act as the central regulatory, supervisory and enforcement authority of the international business and financial services industry in Labuan.

Labuan FSA's key role is to license and regulate licensed entities operating within Labuan IBFC and to ensure all such entities remain in compliance with the internal and international best standards adopted by the jurisdiction. Labuan FSA also develops policies for the orderly conduct of business and financial services in Labuan IBFC.

## **Function of Labuan FSA**

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

1. To administer, enforce, carry out and give effect to the provisions of the following laws:
  - a) Labuan Companies Act 1990 ("LCA");
  - b) Labuan Business Activity Tax Act 1990 ("LBATA");
  - c) Labuan Trusts Act 1996;
  - d) Labuan Financial Services Authority Act 1996 ("Labuan FSA");
  - e) Labuan Foundations Act 2010;
  - f) Labuan Financial Services and Securities Act 2010 ("LFSSA");
  - g) Labuan Islamic Financial Services and Securities Act 2010;
  - h) Labuan Limited Partnerships and Limited Liability Partnerships Act 2010; and
  - i) Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Anti-Money Laundering Act).

Any other laws relating to business and financial services in Labuan;

2. To exercise, discharge and perform such powers, duties and functions in accordance with the laws;

3. To maintain the good reputation of Labuan IBFC as an international business and financial centre;
4. To carry out research and commission studies on financial services in Labuan IBFC;
5. To make recommendations for the creation and improvement of facilities to enhance the attraction of Labuan IBFC as a centre for financial services;
6. To collaborate with financial institutions and industry associations in Labuan IBFC to promote and provide financial services to foster high standards for Labuan IBFC's financial services;
7. To advise and make recommendations to the government on matters relating to financial services in Labuan IBFC; and
8. To carry out all such activities and to do all such things as necessary or advantageous and proper for the administration of the Authority, or for such other purposes as may be directed by the Minister.

This document is based on the law as at June 2017 unless otherwise stated.

# FREQUENTLY ASKED QUESTIONS

## 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 2016 which governs companies operating in Malaysia domestically.

### **How is a Labuan company formed?**

A Labuan company is one which 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:

- Incorporation of a Labuan company in Labuan IBFC must be done through a Labuan trust company. The application should be submitted together with the Memorandum and Articles of Association, consent letter to act as director, statutory declaration of compliance as well as payment of registration fees based on paid-up capital.
- payment of the incorporation fee of MYR1,000 to MYR6,000 depending on the value of nominal capital, as well as other administrative fees

### **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 MYR6,000. 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 minimum of one share is required. Apart from this, there is no minimum capital requirement, and Labuan companies may issue shares of different classes and of different rights but no bearer shares are allowed. Shares may be denominated in any currency except in Malaysian Ringgit.

The minimum number of shareholders in an offshore company is one (1). The shareholder may be an individual, a corporation or a trust company holding the shares as a nominee, or on trust. A Labuan company may be limited by shares, limited by guarantee or an unlimited capital 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 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.

### **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 banking, Labuan insurance 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 as part of the tax filing requirements

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.

### **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 than 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 2016 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 nine 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 one 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 also subject to that Jurisdictions approval. Certain conditions must be fulfilled before Labuan FSA grants approval.

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

With effective 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 LBATA. (See "Taxation System in Labuan")` An annual fee of MYR10,000 is charged upon approval, and for every subsequent year during which the approval is valid.

As of 19 January 2010, a Labuan bank can now open one or more co-located offices in Kuala Lumpur and Iskandar. 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 and/or Johor 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 in, through or from the marketing office. An annual fee of MYR7,500 is charged upon approval, and for every subsequent year during which the approval is valid.

### ***Are there any prohibited activities for a Labuan company?***

A Labuan company may be incorporated for any lawful purpose and, subject to any other written laws on financial services applicable to Labuan, shall carry out business only in, from or through Labuan.

### ***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 Malaysian resident 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 Labuan company by a resident of Malaysia.

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

The secrecy provisions under the Labuan Companies Act 1990 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 Labuan 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 Act 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?***

Protected cell companies can be an alternative solution to standard corporate structures.

As one of the innovative business structures on offer in Labuan IBFC, protected cell companies may also be structured to further enhance the insurance and mutual funds industries, particularly in providing cover for uninsurable risks and plenty of flexibility in managing risk portfolios. They can also be used as an efficient tax planning tool, besides serving as an effective asset protection tool and wealth management vehicle.

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 cell 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.

## **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 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 trust and any subsequent changes, must be registered within one month of the change.

### **What is the duration of a Labuan trust?**

The duration of a Labuan Trust, which used to be limited to 100 years, can now:

- (a) be for a fixed duration,
- (b) continue for an unlimited period unless otherwise stated in the trust terms, and
- (c) provide that the trustee be authorised to appoint a fixed duration, convert a fixed duration to an unlimited period, or alter, by limiting or extending, the duration of the trust.

In the event that there are legal issues related to the perpetuity rule, the trustee ultimately has the statutory power and discretion to determine the trust period.

### **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.

### **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?**

A Labuan Trust enjoys clear statutory asset protection provisions, which also apply to the Labuan Special Trust and the Labuan Foundation. Where a Labuan Trust is validly created in accordance with the Labuan Trusts act 1996, the Malaysian courts shall not vary it or set it aside or recognise the validity of any claim against the property of the Labuan Trust pursuant to the law of another jurisdiction or the order of a court of another jurisdiction in respect of claims arising from, amongst others, marriage or its dissolution, succession and creditors.

### ***Can a Labuan trust carry out a re-domiciliation from Labuan***

The transfer of domicile by Labuan trusts from Labuan is permitted under the Labuan Trust Act 1996 subject to the terms of the Trust and provided they originate from a recognised jurisdiction.

### ***What is a Labuan special trust?***

A Labuan special trust is a trust of company shares which is 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.



## LABUAN FOUNDATIONS

### **What is a Labuan Foundation?**

A Labuan foundation is a corporate body with a separate legal entity, established to manage its own property for any lawful purpose which may be charitable or non-charitable.

A charitable purpose means and includes any of the following description of purposes:

- The prevention and relief of poverty;
- The advancement of religion, profession or education;
- The advancement of health including the prevention and relief of sickness, disease or of human suffering;
- Social and community advancement including the care, support and protection of the aged, people with a disability, children and young people;
- The advancement of culture, arts and heritage;
- The advancement of amateur sports, which promote health by involving physical or mental exertion;
- The promotion of human rights, conflict resolution and reconciliation;
- The advancement of environmental protection and improvement;
- The advancement of animal

welfare; or

- The advancement of facilities for recreation or other leisure-time occupation in the interest of social welfare.

In the case of a Labuan Islamic foundation, its aims and operations shall be in compliance with Shariah principles.

### **How to register a Labuan Foundation?**

The secretary of the Labuan foundation shall be responsible for 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 then issued by Labuan FSA as evidence of registration. A register of foundation's is to 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.

### **Can a Labuan Foundation be dissolved?**

A Labuan foundation can be dissolved:

- upon the passing of a resolution by the officer on the basis that the foundation is established for a definite period and that period has expired;
- when the purpose of the foundation is fulfilled or becomes incapable of fulfilment; or
- when the charter requires such dissolution.

After the dissolution, the ownership of the remaining assets will be transferred to the beneficiaries.

## **LABUAN LIMITED PARTNERSHIPS AND 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 limited partnership (LP) is a business entity comprising of two or more partners who operate or manage a business together. The minimum number of partners for a Labuan LP is two partners, i.e. one general partner and one limited partner, and the maximum number of partners allowed is 50 partners.

Partners may be a corporation except for firms which are set up for professional practice, in which case it must consist of natural persons only and supplemented with professional indemnity insurance coverage issued by an insurer approved by Labuan FSA.

### ***What is a Labuan limited liability partnership?***

A limited liability partnership (LLP) is a business entity comprising two or more partners who operate or manage a business together. An LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. It is capable of entering into contracts and holding property in its own name.

The minimum number of partners for a Labuan LLP is two partners, ie one designated partner and one limited partner.

A Labuan LLP is a type of business entity that permits a partner to be shielded from liability for partnership obligations created by another partner's, or person's misconduct.

### ***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 Labuan 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.

### **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.





### ***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 Labuan limited partnership; or
- where the sole or last remaining partner is a body corporate, upon its dissolution, bankruptcy or withdrawal from the Labuan 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 2016 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 partner 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.

## **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 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.

### **What are the licensing requirements for Labuan banks?**

Organisations that meet the following minimum criteria may apply for a Labuan banking licence:

- Must be a bank or financial institution;
- Possesses a sound track record;
- Accorded a good credit rating by acceptable rating agencies;
- Supervised by a competent regulatory authority; and
- Conforms to generally accepted standards of international banking practices or the Bank for International Settlements (BIS).

The annual license fee is MYR100,000 (USD30,000). All licensees are required to pay their annual licence fee to the Labuan FSA or before 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 MYR10 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 means the business of receiving deposits on current accounts, deposit accounts, savings accounts, and includes the investment banking business, Labuan financial business, Islamic banking business and such other transactions and terms and conditions as specified by Labuan FSA in any currency including Malaysian Ringgit where permitted by Bank Negara Malaysia

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.

### **What is investment banking business?**

Investment banking means the business of providing credit facilities and consultancy and advisory services relating to corporate and investment matters, including making investments on behalf of any person. Other activities include undertaking foreign exchange transactions, interest rate swaps, dealings in derivative instruments or derivative financial instruments or any other similar risk management activities.

### **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.

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 but only where permitted by the Exchange Control Act 1953 and other relevant laws in force).

### **Are there any prohibitions for a Labuan bank?**

A Labuan company may be incorporated for any lawful purpose and, subject to any other written laws on financial services applicable to Labuan, shall carry out business only in, from or through Labuan.

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. These measures have been introduced to prevent Labuan from being turned into a centre for illegal activities such as laundering of funds.

A Labuan bank can now have one or more co-located offices in Kuala Lumpur or Iskandar 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 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 Financial Services Act 2013, Anti-Money Laundering Act 2001 and LBATA, for compliance with any double taxation agreements entered into by Malaysia.

## **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 Labuan FSSA?**

The range of Labuan insurance activities regulated under the Act includes insurance and reinsurance, takaful and retakaful business, captive insurance, and such other Labuan 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 authorised by Labuan FSA.

Labuan Islamic Takaful operators must ensure compliance with the Shariah principles and must establish an internal Shariah advisory board to advise on 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 MYR10,000 to MYR50,000 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 LCA; or
- a branch of a Malaysian insurer;

With respect to the licence to carry on a Labuan insurance-related activity, 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 six months, must be met. In addition, a Labuan insurance manager, Labuan underwriting manager, 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. Applicants must maintain a minimum paid-up capital or working funds with a bank in Labuan amounting to MYR7.5 million or its equivalent in any foreign 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 Labuan FSA 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.

### **What are the disclosure prohibitions for Labuan 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.

## **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 administration of mutual funds in Labuan is set out under the LFSSA.

For the purposes of the LFSSA, 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 MYR250,000 or its equivalent in foreign currency; no restriction on number of investors if minimum investment is MYR500,000 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 for registration.

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.

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?***

Maintain a paid-up capital unimpaired by losses of at least MYR300,000 or its equivalent in any foreign currency throughout its operations. Where the Labuan fund manager has assets under management (AUM) of more than MYR150 million, it must maintain additional capital equivalent to 0.2% of the AUM in excess of MYR150 million. 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 MYR300,000 or its equivalent in any foreign currency.

### ***How much is the annual licence fee?***

The annual licence fee

- for companies which operate in Labuan - MYR5,000
- marketing office – MYR7,500

### ***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 three 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.

### ***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 LBATA, 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.

## **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 MYR150,000 (or its equivalent in any foreign currency), and maintain a security deposit of MYR100,000 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;
- act as administrator and apply for a grant of letters of administration of the estate of a deceased person; and
- Act 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 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 and Johor to expand their market reach.

### **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 trust company shall not be held in confidence and be disclosed to the applicant.

## **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. The LFX is a 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; and
- Trading agents.

### **Who regulates the LFX?**

Labuan FSA is the statutory regulator for LFX.

For the purpose of the proper conduct of LFX, 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; and
- 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 with the above matters.

# TAXATION SYSTEM IN LABUAN

## CORPORATE TAXATION

### 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 LBATA and subject to Nil or low income tax (i.e. 3% of net audited profits or MYR20,000) depending on the type of activity conducted in, from or through Labuan.

#### **Is the preferential tax treatment available to all entities 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 currency, by a Labuan entity with non-residents or another Labuan entity.

#### **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 MYR20,000, upon annual election.

A rebate shall be granted to a Labuan entity upon tax charged for each year of assessment for any zakat which is paid in the basis period for that year of assessment to, and evidenced by a receipt issued by, a Labuan Islamic religious authority.

#### **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 properties situated in Labuan by a Labuan entity on its own behalf.

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

#### **What is the tax treatment if an entity 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 audited profits, or at the fixed sum of MYR20,000 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 audited profits and hence subject to the 3% tax. If an election is made to pay the fixed sum, the tax would be restricted to MYR20,000.

Where a Labuan entity carries on a Labuan non-trading activity any capital gains earned would be tax free since the Labuan entity is not subject to tax.

### **Is there any indirect tax in Labuan?**

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

### **Is there any stamp duty in Labuan?**

Stamp duty is imposed on the transfer of certain types of instruments in Malaysia as specified in the Stamp Act 1949.

However, instruments made in connection with a Labuan business activity by a Labuan company, including instruments for the shares in 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 Labuan trading activities is taxed at 3%, the relevant form must be completed & submitted along with it's in addition audited financial statements, payment slip and statutory declaration.

Where a Labuan company conducting Labuan trading activities makes an election to pay MYR20,000 in a given year of assessment, an election form must be completed in addition to the prescribed statutory declaration form and submitted along with the payment slip.

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

### **When is payment of tax due?**

Full payment of the tax must be made before the filing of the return, which is due on the 31st March each year.

### **Are there any tax exemptions on withholding tax in Labuan?**

Ordinarily, payments of interest, royalties, technical fees and other gains or profits not coming within the specified classes of income, which are derived from Malaysia and paid to non-residents, would be subject to withholding tax in Malaysia.

However, Labuan companies are exempted from withholding tax on those specified payments made to non-residents.

Under specific tax treatment, royalties, interest and technical or management fees paid by a Labuan company to a non-resident or another Labuan 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. Dividends paid or distributed by a Labuan company are exempt from income tax in the hands of shareholders.

There is no Malaysian withholding tax on dividends paid by Labuan companies.

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

Where the Labuan company is carrying on Labuan trading activities, dividends that reflected as part of the net audited profits would be subject to a 3% tax. Where an election to pay the fixed sum has been made, the tax would be restricted to MYR20,000.

Where the Labuan company is carrying on Labuan non-trading activities, it shall not be subject to tax.

## **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 three 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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## **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 1% to 28% (from year of assessment 2016) for resident individuals and a flat rate of 28% (from year of assessment 2016) for non-resident individuals.

### **Any tax exemptions available for individuals in Labuan?**

There are four main tax incentives applicable up to year 2020 for

Expatriates and Malaysians working in a Labuan Company for the following capacity:

1. Exempt expatriates from the payment of income tax in respect of fees received by that individual in his/her capacity as a director of a Labuan entity.
2. Exempt any person from the payment of income tax on 65% of the statutory income derived from a source consisting of the provision of qualifying professional services (legal, accounting, financial and secretarial services) rendered in Labuan by that person to a Labuan entity.
3. Exempt expatriates from the payment of 50% of gross income received by that individual from exercising an employment
4. Exempt Malaysian citizen from the payment of income tax on 50% of gross housing allowance and gross allowance received by that individual from exercising an employment with a Labuan entity in Labuan.

### **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 Scheduler Tax Deduction Scheme.

## GOODS AND SERVICES TAX

Malaysia introduced GST on the 1<sup>st</sup> April 2015 at a standard rate of 6% levied on any supply of goods or services made in Malaysia, including any importation of goods into Malaysia. With the implementation of GST, the Sales Tax Act 1972 as well as the Service Tax Act 1975 was repealed so that sales tax and service tax would no longer be chargeable.

GST shall not apply to any importation of goods or supply of imported services into Labuan unless specifically prescribed by the Minister of Finance by an order laid before Parliament. However, GST is chargeable on all goods supplied from Labuan to Malaysia or taxable services made by a taxable person in Labuan to Malaysia.

## TAX TREATY ARRANGEMENTS

### **Which countries have concluded double tax treaties with Malaysia?**

Malaysia has an extensive network of tax treaties with 75 countries.

Countries which have concluded double tax treaties with Malaysia are:

Albania	Ireland	Romania
Argentina (Limited Agreement) *	Italy	Russian Federation
Australia	Japan	San Marino
Austria	Jordan	Saudi Arabia
Bahrain	Kazakhstan	Senegal **
Bangladesh	Korea Republic	Seychelles Republic
Belgium	Kyrgyz Republic	Singapore
Bosnia & Herzegovina **	Kuwait	Slovakia **
Brunei	Laos	South Africa
Canada	Lebanon	Spain
China	Luxembourg	Sri Lanka
Chile	Malta	Sudan
Croatia	Mauritius	Sweden
Czech Republic	Morocco	Switzerland
Denmark	Mongolia	Syria
Egypt	Myanmar	Thailand
Fiji	Namibia	Turkey
Finland	Netherlands	Turkmenistan
France	New Zealand	United Arab Emirates
Germany	Norway	United Kingdom
Hong Kong	Pakistan	United States (Limited Agreement) *
Hungary	Papua New Guinea	Uzbekistan
India	Philippines	Venezuela
Indonesia	Poland	Vietnam
Iran	Qatar	Zimbabwe

\* Restricted to taxation of air and sea transport operations in international traffic.

\*\* Pending ratification.

## ***Which tax treaties exclude Labuan companies?***

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

Australia  
Chile  
Germany  
Indonesia  
India

Japan  
Luxembourg  
Netherlands  
Seychelles Republic  
South Africa

South Korea  
Spain  
Sweden  
United Kingdom

Currently, Malaysia is on the white list issued by the OECD. The Malaysia government provides the flexibility for Labuan entities to be taxed under the domestic Malaysia income tax legislation. This is to facilitate access to double tax treaties under the domestic tax regime. The election to be taxed under the Income Tax Act 1967 is an irrevocable election.



## ***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?***

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 or Israeli currency, with the exceptions as provided in other Labuan legislations.

### ***Is there any exchange control restrictions for Labuan banks?***

A Labuan bank 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 restrictions.

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





## Get in touch



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