



GUIDELINES ON THE ESTABLISHMENT OF LABUAN TRUST AND ISLAMIC TRUST

1.0 Introduction

- 1.1 The Guidelines clarifies the procedures for the creation, establishment and regulatory requirements for Labuan trust and Islamic trust (Labuan trust)¹ in the Labuan International Business and Financial Centre (IBFC).
- 1.2 A Labuan trust has the same meaning assigned to it by Part II of Labuan Trusts Act 1996 (LTA) and the creation of a Labuan trust is generally for an individual or a settlor to give specific property to a third party to be held for the benefit of others, including charities. The LTA also allows the creation of the following types of trust:
- 1.2.1 Purpose trusts;
 - 1.2.2 Charitable trusts;
 - 1.2.3 Spendthrift or protective trusts; and
 - 1.2.4 Labuan special trust.

2.0 Applicability

- 2.1 The Guidelines is applicable for Labuan trusts created under the LTA and Labuan Islamic trusts established under Section 105 of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

3.0 Legal Provision

- 3.1 The Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to provide guidance on the creation or establishment of Labuan trusts and Labuan Islamic trusts.
- 3.2 Any person who fails to comply with the Guidelines is guilty of an offence and may be punishable under Section 36B and 36G of the LFSAA.

¹ Henceforth onwards, in the Guidelines, Labuan trust will also include Labuan Islamic trust throughout the Guidelines unless specified otherwise.

- 3.3 The Guidelines should be read together with the following:
- 3.3.1 LTA;
 - 3.3.2 Labuan Trusts Regulations 2010;
 - 3.3.3 Labuan Trusts (Amendment) Regulations 2013;
 - 3.3.4 LIFSSA; and
 - 3.3.5 Written directions, guidelines and circulars that Labuan FSA may issue from time to time.
- 3.4 Unless the context otherwise requires, all other terms expressed in the Guidelines have the meaning assigned thereto by the LTA and LIFSSA. Should there be any inconsistency in the provision(s) stipulated herein this Guidelines with any provisions in the LTA or LIFSSA, the provisions of the LTA and LIFSSA shall prevail.

4.0 Effective Date

- 4.1 The Guidelines shall come into effect on 1 August 2015 and would remain effective and applicable unless amended or revoked.
- 4.2 The Guidelines will supersede the Guidelines on Shariah Compliant Offshore Trust in Labuan International Business and Financial Centre (IBFC) issued on 24 July 2008 by Labuan FSA.
- 4.3 All creations and registrations granted by Labuan FSA relating to Labuan trust prior to the Guidelines shall remain valid unless revoked.

5.0 Purpose of a Labuan Trust

- 5.1 A Labuan trust may be created or established for a specific particular purpose which could be charitable or otherwise. A charitable purpose means and includes any of the following description of purposes:
- 5.1.1 The relief or eradication of poverty;
 - 5.1.2 The advancement of education;
 - 5.1.3 The promotion of art, science and religion;
 - 5.1.4 The protection of the environment;
 - 5.1.5 The advancement of human rights and fundamental freedom; or
 - 5.1.6 Any other purposes which are beneficial to the community.

6.0 Creation of a Labuan Trust

- 6.1 A Labuan trust can be created by a will or other instruments in writing, including through a unilateral declaration. If the Labuan trust is created through a unilateral declaration, the declaration shall be done in writing by a Labuan trust company or Labuan managed trust company who is a trustee of the Labuan trust and shall cover the following areas:
- 6.1.1 The Labuan trust company as a trustee to the Labuan trust;
 - 6.1.2 The name of the Labuan trust;
 - 6.1.3 The terms of the Labuan trust;
 - 6.1.4 The names or information enabling the identification of all beneficiaries; and
 - 6.1.5 Complying with all the requirements of the LTA.
- 6.2 A Labuan trust may opt to be registered under LTA using the following forms:
- 6.2.1 A Labuan trust registered under LTA:
 - a. Form 1 – Application for Registration of a Labuan Trust.
 - b. Form 2 – Declaration by a Labuan Trust Company as Trustee.
 - 6.2.2 A Labuan Islamic trust registered under LIFSSA:
 - a. Form 3 – Application for Registration of a Labuan Islamic Trust.
 - b. Form 4 – Declaration by a Labuan Trust Company as Trustee.
- 6.3 The registration of the Labuan trust and any subsequent changes made must be made by the Labuan trust company by submitting the following documents as required under Section 12(3) of LTA:
- 6.3.1 A statement containing the following:
 - a. The name of the Labuan trust;
 - b. The date of its creation;
 - c. The name and address of the Labuan trust company acting as trustee;
 - d. The address of the registered office of the Labuan trust;
 - e. The proper law of the Labuan trust; and
 - 6.3.2 A declaration by the Labuan trust company or Labuan managed trust company, which are acting as trustee of the Labuan trust, that the trust satisfies the conditions of the LTA.

- 6.4 The Labuan trust may exist for a fixed period or in perpetuity as specified by the terms of the trust. The terms of the Labuan trust may also authorise the trustee to undertake the following with regard to the duration of the Labuan trust:
- 6.4.1 Appoint a fixed duration to a Labuan trust;
 - 6.4.2 Convert a Labuan trust with fixed duration to perpetuity; or
 - 6.4.3 Alter, by limiting or extending the duration of the Labuan trust.

7.0 Beneficiaries of a Labuan Trust

- 7.1 The Labuan trust is not valid if there is no beneficiaries identifiable or ascertainable unless the trust is a charitable Labuan trust. A beneficiary shall be identifiable by name or ascertainable by reference to a class or relationship to some persons. In addition, the trust instruments of the Labuan trust may include the following:
- 7.1.1 The addition of a person as a beneficiary;
 - 7.1.2 The exclusion of a beneficiary from a benefit;
 - 7.1.3 The imposition on a beneficiary of an obligation as a condition for a benefit; or
 - 7.1.4 The power to declare that any person shall cease to be a beneficiary.
- 7.2 A settlor or a trustee may also be a beneficiary of a Labuan trust unless he is the sole trustee.

8.0 Trustees of a Labuan Trust

- 8.1 The appointment of trustees of the Labuan trust shall be provided in the trust instrument and subject to the following:
- 8.1.1 If it is the sole trustee of the Labuan trust, it shall be the Labuan trust company or Labuan managed trust company.
 - 8.1.2 If there are many trustees, one of the trustee shall be the Labuan trust company or Labuan managed trust company.
- 8.2 The trustee shall be responsible for the administration of the Labuan trust including maintaining the list of settlor and beneficiaries pursuant to requirement under Section 30(4) of LTA.
- 8.3 The trustee may also be the settlor or beneficiary of the Labuan trust provided that he is not the sole trustee.

- 8.4 A trustee shall have all the powers of a beneficial owner in relation to the trust property and exercise his powers in the interest of the beneficiaries in accordance with the terms of the trust and provisions of the LTA. In addition, the trustee shall also undertake the following:
- 8.4.1 Insure any property which is subject to the trust against risks of loss or damage due to any event;
 - 8.4.2 Pay the premiums out of any income or capital funds of the trust; and
 - 8.4.3 Review the investments of the trusts having regard to the standard investment criteria, periodically.

9.0 Property of a Labuan Trust

- 9.1 The property of the Labuan trust includes the following:
- 9.1.1 Assets of every kind whether corporeal or incorporeal, movable or immovable, tangible or intangible, however acquired; and
 - 9.1.2 Legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such property.
- 9.2 The property of the Labuan trust is to be utilised solely for the purposes and objects stated in the trust instruments and may also include Malaysian property.
- 9.3 For Malaysian property, prior approval of Labuan FSA is required. The qualifying criteria for approval shall include but not limited to the following:
- 9.3.1 Obtain all necessary approvals from the relevant authorities in relation to the vesting of properties to the trust;
 - 9.3.2 Properties to be vested shall be unencumbered unless necessary consents have been obtained; and
 - 9.3.3 Properties to be vested shall be obtained through lawful means.
- 9.4 The properties vested or to be vested to the Labuan trust must include consent letters from relevant authorities (where necessary) which may include the respective land office or local authorities such as Bank Negara Malaysia, Companies Commission of Malaysia and Securities Commission of Malaysia.
- 9.5 Malaysian settlors are free to vest Malaysian property to a Labuan trust as permitted by Foreign Exchange Administration (FEA) rules issued by Bank Negara Malaysia. However, Labuan non-charitable trust are required to provide in the trust instruments that any subsequent conversion or transfer of the vested property for investment abroad would need to comply with FEA rules.

10.0 Operation of a Labuan Trust

- 10.1 All submissions for the registration of a Labuan trust must be filed through the Labuan trust company that also functions as a trustee of the Labuan trust.
- 10.2 The registered office of a Labuan trust shall be the registered office of the Labuan trust company or Labuan managed trust company which has been appointed as trustee of the trust and shall be the address for service of any documents relating to the trust.
- 10.3 The accounting records and other records shall be kept at the registered office of the Labuan trust.
- 10.4 Every Labuan trust shall ensure compliance with the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.
- 10.5 All Labuan trust companies and Labuan managed trust companies are required to submit a status update on Labuan trusts in which they are the trustees to Labuan FSA on half-yearly basis as per the **Appendix**.

11.0 Labuan Islamic Trust

- 11.1 A Labuan Islamic trust can be established under Section 105 of LIFSSA and all the provisions of LTA shall apply to a Labuan Islamic trust unless specifically provided. The object, purpose and activity of a Labuan Islamic trust must be in compliance with Shariah principles. The creation of a Shariah compliant trust is to provide an alternative for a settlor to exercise his rights in creating a trust in accordance with the Shariah principles.
- 11.2 The trustee of a Labuan Islamic trust is required to appoint or consult a Shariah adviser to advise matters relating to the operations of the Islamic trust to ensure compliance with Shariah principles.
- 11.3 The vesting of the property into the Labuan Islamic trust may be facilitated through *Hibah* or *Hadiah* as guided by the Shariah Resolution of the Shariah Supervisory Council of Labuan FSA on Labuan Islamic Trust issued by Labuan FSA.

12.0 Payment of Fee for a Registered Labuan Trust

- 12.1 A Labuan trust that opts for registration is required to pay a one-off registration fee amounting to RM750 to Labuan FSA.

13.0 Submission for Registration and Enquiries

- 13.1 Any submission of application or enquiries on the establishment of a Labuan trust may be forwarded to the following contact details:

Director
Business Management Department
Labuan Financial Services Authority
17th Floor, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Federal Territory of Labuan
Malaysia

Telephone no. : 087 591 200
Facsimile no. : 087 453 422 / 413 328
E-mail : roc@labuanfsa.gov.my

Labuan Financial Services Authority
2 March 2015



STATUS UPDATE ON LABUAN TRUST AND ISLAMIC TRUST

Name of Labuan Trust Company	
Reporting Date	<input type="checkbox"/> 30 June 20__ <input type="checkbox"/> 31 December 20__ <i>(Note: Please tick (✓) at the appropriate box)</i>

Type of Labuan Trusts		No. of Labuan Trust ²	
		Registered	Unregistered
Labuan charitable trust <i>(Ref: Section 11B LTA)</i>	Conventional		
	Islamic		
Labuan protective trust <i>(Ref: Section 11E LTA)</i>	Conventional		
	Islamic		
Labuan purpose trust <i>(Ref: Section 11A LTA)</i>	Conventional		
	Islamic		
Labuan special trust <i>(Ref: Section 46C LTA)</i>	Conventional		
	Islamic		
Labuan spendthrift trust <i>(Ref: Section 11E LTA)</i>	Conventional		
	Islamic		
Others: _____ <i>(please specify)</i>	Conventional		
	Islamic		

Guidance note:

1. This status update is issued under Section 4B of the Labuan Financial Services Authority Act 1996 (LFSSA).
2. This form is to be submitted on half-yearly basis i.e. 30th June and 31st December, within 15 working days after the closing of each reporting period to the Industry Reporting Unit of Labuan FSA through email (iru@labuanfsa.gov.my).
3. Attachments are allowed if there is not enough space for the information to be provided.
4. Labuan trust officers are required to confirm the information provided in this report prior to submission to Labuan FSA.

(signature)

Name of the trust :
officer

Date :

² Accumulated figure as at reporting date.