



GUIDELINES ON THE ESTABLISHMENT OF LABUAN FOUNDATION INCLUDING ISLAMIC FOUNDATION

1.0 Introduction

- 1.1 The Guidelines clarifies the procedures for the registration and regulatory requirements for Labuan foundation and Labuan Islamic foundation (Labuan foundation) in the Labuan International Business and Financial Centre (Labuan IBFC).

2.0 Applicability

- 2.1 The Guidelines is applicable for Labuan foundation registered under the Labuan Foundations Act 2010 (LFA) and Labuan Islamic foundation registered under Section 107 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 clarify the provisions of Part III, IV, V and VI of the LFA and Part IX of the LIFSSA.
- 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.

4.0 Effective Date

- 4.1 The Guidelines shall come into effect on 12th July 2013 and would remain effective and applicable unless amended or revoked.
- 4.2 The Guidelines will supersede the earlier Guidelines on the Establishment of Labuan Foundation including Islamic Foundation issued on 23rd April 2013.

- 4.3 All registrations granted by Labuan FSA relating to Labuan foundation prior to this Guidelines shall remain valid unless revoked.

5.0 Purpose and Object of Labuan Foundation

- 5.1 Labuan foundation may be established to manage its own property for any lawful purpose which may be charitable or non-charitable.
- 5.2 A charitable purpose means and includes any of the following description of purposes:
- 5.2.1 The prevention and relief of poverty;
 - 5.2.2 The advancement of religion, profession or education;
 - 5.2.3 The advancement of health including the prevention and relief of sickness, disease or of human suffering;
 - 5.2.4 Social and community advancement including the care, support and protection of the aged, people with a disability, children and young people;
 - 5.2.5 The advancement of culture, arts and heritage;
 - 5.2.6 The advancement of amateur sport, which promote health by involving physical or mental exertion;
 - 5.2.7 The promotion of human rights, conflict resolution and reconciliation;
 - 5.2.8 The advancement of environmental protection and improvement;
 - 5.2.9 The advancement of animal welfare; or
 - 5.2.10 The advancement of facilities for recreation or other leisure-time occupation in the interest of social welfare.
- 5.3 Specifically for a Labuan Islamic foundation, its operations shall be in accordance with Shariah principles and other requirements stipulated in paragraph 10.0 of the Guidelines.

6.0 Establishment of Labuan Foundation

- 6.1 Labuan foundation can be established by a founder by:
- 6.1.1 Subscribing his name to the charter of the foundation;
 - 6.1.2 Complying with all the requirements of the LFA; and
 - 6.1.3 Has received a certificate of registration from Labuan FSA.
- 6.2 The founder shall, before the registration of a Labuan foundation, appoint a registered Labuan trust company to be the secretary of the proposed Labuan foundation.

- 6.3 Application for registration of the foundation can be submitted to the Registrar of Company using the following forms:

Labuan Foundations Act 2010

Form 1 – Application for Registration of a Labuan Foundation.

Form 2 – Declaration by a Labuan Trust Company as Secretary.

Labuan Islamic Financial Services and Securities Act 2010

Form 8 – Application for Registration of a Labuan Islamic Foundation.

Form 9 – Declaration by a Labuan Trust Company as Secretary.

- 6.4 The registration of the foundation must be made by the secretary of the foundation by submitting the following documents as required under Section 14(1) of LFA:
- 6.4.1 A statement on the particulars of the charter.
 - 6.4.2 A list of names and addresses of the officers.
 - 6.4.3 A statutory declaration of compliance by the secretary.

Charter

- 6.5 The following information must be specified in the charter as required under Section 8(2) of LFA:
- 6.5.1 Name of the foundation.
 - 6.5.2 Name and address of the founder or where the founder is a body corporate, the place where it is incorporated/registered or principal office/place of business.
 - 6.5.3 Purpose or object of the foundation.
 - 6.5.4 Identity of the beneficiary or the identification of a body by which the beneficiary is to be ascertained, or a statement that the Labuan foundation is to benefit the public at large.
 - 6.5.5 Duration of the foundation.
 - 6.5.6 Name and address of the secretary of the foundation in Labuan.
- 6.6 The charter may also make provision for the foundation as stipulated under Section 8(3) of LFA which may include:
- 6.6.1 Reservation of rights or powers of the founder.
 - 6.6.2 Amendment of charter.
 - 6.6.3 Requiring or permitting the making of articles.
 - 6.6.4 Addition or removal of beneficiaries.

- 6.6.5 Appointment of a council, council member or supervisory person either in lieu of or in addition to the council, and their roles and powers.
 - 6.6.6 Regulation of any supervisory person.
 - 6.6.7 Appointment, removal, tenure of office and representative authority of officers.
 - 6.6.8 Appointment, removal and tenure of office of the approved auditor at the discretion of the council.
 - 6.6.9 Revocation of the charter by the founder and the return of the property to the founder.
- 6.7 Labuan foundation with Malaysian property is required to provide in the charter the condition as per paragraph 9.5 of the Guidelines.

Property of the Labuan Foundation

- 6.8 The property of the Labuan foundation includes the following:
- 6.8.1 Assets of every kind whether corporeal or incorporeal, movable or immovable, tangible or intangible, however acquired; and
 - 6.8.2 Legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in, such assets as described in paragraph 6.8.1, including bank cheques, money orders, shares, securities, bonds, bank drafts and letters of credit.
- 6.9 The property of the Labuan foundation is owned legally and beneficially by the foundation and is to be utilised solely for the purposes and objects stated in the charter of the foundation. For Labuan Islamic foundation, the source and the intended utilisation of the property must be in accordance to Shariah principles.
- 6.10 The property of the Labuan foundation can be non-Malaysian property. For Malaysian property, the prior approval of Labuan FSA is required as per paragraph 9.0 of the Guidelines.

7.0 Operation of Labuan Foundation

- 7.1 The officer of the Labuan foundation who is duly appointed by the founder shall be responsible for the administration of the Labuan foundation.
- 7.2 The officer may also be the founder or beneficiary of the Labuan foundation provided that he is not a council member and must not be disqualified pursuant to Section 37 of LFA.

- 7.3 The founder may also appoint a council for the Labuan foundation:
- 7.3.1 To ensure compliance by the Labuan foundation and its officer with the charter of the foundation and provisions of the LFA; and
 - 7.3.2 Be responsible for general supervision of the management of the foundation by its officer.
- 7.4 If appointed, the council must comply with the meeting requirements as required under Section 26 of LFA.
- 7.5 All submissions must be filed through the secretary of the Labuan foundation who is duty bound under Section 43(3) of LFA to ensure the validity, veracity and authenticity of all submissions to the authority.
- 7.6 The accounting records and other records shall be kept at the registered office of the Labuan foundation or at such other place in Labuan as the officers think fit and shall at all times be open to inspection by the council members, supervisory person, officers, and the approved auditor, if appointed.
- 7.7 Every Labuan foundation shall ensure that its founder, council member, officer, and secretary remain as fit and proper persons throughout their appointment with the foundation as may be prescribed in the Guidelines on Fit and Proper Person issued by Labuan FSA.
- 7.8 Every Labuan foundation shall ensure compliance with the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

8.0 Specific Requirements for Labuan Charitable Foundation

- 8.1 If the endowment of property(ies) is from a corporation, Labuan charitable foundation is required to submit a copy of the certified resolution from the corporation approving the endowment of the property(ies) to the foundation.
- 8.2 If the endowment of property(ies) is from an individual, Labuan charitable foundation is required to submit a copy of an undertaking to endow the property(ies) to the foundation.
- 8.3 A Labuan charitable foundation that solicits donation from the public shall comply with the following:
- 8.3.1 Appoint a council of at least three (3) fit and proper persons;

- 8.3.2 The founder may be a council member. However, the majority of the council members shall be independent of the founder;
- 8.3.3 Appointment of a supervisory person for the foundation who is fit and proper in accordance to the Guidelines on Fit and Proper Person issued by Labuan FSA;
- 8.3.4 Provide information memorandum or such other information document for the public which shall include but not limited to the following minimum information:
- a) Name of the foundation;
 - b) Purpose and object of the foundation;
 - c) List of its founder, council members, supervisory person, officer and secretary, where applicable;
 - d) Statement of its establishment under LFA or LIFSSA;
 - e) Whether it has been accorded the status of an “approved institution or organisation” under the Income Tax Act 1967 for donations made to the foundation to be tax deductible, where applicable;
- 8.3.5 Submit a proposed general operating plan, which include the management of the property in regard to the utilisation and distribution of the property, the strategy of the foundation including its investments and other related information; and
- 8.3.6 Submit annual audited accounts to Labuan FSA within six (6) months after the close of each financial year of the foundation.
- 8.4 All Labuan charitable foundations are required to comply with the legal requirement(s) of the jurisdiction they intend to operate in.

9.0 Labuan Foundation with Malaysian Property

- 9.1 All Labuan non-charitable foundations including foundations established for the benefits of family members that intend to include Malaysian property(ies) must seek prior approval from Labuan FSA. This does not apply to Labuan charitable foundation.
- 9.2 The qualifying criteria for approval shall include but not limited to the following:
- 9.2.1 Obtain all necessary approvals from the relevant authorities in relation to the endowment of property(ies) to the foundation;
 - 9.2.2 Property(ies) to be endowed shall be unencumbered. For encumbered property(ies), consent should be obtained from the person(s) who encumbers the property(ies); and
 - 9.2.3 Property(ies) to be endowed shall be obtained through lawful means.

- 9.3 The property(ies) endowed or to be endowed to the Labuan foundation must include consent letters from relevant authorities (where necessary) to be submitted with the application or within 60 days from the registration date of the endowment of the property(ies).
- 9.4 The relevant authority(ies) referred in paragraph 9.3 may include the respective land office or local authority such as Bank Negara Malaysia, Companies Commission of Malaysia and Securities Commission of Malaysia.
- 9.5 Malaysian founders are free to endow Malaysian property to a Labuan foundation as permitted by Foreign Exchange Administration (FEA). However, Labuan non-charitable foundations are required to provide in the charter that any subsequent conversion or transfer of the endowed property for investment abroad would need to comply with FEA rules.

10.0 Labuan Islamic Foundation

- 10.1 Labuan Islamic foundation can be established under Section 107 of LIFSSA and all the provisions of LFA shall apply to Labuan Islamic foundation unless specifically provided. The object, purpose and activity of Labuan Islamic foundation must be in compliance with Shariah principles.
- 10.2 The officer of a Labuan Islamic foundation is required to appoint or consult a Shariah adviser to advise matters relating to the operations of the Islamic foundation to ensure compliance with Shariah principles.
- 10.3 The foundation must have a clearly executed legal transfer of ownership of the property(ies) from the founder to the foundation.
- 10.4 The endowment of the property into the Labuan Islamic foundation could be done through *Hibah* or *Hadiah*.

11.0 Payment of Fee

- 11.1 Labuan foundation is required to pay to Labuan FSA the following fees:
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| 11.1.1 One-off payment of registration fee | RM750 |
| 11.1.2 Annual fee on or before anniversary date | RM750 |

12.0 Submission for Application and Enquiries

12.1 The submission of completed application for a Labuan foundation including Islamic foundation may be forwarded to the address stated below.

Director General
Labuan Financial Services Authority (Labuan FSA)
17th Floor, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Federal Territory of Labuan
Malaysia

12.2 Any request for additional information or clarification pertaining to the guidelines may be directed to the following contact details.

Telephone no. : 087 591 200
Facsimile no. : 087 453 422 / 422 300
E-mail : roc@labuanfsa.gov.my

Labuan Financial Services Authority
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