



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 12 July 2013 and would remain effective and applicable unless amended or revoked. Notwithstanding this, new requirements introduced in the revised Guidelines which are marked with an asterisk shall come into effect on 4 April 2016.
- 4.2 The Guidelines will supersede the earlier Guidelines on the Establishment of Labuan Foundation including Islamic Foundation issued on 12 July 2013.
- 4.3 All registrations granted by Labuan Financial Services Authority (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 For non-charitable foundation, endowment of properties can only be done by a founder and the person to whom he had assigned or transferred his rights, powers and obligations under the LFA (referred to as “the assignee”)¹. In this regard, a non-charitable foundation is not permitted to receive donations from third parties or the public.
- 5.3* In the event that, a non-charitable foundation intends to solicit donations, it would need to amend the foundation’s charter. The foundation concerned will be reclassified as a charitable foundation and be subjected to additional requirements as provided in this Guidelines.
- 5.4 A charitable purpose means and includes any of the following description of purposes:
- 5.4.1 The prevention and relief of poverty;
 - 5.4.2 The advancement of religion, profession or education;
 - 5.4.3 The advancement of health including the prevention and relief of sickness, disease or of human suffering;
 - 5.4.4 Social and community advancement including the care, support and protection of the aged, people with a disability, children and young people;
 - 5.4.5 The advancement of culture, arts and heritage;
 - 5.4.6 The advancement of amateur sport, which promote health by involving physical or mental exertion;
 - 5.4.7 The promotion of human rights, conflict resolution and reconciliation;
 - 5.4.8 The advancement of environmental protection and improvement;
 - 5.4.9 The advancement of animal welfare; or
 - 5.4.10 The advancement of facilities for recreation or other leisure-time occupation in the interest of social welfare.
- 5.5 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

Registration

- 6.1 Labuan foundation can be established by a founder by:
- 6.1.1 Subscribing his name to the charter of the foundation;

¹ Pursuant to section 12(2) of the LFA

- 6.1.2* Specifying in the charter the type of initial assets endowed for the establishment of the foundation at the point of its registration;
 - 6.1.3 Complying with all the requirements of the LFA; and
 - 6.1.4 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.

Founder

- 6.5 Pursuant to section 2 of the LFA, founder(s) for a foundation shall be those which are identified at the point of establishment of the said foundation. In this regard, no other persons shall be recognised as founder(s) subsequent to the registration of the foundation.
- 6.6* In cases where a founder acts as a nominee (referred to as “nominee founder”) to another person to endow assets into the foundation, the said founder is required to provide a declaration that he is acting as a nominee to the Registrar of Companies, Labuan FSA (ROC). This declaration shall be made via the *Statement pursuant to the Circular dated 12 March 2014 from the Labuan Financial Services Authority* at the point of registration. The declaration shall include information on the type of initial assets to be endowed under the nominee arrangement for and on behalf of the ultimate founder.
- 6.7* For each subsequent endowment(s) to the foundations, should the assets endowed are not in the name of the nominee founder, the nominee founder shall provide a declaration to the ROC in respect of the beneficial ownership of these assets.

- 6.8 The trust company which is appointed as the secretary to the foundation shall maintain and ensure all records, including the identity of the person(s) that the founder is acting on behalf of, are updated on a timely basis and verified. Such records shall be made readily available as and when requested by Labuan FSA.

Charter

- 6.9 The following information must be specified in the charter as required under Section 8(2) of LFA:
- 6.9.1 Name of the foundation.
 - 6.9.2 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.
 - 6.9.3 Purpose or object of the foundation.
 - 6.9.4 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.
 - 6.9.5 Duration of the foundation.
 - 6.9.6 Name and address of the secretary of the foundation in Labuan.
- 6.10 The charter may also make provision for the foundation as stipulated under Section 8(3) of LFA which may include:
- 6.10.1 Reservation of rights or powers of the founder.
 - 6.10.2 Amendment of charter.
 - 6.10.3 Requiring or permitting the making of articles.
 - 6.10.4 Addition or removal of beneficiaries.
 - 6.10.5 Appointment of a council, council member or supervisory person either in lieu of or in addition to the council, and their roles and powers.
 - 6.10.6 Regulation of any supervisory person.
 - 6.10.7 Appointment, removal, tenure of office and representative authority of officers.
 - 6.10.8 Appointment, removal and tenure of office of the approved auditor at the discretion of the council.
 - 6.10.9 Revocation of the charter by the founder and the return of the property to the founder.
- 6.11 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

- 6.12 The property of the Labuan foundation includes the following:
- 6.12.1 Assets of every kind whether corporeal or incorporeal, movable or immovable, tangible or intangible, however acquired; and
 - 6.12.2 Legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in, such assets as described in paragraph

6.12.1, including bank cheques, money orders, shares, securities, bonds, bank drafts and letters of credit.

- 6.13 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.
- 6.14 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.
- 6.15 Any assets endowed to a Labuan foundation shall be the properties of such foundation². In this regard, withdrawal of properties from a Labuan foundation is not permitted throughout its lifetime.

7.0 Operation of Labuan Foundation

- 7.1 Section 12(2) of LFA allows for a founder to transfer its rights, powers and obligations if allowed by the charter of the foundation or any instrument in writing (e.g. deed of assignment) to be executed between the founder and his assignee. In this regard:
- 7.1.1 the assignee who is assigned with such rights, powers and obligations shall be deemed to be a founder when exercising them or performing such obligations. The assignee also has the rights to endow his own assets into the Labuan foundation; and
- 7.1.2 the foundation is required to notify ROC via the submission of *Form 4: Notice of Changes of Particulars of a Labuan Foundation* within 30 days from the effective date of the assignment, together with supporting documents, such as the amended charter or any duly executed instruments in writing.
- 7.2 The officer of the Labuan foundation who is duly appointed by the founder shall be responsible for the administration of the Labuan foundation.
- 7.3 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.
- 7.4 The founder may also appoint a council for the Labuan foundation:
- 7.4.1 To ensure compliance by the Labuan foundation and its officer with the charter of the foundation and provisions of the LFA; and

² Pursuant to section 11(1) of the LFA

- 7.4.2 Be responsible for general supervision of the management of the foundation by its officer.
- 7.5 If appointed, the council must comply with the meeting requirements as required under Section 26 of LFA.
- 7.6 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.
- 7.7 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.
- 7.8 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.
- 7.9 Every Labuan foundation shall ensure compliance with the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities 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 * The Labuan charitable foundation is required to obtain prior approval of Labuan FSA before establishing a representative office outside of Labuan including Malaysia.
- 8.5 * The establishment of the representative office is confined to carrying out facilitation of meetings and other administrative functions as approved by Labuan FSA. Income generating or fund raising activities including investments related activities, as well as maintenance of records and books of accounts (in line with paragraph 7.7 of this Guidelines) **shall not** be undertaken at the representative office.
- 8.6 * For the purpose of the establishment of the representative office, the charitable foundation is required to submit the proposed activities to be carried out at such office together with the organisational chart of the office along with its application. In addition, the Labuan charitable foundation is required to submit a bi-annual report on the activities undertaken at the representative office to:
- Director
Business Management Department
Labuan FSA
17th Floor, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Federal Territory of Labuan
Malaysia
- 8.7 All Labuan charitable foundations are required to comply with the legal requirement(s) of the jurisdiction or market that they intend to operate in. This shall include obtaining necessary approvals and authorisation from the relevant authorities.

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:
- | | |
|---|-------|
| 11.1.1 One-off payment of registration fee | RM750 |
| 11.1.2 Annual fee on or before anniversary date | RM750 |
| 11.1.3 Application fee for the establishment of a representative office | RM300 |

12.0 Submission for Registration and Enquiries

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

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

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
23rd April 2013 (First issued)
12th July 2013 (Revised)
4 April 2016 (Revised)