

LABUAN FOUNDATIONS

1. What is a Foundation?

- 1.1. A foundation is an independent entity which carries many of the characteristics of both a company limited by guarantee and a trust. A foundation is likened to that of a trust within a corporate shell. Once a foundation comes into existence it becomes a unique legal entity and takes on its own legal personality. This means that the foundation is not owned by any one person and it operates under its own name, thus allowing for it to enter into agreements, sue or be sued, open bank accounts and own multiple other corporations. The main reason an individual would set up a foundation is for asset protection purposes and protection against force heirship rules.
- 1.2. Many organisations which form a foundation desire a high level of anonymity and this can be achieved effectively by forming a foundation to manage the corporation's assets. A foundation provides for a centralised and valuable system to manage the foundation property and get the best possible outcomes through effective tax planning under the chosen jurisdictions' legislation. Like a trust, a foundation can also set out certain requirements to be carried out for the benefit of the beneficiaries through a foundation charter, thus ensuring standards are met.
- 1.3. A foundation is generally set up where a jurisdiction cannot recognise a trust under its legislation.

2. Uses of Labuan foundations

- 2.1. A flexible structure to hold assets to benefit family members

A foundation is often used as an alternative to a trust in structuring for succession planning and other purposes. As with a trust, beneficiaries can have a fixed entitlement (to, say, income from the assets, as they would in a life interest trust) or receive benefits at the discretion of the foundation (as they would in a discretionary trust).

Foundations may have a particular appeal to founders who wish to retain some control, as they or parties of their choice, can sit on the council of the foundation. Alternatively, the founder may have a supervisory role, overseeing the actions of the council. This could be achieved by requiring the council to obtain the guardian's consent before exercising a particular power. It is also possible to create a corporate guardian, with several family members on the board.

The fact that a foundation can be established where beneficiaries have no right to enforce and no rights to information may also appeal to some founders.

- 2.2. A foundation for charitable or philanthropic purposes

A Labuan foundation can be created for charitable purposes, and also for purposes which are philanthropic but do not meet the strict criteria to qualify as charitable.

2.3. Retaining and preserving certain assets

Foundations can be particularly useful where a structure is required to hold assets whose value is volatile or may diminish, or where a single asset is held, such as an aeroplane, artwork or a boat. Given a trustee's duty to diversify, act prudently, and in the best interests of the beneficiaries, trustees may be reluctant to hold such assets. There are a number of solutions which clients may consider in this situation, including establishing a Labuan foundation specifically to hold the asset to benefit certain beneficiaries or purposes. The council of the foundation will not be subject to the same duties as a trustee in a traditional trust – rather their duty will be to ensure the object of the foundation (namely the holding and preservation of the asset) is achieved.

2.4. Family businesses

Founders of family businesses often recognise the need to establish a long-term holding structure for that business, to help ensure the business is not fragmented on the passing of the founder. A traditional trust structure can be problematic in this context for the reasons set out above – namely the trustee's duty to diversify investments. A Labuan foundation is one potential solution such clients might consider – the foundation is established for the purpose of holding the company for the benefit of the family (and perhaps other beneficiaries or purposes). The council's duty will be to retain the company for the benefit of family (and other beneficiaries or purposes, if relevant).

2.5. Holding an asset to carry out a specific transaction

In commercial situations, it is not uncommon for a special purpose vehicle company to be established where its ownership needs to be separate from the rest of the structure. A foundation is an 'ownerless' incorporated vehicle which can be established for a specific business purpose, and is ideally suited to this type of planning.

2.6. In combination with trusts

Where individuals or families establish trusts, but wish to retain a high level of control, they often establish a private trust company (**PTC**) to be trustee. Family members can sit on the board of the PTC and therefore have direct involvement in trustee decisions.

Traditionally the shares of a PTC have been held by a professional trustee on the terms of a non-charitable purpose trust. An alternative holding vehicle is a Labuan foundation. This may be more appealing than a non-charitable purpose trust for some settlors, as the settlor or named family members can sit on the council, and therefore be involved directly in running the structure at this level.

An alternative may be for a foundation itself to act as trustee, rather than a PTC. This enables the founder, family members and advisers to be involved directly as trustee, as with a PTC structure, but without the additional layer being required to hold the PTC shares.

Foundations can also be used to own shares of any corporate protector or enforcer involved in a trust structure.

3. Legal framework.

- 3.1. The Labuan Foundations Act 2010 ("LAFA") was enacted on 11 February 2010 for the establishment, regulation and dissolution of Labuan foundations. The charter of a Labuan foundation governs the purpose or object of the Labuan foundation and sets down the rights, powers and terms of the Labuan foundation.

4. Establishment of a Labuan Foundation.

- 4.1. Any person may, by subscribing his name to a charter of a Labuan foundation as the founder and complying with the requirements of LAFA, establish a Labuan foundation.

5. Founder of Labuan Foundation.

- 5.1. A founder is the person who subscribes his name to the charter establishing a Labuan foundation acting either for himself or on behalf of another person and who, by transfer of title, endows that Labuan foundation with its initial assets.
- 5.2. The founder of a Labuan foundation may be a resident or a non-resident.
- 5.3. The property of the Labuan foundation shall not include any Malaysian property unless the prior approval of the Authority is obtained or the Labuan foundation is a foundation for charitable purposes.

6. Beneficiaries under Labuan Foundation.

- 6.1. The beneficiaries of a Labuan foundation may be a resident or a non-resident.
- 6.2. Where the property of a Labuan foundation include Malaysian property, the Income Tax Act 1967 ("ITA") shall be applicable to any income derived therefrom.
- 6.3. The income derived from any property which is not Malaysian property is subject to the Labuan Business Activity Tax Act 1990 ("LABATA").

7. Purpose and Object of Labuan Foundation.

- 7.1. The main purpose or object of a Labuan foundation shall be the management of its property.
- 7.2. The purpose or object of a Labuan foundation may also include any purpose or object which is not unlawful, immoral or contrary to any public policy in Malaysia and such purpose or object may be charitable or non charitable.
- 7.3. A Labuan foundation may, in the course of the management of its property, do such things and exercise such powers as are necessary for the proper administration of its property, including but not limited to buying and selling of such property and engaging in any other acts or activities that are not prohibited under any law for the time being in force in Malaysia, but such acts and activities shall be ancillary or incidental to the purpose or object of the Labuan foundation.

8. Charter of Labuan Foundation.

8.1. Every Labuan foundation shall have a charter, which shall be duly signed by each founder. The charter sets out the rights, powers and terms of the foundation.

8.2. The charter should contain the following information, as a minimum:

- (a) Name of the foundation;
- (b) Name and domicile of the founder or where the founder is a body corporate or corporation, the place where it is incorporated and its registered or principal office or place of business;
- (c) Purpose or object;
- (d) Identity of beneficiaries 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;
- (e) Duration, if any, for which the Labuan foundation is to exist or, if the Labuan foundation is to exist for an indefinite duration, a statement to that effect
- (f) Name and domicile in Labuan of the secretary of the foundation (which is the address of the registered office of a licensed Labuan foundation company)
- (g) Rights or powers of the founder

8.3. The charter of a Labuan foundation may make provisions for, but not limited to, the following matters:

- (a) Reservation of rights or powers of the founder;
- (b) Amendment of charter;
- (c) Requiring or permitting the making of articles;
- (d) Addition or removal of beneficiaries;
- (e) Appointment of a council, council member or supervisory person either *in lieu* of or in addition to the council, and their roles and powers;
- (f) Regulation of any supervisory person of the Labuan foundation;
- (g) Appointment, removal, tenure of office and representative authority of officers of the Labuan foundation;
- (h) Appointment, removal and tenure of office of the approved auditor of the Labuan foundation at the discretion of the council; and
- (i) Revocation of the charter by the founder and the return of the property to the founder.

8.4. Where the charter of a Labuan foundation makes provision for the amendment of the charter, the charter may be amended according to the procedures laid down in the charter or, in the absence of any such procedures in the charter, in accordance with the following procedure:

- (a) the founder or the officers shall convene a meeting of:
 - (i) the founder or his estate, as the case may be;
 - (ii) the officers; and
 - (iii) the council of the Labuan foundation, if any; and

- (b) the resolution for amendment of the charter shall be adopted only if agreed by:
 - (i) the founder or his estate;
 - (ii) the officers; and
 - (iii) the council of the Labuan foundation, if any.

8.5. The officers of a Labuan foundation may resolve on such amendments to the charter of the Labuan foundation as in their opinion are necessary in the circumstances to maintain the purpose and object of the Labuan foundation and shall apply to the Court for its approval on the proposed amendments to the charter of the Labuan foundation in the event:

- (a) An agreement could not be reached for any proposed amendment to the charter;
- (b) The charter has no provision for amendment; or
- (c) It is not possible to comply with the provisions of LAFA because the founder is no longer living or in existence.

9. Articles of Labuan Foundation.

9.1. Where the charter of a Labuan foundation provides that articles shall or may be made, such articles may provide for, but not limited to, the following matters:

- (a) Distribution of property to beneficiaries;
- (b) Identification of any initial beneficiaries or any beneficiaries to be designated at a later date;
- (c) The minimum value of the property of the Labuan foundation in the absence of which no distribution to any beneficiary may be made; and
- (d) Identification of the remaining beneficiary upon the dissolution of the Labuan foundation.

9.2. In the absence of articles of a Labuan foundation on any matter, the provisions of LAFA in respect of that matter shall apply.

10. Property of Labuan Foundation.

10.1. Any property endowed to a Labuan foundation shall be the property of that Labuan foundation with full legal and beneficial title and shall cease to be the property of the founder and shall not become the property of a beneficiary unless the property is distributed in accordance with the provisions of the constituent document and the provisions of LAFA.

10.2. The property of a Labuan foundation shall be exclusively managed, including being realised, applied, administered, invested and disbursed in accordance with the constituent document and the provisions of LAFA for the attainment of the purposes or objects of the Labuan foundation.

11. Powers and Obligations of Founders.

- 11.1. Unless the constituent document otherwise provides, where there is more than one founder, the powers of the founder under the constituent document shall only be exercised by all the founders acting jointly and in common.
- 11.2. The founder may, in the Labuan foundation charter or by instrument in writing revocable or irrevocable, assign or transfer any or all of his rights, powers and obligations under LAFA and the constituent document of the Labuan foundation to such person as the founder shall, in his absolute discretion, determine.
- 11.3. The person to whom the founder has assigned or transferred any or all of his rights shall be deemed to be a founder.
- 11.4. Where a founder has made an undertaking to endow any property to the Labuan foundation, the Labuan foundation may enforce that undertaking against the founder.

12. Name of Labuan Foundations.

- 12.1. The name of a Labuan foundation shall end with the words “Labuan Foundation” or “(L) Foundation” in romanised characters, any word or words in the national language of any country which connote a foundation, or any abbreviation, as part of its name
- 12.2. The name of a Labuan foundation may be in foreign characters, alphabet or language provided that an accurate and certified rendition of the name in the English language is employed and is clearly stated in every written communication sent by, or on behalf of, the Labuan foundation and every document issued or signed by, or on behalf of, the Labuan foundation that evidences or creates a legal obligation of the foundation.
- 12.3. A Labuan foundation may, if permitted by its charter, change its name.

13. Registration of Labuan Foundations.

- 13.1. An application for the registration of a Labuan foundation shall be made by the secretary of the Labuan foundation (the Labuan trust company) to the Authority accompanied by the prescribed fee and the following documents:
 - (a) A statement signed by the secretary of the Labuan foundation containing the following particulars extracted from the charter:
 - (i) The name of the Labuan foundation;
 - (ii) The date of the charter and the date of any amendment made to the charter;
 - (iii) The purpose and objects of the Labuan foundation;
 - (iv) The date of the articles of the Labuan foundation, if any, and the date of any amendment made to the articles;
 - (v) The name and address of the secretary of the Labuan foundation;
 - (vi) The address of the registered office of the Labuan foundation;
 - (vii) The duration for which the Labuan foundation is established; and
 - (viii) An original copy of the charter of the Labuan foundation.

- (b) A list containing the names and addresses of the officers of the Labuan foundation; and
 - (c) A statutory declaration by the secretary of the Labuan foundation of compliance with all relevant requirements of LAFA.
- 13.2. Upon the registration of a Labuan foundation the Authority shall issue a certificate in respect of the registration which shall be conclusive evidence that the Labuan foundation is registered by the name specified in the certificate.
- 13.3. If any change is made or occurs in any of the particulars registered in respect of a Labuan foundation, the secretary of such Labuan foundation shall within thirty days after the change notify the Authority of such change.

14. Striking Off.

- 14.1. If a Labuan foundation has failed to pay its annual fee or has contravened any provisions of LAFA, the Authority may serve a notice on the Labuan foundation notifying it that the name of the Labuan foundation shall be struck off the register, unless the Labuan foundation takes any step or any action to remedy the breach as may be specified in the notice within thirty days from the date of the notice or such longer period as may be extended by the Authority.
- 14.2. Where the name of a Labuan foundation has been struck off the register, the Labuan foundation, liquidators and receivers of the Labuan foundation, shall not:
- (a) commence or defend any legal proceedings, carry on any business or in any way deal with the properties of the Labuan foundation;
 - (b) defend any legal proceedings, make any claim or claim any right for or in the name of the Labuan foundation; or
 - (c) act in any manner with respect to the affairs of the Labuan foundation.
- 14.3. The Labuan foundation, liquidators and receivers may however apply to the Authority for the name of the Labuan foundation to be restored and also continue to carry on or defend legal proceedings that were begun prior to the date of striking off.
- 14.4. The striking off of the Labuan foundation shall in no way reduce or affect the liabilities and obligations of the Labuan foundation and it shall remain liable for all its claims, debts, liabilities, obligations and shall comply with claims made through judgment and Court orders.
- 14.5. Where the name of a Labuan foundation has been struck off the register it may within three years immediately following the date of the striking off, apply to the Authority to have its name restored to the register. Upon approval being granted by the Authority the name of the Labuan foundation shall be deemed to have never been struck off.

15. Redomiciliation in Labuan and Another Country.

- 15.1. A foundation established under the laws of another country or jurisdiction may redomicile in Labuan and be registered as if it had been established under LAFA. However, the registration does not create a new legal entity or affect the property of the Labuan foundation or render defective any legal proceedings by or against the Labuan foundation.

- 15.2. A Labuan foundation may, subject to any limitations in its constituent document, redomicile and register under the laws of another country in the manner provided under those laws. The redomicilation and registration in another country does not create a new legal entity or affect the property of the Labuan foundation or render defective any legal proceedings by or against the Labuan foundation.
- 15.3. Upon receipt of an apostilled copy of the certificate of registration issued by the competent authority of another country, the Authority shall strike the Labuan foundation off the register.

16. Appointment of Council.

- 16.1. The charter of a Labuan foundation usually provides for the appointment of a council which shall consist of one or more members who may be a natural person or corporation.
- 16.2. The council member may be appointed by the founder prior to registration. Upon registration the founder or such other person as may be empowered by the founder in the charter or articles of the Labuan foundation may appoint the council.
- 16.3. A founder or beneficiary who is not an officer of the Labuan foundation may be appointed as a council member.
- 16.4. A council member must deliver his consent to act to the founder or the person appointing him before his appointment becomes effective.

17. Council Meeting.

- 17.1. The council members of a Labuan foundation may convene meetings in such manner and at such times and places within or outside Labuan as may be necessary. The council meeting may be held at more than one venue using any technology that allows all council members a reasonable opportunity to be heard.
- 17.2. All minutes of the council meetings shall be recorded and kept in the registered office.
- 17.3. In the case of a single council member, any reference to minutes of council meeting shall be evidence of a decision or direction of the council in relation to any matter pertaining to any of the affairs of the Labuan foundation.

18. Powers of Council.

- 18.1. The powers of the council are contained in the constituent documents of the Labuan foundation.
- 18.2. The council shall ensure compliance by the Labuan foundation and its officers with the terms of the constituent document and the provisions of LAFA and be responsible for the general supervision of the management of the Labuan foundation by its officers.
- 18.3. The council shall represent the Labuan foundation and the officers of the Labuan foundation shall act in accordance with the instructions of the council.

19. Appointment of Supervisory Person.

- 19.1. A supervisory person is any person or body of persons having supervisory powers over the Labuan foundation and is appointed under the charter of the Labuan foundation.
- 19.2. The charter of a Labuan foundation may provide for the appointment of a supervisory person who may be a natural person or corporation.
- 19.3. A person shall not be appointed or remain as a supervisory person if he is an officer of the Labuan foundation.

20. Rights and Duties of Council.

- 20.1. The council shall have the following rights:
 - (a) To be informed of all meetings of the officers;
 - (b) To attend and be heard but not to vote at meetings of the officers;
 - (c) Where any business of a Labuan foundation is conducted by the circulation of documents, to be included in the circulation of documents at the time that they are circulated to the officers;
 - (d) Where any business of a Labuan foundation is conducted by the delegation of powers to an officer, to be informed of the terms and any exercise of the power that has been delegated.
- 20.2. The council shall have access to the books, records, accounts and vouchers of the Labuan foundation.
- 20.3. A council member shall exercise reasonable care and skill in performing his duties and exercising his rights and powers. In the absence of any officer of the Labuan foundation, the council shall perform the duties and exercise the powers of the officers.

21. Appointment of Officers.

- 21.1. The founder shall, before the registration of a proposed Labuan foundation, appoint at least one person to be an officer of the Labuan foundation. The officer may be a natural person or a corporation.
- 21.2. A founder or beneficiary who is not a council member may be appointed as an officer of the Labuan foundation.
- 21.3. An officer must deliver his consent to act to the founder before his appointment becomes effective.
- 21.4. A person shall be disqualified to be appointed as an officer of a Labuan foundation if he is a council member and is connected to the council member. A person is connected to a council member if he is a family member of the council member. Council member's family member includes his spouse, parent, child including adopted child and stepchild, brother, sister and the spouse of his child, brother or sister. A corporation which is associated with a council member is also disqualified. A corporation is associated with a council member if it is under an obligation, or its directors are accustomed, to act in accordance with the directions, instructions or wishes of that council member or that council member has a controlling interest in that corporation.

22. Duties of Officers.

- 22.1. The officers of a Labuan foundation shall be responsible for the proper administration of the Labuan foundation in order to achieve the purposes or objects of that Labuan foundation.
- 22.2. The officers of a Labuan foundation shall exercise reasonable care and skill in the management and investment of the property of the Labuan foundation. They shall act in accordance with the provisions of the constituent documents and LAFA.
- 22.3. In the absence of the appointment of a council or supervisory person, the officers of a Labuan foundation acting jointly shall be the governing body of the Labuan foundation and, as against a third party, the officers so acting shall represent the Labuan foundation.
- 22.4. Except as provided by the constituent document, the officers of the Labuan foundation shall act unanimously and may so act by circulation of a written document duly signed by each officer.
- 22.5. The remuneration of the officers may be provided by the charter and any dispute in respect of the amount of the remuneration can be referred to and determined by the Court.

23. Meeting of Officers.

- 23.1. The officers of a Labuan foundation may convene meetings in such manner and at such times and places within or outside Labuan as may be necessary. The officers' meeting may be held at more than one venue using any technology that allows all officers a reasonable opportunity to be heard.

- 23.2. The officers of a Labuan foundation shall hold an annual general meeting every year in addition to any other meetings.
- 23.3. The founder, and the council members or supervisory person shall be entitled to be notified of the officers' meeting, to table business to be considered at the meeting and to attend and be heard at the meeting, but shall not be entitled to vote at such meeting.
- 23.4. The officers shall proceed to convene an officers' meeting on the requisition of the founder, council member or supervisory person.
- 23.5. The quorum for a meeting of officers shall be that fixed in the constituent document of the Labuan foundation. Where no quorum is fixed in the constituent document, a meeting of officers shall be properly constituted for all purposes if at the commencement of the meeting one half of the total number of officers are present in person or by alternate.
- 23.6. The officers at a meeting of officers shall pass resolutions by a simple majority of the votes cast by the officers, each officer having one vote and the chairman having a casting vote in case of an equality of votes. Each Labuan foundation shall cause minutes of all meetings of officers to be entered in a book kept for that purpose.
- 23.7. A resolution of all officers consented to in writing, or by telex, telegram, facsimile, cable or other written electronic communication, without the need for any notice shall be valid as a resolution taken in an officers' meeting.

24. Secretary.

- 24.1. Before the registration of a Labuan foundation, the founder shall appoint a Labuan trust company to be the secretary of the proposed Labuan foundation.
- 24.2. The secretary may be a council member at the same time provided that the secretary shall not be the sole council member.
- 24.3. Every document or instrument required or permitted to be filed or lodged with the Authority shall be filed or lodged through a Labuan trust company.
- 24.4. Every application to the Authority for any certificate to be issued or for any extract or copy of any certificate or of any document lodged or filed with the Authority shall be made through a Labuan trust company.

25. Registered Office.

- 25.1. The registered office of a Labuan foundation shall be the registered office of the trust company which serves as the secretary and to which all communications, correspondences and notices may be addressed.
- 25.2. Accurate copies of the constituent document and all documents and instruments filed or lodged with the Authority and the books containing the minutes of council meetings and meetings of officers shall be kept at the registered office.

- 25.3. The records of a Labuan foundation may be kept in the form of photographic film or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.
- 25.4. The founder, council member, supervisory person or officer may inspect documents kept at the registered office during office hours without charge. Persons who are entitled to inspect minutes of the council's meeting can obtain copies of the minutes without charge.
- 25.5. Any person authorized by the Labuan foundation may inspect any document served on, registered by or filed with the Authority and obtain a certified copy thereof.

26. Capacity and Powers of a Labuan Foundation.

- 26.1. A Labuan foundation is a body corporate and may sue and be sued in its corporate name.
- 26.2. A Labuan foundation has the capacity, rights, powers, and privileges of an individual person

27. Liability of Council Member, Supervisory Person, Officer and Secretary.

- 27.1. No council member, supervisory person, officer or secretary of a Labuan foundation shall be personally responsible for any liability of a Labuan foundation unless such liability had been incurred as a result of his own gross negligence, wilful default or misconduct, fraud or dishonesty.
- 27.2. Any provision which exempts and indemnifies any council member, supervisory person, officer or secretary against, any liability, negligence, default, misconduct or breach of duty of which he may be guilty shall be void.

28. Claims by Creditors.

- 28.1. LAFA contains provisions for the satisfaction of creditors' claims out of assets of the Labuan foundation under specific circumstances. Such circumstances may arise where the disposition of assets into the Labuan foundation leaves the founder insolvent or without property to satisfy the claims and the founder has also shown intent to defraud creditors. The burden of proving the foregoing lies with any claiming creditor.
- 28.2. The disposition of property into a Labuan foundation shall not be considered fraudulent against a creditor if its creation or disposition of property by the founder:
- (a) leaves him with assets whose total fair market value immediately after the creation, registration or disposition exceeds the value of the creditor's claim;
 - (b) takes place before the creditor's cause of action accrued or had arisen;
 - (c) takes place after the expiration of two years from the date which the creditor's cause of action accrued; or
 - (d) takes place before the expiration of two years from the date which the creditor's cause of action accrued but such creditor fails to commence action before the expiration of one year from the date of such creation or disposition.

28.3. The term “creditor” includes any person who alleges a cause of action.

29. Accounts and Audit.

- 29.1. A Labuan foundation shall cause to be kept proper accounting and other records as will sufficiently explain the transaction and financial position of the Labuan foundation.
- 29.2. The accounting records of a Labuan company shall be kept in the registered office in Labuan or at such other place in Labuan as the officers think fit. It is the responsibility of the officers of the Labuan foundations to ensure that transactions are entered into the Labuan foundation’s books within 60 days of their occurrence.
- 29.3. Any founder, council member, supervisory person, officer and secretary of a Labuan foundation shall be entitled to be furnished, within seven days after he has made a request to the Labuan foundation, with a copy of the financial statements, accounts and records and report of approved auditor, if any, at no charge by the officers.
- 29.4. Where an application is made to the Court by a founder, a council member, a supervisory person, an officer, a secretary or a beneficiary, the Court may order the appointment of an approved auditor to carry out an audit of the Labuan foundation.
- 29.5. The approved auditor appointed under by the Court shall submit his report to the Court within such time as the Court may determine.

30. Unenforceability of Foreign Claims.

- 30.1. LAFA provides that where a Labuan foundation is established in accordance with the provisions of the LAFA, the Court shall not vary the Labuan foundation or set it aside or recognise the validity of any claims against the property pursuant to the laws of another jurisdiction or the order of a court of another jurisdiction in respect of:
- (a) the personal and proprietary consequences of marriage or the termination of marriage;
 - (b) succession rights, whether testate or intestate, including the fixed shares of spouses or relatives;
 - (c) any claims or orders of Court with regard to matters (a) or (b) in reference to the personal laws of the founder or the beneficiaries;
 - (d) the claims of creditors in an insolvency;
- 30.2. All questions arising with regard to a Labuan foundation established and existing under LAFA or in regard to any disposition of property to it shall be determined in accordance with LAFA without reference to the laws of any other jurisdictions with which the Labuan foundation or disposition may be connected, including questions as to the capacity of the founder and any aspect of the validity of the Labuan foundation or disposition or the interpretation or effect of the Labuan foundation.

31. Beneficiaries.

- 31.1. A beneficiary is a person designated as a beneficiary under the provisions of the constituent document of a Labuan foundation.

31.2. A beneficiary shall be entitled to:

- (a) to receive, on request, information from the Labuan foundation in respect of the fulfilment of the purposes and objects of the Labuan foundation;
- (b) on request, to inspect and to be supplied with a copy of:
 - (i) the charter of the Labuan foundation and any amendment made to the charter;
 - (ii) the articles of the Labuan foundation and any amendment made to the articles;
 - (iii) any audit report, including special audit reports, books of account, reports on the financial position of the Labuan foundation and its annual accounts.

31.3. No distribution to a beneficiary shall be validly made unless it is signed by all the officers then appointed.

31.4. No distribution to a beneficiary shall be made for the purpose of defeating the claim of any creditor of the Labuan foundation.

32. Dissolution.

32.1. A Labuan foundation shall be dissolved on the occurrence of the following events and upon the officers passing a resolution to that effect:

- (a) the Labuan foundation is established for a fixed duration and that duration expires;
- (b) the purpose of the Labuan foundation is fulfilled or becomes incapable of fulfillment, or
- (c) any provision of the charter of the Labuan foundation so requires.

32.2. When it is proposed to dissolve a Labuan foundation, and after a declaration to that effect had been made to the Authority, the officers shall do all things that are necessary for the orderly winding up of the affairs of the Labuan foundation, and shall collect the properties of the Labuan foundation, and after discharging or making adequate provision for the discharge of the obligations of the Labuan foundation, shall distribute the remaining properties in accordance with Para 32.4.

32.3. The Court may, on the application of the Labuan foundation, or by a creditor or creditors of the Labuan foundation or by the Authority, order the dissolution of a Labuan foundation if the Court is of the opinion that it is just and equitable that the Labuan foundation be dissolved.

32.4. Where a Labuan foundation is dissolved and there remain some properties after its dissolution, those properties shall be the property of the beneficiary who, according to the constituent document of the Labuan foundation, is entitled to receive any remaining property after the dissolution of the Labuan foundation. Where there is more than one remaining beneficiary entitled to receive the remaining property, the remaining property shall be divided equally between them.

33. Secrecy.

- 33.1. No person who for any reason has access to any record, book, register, correspondence or other document, material or information whatsoever relating to the business and affairs of the Labuan foundation, shall give, divulge, reveal, publish or otherwise disclose to any other person such record, book, register, correspondence or other document, material or information.
- 33.2. However, the above provisions shall not apply where disclosure:
- (a) is required for the purpose of the performance of the supervisory function of the Authority as may be provided for under the Labuan Financial Services Authority Act 1996 or LABATA;
 - (b) is required pursuant to an order of the court made upon an ex-parte application, provided that the person disclosing the relevant information shall notify the person affected by the order and upon receipt of such notification, the affected person may file in the necessary application to the court to contest the order or otherwise comply with the order accordingly; and
 - (c) is with the prior written consent of the Labuan foundation.
- 33.3 Notwithstanding the above secrecy provisions, section 20 of the Anti-Money Laundering and Anti-Terrorist Financing Act 2001 shall override such provisions should the Authority suspect that the person is involved in money laundering and terrorist financing activities.
- 33.4. All proceedings, except criminal proceedings, shall, unless the Court otherwise orders, be heard *in camera* and no details of the proceedings shall be published by any person without leave of the Court.
- 33.5. Any person who contravenes Para 33.1. commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

34. Conclusion.

- 34.1. LAFA has given the Labuan International Business and Financial Centre (IBFC) a new legal framework to conduct the following activities in Labuan:
- (a) tax and estate planning;
 - (b) asset protection planning;
 - (c) maintenance of corporate control;
 - (d) assistance to charities;
 - (e) separation of voting and economic benefits in investment holding companies;
 - (f) ownership of private trust companies;
 - (g) operation of employee share option schemes; and
 - (h) holding assets off-balance sheet in connection with the securitisation of mortgage.
- 34.2 Labuan foundation is designed for those from the civil law countries where the concept of trust is not well understood or recognised.



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