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01

What is a Labuan foundation?

Labuan foundation, like a company, is a corporate body with a separate legal entity, established to hold assets in its own names with the objective of managing the assets for the benefit of its beneficiaries, or particular purposes, or both. It is typically used for private wealth management and charitable purposes.

The Labuan foundation is an orphan structure where they do not have shareholders. Labuan foundations are managed by one or more officers and operates in accordance with the constituent documents comprising of charter and articles.

In the case of an Islamic foundation, the foundation's aims and operations shall be in compliance with Shariah principles.

02

What is the basic structure of a Labuan foundation?

The structure of a Labuan foundation consists of the following:

- Registered office – A Labuan Foundation must be registered and has a registered office;
- Charter - sets out the parameters within which a Labuan foundation is managed and governed;
- Key Management - consists of officer and secretary. For charitable foundations which soliciting public donations, it is mandatory to appoint council members and supervisory person;

The key management is comprised of:

1. Officer - primarily administrative as the officer is responsible for ensuring the proper administration of the foundation.
 2. Secretary - acts as the service provider to the foundation and performs all secretarial functions including filing and lodging of documents with Labuan FSA.
 3. Council member - responsible for the general supervision of the foundation management and ensuring that the purpose for which the foundation was established is fulfilled in accordance with the charter, articles and the law. In effect, the council is similar to the Board of Directors of a company.
 4. Supervisory person – to ensure the council members act in accordance with the charter as well as safeguard the Labuan foundation's properties in line with its purpose and object.
- Assets - assets endowed to a Labuan foundation become the assets of that foundation with full legal and beneficial title. The assets shall cease to be the property of the founder. These assets are to be applied only for the benefit of the identified purpose(s) of the foundation;
 - Beneficiaries - include individuals, corporate entities or charities and are those who have vested interest in the assets of the foundation. Unless specifically provided in the charter or articles, beneficiaries have no rights to the foundations assets prior to the distribution of assets and are not owed any fiduciary duties; and
 - Dissolution - 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; the purpose of the foundation is fulfilled or becomes incapable of fulfilment; or the charter requires such dissolution. After the dissolution, the ownership of the remaining assets will be transferred to the beneficiary in accordance with the provision of the constituent document, or otherwise the section 69(3) of Labuan Foundations Act 2010 (LFA).

03

What is the governing legislation for the business and operations of Labuan foundations?

Labuan foundations are governed by the LFA while Labuan Islamic foundations are governed under Part IX of Labuan Islamic Financial Services and Securities Act 2010.

04

What are the advantages of Labuan Foundations?

- Legal Personality – The feature of a separate legal entity means that all liabilities remain as the corporate liabilities of the foundation. The Labuan foundation is also protected from foreign claims and cannot be forcefully liquidated to satisfy other obligations such as claims arising from a divorce, lawsuit or creditors;

- Initial endowment – Although no minimum amount of assets is stipulated for an endowment, it is expected that a registration of Labuan foundation would be accompanied by an endowed assets of at least USD1;
 - Reserve powers of a founder – a founder may retain certain powers in the Labuan foundations e.g. for the purpose of amendments of charter, appointment and removal of beneficiaries. A founder can also be a council member so as to enable him to manage the foundation and its assets;
 - Life span of Labuan Foundations – Labuan foundations may exist 'in perpetuity' as there is no finite period limitation stipulated under the Labuan Foundation Act. This provides for the continuity of the Labuan foundation as needed by the founder;
 - Continuity - A foundation established in another jurisdiction can be legally redomiciled to Labuan and vice versa provided that the other jurisdiction permits and recognise such redomiciliation; and
 - Confidentiality - The officer, council member, supervisory person and secretary are restricted from disclosing any information relating to the foundation unless otherwise required or provided for by law, the court or the charter.
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05

Are foundations required to register with Labuan FSA for their set up in Labuan IBFC?

Yes. It is mandatory for Labuan foundations to be registered with Labuan FSA.

06

How do I register a foundation in Labuan?

Applications for registration of a Labuan foundation must be submitted to Labuan FSA by a Labuan trust company, who shall act as the Secretary of the foundation. Following the submission of the registration documentation, Labuan FSA shall review and conduct the necessary CDD on the applicant. Upon payment of the required registration fee, a certificate of registration will be issued.

To register a Labuan Islamic foundation, the following shall be observed:

- The Memorandum of Association states that the aims and operations of the Labuan Islamic foundation will not involve any element which is not in compliance with Shariah principles; and
 - The officers of a Labuan Islamic Foundation shall appoint a qualified person as a Shariah adviser, or consult a qualified person, who shall advise the Labuan Islamic foundation on the management and operations of the Labuan Islamic Foundation and ensure compliance with Shariah principles.
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07

Can Labuan foundations be registered for both charitable and non-charitable purposes?

Generally, a Labuan foundation must be registered either for charitable or non-charitable purpose. However, a Labuan non-charitable foundation may be allowed to undertake charitable activities provided these are incidental to their philanthropic purpose i.e. not the primary activities of the non-charitable foundation. This must be indicated clearly in the charter and the foundation is not allowed to solicit public donations.

08

Can a third party become a founder subsequent to the formation of the foundation?

No. A founder refers to the person who subscribes his name to the charter during establishment of the Labuan foundation and endows the foundation with initial assets.

09

Can a foundation be registered without any initial endowment?

No, as at the point of its registration, the type of initial assets endowment must be specified i.e. provided in the charter. The actual endowment of these assets must then be performed within a period of twelve months from the date of registration of the foundation pursuant to section 12(4)(b) of LFA.

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If a third party gives an asset to an existing Labuan foundation, can he then become a founder? How would the law regard the asset given to the foundation?

No, as the founder refers to the person who establishes the Labuan foundation by endowing it with initial assets. Assets given by third parties shall not be regarded as endowments.

11

Can assets endowed be allowed to be withdrawn by the founder under normal circumstances?

No, once assets are endowed, the founder will not have any legal rights to them as the same have been transferred to the Labuan foundation.

12

Is the requirement for a Labuan charitable foundation to submit a copy of certified resolution if the endowment is from a corporation and/or a copy of letter of undertaking if

the endowment is from an individual is only applicable to initial endowment

The above applies to both initial endowment and subsequent endowments from corporation or identified individual. However, this is not applicable for any donations made by the public to the charitable foundation, regardless whether these are in cash or non-cash form.

13

Can a non-charitable foundation be converted to charitable foundation? What are the procedures for this?

Yes. The non-charitable foundation needs to amend its charter and obtain prior approval from Labuan FSA. Furthermore, if the foundation intends to solicit public donations, it would be subjected to additional requirements as provided in the Guidelines.

14

What is the difference between a trust and a foundation?

Labuan IBFC offers trusts (governed by common law) and foundations (under the civil law code), both types of which can be applied in an Islamic manner as long as they subscribe to Shariah principles. Both trusts and foundations are highly flexible, covering many types to suit different needs.

Trusts and foundations are differentiated as follows:

Criteria	Foundation	Trust
Origin	Civil law origins	Common law origins
Legal personality	Legal entity (may sue or be sued in its name)	Not a legal entity
Registration requirement	Mandatory	Optional
Ownership of assets	Assets endowed to a foundation shall be legally owned by the foundation	Assets, upon being vested in the trust, are legally owned and held in trust by the trustee
Constituent document	Charter and articles	Trust deed
Reserved power	The founder does not retain any ownership rights in relation to the foundation's property	The settlor has certain reserved power after establishing the trust
Enforcement	Law and regulations	Letter of wishes
Governance	Council members	Trustees

15

Can an officer becomes a supervisory person?

Officer and supervisory person shall not be the same person to avoid conflict of interest in performing their respective roles.

16

How is a Labuan foundation's income taxed?

Subject to fulfillment of the prescribed substantial activity requirements, Labuan Foundation's investment income from non-trading activities such as dividends and interest is not subject to tax under the Labuan Business Activity Tax Act 1990.

17

What are the relevant fees pertaining to the registration and operation of Labuan foundations?

The fees payable are illustrated in the table below:

Fees	Amount
Registration fee	RM750
Annual fee	RM750
Approval for change of name	RM250
Restoration to register	RM750
Search or inspection of any document kept by the Authority (by the foundation including Founder, beneficiaries, council and officers)	RM20
Search or inspection of any document kept by the Authority (others)	RM200
Redomiciliation	RM750

Also in this section

> [List Of Labuan Foundation \(Charitable Solicit Public Donation\)](#)

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