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# Introduction to Labuan Foundation for Corporations





## I. Introduction

Labuan, widely known to be of an offshore jurisdiction offers companies an opportunity under the Labuan Foundations Act 2010 (“LFA”) to independently hold assets under its own name as registered body corporate with its own separate legal entity. The primary objective of such establishment is for a foundation to hold and manage its own assets for their beneficiaries<sup>1</sup>, be it for charitable or non-charitable purposes so long as it is lawful<sup>2</sup>. For the purpose of this article, there are two types of Labuan foundation i.e. a charitable foundation and a non-charitable foundation. A non-charitable foundation’s 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 and is not permitted to receive donations from third parties or the public. A charitable foundation on the other hand includes the following<sup>3</sup>: -

- i. The prevention and relief of poverty;
- ii. The advancement of religion, profession or education;
- iii. The advancement of health including the prevention and relief of sickness, disease or of human suffering;
- iv. Social and community advancement including the care, support and protection of the aged, people with a disability, children and young people;
- v. The advancement of culture, arts and heritage;
- vi. The advancement of amateur sport, which promote health by involving physical or mental exertion;
- vii. The promotion of human rights, conflict resolution and reconciliation;
- viii. The advancement of environmental protection and improvement;
- ix. The advancement of animal welfare; or
- x. The advancement of facilities for recreation or other leisure-time occupation in the interest of social welfare.

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<sup>1</sup> Section 7(1) LFA

<sup>2</sup> Section 7(2) LFA

<sup>3</sup> Item 5.4 of the Guidelines on the establishment of Labuan Foundation including Islamic Foundation



## II. Advantages of Forming a Labuan Foundation

### i. Separate Legal Entity

A Labuan foundation is an independent self-governing legal entity. Thus, all liabilities remain as corporate responsibility of the foundation. The Labuan foundation is also protected from foreign claims and/or cannot be forcefully liquidated to satisfy other obligations including claims arising from a divorce, lawsuit or creditors.<sup>4</sup>

### ii. Full Administration and Control

The requirement of a charter makes it possible for a foundation to achieve full administration and control over the foundation as the basic structure as discussed in paragraph IV below allows for a clear-cut delegation of each key management. Moreover, the rules embodied in the charter will make managing the foundation smoother. Changes to the charter can be incorporated, offering flexibility to fit the foundation's needs. However, certain amendments to the charter would be subject to additional requirements by the Labuan Financial Services Authority ("LFSA") through their guidelines. Pursuant to the case of **Nabors Drilling (Labuan) Corp v Lembaga Perkhidmatan Kewangan Labuan [2020] 12 MLJ 54** any guidelines made under LFA shall be observed by the foundation as they act 'to clarify any provision' of the said act or 'any other matters relating to Labuan financial services'. Therefore, it is pertinent to be aware and up to date with any guidelines issued by the LFSA.

### iii. Tax Incentives

A charitable foundation that solicits public donations may be accorded the status of an "approved institution or organization" under the **Income Tax Act 1967** and be granted tax exemption on its income, where applicable.

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<sup>4</sup> Section 61 LFA



Income derived from the Labuan foundation is taxed at 3% of its chargeable profits for the specified year of assessment.<sup>5</sup>

iv. **Continuity**

A foundation established in another jurisdiction may be redomiciled to Labuan and vice versa, provided that the other jurisdiction allows and recognize such domiciliation<sup>6</sup>. A lifespan of a foundation may also continue as long as the founder sees fit, reflected by the duration in the charter and there is no limitation period specified under the LFA.

v. **Initial Asset**

The LFA does not place any capital requirement, and an initial endowment at the time of registration can be as low as USD 1.

### III. **Disadvantages of a Labuan Foundation**

i. **Annual fees payable to LFSA**

While the registration of a Labuan foundation is considered affordable as they only require a one-off payment of RM750 registration fee and RM300 application fee for the establishment of a representative office. The foundation is required to pay an annual fee of RM750 on or before the foundation's anniversary date.<sup>7</sup>

### IV. **Regulatory Requirements**

In establishing a Labuan foundation, a founder first and foremost is required to subscribe his name to the charter of the foundation. Among others, the founder is also responsible in identifying and establishing the purpose of their Labuan Foundation, the type of foundation (charitable or non-charitable), how its managed, the duration of the foundation and the type of initial assets endowed at

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<sup>5</sup> <https://www.labuanfsa.gov.my/areas-of-business/financial-services/wealth-management/labuan-foundations/>. See also Section 6(3) of LFA and Section 2B of the Labuan Business Activity Tax Act 1990

<sup>6</sup> Section 23 and Section 24 of LFA

<sup>7</sup> Item 11 of the Guidelines on the establishment of Labuan Foundation including Islamic Foundation



the point of registration all in the charter of their Labuan Foundation. However, before registering a Labuan foundation, a basic structure in terms of the key management of a Labuan foundation must be formed.

### **Basic structure**

A basic structure of a Labuan foundation should consist of the following<sup>8</sup>: -

#### **i. Founder**

A founder is the main controller of the foundation who reserves the right to change the charter. There shall be a minimum of one person, either a natural person or corporate entity. However, similarly to all other key management listed below, there are no requirement to be a resident and non-resident of Malaysia. A founder may also assign or transfer their rights, powers and obligations and the assignee who is assigned with such rights shall be deemed as the original founder, who also have the rights to endow his own assets into the foundation. In doing so the foundation must notify the Registrar of Companies (“**ROC**”) within 30 days from the effective date of the assignment.

#### **ii. Officer**

An officer is in charge of the administration of the foundation which includes the distribution of the assets to the benefit of the designated beneficiaries and ensuring the wishes of the founders are carried out as per the charter.

#### **iii. Secretary**

It is compulsory to appoint a licensed Labuan Trust Company as the company secretary of the foundation. A secretary shall act as a service provider to the foundation and acts as a compliant agent function and act as a conduit between the foundation and LFSA. Additionally, for the purpose of registering the foundation, it must be made be made by the secretary following **Section 14(1)** of **LFA**.

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<sup>8</sup> Item 7 of the Guidelines on the establishment of Labuan Foundation including Islamic Foundation



#### iv. **Beneficiaries**

The beneficiary will benefit from the foundation and retain benefit from the foundation as per their vested interest prescribe in the charter. A beneficiary can either be individuals, corporate bodies or charities. However, unlike a trust, beneficiaries are not owed any fiduciary duty nor do they have rights to vote.

#### v. **Council Member**

Similar to a Board of Directors of a standard company, the general supervision and decision-making abilities involving the foundation are carried out by the council in accordance with their powers and duties as per the foundation's charter.

#### vi. **Supervisory person**

A supervisory person may be appointed by a founder to conduct check and balance, ensuring council members act in accordance with the charter by monitoring their decision makings.

### V. **Conclusion**

The Labuan Foundations Act has allowed corporations to hold and manage their assets by putting in place a proper and effective structure for the foundation. As discussed above, the advantages seem to outweigh the drawbacks, especially for those looking to establish a long-term structure that can be redomiciled to other jurisdictions if needed. Overall, with its unique advantages, strong asset protection, and flexibility in management, the Labuan foundation stands as a robust and viable option for those seeking to build corporate legacies and ensure continuity for generations to come by having the benefits of a trust and the certainty of a company. By carefully considering the pros and cons, compliance with the regulatory requirements, interested parties can harness the potential of the Labuan foundation to achieve their financial goals and aspirations.

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Published Date:  
02 August 2023



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