

GUIDELINES ON THE ESTABLISHMENT AND OPERATIONS OF LABUAN LEASING BUSINESS

1.0 Introduction

- 1.1 The purpose of the Guidelines is to clarify the application procedure, operational and regulatory requirements for Labuan companies carrying out leasing business and Islamic leasing business in Labuan International Business and Financial Centre (IBFC).

2.0 Applicability

- 2.1 The Guidelines are applicable to all Labuan companies carrying out leasing business and Islamic leasing business in Labuan International Business and Financial Centre (IBFC) pursuant to section 90 of the Labuan Financial Services and Securities Act 2010 (LFSSA) and section 65 of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

3.0 Legal Provision

- 3.1 The Guidelines are issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to clarify the requirements on the establishment and operations of Labuan leasing company and Islamic leasing company licensed under section 92 of LFSSA and Section 67 of LIFSSA respectively.
- 3.2 Any person who fails to comply with the Guidelines is guilty of an offence punishable under Section 36B and 36G of the LFSAA.

4.0 Effective Date

- 4.1 The Guidelines shall come into effect on 1st August 2013 and would remain effective and applicable unless amended or revoked otherwise.
- 4.2 The Guidelines for Carrying on Offshore Leasing Business in Labuan issued in March 2003 are now repealed.
- 4.3 All approvals made by Labuan FSA relating to Labuan leasing business before the commencement of these guidelines shall remain valid unless revoked until the expiry of the lease transaction.

5.0 Definition

- 5.1 The definition of leasing business is provided under Section 86 of LFSSA which stipulates that:

“leasing business” means the business of letting or sub-letting property on hire for the purpose of the use of such property by the hirer regardless whether the letting is with or without an option to purchase the property, including charters of ships, and for the purpose of this definition, “property” includes any plant, machinery, equipment or other chattel attached or to be attached to the earth and “charters of ships” means bareboat charters only and does not include the transportation of passengers or cargo by sea or the charter of ships on a voyage or time charter.

- 5.2 The Islamic leasing business has the same meaning as conventional leasing business except for the requirement to ensure compliance with Shariah principles as specified under Section 60 of LIFSSA.

6.0 Who Can Apply?

- 6.1 Any person intending to undertake leasing business in Labuan IBFC may apply to Labuan FSA for approval.
- 6.2 Upon receiving approval from Labuan FSA, the applicant is required to establish a Labuan company incorporated or registered under Labuan Companies Act 1990 (LCA).

7.0 Application Requirements

- 7.1 The application for licence to carry on leasing business in Labuan IBFC shall be made by submitting the duly completed *Form LFB: Application For Licence To Carry On Labuan Financial Business*.

8.0 Operational Requirements

- 8.1 An approved Labuan leasing company is required to:
- 8.1.1 Maintain bank account(s) under its name preferably in Labuan IBFC and Malaysia to facilitate the leasing operation including lease remittances/lease rental;
 - 8.1.2 Ensure that the lease agreement is duly stamped and endorsed by the Collector of Stamp Duties, at the Stamp Duty Office, Inland Revenue Board of Malaysia;
 - 8.1.3 Transact business only in foreign currency and not dealing in Malaysian Ringgit except for the purpose of defraying

administrative and statutory expenses or as permitted under Exchange Control Act 1953;

- 8.1.4 Notify Labuan FSA of any changes to its constituent documents and business plan within 30 days of the changes being effected;
 - 8.1.5 Obtain an approval from Labuan FSA on new appointment or change on its directorship and shareholding;
 - 8.1.6 Notify Labuan FSA on the termination/extension of any leasing transaction within 30 days upon the termination/extension;
 - 8.1.7 Ensure all leasing transactions and agreements are done through Labuan and adequate and proper records and books of accounts be maintained in Labuan;
 - 8.1.8 Conduct its business with due diligence and sound principles and comply with the laws and regulations where it services its clients.
 - 8.1.9 Ensure all its leased assets are adequately insured;
 - 8.1.10 Ensure that the directors and officers responsible for the management of the company are fit and proper persons pursuant to section 4 of LFSSA and the Guidelines on Fit and Proper Person issued by Labuan FSA;
 - 8.1.11 Ensure that all leasing transactions with its related party comply with the transfer pricing rules issued by the related party's relevant authorities; and
 - 8.1.12 Comply with any other requirements to be issued by Labuan FSA from time to time.
- 8.2 Subsequent leasing transactions with Malaysian residents are subject to Labuan FSA's prior approval and payment of subsequent transaction fee.

9.0 Reporting Requirements

An approved leasing company is required to:

- 9.1 Appoint an approved external auditor to undertake an audit in respect of its accounts and business operations;
- 9.2 Submit to the Supervision and Enforcement Department of Labuan FSA within six (6) months after the close of each financial year, a copy of its audited financial statements; and
- 9.3 Provide statistics and information as may be required by Labuan FSA in relation to prudential information, general business conduct and volume and direction of business in Labuan.

10.0 Fee

- 10.1 The annual licence fee is payable to Labuan FSA upon approval to undertake leasing transaction with Malaysian resident. The subsequent annual licence fee payment must be made to Labuan FSA on or before every 15th day of January.

Type of Fee	Lease with Malaysian resident	Lease with non-Malaysian resident
Annual Licence Fee	RM60,000	Nil
Each Subsequent Leasing Transaction	RM20,000 (One off)	Nil

- 10.2 The annual licence fee would apply when a Labuan leasing company embarks into a leasing transaction with Malaysian resident although its initial leasing transactions are conducted with non-Malaysian resident entities. The subsequent leasing transaction fee would also be applicable for any subsequent transaction with Malaysian resident.

11.0 Others

- 11.1 Labuan leasing companies that carry on charters of ships under the guidelines are encouraged to register their ships under the Malaysia International Ship Registry or Malaysia Ship Registry as provided in the Merchant Shipping Ordinance 1952.
- 11.2 Labuan leasing companies are also encouraged to primarily secure the insurance coverage for their leased assets/properties from Labuan-based insurance companies and takaful operators prior to securing the services of other insurance players elsewhere.
- 11.3 The Guidelines shall exclude and not applicable for the underlying leasing transaction which are done for the purpose of facilitating the issuance of Sukuk Al-Ijarah.

12.0 Application Submission and Enquiry

12.1 The application or any request for additional information and clarification pertaining to the guidelines can be submitted to:

Business Management Department
Labuan Financial Services Authority (Labuan FSA)
Level 17, Main Office Tower, Financial Park Complex
Jalan Merdeka
87000 Federal Territory of Labuan
Malaysia

Contact person : Mr. Jaffree Ismail
Telephone no. : 087-591200 / 591300
Facsimile no. : 087-453442 / 413328
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Labuan Financial Services Authority
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