

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 business¹ in Labuan International Business and Financial Centre (IBFC).
- 1.2 “Leasing business” is 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. The property may include plant and machineries, ships, aircrafts, etc.

2.0 Applicability

- 2.1 The Guidelines is applicable to all Labuan companies carrying out leasing business in Labuan IBFC pursuant to Sections 90 and 92 of the Labuan Financial Services and Securities Act 2010 (LFSSA) and Sections 65 and 67 of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).
- 2.2 The Guidelines is not applicable for the underlying leasing transactions which are done for the purpose of facilitating the issuance of Sukuk Al-Ijarah. However, leasing business structured by way of ijarah shall observe all the requirements of the Guidelines.

3.0 Legal Provision

- 3.1 The Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSSA) to clarify the requirements on the establishment and operations of Labuan leasing company licensed under Section 92 of LFSSA and Section 67 of LIFSSA, respectively.

4.0 Effective Date

- 4.1 The Guidelines shall come into effect on 1 January 2019 and would remain effective and applicable unless amended or revoked.
- 4.2 The Guidelines supersedes the Guidelines on the Establishment and Operations of Labuan Leasing Business issued on 29 December 2017.
- 4.3 All approvals granted by Labuan FSA relating to Labuan leasing business before the effective date of this Guidelines shall remain valid unless otherwise revoked or if the lease transaction has expired.

¹ including Islamic leasing business that is in compliant with Shariah principles.

5.0 Eligibility

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

6.0 Application Requirements

- 6.1 Submit a duly completed application form with the relevant supporting documents as stipulated in the Form LFB-Leasing, which is downloadable at www.labuanibfc.com.
- 6.2 Labuan FSA may require from the applicant such other information or documents for the purpose of determining the merits of the application.
- 6.3 The application for Labuan FSA's approval to conduct leasing business may be submitted directly by the applicant or through the Labuan trust company(s) together with a non-refundable processing fee as stated in Paragraph 9.1.

7.0 Operational Requirements

- 7.1 Have sufficient and positive capital or working funds which commensurate with the business operations² at all time. Labuan FSA may exercise its discretion to require a Labuan leasing company to inject additional capital, taking into account its business profile as well as nature, scale, complexity and diversity of their business activities.
- 7.2 Ensure that the directors and officers responsible for the management of the company meet the Fit and Proper Person requirements as specified in the Guidelines on Fit and Proper Requirements issued by Labuan FSA.
- 7.3 Establish an adequate set of internal policies and controls for its operations, compliances, corporate governance and risk management. These need to be regularly reviewed to ensure that they remain appropriate, relevant and prudent.
- 7.4 Ensure that all its leased assets are adequately insured. In this regard, Labuan leasing companies are 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.

² Considerations shall include but not limited to the following factors:

- a) volume of the business;
- b) value of the asset leased; and
- c) leasing arrangement, i.e. operating or finance lease.

- 7.5 Maintain adequate and proper records and books of accounts in Labuan in line with the Directive on Accounts and Record-keeping Requirement for Labuan Entities issued by Labuan FSA. Its name and company number must be clearly indicated on its letterhead, stationery and other documents.
- 7.6 Maintain bank account(s) under its name preferably in Labuan IBFC and/or Malaysia to facilitate the leasing operations including any lease remittances/lease rental payment transactions
- 7.7 Ensure that all leasing transactions with any of its related party are conducted at arm's length basis and are subjected to the transfer pricing rules and guidelines issued by the relevant authorities.
- 7.8 Obtain prior approval from Labuan FSA for:
- (i) each new and subsequent leasing transactions including any change of lessee(s) and leased asset(s);
 - (ii) change of shareholders of more than ten per centum; and
 - (iii) appointment of directors.
- 7.9 Notify Labuan FSA within 30 days pertaining to the following matters:
- (i) any change of information with regard to the place of business or office;
 - (ii) any changes to the constituent documents and business plan which include the change of its company name; and
 - (iii) termination / extension of any leasing transactions.
- 7.10 The Labuan leasing company has to establish substantial activity requirements in Labuan as prescribed by the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 (Substance Regulation); as well as the following:
- (i) maintaining an operational office in Labuan; and
 - (ii) carrying out the core income generating activities from the Labuan office. Typically, the activities may include identifying and acquiring of assets to be leased, agreeing funding terms, setting the terms and duration of financing/leasing, monitoring and revising agreements and managing risks.

8.0 Reporting Requirements

8.1 A Labuan leasing company is required to:

- (i) submit one (1) hardcopy and one (1) softcopy of its audited financial statements to Labuan FSA within six (6) months after the close of each financial year; and
- (ii) provide statistics and information as may be required by Labuan FSA from time to time.

9.0 Fee payable

9.1 The fees payable to Labuan FSA to undertake a Labuan leasing business dealing with Malaysian resident and non-Malaysian resident are as follows:

Type of Fee	Amount
(i) Annual licence fee	RM60,000/ USD20,000
(ii) Each subsequent leasing transaction	RM20,000/ USD6,000
(iii) Processing fees (non-refundable):	
(a) Normal application	RM1,000/ USD350
(b) "Fast track" application	RM3,500/ USD1,200

9.2 Pursuant to Section 189 of LFSSA and Section 150 of LIFSSA, the payment of annual licence fee is payable latest by 15 January of each year.

10.0 Submission of Application and Enquiries

10.1 The application for Labuan leasing business may be submitted to:

Head of Business Operations Unit
Legal and Business Management Department
Labuan FSA
Level 17, Main Office Tower
Financial Park Complex, Jalan Merdeka
87000 Federal Territory of Labuan, Malaysia

(Email: bou@labuanfsa.gov.my)

10.2 Any enquiries or clarifications may be directed to the following contact details:

Telephone : +6087 591 200
Facsimile no. : +6087 453 442 / 422 300
Email : bou@labuanfsa.gov.my (Application)
bpu@labuanfsa.gov.my (Guidelines)

Labuan Financial Services Authority

5 March 2019 (Revised)

29 December 2017

1 August 2013