

## **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<sup>1</sup> in Labuan International Business and Financial Centre (IBFC).
- 1.2 “Leasing business” is defined as 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<sup>2</sup>, including charters of ships (bare-boat basis). The assets leased under Labuan leasing business are expected to be big ticket items of high value or specialised assets.

### **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 shall exclude and not applicable for the underlying leasing transactions which are done for the purpose of facilitating the issuance of Sukuk Al-Ijarah. Nonetheless, ijarah leasing business 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 (LFSAA) 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.
- 3.2 Any person who fails to comply with the Guidelines commits an offence upon which Labuan FSA may undertake appropriate enforcement action to the extent provided by the law.

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<sup>1</sup> including Islamic leasing business that is in compliant with Shariah principles.

<sup>2</sup> including any plant, machinery, equipment or other chattel attached or to be attached to the earth.

#### **4.0 Effective Date**

- 4.1 Save for Paragraph 7.11, all requirements of the Guidelines shall come into effect on 1 January 2018. The substance requirements by the Labuan leasing companies under Paragraph 7.11 shall come into effect on 1 January 2019 to provide sufficient transition period for compliance.
- 4.2 The Guidelines on the Establishment and Operations of Labuan Leasing Business (issued on 1 August 2013) and Clarification Note for Guidelines on the Establishment and Operations of Labuan Leasing Business (issued on 10 October 2013) are now repealed.
- 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.

#### **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 the 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](http://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.

#### **7.0 Operational Requirements**

- 7.1 Have sufficient and positive capital or working funds which commensurates with the Labuan leasing business<sup>3</sup> at all times. 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.

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<sup>3</sup> Considerations shall include but not limited to the following factors:

- (i) volume of the business;
- (ii) value of the asset leased; and
- (iii) leasing arrangement, i.e. operating or finance lease.

- 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. For this purpose, the requirement of paragraph 7.12 would need to be observed prior to entering into such insurance arrangement.
- 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 The lease agreement shall be stamped and endorsed by the Collector of Stamp Duties, at the Stamp Duty Office of Inland Revenue Board of Malaysia, Labuan branch.
- 7.8 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.
- 7.9 Obtain prior approval from Labuan FSA for:
- (i) each new and subsequent leasing transactions. In this regard, no leasing transaction shall be undertaken prior to Labuan FSA's approval;
  - (ii) establishment of office outside Labuan and establishment or acquisition of subsidiary;
  - (iii) change of lessee and leased asset;
  - (iv) change of shareholders of more than ten per centum; and
  - (v) appointment of directors.

- 7.10 Notify Labuan FSA within 30 days pertaining to the following matters:
- (i) resignation of directors;
  - (ii) any change of information with regard to the place of business or office in Labuan;
  - (iii) any changes to the constituent documents and business plan which is not tantamount to the change of lessee and leased asset. This may include the change of its company name; and
  - (iv) termination / extension of any leasing transactions.
- 7.11 The Labuan leasing company has to establish substantial activities and perform strategic functions in Labuan. In this regard, the substance requirements should include but not limited to the following factors:
- (i) *Physical presence*: Maintain an operational office in Labuan. The operational office should be used for business purposes only and must be appropriately furnished with office equipments<sup>4</sup>;
  - (ii) *Key leasing activities*: The core income generating activities are expected to be carried out from the Labuan office. Typically, the activities may include identifying and acquiring of assets to be leased, negotiating leasing terms, soliciting lessees, management of leased assets and financing the acquisition of assets;
  - (iii) *Employment*: Have adequate number of full-time employees with necessary qualification, skills or experiences in the relevant fields related to the leasing business<sup>3</sup>; and
  - (iv) *Annual business spending*: Have incurred adequate business spending in Malaysia including Labuan in undertaking the Labuan leasing business<sup>3</sup>.
- 7.12 Comply with applicable laws, rules and regulations relevant to the leasing business, including relevant guidelines issued by Labuan FSA and regulatory requirements of the jurisdictions where Labuan leasing business is authorised to operate in (where applicable). Labuan leasing company is expected to obtain necessary approvals from the relevant authorities in the market it intends to operate prior to commencing its business in those respective markets and provide a copy of the approvals to Labuan FSA.

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<sup>4</sup> For a group with more than one Labuan leasing companies may share the same office.

## 8.0 Reporting Requirements

8.1 A Labuan leasing company is required to:

- (i) appoint an approved external auditor to undertake an audit in respect of its accounts and business operations;
- (ii) 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
- (iii) provide statistics and information as may be required by Labuan FSA from time to time.

## 9.0 Fee Payable

9.1 The annual licence fee and approval fee for each subsequent leasing transaction are payable to Labuan FSA to undertake a Labuan leasing business dealing with Malaysian resident and non-resident. 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.

Type of Fee	Amount (RM)
Annual licence fee	60,000
Each subsequent approved leasing transaction	20,000

## 10.0 Submission of Application and Enquiries

10.1 The application for Labuan leasing business can 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**

29 December 2017 (Revised)

1 August 2013