

The Guide to Corporate Establishment in Labuan, Malaysia

Situated in the heart of Southeast Asia, and in close proximity to economic hubs such as Singapore, Hong Kong, Kuala Lumpur, and Jakarta, lies Labuan. Labuan is home to 96,800 people and offers a variety of benefits for businesses, including a gentle income tax regime, a well-regulated financial system, a deep water port, and highly developed supporting infrastructure. With improvements being made on a continual basis, Labuan could soon be giving other more established financial jurisdictions a run for their money.

The Labuan International Business and Finance Center (IBFC)

The financial services industry in Labuan has taken root largely thanks to the creation of the Labuan International Offshore Financial Center in 1990, along with the passing of offshore laws and the creation of LOFSA (Labuan Offshore Financial Authority). With the passage of new laws in 2010, LOFSA has re-branded itself as Labuan FSA, and the center itself has been renamed the Labuan International Business and Finance Center (IBFC).

The Labuan IBFC shares a common time zone with many large Asian cities and its location between China and India as well as its proximity to several other financial centers has been used to promote it as a convenient location for business dealings. To assist in developing the stature of the jurisdiction, Labuan has been designated as a financial center and free trade zone by the Malaysian government.

Incorporation/Registration of a Foreign Labuan Company

For those interested in establishing operations in Labuan, the Labuan Companies Act of 1990 (LCA) provides for the incorporation, registration, and administration of companies in Labuan. Unlike companies in mainland Malaysia, which are subject to regulation under the Companies Act of 1965, Labuan companies are only regulated by the LCA.

A Labuan company can be formed through either: incorporation under the LCA; or registration under the LCA as a foreign company incorporated outside Malaysia.

Incorporation in Labuan involves a simple process free from the hurdles found in many other ASEAN markets. The first step involved in this process is to check with government officials to ensure that the name of the company is not objectionable or currently being used. Following approval of the company name, all companies seeking to register or incorporate within Labuan must produce articles of association, list all directors and offices, and empower an agent to act on behalf of the company in Labuan. Upon registration, a certificate will be issued as evidence of compliance with the registration requirements.

The LCA permits a company to transfer its place of incorporation to Labuan. For those seeking to pursue this course of action, the following issues should be considered:

- The laws of the jurisdiction of incorporation must permit the transfer; and
- Consent of shareholders, debenture holders, and creditors as well as the proper officer of the relevant authority of the place of incorporation must be obtained.

Management and Administration Requirements

Every Labuan company is required to appoint a trustee company to attend to their secretarial matters and shall at all times have a registered office in Labuan. While this office must be the principal office of the company under most circumstances, it is possible to operate a primary office in Kuala Lumpur under certain circumstances.

In terms of staffing, a Labuan company is required to have at least one director, who may be a resident director, and at least one resident secretary. Both the resident

director and resident secretary of a Labuan company must be officers of at least one of the following:

- a Labuan trust company approved by Labuan FSA;
- a domestic company wholly owned by the trust company; or
- a licensed or registered domestic company who holds shares in a Labuan company

The register of a company in Labuan must be maintained at the registered office. The details to be recorded in the register include the full name and usual residential address of each director or secretary. The register is to be open for inspection by any director, inspector, or auditor of the company without charge.

Particulars of any change to documents of a foreign Labuan company with Labuan FSA must be furnished to Labuan FSA within one month after the change or alteration. This includes a change or alteration to the memorandum and articles of association, directors of the company, address of the registered office, etc.

Annual Return and Accounting Requirements

A foreign Labuan company is not required to maintain its accounting and other records in Labuan. It must submit an annual return in the prescribed form once every calendar year, no later than 30 days prior to the anniversary of the date of registration.

Prohibited Activities Labuan Company

Under the amended LCA, Labuan companies are now permitted to carry on shipping operations but are limited to those carried out in Labuan or outside of Malaysia.

Transactions in Ringgit are generally prohibited except for:

- Defraying administrative expenses and statutory expenses;
- Holding of investments or debt obligations in a domestic company;
- Payment for professional services from Malaysian service providers; and
- Where permitted by the Labuan Financial Services and Securities Act, 2010 (LFSSA) or Labuan Islamic Financial Service, 2010 (LIFS).

Optimizing Business in Labuan

Opening a business in Labuan can be very complicated at times, but in the long run it is considered to be one of Asia's most cost effective financial hubs because it is usually overshadowed by more famous financial hubs like Malaysia, Singapore, and Kuala Lumpur. The Pan-Asia associates at Dezan Shira & Associates can offer the best, most practical methods to starting a successful business in Labuan or any other ASEAN state.

Since its establishment in 1992, Dezan Shira & Associates has been guiding foreign clients through Asia's complex regulatory environment and assisting them with all aspects of legal, accounting, tax, internal control, HR, payroll and audit matters. As a full-service consultancy with operational offices across China, Hong Kong, India and emerging ASEAN, we are your reliable partner for business expansion in this region and beyond.

For inquiries, please email us at info@dezshira.com. Further information about our firm can be found at: www.dezshira.com