

LABUAN – OFSHORE COMPANY

Principal Corporate Legislation

On November 6, 1989, the Government of Malaysia declared the Federal Territory of Labuan as an International Offshore Financial Centre. The following statutes apply:

- The Offshore Companies Act 1990.
- The Labuan Trust Companies Act 1990.
- The Offshore Banking Act 1990.
- The Offshore Insurance Act 1990.
- The Labuan Offshore Business Activity Tax Act 1990.
- The Labuan Offshore Trusts Act 1996.
- The Labuan Offshore Limited Partnerships Act 1997.
- The Labuan Offshore Securities Industry Act 1998.

In addition, the Labuan Offshore Financial Services Authority (LOFSA) has been established as the sole regulatory body for those statutes.

Type of Law

The Malaysian legal system is based on the English model. Special laws applicable to the offshore industry in Labuan have been enacted. Arbitration is permitted. Disputes are heard in camera. Final appeal lies with the Supreme Court.

Type of Company for International Trade and Investment

Offshore company.

Procedure to Incorporate

Submission to the Registry of the Memorandum and Articles of Association, consent to act as a director form, Statutory Declaration of Compliance and the requisite fee.

Restrictions on Trading

Permitted trading of an offshore company:

An Offshore Company shall only carry on business in, from or through Labuan. An Offshore Company may not: carry on business with a resident of Malaysia except as permitted by the Offshore Banking Act 1990; carry on the business of Banking or Insurance or such similar business unless it is licensed so to do under the Offshore Banking Act 1990 or the Offshore Insurance Act 1990; carry on business in the Malaysian currency except for defraying its administrative and statutory expenses; carry on business of shipping or petroleum operations in Malaysia or carry on business as a trust company.

Exceptions to carrying on business with residents of Malaysia:-

An Offshore Company is not treated as carrying on business with residents of Malaysia if it makes or maintains deposits with a person carrying on business in Malaysia; it makes contact with professional advisers carrying on business in Malaysia; it prepares and maintains books and records in Malaysia; it acquires or holds any lease or property for operational purposes or accommodation of its employees; it holds directors' or members' meetings within Malaysia; it holds shares, debt obligations, or other securities in a company incorporated under the Offshore Companies Act 1990 or in a domestic company, or holds shares, debts obligations or other securities for the purposes of a transaction entered in to in the ordinary course of a money-lending business.

Powers of Company

A company incorporated in Labuan has the same powers as a natural person.

Language of Legislation and Corporate Documents

English.

Shelf Companies Available

No.

Time to Incorporate

8 days.

Name Restrictions

Names resembling the name of a company incorporated or registered under the Companies Act 1965 are not acceptable. Names that in the opinion of the Registrar suggest Royal or government patronage. Names, which the Registrar considers undesirable, will be rejected.

Language of Name

Offshore companies are allowed to have names in a foreign language, provided they use the Latin alphabet.

Registered Office Required

Yes, must be maintained in Labuan and must be maintained at the office of a licensed management company.

Names Requiring Consent or License

Bank, building society, insurance, assurance, reinsurance, fund management, investment fund, trust, trustees, Chamber of Commerce, university, municipal or their foreign language equivalents.

Suffixes to Denote Limited Liability

Corporation, Incorporated, Limited, Société Anonyme or Sociedad Anónima or the relevant abbreviations. If the Malaysian word Berhad is used then it must be preceded by '(L)' to denote that the company is incorporated in Labuan.

Disclosure of Beneficial Ownership to Government Authorities

No.

Compliance

Authorized and Issued Share Capital

The standard authorized capital is US\$10,000 divided in to 10,000 shares of US\$1. The minimum issued capital is one share, which may be fully or partly paid.

Classes of Shares Permitted

Registered shares of par value, preference shares, redeemable shares and shares with no voting rights.

Taxation

Offshore Companies that are trading pay 3% on net audited profits or the sum of RM 20,000. Offshore Companies that do not trade do not pay tax.

Double Taxation Agreements

Labuan, being a region of Malaysia, is party to over forty double tax agreements. The countries include: Albania, Australia, Austria, Bangladesh, Belgium, Canada, China, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Italy, Japan, Korea, Malta, Mauritius, Mongolia, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Romania, Saudi Arabia, Soviet Union, Singapore, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, UAE, UK, Vietnam, Yugoslavia and Zimbabwe.

Financial Statements Required

A set of accounting records must be kept in Labuan. Non-trading (i.e. investment and holding companies) and trading companies which elect to pay tax of RM 20,000 p.a. are not required to file financial statements.

Such companies are exempt from appointing an auditor if they are not a licensed offshore bank or insurance company, did not invite the public to subscribe for shares or debentures or to deposit money with or lend money to the company and the members of the company have resolved that no auditor be appointed.

A trading company, which pays 3% of audited net profits, is required to appoint an auditor and file audited financial statements.

There is a filing fee of RM 50 for 'adoption of accounts' and if the accounts of the Labuan Company has been audited, then there is a filing fee of RM 50 for the 'lodgement of the said audited accounts'.

Note that a Labuan Company accounts need not be audited unless the company wishes to pay 3% of the net profit (as per the audited accounts).

Directors

The minimum number of directors is one. Corporate directors are allowed. Directors may be of any nationality and need not be resident in Labuan or Malaysia.

Company Secretary

A Labuan company must have a resident company secretary, who must either be an officer or a subsidiary of a licensed Labuan trust company

Shareholders

The minimum number of shareholders is one.