

Labuan Enters into a New Dawn through Legislative Changes

Effective 11th February 2010, the Labuan Offshore Financial Services Authority (LOFSA) is now known as Labuan Financial Services Authority ("Labuan FSA"). This change coincided with the enactment of four new Acts and the amendments made to four existing Acts affecting the Labuan FSA.

"The changes have taken into consideration all aspects so that we are ahead of accepted international standards and practices," said Labuan FSA Director-General Datuk Azizan Abdul Rahman. *(Courtesy of Bernama)*

These changes have re-emphasized Labuan as a major player within the international offshore business financial centres. These new enactments have made positive changes in the way the Labuan operates whilst enhancing its product and services offering. Among the recent changes was the introduction of the **Labuan Foundations Act 2010**. The law was expected to dramatically improve Labuan and completely change the way the duty-free Island conducts its financial services business, especially within the trust fraternity.

A Foundation is a legal entity different to any other entity known in Anglo-Saxon Law. A Foundation is not the legal personification of any other person or persons but a corporate body that has no owners (shareholders, participants or partners), and which traditionally has charitable or philanthropic aims for the benefit of a generality of persons.

Some advantages of a Labuan Foundation include the fact that it is far less expensive to create and to maintain and it offers more flexibility for the client. A Labuan Foundation ("Foundation") is created when one or more natural persons or legal entities ("Founder (s)") formalize a document known as a "Charter", which is registered with the Labuan FSA, through which the parties undertake to endow assets ("Foundation Assets") to be managed by a "Council" or an "Officer", if appointed, for the benefit of one or more "beneficiaries". A Labuan Foundation is a combination of a trust and a corporation. In general, a Foundation has similarities with a corporation in so far as it is registered at the Labuan FSA, the assets of this new legal entity are separate from those of the Founder, it is constituted to maintain confidentiality on the ownership of assets and in order to obtain fiscal benefits, and it has similar administrative bodies. It differs from a corporation in that the Foundation has no owners, as it does not issue share certificates nor any other participation title, and a Foundation may be created as a testamentary instrument and may not have profit aims.

Likewise, a Foundation has similarities to a trust: it is a juridical institution that requires specific formalities; some of the Founder's assets are transferred, contributed or "donated" to the Foundation; a Foundation may be revocable; it may be created inter vivos or mortis-causa by means of testamentary provisions and it is usually created with the purpose of managing, preserving, administering or investing assets for the benefit of the donor's close relatives, as well as to obtain confidentiality and fiscal benefits. It differs from a trust in so far as the Foundation is the owner of its assets, since it possesses its own legal personality and there is no "trustee" but rather the figure of a "Foundation Council" which combines the functions of the "Board of Directors" (of a corporation) and the functions of a "trustee" (of a trust).

Assets placed inside a Labuan Foundation are sole and separate property and cannot be seized to satisfy any personal judgments or obligations of the Founder or the Foundation's beneficiaries. Assets inside a Labuan Foundation cannot be attached in order to satisfy any claims against the Founder, including judgments for divorce, lawsuit and other liabilities.

The Labuan Foundation offers the best of a trust and the best of an offshore corporation. While the Foundation cannot technically engage in business activities, it can own the shares of a company engaged in business activities. It is also permissible for the foundation to engage in any activity, which will increase the value of assets. This means that a Foundation can be the owner of bank accounts, securities brokerage accounts and real estate holdings, etc.

This is only one of the new initiatives that the Labuan FSA had brought forward through its new legislative initiatives. *"Labuan has always been seen as an effective and user friendly jurisdiction"*, said David Kinloch, CEO of Labuan IBFC, the sales and marketing unit for the Island, *"but these new provisions will make it possible for us to attract and welcome many new categories of clients. Malaysians with foreign assets or foreigners with Malaysian assets are now able to structure their investments via Labuan IBFC. This allowance is made even more attractive by the new trust and estate management products also introduced by the new legislation,"* he added. *(Courtesy of Labuan IBFC Press Release)*.

The new laws came into effect on 11 February 2010. In addition to the Labuan Foundations Act, comprehensive amendments have been made to four existing laws, as well as the introduction of new legislations to facilitate limited liability partnerships, shipping registry, trust, protected cell companies and captive insurance.

*This article is jointly written by Cheang & Ariff and Equity Trust.
For more information, please contact Mr. Yoon Ming Sun, at
telephone (+60) 3 2691 0803 or email yms@cheangariff.com*