

Labuan Foundation

With the promulgation of the new legislation in 2010, Labuan is now one of the few common law jurisdictions offering investors a choice of common law trusts and civil law foundations. As part of Labuan IBFC's efforts to heighten the awareness of its wealth management products and services, Labuan Financial Services Authority ("Labuan FSA") has designated year 2013 as its Wealth Management Year.

Advantages

- ✓ Registered corporate body with separate legal entity with the ability to -enter into contracts or any other lawful dealings on its own.
- ✓ Protection from creditors' claims (subject to conditions mentioned under item B) and against claims or intent to defraud with regards to the act of establishing the foundation, the disposing property and founder as beneficiary.
- ✓ Protected from foreign claims and cannot be forcefully liquidated to satisfy other obligations such as claims arising from divorce, lawsuit or creditors.
- ✓ Protection against forced heirship.
- ✓ Not subject to compulsory perpetuity period.
- ✓ Confidentiality and anonymity. Information concerning the Labuan foundation is not on any public record.
- ✓ Simple and straight forward tax systems in Labuan. No tax in Labuan on non-trading activities.
- ✓ Distributions by a Labuan foundation to its beneficiaries are tax-exempted in Labuan. However, the beneficiaries will need to satisfy their own tax liabilities in their respective jurisdictions of tax residence.
- ✓ No foreign exchange controls.
- ✓ No withholding tax /capital gain tax / inheritance tax.
- ✓ No stamp duty on all instruments relating to offshore business activities.

Structure and Composition

Founder	<p>It is the person who establishes the foundation.</p> <ul style="list-style-type: none"> • Minimum One, either natural person or corporate entity. • Subscriber to the Charter. • May be residents or non-residents of Malaysia. • May also be a council member and one of the beneficiaries.
Beneficiaries	<ul style="list-style-type: none"> • May include individuals, corporate entities or charities and are those who have vested interest in assets of the foundation. • May be residents or non-residents of Malaysia. • Unless specifically provided in the charter or articles, beneficiaries have no rights to the foundation's assets and are not owed any fiduciary duties.

Whilst every effort has been made to ensure that the details contained herein are correct and up-to-date, it does not constitute legal or other professional advice. We do not accept any responsibility, legal or otherwise, for any error omission.

Please do not hesitate to contact us:

Email : info@intershores.hk

WhatsApp: (852) 5681 1114

Tel : (852) 2186 6936

Officer	<ul style="list-style-type: none">• Compulsory appointment.• One or more must be appointed by Founder prior to registration of the Foundation.• May be either natural person or corporate entity.• May be residents or non-residents of Malaysia.• Founder or Beneficiary may be appointed as Officer (<i>but not be a council member at the same time</i>).• Duties are inter alia to ensure <i>proper administration</i> of the foundation and to carry out decisions of the Council.
Council Members	<ul style="list-style-type: none">• Not a compulsory appointment, at the discretion of the Founder.• If appointed, one or more, either natural person or corporate entity.• May be residents or non-residents of Malaysia.• Cannot act as Officer at the same time.• Council is similar to the Board of Directors in a company context. The council is responsible to <i>manage and oversee operations</i> of the foundation and to ensure compliance with the relevant laws and with terms of the charter and articles.• Council members supervise Officers of the foundation. The council's decision must be in line with the objectives and purposes for which the foundation was established.• Council members do not owe fiduciary duty to beneficiaries and hence, this eliminates competing beneficiaries interests.
Secretary	<ul style="list-style-type: none">• Compulsory appointment• The secretary must be a licensed Labuan Trust Company• Acts as service provider to the foundation and performs a compliant agent function and acts as a conduit between foundation and Labuan FSA
Protector or Supervisory person	At the discretion of the Founders, there may also be a protector or supervisory person. These parties may monitor the Council's decision, power to add or remove Officers, Council members etc.

Key Features

Registered Office	Mandatory to maintain a registered office in Labuan which shall be the address of the Secretary of the foundation.
Capital / Wealth Requirements	<ul style="list-style-type: none">• No capital requirements as a foundation does not have share capital.• Minimum endowment of USD1.00 as an initial asset at time of establishment.
Legal Status	<ul style="list-style-type: none">• It is a legal entity with rights and status of a separate and independent person.• It can be shareholder of a company.• It can enter into contracts, buy and sell properties, own bank accounts or own shares or interest in other corporations.

Whilst every effort has been made to ensure that the details contained herein are correct and up-to-date, it does not constitute legal or other professional advice. We do not accept any responsibility, legal or otherwise, for any error omission.

Please do not hesitate to contact us:

Email : info@intershores.hk
WhatsApp: (852) 5681 1114
Tel : (852) 2186 6936

Legal Status	<ul style="list-style-type: none">• It is a legal entity with rights and status of a separate and independent person.• It can be shareholder of a company.• It can enter into contracts, buy and sell properties, own bank accounts or own shares or interest in other corporations. <p>For purposes of minimizing risk, it is encouraged that all trade activities (if any) should be carried out through an underlying company or partnership. Trade or commercial activities are incidentals or ancillary to its main purpose which is the management of its property.</p>
Registration	All Labuan foundations are required to be registered with Labuan FSA.
Duration	May be fixed or infinite life span.
Currency	Labuan foundations are expected to carry on business in any currency other than the Malaysian currency except as permitted by the relevant authorities.
Assets	Assets of every kind, tangible or intangible, movable or immovable, may be endowed to a Labuan foundation. These assets are owned by the foundation and are to be applied according to identified purposes.
Malaysian Assets	<ul style="list-style-type: none">• Labuan foundation for charitable purposes may hold Malaysian assets• For non-charitable purposes foundation, prior approval from the Labuan FSA is required for holding Malaysian assets.
Founder Retains Control	<ul style="list-style-type: none">• Founder may be appointed as sole council member and one of the beneficiaries.• Founder may reserve rights and powers in the charter or articles of the foundation.
Creditors' Claim	<p>Being a separate legal entity, if the transfer of assets was completed prior to the claim arising, the assets are beyond the reach of a creditor's claim against the Founder. However, it is important that the transfer of assets:</p> <ul style="list-style-type: none">• takes place before the creditor's cause of action accrued;• takes place two (2) years from date of registration;• must not render the Founder's insolvent; and• must be made without any intent to defraud the creditor.
Accounts	<ul style="list-style-type: none">• accounting records maintained in Labuan.• must be made available for inspection by officers of foundation.
Redomiciliation	Allowed. A foundation established in another jurisdiction may be legally redomiciled to Labuan and vice versa, provided that the other corresponding jurisdiction permits.

Whilst every effort has been made to ensure that the details contained herein are correct and up-to-date, it does not constitute legal or other professional advice. We do not accept any responsibility, legal or otherwise, for any error omission.

Please do not hesitate to contact us:

Email : info@intershores.hk

WhatsApp: (852) 5681 1114

Tel : (852) 2186 6936

Dissolution

The foundation may be dissolved upon the passing of a resolution by the officer on the basis that:

- the foundation is established for a definite period and that period has expired;
- the purpose of the foundation is fulfilled or becomes incapable of fulfillment;
or
- the charter requires such dissolution.

After the dissolution, the ownership of the remaining assets will be transferred to the beneficiary.

IBFC Tax System

Labuan Business Activity Tax Act 1990 (“LBATA”) governs the imposition, assessment and collection of tax on a Labuan business activity carried on by a Labuan entity in, from or through Labuan. Only Labuan entities carrying on a Labuan business activity are able to take advantage of the provisions under LBATA. Labuan entities that carry on a non-Labuan business activity are subject to the provisions of the Malaysian Income Tax Act, 1967 (“ITA”).

“Entity” in LBATA includes Labuan Foundation established and registered under the Labuan Foundations Act 2010.

If the foundation does not engage in trade in its own right (but through subsidiaries), its activities are non-trading and therefore, not subjected to any tax in Labuan.

Where the property of the Labuan Foundation includes Malaysian property, the ITA shall be applicable for any income derived from the Malaysian property.

Whilst every effort has been made to ensure that the details contained herein are correct and up-to-date, it does not constitute legal or other professional advice. We do not accept any responsibility, legal or otherwise, for any error omission.

Please do not hesitate to contact us:

Email : info@intershores.hk
WhatsApp : (852) 5681 1114
Tel : (852) 2186 6936