

LEGAL ALERT

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New Guidelines on Labuan Leasing Business Issued by the Labuan Financial Services Authority

The Labuan Financial Services Authority (“[Labuan FSA](#)”) issued the revised Guidelines on the Establishment and Operations of Labuan Leasing Business (the “[Guidelines](#)”) on 29 December 2017. This was in line with the mission of the Organisation for Economic Co-operation and Development (“[OECD](#)”) to promote policies that will improve the economic and social well-being of people around the world and to address the Base Erosion and Profit Shifting (“[BEPS](#)”) Action 5 on Harmful Tax Practices. The revised Guidelines are effective from 1 January 2018, save for Paragraph 7.11 thereof, which will come into effect on 1 January 2019.

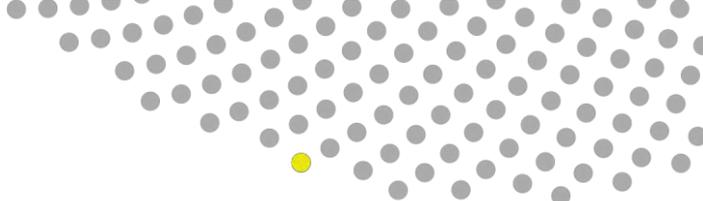
The issuance of the Guidelines also aims to enhance the operational requirements of Labuan leasing companies for the benefit of the Labuan economy and infrastructure. The Labuan International Business and Financial Centre (“[Labuan IBFC](#)”) has long been a favoured destination for asset leasing companies in the oil and gas, aviation, and maritime sectors which have assets leased to operators in and outside Malaysia. Assets which are being leased by Labuan leasing companies are broadly divided into big ticket items of high value or specialised assets which include but are not limited to ships, aircraft, submarines, diving chambers, engines, compressors, power units, medical equipment, aviation simulators, sonar mapping devices, factory machineries, and others. Both lessee and lessor are able to save considerable costs due to tax efficiency and stamp duty exemptions of leasing an asset through the Labuan IBFC. For such reasons, many asset owners such as oil and gas companies, airline operators, freight forwarders, aircraft leasing companies and ship owners have incorporated Labuan companies in order to conduct Labuan leasing business.

Currently, most Labuan leasing companies outsource most of their operations, such as management, business development, lease administration and day-to-day operations to their holding companies or rely on external third parties to provide such services, whether in the Labuan IBFC or other financial centres such as Hong Kong, Singapore, Kuala Lumpur and even as far as London and Dublin.

The revised Guidelines will impact the way Labuan leasing companies conduct their leasing business in the Labuan IBFC. Most of the conditions set out in the revised Guidelines are already practised by most Labuan leasing companies in their day-to-day operations, but the revised Guidelines spell out the requirements explicitly.

In summary, the revised Guidelines compel Labuan leasing companies to, inter alia, promote its operations to be conducted in and from Labuan by:

- a. having sufficient and positive capital and working funds which are commensurate with the scope of its Labuan leasing business;
- b. ensuring that the leased assets are adequately insured, in respect of which they are encouraged to use the services of Labuan-based insurance companies and takaful operators;
- c. maintaining adequate and proper records and books of accounts in the Labuan IBFC;

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- d. maintaining bank accounts in its name, preferably in the Labuan IBFC;
 - e. ensuring that all lease documentation are stamped (or, where appropriate, endorsed as exempt from stamp duty) at the Stamp Duty Office of the Inland Revenue Board of Malaysia located in Labuan;
 - f. establishing substantial activities and performing strategic functions in Labuan, including, but not limited to:
 - i. having physical presence in the form of an operational office in Labuan, with appropriate infrastructure and staff;
 - ii. having “core income generating activities” carried out from the Labuan office, including identification and acquisition of leased assets, negotiation of leasing terms, solicitation of lessees, management of leased assets and the financing of the acquisition of the assets;
 - iii. employing full time employees with necessary qualifications, skills and experience in the relevant leasing business; and
 - iv. incurring adequate business spending in Malaysia, including Labuan, in undertaking the Labuan leasing business.

The conditions under paragraphs (f)(i) to (iv) above are set out in Paragraph 7.11 of the Guidelines, which will come into force on 1 January 2019. Labuan leasing companies are now left with less than 1 year to put in place the necessary infrastructure and personnel in order to comply with the requirements of Paragraph 7.11.

Labuan leasing companies with existing Labuan leasing licenses can take heart that all approvals granted by the Labuan FSA relating to its Labuan leasing business prior to 1 January 2018 will remain valid, unless such approvals are revoked or the leasing transactions have expired. On 20 February 2018, in response to feedback from certain Labuan leasing companies, the Labuan FSA released a Frequently Asked Questions (“FAQ”) document on the Guidelines. The FAQ made it clear that, *inter alia*:

1. Labuan leasing companies must have an actual operational office in Labuan and merely having a registered office at the company secretary’s office is not sufficient.
2. Several Labuan leasing companies within the same corporate group may share the same operational office.
3. Labuan leasing companies’ employees located in Labuan must be engaged on a full time basis.
4. Labuan leasing companies may continue to outsource services e.g. to its parent company operating outside Labuan, with the prior approval of the Labuan FSA. However, “core income generating” activities of a Labuan leasing company must be carried out from its operational office in Labuan.
5. Labuan leasing companies may, with the Labuan FSA’s prior approval, maintain and keep its records outside Labuan, provided that copies of such records are also kept in its Labuan operational office and updated once every six months.

The coming into force of the revised Guidelines means that all Labuan leasing companies will need to reevaluate their business model and operations in Labuan in order to fulfil the requirements to commit capital, infrastructure and human resources into their leasing operations. The revised Guidelines dovetails with the Labuan FSA’s stated intention to make Labuan leasing business one which is focused on “big ticket” assets or assets which are specialised in nature, or which utilise state-of-art technology which is not available in Malaysia.

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If you have any questions or require any additional information, you may contact [Loo Tatt King](#), [Chow Wan San](#) or the ZICO Law partner you usually deal with.

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