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LABUAN - AN INTERNATIONAL BUSINESS AND FINANCIAL CENTRE OF MALAYSIA

1. Location.

- 1.1. The Federal Territory of Labuan is comprised of 7 small islands namely Pulau Labuan, Dahat, Kuraman, Papan, Rusukan Besar, Rusukan Kecil and Pulau Burung. Labuan is located at latitude 05 degree North and longitude 115 degree East and is about 10 km off the west coast of the east Malaysian state of Sabah.
- 1.2. Labuan is centrally located in the heart of ASEAN region, roughly equidistant from Bangkok, Jakarta, Kuala Lumpur, Manila, Singapore and Hong Kong.
- 1.3. Labuan has a tropical climate which is warm and humid throughout the year; daytime temperatures average 30 degree Celsius and two seasonal monsoon periods with the rainy season stretching from April to June and from September to December.
- 1.4. Labuan is connected to Kuala Lumpur by at least 3 daily return flights with a flying time of 2½ hours. There are numerous flights daily to Kota Kinabalu, an international hub, with a flying time of half an hour.

2. Political System.

- 2.1. The Federal Territory of Labuan, which is part of Malaysia, is under the administration of the Ministry of the Federal Territories and Urban Well-being.
- 2.2. Malaysia is a multi-racial and multi-religious nation consisting of 13 states and three federal territories. It was formerly a British colony but obtained independence on 31 August 1957 and on 16 September 1963 Malaysia was formed with the joining of Malaya, Sabah, Sarawak and Singapore (Singapore left Malaysia in 1965). The form of government is a constitutional monarchy with the Yang DiPertuan Agong (The King) as the Head of State. It has a bicameral Parliament, with the House of Representatives having 222 members and the Senate 64. Representatives are elected by adult suffrage every 5 years whilst the Senate is partly appointed by the King and partly elected by the State Legislatures.
- 2.3. Labuan was previously under the administration of the state of Sabah but was made a Federal Territory on 16 April 1984. The development of Labuan as an International Business and Financial Centre ("IBFC") began in October 1990. The objective was to accelerate the development of the economy of the island. The Malaysian Government has developed the infrastructure (with further projects underway), and the telecommunications facilities in Labuan to enable it to function as a modern and efficient international business and financial centre.





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3. Legal System.

- 3.1. The Malaysian legal system is based on English laws. However, the Malaysian law has now evolved a character and structure of its own that includes native customs and laws. Final appeal lies with the Federal Court.
- 3.2. To establish Labuan as a credible and leading international business and financial centre, the Malaysian government has enacted the following laws:
- (a) Labuan Companies Act 1990;
 - (b) Labuan Foundations Act 2010 ;
 - (c) Labuan Financial Services and Securities Act 2010;
 - (d) Labuan Islamic Financial Services and Securities Act 2010;
 - (e) Labuan Business Activity Tax Act 1990;
 - (f) Labuan Financial Services Authority Act 1996;
 - (g) Labuan Trusts Act 1996;
 - (h) Labuan Limited Partnerships and Limited Liability Partnerships Act 2010; and
 - (i) Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

4. Preferred Activities.

- 4.1. The Authority in Labuan encourages the following activities :
- (a) Labuan banking, Labuan investment banking and Labuan financial services business;
 - (b) Labuan trust and fund management;
 - (c) Labuan insurance and insurance-related business;
 - (d) Labuan investment holding companies;
 - (e) Labuan trading companies;
 - (f) Labuan limited partnerships and limited liability partnerships;
 - (g) Labuan Islamic banking, Islamic investment banking and Islamic financial services businesses;
 - (h) Labuan takaful and takaful-related business; and
 - (i) Labuan foundations.

5. Tax Regime.

- 5.1. Labuan entities incorporated, registered or established under any one of the various Labuan legislation [Labuan Companies, Labuan foreign companies, Labuan Foundations, Labuan Islamic Foundations, Labuan Islamic Partnerships, Labuan Limited Partnerships, Labuan Limited Liability Partnerships, Labuan Islamic Trusts, Labuan Trusts, licensed Malaysian Islamic Banks, licensed Malaysian Banks, any Labuan financial institutions and any person declared by the Minister of Finance to be a Labuan entity (collectively “Labuan entities”)] carrying on Labuan trading activity, as defined under the Labuan Business Activity Tax Act 1990 (“LABATA”), will be subject to tax at either 3% of audited net profits or RM20,000 per annum. The election is left to the taxpayer who is required to make such choice within 3 months after the end of previous calendar year.





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- 5.2. Labuan entities carrying on Labuan non-trading activity, as defined under LABATA (basically investment holding activities), are not subject to tax.
- 5.3. Labuan entities carrying on both Labuan trading activities and non-trading activities will be taxed on all income as if it had been sourced from trading activities.
- 5.4. Labuan entities are given the option to elect to be taxed under the local tax regime [Income Tax Act 1967- ("ITA")] or under the existing preferential tax regime of LABATA as listed under item 5.1 and 5.2.
- 5.5. Labuan entities electing to pay tax under the ITA (such election shall be irrevocable) are taxed at the prevailing local tax rate (currently at 25% with effect from year of assessment 2010) and governed by all the provisions of the ITA.
- 5.6. This ITA election will enable the Labuan entities to have more certainty to the benefits of the double tax agreements which Malaysia has signed with over 69 treaty partners. The double tax agreements would render the withholding tax on the dividends and interest paid much reduced. There are also exemption provisions under the ITA whereby all dividends and interest income of a company are tax exempt (Para 28, Schedule 6 of the ITA). Similarly dividends received by the shareholders of the Labuan entities will be tax exempt.
- 5.7. Although the election to pay tax under ITA will subject the Labuan entities to 25% tax, with proper application of the relevant ITA provisions there creates a situation whereby the **dividend and interest income** of the Labuan entities and the **dividend received** from a Labuan entities are not subject to any tax in Malaysia.

6. Stamp Duties.

- 6.1. No stamp duties is payable on the transfer of shares, agreements entered in the course of doing business and memorandum and articles of association of Labuan entities.

7. Capital Gain.

- 7.1. There is no capital gain tax in Labuan, and the gain is taxable only if it is included in the profits of Labuan entities carrying on trading activities.

8. Confidentiality Provisions.

- 8.1. The Labuan IBFC legislation has incorporated confidentiality provisions to protect user confidentiality. Documents lodged with the Labuan Financial Services Authority ("Authority") are not open for public inspection. Disclosure of shareholdings, management and any business, financial or other affairs of the company is prohibited unless lawfully required to make such disclosure by any Court or under the provisions of any law being enforced by the governing authority. Court hearings other than criminal proceedings are held in camera. Heavy penalties await those who breach the secrecy provisions.





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8.2. Notwithstanding the above secrecy provisions, the Authority has the right to request for further information relating to the Labuan entities or any person related to any financial institution should it be satisfied that fraud or criminal offence has been or is likely to be committed. Similarly, section 20 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 shall override the secrecy provisions of all the governing acts in Labuan should the Authority suspect that the person is involved in money laundering or terrorism financing activities.

9. **Multiple Entry Visas.**

9.1. A liberal immigration policy is adopted whereby multiple entry visas are issued to expatriate directors and managers who have been granted work permits. The approval for granting the work permit is given in Labuan and each work permit granted is typically valid for 2-3 years. The entry visas may also be extended to the holder's dependants.

10. **Transfer of Funds to Persons Abroad.**

10.1 There are no withholding taxes or exchange controls imposed on Labuan entities dealing in foreign currency. Funds may be remitted in any currency other than Malaysian Ringgit without any restriction.

11. **Time Zone.**

11.1. Labuan is seven hours ahead of Greenwich meantime.

12. **Economic Activities.**

12.1. Currently the main domestic economic activities in Labuan include offshore oil and gas operations, shipbuilding and repairing, manufacturing, barter trading with neighboring countries and entrepot trading. Labuan enjoys free port status with the exception of petroleum products.

13. **Language.**

13.1. Bahasa Malaysia is the national language. English and Mandarin are commonly spoken, with the former being the predominant language used in the financial sector of Labuan.

14. **OECD Recognition.**

14.1. On 22 February 2010, Malaysia (including Labuan) has been recognized as a Cooperative Jurisdiction by the Organisation for Economic Cooperation and Development ("OECD"). Malaysia (including Labuan) has now been placed on the "white list" by the OECD.

14.2. This recognition by the OECD means Malaysia (including Labuan), has met with the criteria set by the OECD as a category 1 jurisdiction which has "substantially implemented the internationally agreed tax standard".





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- 14.3. Among the criteria set for a Category 1 jurisdiction is the signing of a minimum of 12 Tax Information Exchange Agreements or TIEAs, which allows for the exchange of information for tax purposes in accordance with Article 26 of OECD's Model Tax Convention.
- 14.4. Additional TIEAs are currently being negotiated and/or finalized and it is confidently expected that, by year end 2010, ALL of Malaysia's 69 Double Taxation Agreements will conform to OECD standards AND that Labuan will be included in these agreements in full.

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