

UNIVERSITI PUTRA MALAYSIA

A General Overview on Labuan, Malaysia's International Offshore Financial Center

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by

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Abstract

Labuan, Malaysia's International Offshore Financial Center was established in 1990 and many efforts has been placed by the government to develop Labuan into one of the Asia's premier international offshore center.

However, not many people are aware of the existence of this offshore center including Malaysians. This paper is set with an objectives to introduce Labuan to Malaysians and the world.

Firstly, an introduction on the location and history of Labuan is discussed. This follows by a brief introduction of regulatory bodies governing Labuan. Further discussion will be on the type of services provided and procedure to get on to those business. This paper then continue to elaborate tax regime and legislation in Labuan respectively. Then a comparison between Singapore, Hong Kong and Labuan as Asia's premier offshore financial center is made. Lastly a discussion is then made on government's role in promoting Labuan IOFC

The information and materials for this paper were mainly collected from articles from business magazine and Labuan website.

Although Labuan is relatively small compared to other offshore financial centers in term of number of companies and value of funds managed, it has the potential to become one of the popular offshore center in Asian one day in the future.



Abstrak

Pusat Kewangan Pesisir Luar Antarabangsa Malaysia iaitu Labuan telah ditubuhkan pada 1990. Sejak itu, banyak usaha yang telah dilakukan oleh kerajaan Malaysia untuk membangunkan dan mempertingkatkan Labuan sebagai sebuah pusat pesisir luar antarabangsa di rantau Asia.

Malangnya, pusat pesisir luar di Labuan yang telah lama ditubuhkan ini tidak mendapat perhatian dari dunia dan juga rakyat Malaysia sendiri. Oleh itu, satu matlamat utama kertas projek ini adalah untuk memperkenalkan Labuan kepada rakyat Malaysia dan juga seluruh dunia.

Kertas projek ini akan mula membincangkan sejarah dan kedudukan strategik Labuan. Ini akan disusuli dengan pengenalan kepada badan-badan kerajaan yang melaksanakan undang-undang di Labuan. Perbincangan seterusnya adalah ditumpukan kepada jenisjenis perkhidmatan yang terdapat di Labuan dan prosedur untuk menjalankan perniagaan tersebut. Kertas ini seterusnya memperbincangkan tentang regim pencukaian dan undang-undang di Labuan. Seterusnya, satu perbandingan akan dilakukan antara Hong Kong, Singapura and Labuan, pusat pesisir luar antarabangsa di rantau Asia ini. Akhirnya kertas ini akan membincangkan peranan kerajaan untuk memperkenalkan pusat pesisir luar antarabangsa Labuan.

Maklumat dan bahan untuk kertas projek ini adalah diperolehi dari artikel-artikel majalah perniagaan dan website Labuan di internet.

Walaupun Labuan masih "kecil" dari segi bilangan syarikat dan nilai dana yang diuruskan berbanding dengan pusat-pusat lain, Labuan mempunyai potensi untuk menjadi sebuan pusat offshore yang terkenal di Asia pada suatu hari nanti.



The Background and formation of the Labuan Offshore Financial Center

1.0 Introduction

Offshore financial centers have been very popular among investors in the West especially in United Kingdom. They are well known for their tax benefits and confidentiality where gains from these investment are not disclosed to any third party that includes tax authority. There have been many offshore activities such as offshore banking, offshore insurance and offshore fund management located in the Isle of Man of United Kingdom.

In the South East Asian region, there are also some famous offshore centers that were known by the world such as Hong Kong and Singapore. Hong Kong is well known as a premier financial center and Singapore on the other hand is well known for its cost savings ports.

Our country Malaysia, also have its own international offshore financial center, Labuan, though not as famous and popular like the offshore centers in Hong Kong and Singapore. Malaysians hardly use the offshore facilities in Labuan and some are even unaware that our country does have its own offshore financial center in Labuan.

Thus, the purpose of this paper is to introduce Labuan, Malaysian's international offshore financial center to Malaysians and the world in hope that more business



activities are created and it would gear Labuan towards one of Asia's premier international offshore financial center.

1.1 Why Go Offshore

It is estimated that 60% of world's currency deposits are held in offshore banks and 35% of the world's trade in goods and services operated through offshore international financial centers, or tax heaven.

Offshore international financial centers are well known for their favorable tax regime which have attracted most of business corporation with all sizes and types.

Offshore international financial centers have been very popular all over the world because of the following advantages / characteristics:-

- Minimum or no tax on business profits or other income from offshore transactions or business activities.
- All matters and affairs related to business operations are kept as private and confidential
- A tool of protection or security towards creditors or government as profits or income from offshore investments are not required to be reported or disclosed to any authorities or bodies.
- Improved flexibility offered by generally less restrictive bureaucracy and red tape.
- There should be no foreign control or restriction on the movement of funds into or out of the centers.

These conditions, certainly are favorable to local and international businesses.

Most international firms usually are attracted to these measures which are effectively cost-savings to the firm.



Labuan - A Strategic Geoprahic Trump Card.

2.0 Why Labuan?

Labuan with only a size of 92 square km. is situated off the coast of the South China Sea, near the border between Sabah and Sarawak. It lies about 18km off the shoreline of Sabah and 123km from the Kota Kinabalu and faces the oil-rich kingdom of Brunei. Labuan who is situated in the middle of ASIAN regions and is easily accessible by air. Flights only take about 3-4 hours from many capital cities in the ASIAN region such as Hong Kong, Singapore, Manila, Brunei, Bangkok and Jakarta. Labuan and these major cities transact business more conveniently as they are in the same time zone. Labuan is also located in the heart of Asia Pacific region, one of the most economically thriving regional in the world with benefits from the fast growing economies in the region.

Labuan is expected to replace Hong Kong's role as Asia's international financial center in the future. Hong Kong and Singapore, two popular offshore centers in this region currently will eventually be "shared" by Labuan due the to following reasons:-

- 1. Hong Kong is expected to have a tighter financial rules and regulations and tied financial advantage with China after reversion to Chinese sovereignty in 1997.
- 2. Hong Kong and Singapore have withholding tax which was eliminated in Labuan. Moreover, Labuan is also having double taxation treaties with some foreign countries will be more tax beneficial and attract more funds to Labuan.



Labuan as International Offshore Financial Center

3.0 History

Labuan got her name derived from the Malay word *labuhan* which means anchorage. Initially, it belonged to the Sultanate of Brunei where there were not many inhabitants on the island. On 24 December 1846, The Sultan of Brunei ceded Labuan to Queen Victoria of Britain who then wish to turn Labuan into a major trading and commercial center but failed. Labuan then has gone through Japanese possessions in 1942 and in 1946, thereafter, it has became part of the British Crown Colony. In 1956, Labuan was declared as a free port and barter trading has been very popular then.

On September 16, 1963, Labuan together with Sabah and Sarawak obtained their independence through Malaysia and it was placed as a state in Sabah. Since then, many efforts has been made to improve the island to become a more efficient free port but it has always failed. On April 16, 1984, Sabah transferred the island to Federal Government who have then transformed her to a Federal Territory. With this takeover, the Federal Government has set an target for Labuan to become a tourist destination and a regional and international conference center. Looking at the rapid economic growth in the ASIAN region at that period and the needs for Malaysia to develop it's financial market and diversify the economy, Labuan was transformed into International Offshore Financial Center (IOFC) on October, 1 1990.



For the first two years, little development has been done as infrastructure remained the biggest drawback for Labuan. Infrastructure and telecommunications which play an important role in a financial center were not developed. This has lead to a huge investment allocation to build up facilities, transport and communications in Labuan under the Sixth Malaysia Plan.

3.1 Present

Today, we can see the structural elegance of Labuan Financial Park standing in the middle of Labuan town. This building which consists of office towers, condominium and shopping complex is probably regarded as the largest commercial building in Borneo. It caters for all offshore companies registered in Labuan International Offshore Financial Center.

Besides being the IOFC, Labuan is also involved in developing the oil and gas industry, ship building and repairing activities and also the recreational activities such as duty free shopping and golf. Labuan is also improving herself to be a tourist and sport attraction center. The famous and popular sport event in Labuan is diving.

3.2 Future

A proposal has been envisaged to transform Labuan into an international financial derivatives trading and risk management center within the South East Asia region by setting up Labuan International Financial Exchange (LIFE).



With LIFE, Labuan will become the primary listing center for countries situated in the South East Asia region. Offshore Securities Industries Bills would be promulgated to establish the LIFE which includes both international stock exchange and international money exchange. Besides, Offshore Securities Industries Bills will enable Labuan Offshore Financial Services Authority (LOFSA) to regulate and control all offshore securities and financial activities in Labuan.

Other than establishing Labuan as an financial derivatives and risk management center within South East Asia region, there are also efforts to introduce Labuan as a pioneer Islamic Offshore banking services center. As Labuan is strategically situated among Muslim dominated region, by introducing Islamic Offshore banking services will enable her to capture a large Muslim capital market.



Development and Regulatory Bodies in Labuan

4.0 Introduction

There are basically two main bodies which are responsible for the development of Labuan. Each of these bodies have different role in making Labuan as Asia's Premium International Offshore Financial Center. They are:-

4.1 Labuan Development Authority (LDA)

Since the announcement and launching of Labuan as IOFC in 1990, little progress or development has been seen for the first two years. This has lead to the establishment of LDA in February 1992 under the Act 480 (Lembaga Pembangunan Labuan, 1992). LDA was set up to expedite the overall development of Labuan as IOFC. Among the important roles or function played by LDA were:

- to develop and promote Labuan as an IOFC, duty free as well as tourist center.
- to facilitate and coordinate the Economic and Social, Commercial, Industrial Agricultural, Infrastructure, Residential and Tourist Facilities development of the island.

Large investment has been allocated to build Labuan with state of art infrastructure and telecommunication services. Among the facilities are the Labuan Financial Park which consists of five intelligent towers for office space, condominium units, a 1500 seating capacity conventional hall, shopping mall, parking lots and recreational facilities.



Labuan is also well known as an international teleport, providing multi media telecommunications facilities on par with other IOFCs in the world. A US\$14 million earth telecommunication satellite station and a US\$320 million high capacity submarine cable system, which directly link the island's telecommunications network to the world were built to cater for the sophisticated needs of the offshore players. Among the telecommunication facilities available are Internet, Intelset Business Service, Integrated Services Digital Network and other business communication services.

Besides, flight facility to and out of Labuan has also been increased. Various flight destination are available such Kuala Lumpur, Kota Kinabalu, Kuching domestically which offers a cheaper rate, as for internationally, destinations are like Hong Kong, Taiwan, Singapore, Manila, Brunei, Southern Philippines, Kalimantan and Sulawesi in Indonesia. Looking at the increase in the air traffic, a RM120 million new airport is on it's way by the end of 1998.

Other essential amenities such as roads, water, electricity supplies, health care modern medical equipment, hospital and international school were being upgraded and improved. Also not to forget about the five stars hotel and modern housing facilities.

With these improved and advanced state of art infrastructure and telecommunication services, it will make Labuan fulfill the requirement of IOFC and also cater the needs of expatriate work force.



4.2 Labuan Offshore Financial Services Authority (LOFSA)

The Labuan Offshore Financial Services Authority (LOFSA) was established as a single regulatory agency following the enactment of Labuan Offshore Financial Service Authority Act 1996 on 15 February 1996. It was set up to spearhead and coordinate efforts to promote and develop Labuan as an IOFC. The roles and functions of LOFSA are as follows:

- 1) To be responsible for setting national objectives, policies and priorities for the orderly development and administration of the Labuan IOFC
- 2) To be responsible for the promotion and development aspect of IOFC and recommend to the Government on new measures to speed up growth and development of the Labuan IOFC. Focus will be directed particularly on promoting and coordinating the "software aspects" of the IOFC such as policy and legal matters, while the physical infrastructures ("hardware") side continues to be coordinated by LDA.
- 3) To supervise the activities and operation of the offshore financial services industry in Labuan and to process applications to conduct business in Labuan IOFC specifically in offshore banking, offshore insurance and insurance related business, offshore trust and fund management, incorporating and registration of offshore companies as well as for the setting up of Labuan trust companies.
- 4) To administer, enforce, carry out and give effect to the provision of :
 - i) the Offshore Companies Act 1990 (Amended in 1996)
 - ii) the Labuan Trust Companies Act 1990
 - iii) the Offshore Banking Act 1990 (Amended in 1996)
 - iv) the Offshore Insurance Act 1990 (Amended in 1997)



- v) The Labuan Offshore Trust Act 1996
- vi) Offshore Limited Partnership Act 1997,
- vi) Labuan Offshore Securities Industry Act 1997; and
- vii) any other law relating to offshore financial services in Labuan
- 5. To carry out research and commission studies on offshore financial services in Labuan.
- 6. To make recommendations for the creation and improvement of any facility likely to enhance the attraction of Labuan as a center for offshore financial services
- 7. To co-operate with offshore financial institutions and professional and industry associations in Labuan to promote and provide offshore financial services and to foster high standards of offshore financial services in Labuan
- 8. To advise the Minister generally on matters relating to offshore financial services in Labuan.

All functions under the jurisdiction of Bank Negara Malaysia, Registrar of Company and Securities Commission have been transferred to LOFSA. However, regulating matters related to exchange control still remained by Bank Negara Malaysia while matters relating to taxation remained with Inland Revenue Department. The establishment of LOFSA as a One Stop Agency will streamline and enhance the development of Labuan as a premier IOFC.



Business / Activities Conducted in Labuan IOFC

5.0 Introduction

Currently the number of offshore services provided in Labuan are as follows:-

Table 1: Number of offshore services provider in Labuan (as at 31/12/97)

	No. of Companies
Authority	1
Offshore Banks	64
Trust Companies	20
Offshore Insurance	25
Re-insurance	5
Fund Managers	3
Advocates & Solicitors	15
Audit Firms	15
Stockbroker	1
Commercial Bank	18
Money Broker	2
Investors Relation	1

Source: LOFSA

Although there are 9 types of services rendered by offshore companies in Labuan, there are some main business being carry out in Labuan IOFC which are:-

- Offshore Banking Operations
- Offshore Trust and Fund Management
- Offshore Insurance and Insurance Related Business
- Offshore Money Brokers
- Labuan Trust Companies



5.1 Offshore Banking Services

Application to carry out banking business in Labuan IOFC can be made to the Minister of Finance through LOFSA. LOFSA has a policy that is quite strict which only allowed large banks to set up in Labuan. Offshore banks are permitted to carry out a wide range of banking business in foreign currencies. There are two types of offshore banking in Labuan that are offshore commercial banking (well known as offshore banking) and offshore investment banks.

Among the activities involved by offshore banking are accepting deposits from individual, companies and legal business entities in major trading currencies, credit facilities such as medium term advances, project finance, trade finance, standby letter of credit, bank guarantees and performance bonds, loan syndication, fixed term loan and others.

On the other hand, services provided by offshore investment bank are financial advisory and consultancy services, foreign exchange trading facilities in both spot and forward market, providing debt financing and market and credit research on regional market.

5.2 Offshore Trust Fund Management

A offshore fund management companies are those involved in the management of investment portfolio and providing advisory and other services related to fund management allowed by the terms and condition of fund management license. A fund



management company must be a registered offshore companies with 100% foreign equity shareholding. The criteria of entry into fund management in Labuan is that the parent company should have a sound track record in fund management internationally. Every director and secretary of the applicant fund management company must be "fit and proper" persons to own and operate fund management activities. There shall be no adverse report from home authority on these key persons of the company.

In order to establish an offshore fund management company, one shall made application to Securities Commission via LOFSA. Application submitted will include the Fund Manager's License and Fund Manager's Representative License. After approval was granted by Securities Commission, the applicant will then submit an application to LOFSA to incorporated an offshore fund management company.

An offshore fund management companies are permitted to invest in Malaysia as long as the investments does not have controlling interest. However, to be able to invest in Malaysia, fund management companies must apply a one-time approval to LOFSA. Fund management activities can be either carried out inside or outside Labuan. In recent years, LOFSA has been promoting fund management in Labuan actively. With the existence of Offshore Securities Bill, Labuan is expected to be more actively committed to fund management business.



5.3 Offshore Insurance and Insurance Related Business

Among the offshore insurance offered are captive insurance, direct insurance, and reinsurance. Other related activities are underwriting, insurance management and insurance broking. The offshore insurance covers all type of insurance except domestic direct insurance. Exemption is given to insurance of high net worth individuals.

Many efforts has been taken by government to boost the captive insurance business where one of the most obvious regulation is the decrease in capital requirement in setting up captives offshore insurance companies from RM 1 million to RM300,000 in accordance to amendments in Offshore Insurance Companies Act in 1997.

5.4 Offshore Money Broker

Offshore money broking business is defined as "An intermediary who arrange for transactions between buyer and sellers in the money or foreign exchange markets (all currency except Ringgit Malaysia) and earn a brokerage fees. It does not involve in buying and selling foreign currencies as it's principal business.

Application to obtain a money broker license can be made to LOFSA. Among the eligible applicants are licensed domestic money broker, offshore company with money broking expertise, licensed banking and financial institutions with prior approval from Bank Negara Malaysia.



5.5 Labuan Trust Companies

A trust company which main business is to act as a trustees, agent, executor or administrator pursuant to the objects of the trust company and, without limiting the generality of the foregoing includes:

- establishing or using a share transfer office of share registration office;
- administering, managing or otherwise dealing with property as an agent, legal personal representatives or trustee, whether by servant or agent or otherwise;
- maintaining an agent for the purpose of soliciting business, whether or not the agent is continuously resident in Labuan;
- maintaining an office, agency or branch, whether or not that office, agency or branch is also used for any purpose by another company;
- the provision of management and accounting services or directors, secretaries and registered office for offshore companies incorporated under the Offshore Companies Act 1990 and foreign offshore companies registered thereunder; and
- incorporating or registering companies under the Offshore Companies Act 1990 and generally acting as a lodging agent for any document required to be lodged by a company or person under the Act.

Other than the above business activities, there are a few business activities that are newly set up in Labuan. Offshore leasing is another business activities in Labuan where leasing facilities can be provided to both residents and non-residents of Malaysia where restrictions will be imposed for leasing to residents.

Islamic financial services are expected to expand tremendously in the near future. This is in line with the objective of Labuan to become Asia's premier IOFC with a niche in Islamic products. Among the Islamic products that have been introduced are Islamic financing instruments, takaful, Islamic trusts, Islamic investment funds, Islamic leasing and Islamic capital market.



Requirement/Criteria to operate business in Labuan IOFC

6.0 Introduction

Every company that wish to operate offshore activities in Labuan IOFC must be registered as an offshore company under the Offshore Companies Act 1990. The company can either be an offshore company or foreign offshore company. Under the Labuan Offshore Business Activity Tax Act 1990, companies in offshore business can enjoy the attractive tax treatment. Among the registered business are banking, insurance and insurance related business, fund management, money broker and trust companies.

Business related to banking, insurance, money brokers and fund management are required to obtain a license before they can operate in Labuan. There are also certain entry requirement that needs to be fulfilled before these businesses can be established there. The entry requirement for different type of business will be discussed in the following section.

The two basic requirements for setting up an offshore companies are:

 Offshore companies are required to carry out business with non Malaysian (except those allowed by the Controller of Foreign Exchange, the Offshore Banking Act 1990 and the Offshore Insurance Act 1990)



 All deals must be in foreign currencies and not in Malaysian Ringgit except for administration and statutory expenses and also fees or commission received for giving guarantees denominated in Malaysian Ringgit.

6.1 Setting up an offshore companies

An offshore company is required to have at least one director and resident secretary who are officers of a trust companies. Although there are no minimum capital requirement and company can issue different types of shares and rights BUT bearer share are not allowed. Offshore company is also required to have a registered office in Labuan.

In setting up an offshore company, an incorporation and registration fees and an annual fees need to be paid to LOFSA. Offshore companies that are required to operate with license will be incurring additional license fees. The cost of incorporation and registration fees and the annual fees for different type of business are summarized below:-

