

FREQUENTLY ASKED QUESTIONS

Resident Director under section 87(2) of the Labuan Companies Act 1990 (LCA) (as amended by the Labuan Companies (Amendment) Act 2022)

1.	<p style="text-align: center;">Reason Behind Amendment</p> <p>Q: What is the main reason leading to the amendment of section 87 of LCA?</p> <p>A: To require all Labuan companies to appoint at least one natural person as their directors known as a resident director (RD). Before the amendment, Labuan companies could appoint corporate director without any natural person being appointed in the board. The amendment is to improve and instil good corporate governance practices among Labuan companies.</p>
2.	<p style="text-align: center;">Qualifying Criteria</p> <p>Q: What are the qualifying criteria for a RD?</p> <p>A: As provided in section 87(2) of the LCA, there are three (3) categories of person who can be appointed as a RD as follows:-</p> <ol style="list-style-type: none">1. An approved trust officer of a Labuan trust company (LTC) made available by such LTC to be appointed as a RD: <p style="text-align: center;">OR</p> <ol style="list-style-type: none">2. Any natural person who-<ol style="list-style-type: none">i. has attained the age of eighteen years old;ii. has full legal capacity;iii. has consented to the appointment as a resident director,and fulfil the following requirements-iv. is a citizen of any country except citizen of Israel and Democratic People's Republic of Korea (North Korea);v. is not listed as sanctioned individuals in the United Nations Security Council Resolutions (UNSCRs) lists i.e. UNSCR 1267(1999), 1373(2001), 1988(2011), 1989(2011), 2253(2015), 1718(2006), 2231(2015) also the Ministry of Home Affairs List i.e. List of entities determined by the Minister of Home Affairs under section 66B(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 as published in its website and any other list as Labuan FSA may adopt and issue; andvi. is not a disqualified person pursuant to section 90 of the LCA. <p>Q: Is there any qualifying criteria related to the nationality or residency of a RD?</p> <p>A: A RD can be of any nationality except citizen of Israel and Democratic People's Republic of Korea (North Korea) and/or a RD may reside anywhere in the world.</p> <p>Q: Is reference to the definition of the word 'Resident' in section 7 must be made in compliance with section 87(2) of LCA?</p> <p>A: Not necessary.</p> <p>Q: Can a corporation be appointed as a corporate director on the board, in addition to the RD?</p> <p>A: Yes.</p> <p>Q. Can a director who is an independent director, an executive director or a non-executive director be a RD as well?</p>

	<p>A: Yes.</p> <p>Q: Does an existing individual director of a licensed entity needs to get an approval from Authorisation and Licensing Unit (ALU) in compliance with section 87(2)?</p> <p>A: Not necessary.</p>
3.	<p style="text-align: center;">Time Line</p> <p>Q: When do Labuan companies need to comply with the requirement to appoint a natural person as its RD in accordance with section 87(2) of LCA?</p> <p>A: Labuan companies need to comply with the requirement by 9 February 2023. For clarification, the deadline on 9 February 2023 is for all Labuan companies/Labuan Foreign companies to comply with the requirement to appoint a natural person as one of their directors, if such Labuan companies/Labuan Foreign companies are yet to have any.</p> <p>Nonetheless, under no circumstances will Labuan FSA be held responsible or liable in any way for any claim, damages, losses, expenses, costs or liabilities whatsoever, in the event that any party institute any legal proceeding against any Labuan company based on non-compliance of section 87 of LCA or because of the non-compliance, such Labuan company fails in any legal proceeding that it is involved in.</p>
4.	<p style="text-align: center;">Action to be taken by Labuan Company</p> <p>Q: What action is required if a Labuan company currently already has at least one natural person on the board of directors?</p> <p>A: Such Labuan company is deemed as having complied with section 87(2)(b) of LCA provided that all the criteria stated therein are complied with. Administratively, the Labuan company may need to do the following-</p> <ol style="list-style-type: none"> a. To file a Return on Particulars and Changes of Directors and Secretaries (Form 25) when the time is due in respect of the change of the designation of that director(s) from a "Director" to a "Resident Director". b. The respective trust company needs to change the designation of the RD in the COR@L system accordingly to enable the filing of an Annual Return (Form 27) when the time is due to indicate the correct designation of such RD; and/or c. The respective trust company as the Agent in Labuan needs to file Form 25 to reflect the appointment of a new RD or re-designation of an existing director to RD.
5.	<p style="text-align: center;">Action to be taken by Labuan Foreign Company (Branch)</p> <p>Q: Is a foreign Labuan company required to comply with section 87(2) i.e. appoint a natural person as one its directors?</p> <p>A: Yes.</p> <p>Q: If a foreign Labuan company has already one or more natural person as its' director, has it complied with section 87(2) of the LCA 1990?</p> <p>A: Yes</p> <p>Q: Is it mandatory for a foreign Labuan company to file form 25 to reflect the designation of RD?</p> <p>A: No.</p> <p>Q: For a foreign Labuan company, does the consent in writing as the RD needs to be filed to the Authority?</p> <p>A: Not necessary.</p>

	<p>Q: What happen if a foreign Labuan company choose not to file form 25 since they already complied with section 87(2)?</p> <p>A: No action will be taken since the filing is not mandatory.</p>
6.	<p style="text-align: center;">Roles and Responsibility</p> <p>Q: What are the roles and responsibilities of a Resident Director?</p> <p>A: The role and responsibilities of a RD are the same as those provided in the LCA and other Labuan laws on a director before the amendment.</p> <p>Q: Is there any special role and responsibility for RD as compared to an individual director?</p> <p>A: There is no special role and responsibility attached. Please also refer to the response above.</p>
7.	<p style="text-align: center;">Consent in writing</p> <p>Q: Does form 24 (consent to act as a director) can be considered as consent in writing for the appointment as RD for Labuan company?</p> <p>A: Yes.</p> <p>Q: Is there any standard format for consent in writing for the appointment as RD for Labuan Foreign company?</p> <p>A: No, there is no standard format.</p> <p>Q: Is the consent in writing for the appointment of RD need to be kept at the agent's office?</p> <p>A: If there is, yes.</p>
8.	<p style="text-align: center;">Fees Payable</p> <p>Q: Section 87(10) of LCA, stated that fees are payable to the RD appointed. Is it compulsory to have a separate fee or is it similar to director fee for Board member?</p> <p>A: Not compulsory to have a separate fee and it can be similar to a director fee paid to other directors.</p>
9.	<p style="text-align: center;">Tax Implications</p> <p>Q: What are the tax implications on a RD?</p> <p>A: The same tax implications under the Labuan Business Activities Tax Act 1990 (LBATA) before the amendments are applicable. The implication of tax under LBATA will only be liable to the RD once section 16A of LBATA is fulfilled.</p>
10.	<p style="text-align: center;">In-Active company</p> <p>Q: Is a Labuan company which is going to be wound up or liquidated required to appoint a RD?</p> <p>A: No, provided that the wound up or liquidation process has officially commenced on or before the extended deadline and that one of the directors is a natural person.</p> <p>Q: A Labuan company is in the process of being struck off from the register or a Labuan company which has been struck off, is it required to appoint a RD?</p> <p>A: No.</p>

	<p>Q: Is a Labuan company which has already officially commenced winding up or liquidation process required to appoint a RD?</p> <p>A: No.</p>
11.	<p style="text-align: center;">Consequences for not complying</p> <p>Q: What is the consequence if a Labuan company does not comply with section 87(2) of LCA?</p> <p>A: If any Labuan company does not have a natural person as one of their directors as required by section 87(2) of LCA, Labuan FSA may impose a compound, an administrative penalty or strike off such Labuan company from the register pursuant to the relevant provisions in Labuan laws.</p>
12.	<p style="text-align: center;">Extension of Time (EOT)</p> <p>Q: Is there any extension of time (EOT) granted for those companies that has yet to comply with section 87(2) of LCA?</p> <p>A: For those Labuan companies that are yet to appoint a natural person as one of its' directors by 9 February 2023, an EOT may be applied by stating the reasons why they cannot meet the deadline which can be submitted via COR@L platform (non-licensed entity) or ALU (licensed entity). Take note that based on the reasons provided, it is Labuan FSA's discretion to grant or not to grant the extension.</p>

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