



# **LAWS OF MALAYSIA**

**Act 706**

**LABUAN FOUNDATIONS ACT 2010**

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# LAWS OF MALAYSIA

## Act 706

### LABUAN FOUNDATIONS ACT 2010

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**LAWS OF MALAYSIA****Act 706****LABUAN FOUNDATIONS ACT 2010**

An Act to provide for the establishment, regulation and dissolution of foundations in Labuan and for matters relating to it.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**PART I****PRELIMINARY****Short title and commencement**

**1.** (1) This Act may be cited as the Labuan Foundations Act 2010.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Interpretation**

**2.** In this Act, unless the context otherwise requires—

“administrative penalty” means the penalty imposed in accordance with section 78;

“approved auditor” means a person approved by the Authority as an approved auditor under section 10 of the Labuan Companies Act 1990 [*Act 441*];

“articles” means the articles of a Labuan foundation provided for in section 10;

“Authority” means the Labuan Financial Services Authority established under section 3 of the Labuan Financial Services Authority Act 1996 [Act 545];

“authorized officer” means any officer duly authorized by the Authority under subsection 3(2);

“beneficiary” means a person designated as a beneficiary under the provisions of the constituent document of a Labuan foundation;

“certificate of registration” means the certificate of registration issued under section 15 upon the registration of a Labuan foundation;

“charter” means the charter of a Labuan foundation provided for in section 8;

“constituent document” means the charter and the articles, of a Labuan foundation;

“corporation” means any body corporate, formed or incorporated, or existing within or without Malaysia and includes any foreign Labuan company but does not include—

- (a) any corporation sole;
- (b) any trade union registered under any written law as a trade union; and
- (c) any society registered under any written law relating to co-operative societies;

“council” and “council member” mean the council of a Labuan foundation appointed in accordance with section 25 and council member shall be construed accordingly;

“Court” means the High Court or a judge of the High Court;

“founder” means the person who subscribes his name to the charter establishing a Labuan foundation acting either for himself or on behalf of another person and who, by transfer of title, endows that Labuan foundation with its initial assets;

“initial assets” means the property endowed by the founder or founders, as the case may be, at the time of establishment of a Labuan foundation and vested in and being the property of that Labuan foundation;

“Labuan” means the Federal Territory of Labuan;

“Labuan company” has the meaning assigned to it in the Labuan Companies Act 1990;

“Malaysia” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non living;

“Malaysian property” means any property which is situated in Malaysia;

“Minister” means the Minister for the time being charged with the responsibility for finance;

“officer” means the officer of a Labuan foundation appointed in accordance with section 35;

“person” includes a corporation, a partnership, a body of persons, corporate or unincorporated, and a corporation sole;

“property” includes—

- (a) assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in, such assets as described in paragraph (a), including bank cheques, money orders, shares, securities, bonds, bank drafts and letters of credit;

“register” means the register of Labuan foundations registered under this Act maintained under section 16;

“remaining beneficiary” means a person or persons who, according to the constituent document of a Labuan foundation, shall be entitled to receive any remaining property after the dissolution of the Labuan foundation;

“resident” means any person—

- (a) who is a citizen or permanent resident of Malaysia; or
- (b) who has established a place of business and is operating in Malaysia, other than a Labuan company or a foreign Labuan company incorporated or registered under the Labuan Companies Act 1990, a Labuan foundation established under this Act, a partnership registered under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 [Act 707],

and includes a person who is declared to be a resident pursuant to section 43 of the Exchange Control Act 1953 [Act 17];

“secretary” means a Labuan Trust company appointed as secretary in accordance with section 41;

“supervisory person” means any person or body of persons having supervisory powers over the Labuan foundation and is appointed under the charter of the Labuan foundation;

“to endow” means to pass, or covenant to pass, the title in property, absolutely so as to transfer the title to the property effectively, with or without consideration, to a Labuan foundation so that the property is the property of that Labuan foundation.

## PART II

### ADMINISTRATION OF THE ACT

#### **Administration of the Act**

**3.** (1) The Authority shall be responsible for the administration of this Act subject to the general directions and control of the Minister.

(2) The Authority may authorize any of its members or officers to perform any of its functions, exercise any of its powers or discharge any of its duties under this Act.

(3) Subject to such limitations, if any, as may be prescribed by the Authority, an authorized officer shall exercise all the powers, discharge all the duties and perform all the functions of the Authority and every power so exercised, duty so discharged and function so performed shall be deemed to have been duly exercised, discharged and performed for the purposes of this Act.

### PART III

#### ESTABLISHMENT OF LABUAN FOUNDATION

##### **Establishment of Labuan foundation**

**4.** (1) Any person may, by subscribing his name to a charter of a Labuan foundation as the founder and complying with the requirements of this Act, establish a Labuan foundation.

(2) The establishment of a Labuan foundation shall not be completed until a certificate of registration in respect of such Labuan foundation has been issued under Part IV.

##### **Founder of Labuan foundation**

**5.** (1) The founder of a Labuan foundation may be a resident or a non-resident.

(2) The property of the Labuan foundation shall not include any Malaysian property unless the prior approval of the Authority is obtained or the Labuan foundation is a foundation for charitable purposes.

**Beneficiaries under Labuan foundation**

6. (1) The beneficiaries of a Labuan foundation may be a resident or a non-resident.

(2) Where the property of a Labuan foundation include Malaysian property, the Income Tax Act 1967 [Act 53] shall be applicable to any income derived therefrom.

(3) The income derived from any property which is not Malaysian property is subject to the Labuan Business Activity Tax Act 1990 [Act 445].

**Purpose and object of Labuan foundation**

7. (1) The main purpose or object of a Labuan foundation shall be the management of its property.

(2) Notwithstanding subsection (1), the purpose or object of a Labuan foundation may include any purpose or object which is not unlawful, immoral or contrary to any public policy in Malaysia and such purpose or object may be charitable or non-charitable.

(3) The purpose or object of a Labuan foundation shall be clearly stipulated in its charter.

(4) A Labuan foundation may, in the course of the management of its property, do such things and exercise such powers as are necessary for the proper administration of its property, including but not limited to buying and selling of such property and engaging in any other acts or activities that are not prohibited under any law for the time being in force in Malaysia, but such acts and activities shall be ancillary or incidental to the purpose or object of the Labuan foundation.

**Charter of Labuan foundation**

8. (1) Every Labuan foundation shall have a charter, which shall be duly signed by each founder.

(2) The charter of a Labuan foundation shall state the particulars specified in the First Schedule.

(3) The charter of a Labuan foundation may make provisions for, but not limited to, the matters specified in the Second Schedule.

(4) In the absence of any provision in the charter on any matter, the provisions of this Act in respect of that matter shall apply.

### **Amendment of charter**

**9.** (1) Where the charter of a Labuan foundation makes provision for the amendment of the charter, the charter may be amended according to the procedures laid down in the charter or, in the absence of any such procedures in the charter, in accordance with the following procedure:

(a) the founder or the officers shall convene a meeting of—

(i) the founder or his estate, as the case may be;

(ii) the officers; and

(iii) the council of the Labuan foundation, if any; and

(b) the resolution for amendment of the charter shall be adopted only if agreed by—

(i) the founder or his estate, as the case may be;

(ii) the officers; and

(iii) the council of the Labuan foundation, if any.

(2) The officers of a Labuan foundation may resolve on such amendments to the charter of the Labuan foundation as in their opinion are necessary in the circumstances to maintain the purpose and object of the Labuan foundation and shall apply to the Court for its approval on the proposed amendments to the charter of the Labuan foundation in the event—

(a) an agreement could not be reached for any proposed amendment to the charter;

- (b) the charter has no provision for amendment; or
- (c) it is not possible to comply with the provisions of this section because the founder is no longer living or in existence.

(3) The Court may, pursuant to an application under subsection (2), make an order confirming the amendments, either wholly or in part, on such terms and conditions as it thinks fit, or may make such other orders as it thinks expedient for facilitating or carrying into effect any such amendments, or refuse the application.

### **Articles of Labuan foundation**

**10.** (1) Where the charter of a Labuan foundation provides that articles shall or may be made, such articles may provide for, but not limited to, the matters specified in the Third Schedule.

(2) In the absence of articles of a Labuan foundation on any matter, the provisions of this Act in respect of that matter shall apply.

### **Property of Labuan foundation**

**11.** (1) Any property endowed to a Labuan foundation shall be the property of that Labuan foundation with full legal and beneficial title and shall cease to be the property of the founder and shall not become the property of a beneficiary unless the property is distributed in accordance with the provisions of the constituent document and the provisions of this Act.

(2) The property of a Labuan foundation shall be exclusively managed, including being realised, applied, administered, invested and disbursed in accordance with the constituent document and the provisions of this Act for the attainment of the purposes or objects of the Labuan foundation.

## **Powers and obligations of founder**

**12.** (1) Where there is more than one founder, the powers of the founder under the constituent document and this Act shall only be exercised by all the founders acting jointly and in common, unless the constituent document otherwise provides.

(2) The founder may, in the Labuan foundation charter or by instrument in writing revocable or irrevocable, assign or transfer any or all of his rights, powers and obligations under this Act and the constituent document of the Labuan foundation to such person as the founder shall, in his absolute discretion, determine.

(3) The person to whom the founder has assigned or transferred any or all of his rights, powers and obligations under this Act and the constituent document of the Labuan foundation shall be deemed to be a founder when exercising such rights and powers and performing such obligations.

(4) Where a founder has made an undertaking, recorded in the charter of the Labuan foundation, to endow any property to the Labuan foundation, the Labuan foundation—

- (a) may enforce that undertaking against the founder; and
- (b) shall enforce the undertaking in respect of the initial assets of the Labuan foundation, if at the end of a period of twelve months from the date of registration, the property representing the same has not become the property of the Labuan foundation.

## PART IV

### REGISTRATION OF LABUAN FOUNDATION

#### **Name of Labuan foundation**

**13.** (1) The name of a Labuan foundation shall end with the words “Labuan Foundation” or “(L) Foundation”.

(2) The name of a Labuan foundation may be—

- (a) in romanised characters, any word or words in the national language of any country which connote a foundation, or any abbreviation, as part of its name; or

(b) in foreign characters, alphabet or language provided that an accurate and certified rendition of the name in the English language is employed and is clearly stated in every written communication sent by, or on behalf of, the Labuan foundation and every document issued or signed by, or on behalf of, the Labuan foundation that evidences or creates a legal obligation of the foundation.

(3) Except with the consent of the Minister, a Labuan foundation shall not be registered where the name of the Labuan foundation to be registered is in the opinion of the Authority in any way misleading or otherwise undesirable.

(4) No description of a Labuan foundation shall be deemed inadequate or incorrect by reason of the use of an abbreviation or abbreviations in place of any word or words referred to in subsection (2).

### **Registration**

**14.** (1) An application for the registration of a Labuan foundation shall be made by the secretary of the Labuan foundation to the Authority in the form to be made available by the Authority, and accompanied by the prescribed fee and the documents specified in the Fourth Schedule.

(2) The secretary shall, prior to the application made in subsection (1), conduct reasonable enquiries to verify the information disclosed in the application.

(3) The secretary may furnish such other particulars as the secretary shall in his absolute discretion wish to include in the application.

(4) The Authority may request for further particulars to be furnished by the Labuan foundation applying for registration.

### **Certificate of registration**

**15.** (1) Upon the registration of a Labuan foundation, the Authority shall issue a certificate in respect of the registration and such certificate shall be signed by the Authority or any of its authorized officers and sealed with the seal of the Authority.

(2) The certificate of registration issued under subsection (1) shall be conclusive evidence that the Labuan foundation is registered by the name specified in the certificate with the Authority.

### **Register of Labuan foundation**

**16.** The Authority shall maintain or cause to be maintained a register of Labuan foundations registered under this Act.

### **Change of particulars**

**17.** (1) If any change is made or occurs in any of the particulars registered in respect of a Labuan foundation, the secretary of such Labuan foundation shall within thirty days after the change, or such further period as the Authority may on application allow, file with the Authority a notice signed by an officer of the Labuan foundation, specifying the nature of the change.

(2) If a Labuan foundation fails to comply with subsection (1), the Labuan foundation, the secretary and every officer who is in default shall be liable to an administrative penalty.

### **Change of name**

**18.** (1) A Labuan foundation may, if permitted by its charter, change its name.

(2) Where a Labuan foundation changes its name, it shall send a notice of the change to the Authority in accordance with the provisions of subsection 17(1).

(3) If a Labuan foundation fails to comply with subsection (2), the Labuan foundation, the secretary and every officer who is in default shall be liable to an administrative penalty.

(4) If the Authority approves the name which the Labuan foundation proposes to be its new name, the Authority may, on payment of the prescribed fee, issue a certificate of registration of the Labuan foundation under the new name and upon the issuance of such certificate of registration the change of name shall become effective.

(5) If the name of a Labuan foundation, whether through inadvertence or otherwise and whether originally or by a change of name, is a name by which the Labuan foundation could not be registered without contravention of section 13, the Labuan foundation shall change its name to a name to be approved by the Authority.

(6) If the Authority approves the change of the name of the Labuan foundation under subsection (5), the Labuan foundation shall so change such name within thirty days after the date of such approval or such longer period as the Authority may allow, unless the Minister, by written notice, annuls the approval.

### **Rights and obligations of Labuan foundation not affected by change of name**

**19.** (1) The change of name of a Labuan foundation shall not affect the identity of the Labuan foundation or any rights or obligations of the Labuan foundation or render defective any proceedings by or against the Labuan foundation.

(2) Any proceedings, whether civil or criminal, pending or existing by or against the Labuan foundation under its former name may be continued or instituted by or against the Labuan foundation by the new name of the Labuan foundation.

### **Striking off**

**20.** (1) Notwithstanding any provisions in this Act, where the Authority is satisfied that a Labuan foundation—

(a) has failed to pay the annual fee referred to in section 68;  
or

(b) has contravened any provisions of this Act,

the Authority may serve a notice on the Labuan foundation notifying it that the name of the Labuan foundation shall be struck off the register, unless the Labuan foundation takes any step or any action to remedy the breach as may be specified in the notice within thirty days from the date of the notice or such longer period as may be extended by the Authority.

(2) In the event the Authority—

- (a) receives from the Labuan foundation a notice stating that the Labuan foundation is likely to be unable to remedy the breach specified in the notice served on the Labuan foundation under subsection (1); or
- (b) receives no reply to a notice served on the Labuan foundation under subsection (1),

the Authority may, within thirty days from the date of the expiration of the period mentioned in the notice served under subsection (1) or thereafter, strike off the name of the Labuan foundation from the register unless the Labuan foundation or any person satisfies the Authority that the name should not be struck off.

### **Effect of striking off**

**21.** (1) Where the name of a Labuan foundation has been struck off the register, the Labuan foundation, liquidators and receivers of the Labuan foundation, shall not—

- (a) commence or defend any legal proceedings, carry on any business or in any way deal with the properties of the Labuan foundation;
- (b) defend any legal proceedings, make any claim or claim any right for or in the name of the Labuan foundation; or
- (c) act in any manner with respect to the affairs of the Labuan foundation.

(2) Notwithstanding subsection (1), where the name of the Labuan foundation has been struck off the register, the Labuan foundation, liquidator or receiver of the Labuan foundation, may—

- (a) apply to the Authority for the name of the Labuan foundation to be restored in the register;
- (b) continue to defend proceedings that were commenced against the Labuan foundation prior to the date of the striking off; and

- (c) continue to carry on legal proceedings that were instituted on behalf of the Labuan foundation prior to the date of striking off.

(3) The fact that the name of a Labuan foundation has been struck off the register shall not be construed as preventing—

- (a) the Labuan foundation from being liable for any liabilities, claims, debts, and from performing any of its obligations;
- (b) any person from making any claim against the Labuan foundation and pursuing the claim through to judgment or execution; or
- (c) the Court from granting any order as provided under this Act.

### **Restoration to register**

**22.** (1) Where the name of a Labuan foundation has been struck off the register under section 20, the Labuan foundation may, within three years immediately following the date of the striking off, apply to the Authority to have the name of the Labuan foundation restored to the register.

(2) Upon payment to the Authority of the prescribed fees including any other prescribed fees due and payable, the Authority may restore the name of the Labuan foundation to the register.

(3) Upon restoration of the name of the Labuan foundation to the register under subsection (2), the name of the Labuan foundation shall be deemed never to have been struck off the register.

### **Redomiciliation in Labuan**

**23.** (1) A foundation established under the laws of another country or jurisdiction may, subject to subsection (2), and if so permitted by the laws of such country or jurisdiction, redomicile in Labuan and be registered as if it had been established under this Act.

(2) A foundation established under the laws of another country or jurisdiction that satisfies the requirements of this Act may redomicile in Labuan—

(a) by submitting to the Authority—

- (i) a written application duly signed by all officers, or the equivalent, of the foundation, requesting the Authority to register the foundation under this Act;
- (ii) a statement containing the particulars required under the First Schedule; and
- (iii) a statutory declaration by the secretary or any equivalent officer of the foundation of compliance with all relevant requirements of this Act; and

(b) upon payment of the prescribed fee.

(3) The Authority may, upon receipt of the documents and payment of fees under subsection (2), issue a certificate of registration.

(4) Upon the issuance of the certificate of registration by the Authority under subsection (3)—

- (a) the foundation shall be capable of exercising all powers of a Labuan foundation registered under this Act and no longer be treated as a foundation registered under the laws of the country from which such foundation was redomiciled;
- (b) all properties and other assets of the foundation, including choses in action, shall continue to be vested in the foundation;
- (c) the foundation shall continue to be liable for all of its claims, debts, liabilities and obligations existing prior to its registration under this Act;
- (d) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and no cause of action existing, against the foundation or against any council member, officer or agent of the foundation, shall be released or impaired by its registration under this Act; and

- (e) no proceedings, whether civil or criminal, pending by or against the foundation or against any council member, officer or agent of the foundation, shall be abated or discontinued by reason of its registration under this Act, and the proceedings may be continued, enforced, prosecuted, settled or compromised by or against the foundation or against the council member, officer or agent of the foundation, as the case may be.

### **Redomiciliation in another country**

**24.** (1) A Labuan foundation registered under this Act may, subject to any limitations in its constituent document, redomicile and register under the laws of another country in the manner provided under those laws.

(2) A Labuan foundation registered under this Act that redomiciles and registers under the laws of another country, shall not cease to be a Labuan foundation registered under this Act unless the laws of the other country permit such redomiciliation and registration and the Labuan foundation has complied with those laws.

(3) Where a Labuan foundation registered under this Act redomiciles and registers under the laws of another country—

- (a) the Labuan foundation shall continue to be liable for all of its claims, debts, liabilities and obligations that existed prior to its registration under the laws of the other country;
- (b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause of action existing against the Labuan foundation or against any council member, officer or agent of the Labuan foundation, shall be released or impaired by its registration under the laws of the other country; and
- (c) no proceedings, whether civil or criminal, pending by or against the Labuan foundation or against any council member, officer or agent of the Labuan foundation, shall be abated or discontinued by its registration as a foundation under the laws of the other country, and the proceedings may be continued, enforced, prosecuted, settled or compromised by or against the council member, officer or agent of the Labuan foundation, as the case may be.

(4) Where a Labuan foundation registered under this Act is redomiciled and registered under the laws of another country, the Labuan foundation shall submit to the Authority a certified copy, and where applicable, an apostilled copy of the certificate of registration issued by the registrar or other relevant competent authority in that other country and upon receipt of such copy of the certificate of registration, the Authority shall strike the Labuan foundation off the register and certify that the Labuan foundation has ceased to be a foundation registered under this Act.

## PART V

### COUNCIL, OFFICERS AND SECRETARY

#### *Council*

#### **Appointment of council**

**25.** (1) The charter of a Labuan foundation may provide for the appointment of a council which shall consist of one or more members who may be a natural person or corporation.

(2) Prior to the registration of the Labuan foundation, the council member may be appointed by the founder.

(3) Upon the registration of the Labuan foundation, the council member may be appointed by the founder or such other person as may be empowered by the founder in the charter or articles of the Labuan foundation.

(4) A founder or beneficiary who is not an officer of the Labuan foundation may be appointed as a council member.

(5) The appointment of a council member of a Labuan foundation shall not be effective unless he has delivered to the founder or the person appointing him, as the case may be, his consent in writing to such appointment.

#### **Council meeting**

**26.** The Fifth Schedule shall apply to a council meeting.

**Disqualification of council member**

**27.** A person shall not be appointed or remain as a council member if—

- (a) he is a bankrupt, mentally disordered or of unsound mind;
- (b) that person, being a corporation, is the subject of any proceeding which may result in it being wound up or otherwise dissolved;
- (c) he is convicted of a criminal offence involving fraud and dishonesty or of any criminal offence for which he has been sentenced to imprisonment; or
- (d) he is an officer of the Labuan foundation.

**Cessation of council member**

**28.** A council member who intends to cease acting in that capacity shall give at least thirty days prior notice in writing of his intention to the Labuan foundation not later than seven days before such member intends to cease acting in that capacity.

**Appointment of supervisory person**

**29.** (1) Where the constituent document provides for the appointment of a supervisory person, the provisions of sections 25, 26, 27 and 28 shall apply *mutatis mutandis*, subject to the constituent document, to that appointment and that supervisory person.

(2) Where a Labuan foundation has a supervisory person *in lieu* of or in addition to a council member, all references in this Act to a council and council members shall be construed to include such supervisory person.

**Appointment of council member by Court**

**30.** Where for the time being no council member is appointed to a Labuan foundation or the number of members appointed is less than that required by the charter or this Act, application may be made to the Court by a founder, council member or

other supervisory person, or an officer, for the appointment by the Court of one or more persons to be a council member for the purpose of complying with the requirements of the charter and the provisions of this Act.

### **Powers of council**

**31.** (1) The constituent document may specify the powers of the council and provide for powers in addition to those provided for in this Act.

(2) The council shall—

- (a) take such action as it deems necessary to ensure compliance by the Labuan foundation and its officers with the terms of the constituent document and the provisions of this Act; and
- (b) be responsible for the general supervision of the management of the Labuan foundation by its officers.

(3) The council shall represent the Labuan foundation and for the purpose of ensuring compliance with the terms of the constituent document and the provisions of this Act, the officers of the Labuan foundation shall act in accordance with the instructions of the council.

### **Rights of council**

**32.** (1) In addition to the rights of the council provided for in the constituent document and in the other provisions of this Act, the council shall have the following rights:

- (a) to be informed of all meetings of the officers;
- (b) to attend and be heard but not to vote at meetings of the officers;
- (c) where any business of a Labuan foundation is conducted by the circulation of documents, to be included in the circulation of documents at the time that they are circulated to the officers;

(d) where any business of a Labuan foundation is conducted by the delegation of powers to an officer, to be informed of the terms and any exercise of the power that has been delegated.

(2) The council shall have access to the books, records, accounts and vouchers of the Labuan foundation.

### **Duties of council**

**33.** (1) A council member shall exercise reasonable care and skill in performing his duties and exercising his rights and powers.

(2) In the absence of any officer of the Labuan foundation, the council shall perform the duties and exercise the powers of the officers prescribed in this Act.

### **References to council apply to council members acting jointly and severally**

**34.** References to the council shall apply to the council members acting jointly and severally.

## *Officers*

### **Appointment of officers**

**35.** (1) The founder shall, before the registration of a proposed Labuan foundation, appoint at least one person to be an officer of the Labuan foundation subject to such terms and conditions as the founder deems fit.

(2) The officer may be a natural person or a corporation.

(3) A founder or beneficiary who is not a council member may be appointed as an officer of the Labuan foundation.

(4) The appointment of an officer of a Labuan foundation shall not be effective unless he has delivered to the founder his consent in writing to such appointment.

### **Meeting of officers**

**36.** The Fifth Schedule shall apply to a meeting of officers of a Labuan foundation.

### **Disqualification of officer**

**37.** (1) A person shall not be appointed or remain as an officer of a Labuan foundation if—

- (a) he is a bankrupt, mentally disabled or of unsound mind;
- (b) that person, being a corporation, is the subject of any proceedings which may result in it being wound up or otherwise dissolved;
- (c) he is convicted of a criminal offence involving fraud and dishonesty or of any criminal offence for which he has been sentenced to imprisonment;
- (d) he is a council member; or
- (e) he is a person connected to a council member.

(2) For the purposes of paragraph (1)(e), the person shall be deemed to be connected to a council member if he is—

- (a) a member of that council member's family, including his spouse, parent, child including adopted child and step-child, brother, sister and the spouse of his child, brother or sister; or
- (b) a corporation which is associated with that council member.

(3) For the purposes of paragraph (2)(b), a corporation is associated with a council member if—

- (a) the corporation is accustomed or is under an obligation, whether formal or informal, or its directors are accustomed, to act in accordance with the directions, instructions or wishes of that council member; or
- (b) that council member has a controlling interest in the corporation.

(4) An officer of a Labuan foundation, shall, in the event that he ceases to qualify under this section, give notice in writing of that event to the Labuan foundation and the Authority within seven days after the occurrence of that event.

(5) The Authority may issue a direction that a person who falls within any of the instances under subsection (1) be disqualified from acting as an officer of a Labuan foundation.

### **Duties of officers**

**38.** (1) An officer of a Labuan foundation shall take all such steps and do or cause to be done all such things as may be necessary to properly administer the Labuan foundation to achieve the purposes or objects of that Labuan foundation.

(2) The officer of a Labuan foundation shall exercise reasonable care and skill in the conduct of the affairs of the Labuan foundation, including exercising reasonable care and skill in the management and investment of the property of the Labuan foundation.

(3) The officer of a Labuan foundation shall act in accordance with the provisions of the constituent document of the Labuan foundation and the provisions of this Act.

(4) In the absence of the appointment of a council or supervisory person, the officers of a Labuan foundation acting jointly shall be the governing body of the Labuan foundation and, as against a third party, the officers so acting shall represent the Labuan foundation.

(5) Except where the constituent document of a Labuan foundation otherwise provides and subject to the provisions of this Act, the officers of the Labuan foundation shall act unanimously and may so act by circulation of a written document duly signed by each officer.

### **Cessation of officer**

**39.** An officer of a Labuan foundation who intends to cease acting as such officer shall give at least thirty days prior notice in writing of his intention to the Labuan foundation and lodge with the Authority a declaration of his intention.

### **Remuneration of officers**

**40.** (1) Except where the charter otherwise provides, the officers of the Labuan foundation shall be remunerated in accordance with the duties they are required to perform and taking into account the financial position of the Labuan foundation.

(2) Any dispute in respect of the amount of the remuneration of an officer of a Labuan foundation may be referred by the officers, or an officer, or the council, or the approved auditor, to the Court, which shall determine that remuneration.

### *Secretary*

#### **Secretary**

**41.** (1) The founder shall, before the registration of a Labuan foundation, appoint a person, who shall be a company registered as a Labuan trust company under Part V of the Labuan Financial Services and Securities Act 2010 [*Act 704*], to be the secretary of the proposed Labuan foundation.

(2) The secretary may be a council member at the same time provided that the secretary shall not be the sole council member.

(3) The secretary shall have the duties, powers and obligations provided for in this Act including accepting service of all documents in respect of legal proceedings against the Labuan foundation which may be served on the Labuan foundation.

#### **Cessation of secretary**

**42.** Where the secretary intends to cease acting as the secretary to that Labuan foundation, he shall give at least thirty days prior notice in writing of his intention to the Labuan foundation and lodge with the Authority a declaration of his intention.

**Documents to be filed through secretary**

**43.** (1) Every document or instrument required or permitted to be filed or lodged with the Authority under this Act shall be filed or lodged through the secretary of a Labuan foundation.

(2) Every application to the Authority for any certificate or for any extract or copy of any certificate to be issued under this Act or of any document filed or lodged with the Authority shall be made through the secretary of a Labuan foundation.

(3) The secretary of a Labuan foundation shall ensure the validity, veracity and authenticity of any instrument or document it files or lodges with the Authority on behalf of a Labuan foundation.

(4) Subsection (2) shall not apply where an application is made in respect of a Labuan foundation by any of the founders, officers, council members or beneficiaries of that Labuan foundation and the document, certificate, extract or copy is for his own personal use.

*Registered office***Registered office**

**44.** (1) A Labuan foundation shall have a registered office in Labuan which shall be the address of the secretary to that Labuan foundation, to which all communications, correspondences and notices may be addressed.

(2) A notice of any change of the address of the registered office shall be given in accordance with subsection 17(1).

(3) Any process or document required to be served on a Labuan foundation shall be sufficiently served if addressed to the Labuan foundation by leaving it at, or sending it by post to, the registered office of the Labuan foundation in Labuan.

(4) The process and document required to be served on a Labuan foundation shall be sufficiently served on the Labuan

foundation by leaving it at, or by sending it by post to, any place of business established by the Labuan foundation in Labuan—

- (a) where such Labuan foundation makes default in filing with the Authority the name and address of the registered office which is authorized to accept on behalf of the Labuan foundation the service of any process or document;
- (b) if at any time the registered office so notified ceases to exist; or
- (c) if for any other reason service of such process or document cannot be effected at the registered office.

### **Documents to be kept at registered office**

**45.** (1) Every Labuan foundation shall cause to be kept at its registered office accurate copies of its constituent document and all documents and instruments filed or lodged with the Authority and the books containing the minutes of council meetings and meetings of officers.

(2) Unless the Authority otherwise permits, all duplicates of the minute books of a Labuan foundation may be kept elsewhere and for purposes of inspection under section 48 shall be deemed to be kept at the registered office of the Labuan foundation.

### **Form of records of Labuan foundation**

**46.** The records which a Labuan foundation is required by this Act to keep may be kept in the form of photographic film or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

### **Translation of document and instrument**

**47.** (1) Where any document or instrument required to be filed or lodged with the Authority is in a language other than in the national language or the English language, the instrument or document shall be accompanied by a verified or certified translation of the instrument or document either in the national language or the English language.

(2) Where any accounts or other such records required to be kept and maintained under this Act are not kept in the national language or the English language, a certified true translation of such accounts and records shall be caused to be kept with the original accounts and records.

### **Inspection and production of documents kept by Labuan foundation**

**48.** (1) Documents required to be kept by a Labuan foundation under this Act shall, during business hours, be open for inspection by the founder, council member, supervisory person or officer, as the case may be, of that Labuan foundation without any charge.

(2) Any person, other than a council member, supervisory person or officer of a Labuan foundation, who is entitled to inspect the books of minutes of council meetings shall be furnished, within seven days after he has made a request to the Labuan foundation, with a copy of any such minutes without any charge.

(3) If there is a failure to comply with subsection (1) or to any request for any inspection under this section is refused, the Labuan foundation commits an offence and shall, upon conviction, be liable to a fine not exceeding ten thousand ringgit.

(4) In the case of a continuing offence for an offence committed under subsection (3), in addition to the penalties under subsection (3), the Labuan foundation shall be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction.

(5) In the case of such refusal as referred to in subsection (4), the Court may, by order, compel an immediate inspection of the documents.

### **Inspection and production of documents kept by Authority**

**49.** (1) Any person may if so authorized by the relevant Labuan foundation and upon payment of the prescribed fees—

- (a) inspect any document served on, registered by or filed with the Authority under this Act and kept by the Authority and, if the Authority thinks fit, a copy of the constituent document;

(b) require to be given to him a certified copy of the certificate of registration of the Labuan foundation or of any other document or part of any other document referred to in paragraph (a).

(2) The certified copy of the certificate given under paragraph (1)(b) shall be signed by the Authority and sealed with its seal.

## PART VI

### CAPACITY OF LABUAN FOUNDATION

#### **Capacity and powers**

**50.** (1) A Labuan foundation duly registered under this Act is a body corporate and may sue and be sued in its corporate name.

(2) Subject to this Act and the provisions of its constituent document, a Labuan foundation has the capacity, rights, powers, and privileges of an individual person.

(3) The charter of a Labuan foundation may contain provisions restricting its capacity, rights, powers and privileges.

(4) Notwithstanding subsection (3), the validity of an act done by a Labuan foundation shall not be called into question on the ground of lack of capacity by reason of anything contained in its charter.

#### **Ratification of act done beyond capacity**

**51.** (1) A council member or a beneficiary of a Labuan foundation, may bring proceedings to restrain the doing of any act which but for section 50 would be beyond the capacity of the Labuan foundation, save that no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the Labuan foundation.

(2) It shall be the duty of the officers of a Labuan foundation to observe any limitations on their powers derived from the

constituent document and any action by the officers beyond the powers provided as such shall only be valid upon ratification by the Labuan foundation in the following manner:

- (a) where there is a council or other supervisory person, by a unanimous resolution of the council and such other supervisory person; and
- (b) where there is no council or supervisory person, by a resolution signed by all the officers of the Labuan foundation for the time being.

(3) A resolution ratifying an action by the council member, supervisory person and officer beyond the capacity of the Labuan foundation shall not affect any liability incurred by the officers or any other person and relief from any such liability shall be agreed to separately by resolution of the council and supervisory person.

### **Power of officers to bind the Labuan foundation**

**52.** (1) A party to a transaction with a Labuan foundation is not bound to enquire as to whether the transaction is a transaction permitted by the constituent document of the Labuan foundation or as to any limitation on the powers of the council or officers to bind the Labuan foundation or to authorize others to do so.

(2) Subsection (1) shall not affect any right of any council, council member or supervisory person, or officer of a Labuan foundation, as the case may be, to bring proceedings to restrain the doing of any act which is beyond the powers of the officers.

(3) Subsection (1) shall not affect any liability incurred by the officers of a Labuan foundation or any other person, by reason of the officers exceeding their powers.

### **Execution of contracts, documents by Labuan foundation**

**53.** (1) A Labuan foundation may execute any contract, deed, instrument or other document by, where it has a seal, affixing the seal in the presence of and witnessed to by a council member or

supervisory person, or an officer or other authorized signatory of the Labuan foundation, or where permitted by the constituent document, by affixing the signature of the authorized signatory.

(2) Any contract made according to this section shall be effectual in law, and shall bind a Labuan foundation and all other parties to the contract and may be varied or discharged in the manner in which it is authorized to be made.

(3) A document or proceeding requiring authentication by a Labuan foundation may be signed by an authorized officer of the Labuan foundation and need not be under its seal.

(4) A Labuan foundation may, by writing—

- (a) if the Labuan foundation has a seal, under that seal; or
- (b) signed by the authorised signatories of the Labuan foundation,

each signing or under the seal of the signatory, as the case may be, empower any person either generally or in respect of any specified matters as its agent or attorney to execute any deed, instrument or other document on its behalf and any deed, instrument or document signed by such agent or attorney on behalf of that Labuan foundation under his seal or by the authorized signatories of the agent or attorney, shall bind the Labuan foundation; and all persons dealing in good faith shall be entitled to presume the regular and proper execution of the deed, instrument or other document and to act accordingly.

### **Disclosure of interest**

**54.** (1) Every council member, supervisory person and officer of a Labuan foundation who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Labuan foundation shall, as soon as practicable after the relevant facts have come to his knowledge—

- (a) relating to a council member and supervisory person—
  - (i) declare the nature of his interest at a council meeting;
  - or

- (ii) cause to be circulated in writing to all the other council members particulars of his interest; and
- (b) relating to an officer—
- (i) declare the nature of his interest at a meeting of the officers; or
  - (ii) cause to be circulated in writing to all the other officers particulars of his interest.

(2) Subsection (1) shall not apply in a case where the interest of the council member, supervisory person or officer of a Labuan foundation consists only in him being a member or creditor of another corporation or firm which is interested in a contract or proposed contract with that Labuan foundation, if that interest may properly be regarded as not being a material interest.

(3) The declaration of interest by a council member, a supervisory person or an officer shall be made at the following instances—

- (a) in the case of a proposed contract—
- (i) the declaration shall be made at the council meeting or meeting of the officers, as the case may be, at which the proposed contract is first taken into consideration; or
  - (ii) the declaration shall be made at the next council meeting or next meeting of officers, as the case may be, held after the council member, supervisory person or officer becomes so interested; and
- (b) in the case of an existing contract, the declaration shall be made at the first council meeting or the first meeting of the officers, as the case may be, held after the council member, supervisory person or officer becomes so interested.

(4) For the purposes of subsection (1), a general notice is deemed to be given by the interested council member, supervisory person or officer to the other council members or officers, as the case may be, of a Labuan foundation—

- (a) when it is given at a council meeting or meeting of the officers, as the case may be; or

- (b) where the council member, supervisory person or officer takes reasonable steps to ensure it is brought up and read at the next council meeting or meeting of the officers, as the case may be.

(5) Every council member, supervisory person or officer of a Labuan foundation who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as a council member, a supervisory person or an officer of the Labuan foundation, shall declare at a council meeting or meeting of the officers of the Labuan foundation or cause to be circulated in writing to the other council members or officers the fact and the nature, character and extent of the conflict.

(6) Nothing in this section shall be taken to prejudice the operation of any provision in the constituent document of a Labuan foundation restricting a council member, a supervisory person or an officer of a Labuan foundation from having any interest in contracts with the Labuan foundation.

### **Liability of council member, supervisory person, officer and secretary**

**55.** (1) No council member, supervisory person, officer or secretary of a Labuan foundation shall be personally responsible for any liability of a Labuan foundation unless such liability had been incurred as a result of his own gross negligence, wilful default or misconduct, fraud or dishonesty.

(2) Subject to section 56, any provision contained in the constituent document or in any contract with the Labuan foundation or otherwise, which exempts any council member, supervisory person, officer or secretary of the Labuan foundation or indemnify him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, misconduct or breach of duty of which he may be guilty in relation to the Labuan foundation, shall be void.

### **Court may grant relief**

**56.** (1) Notwithstanding anything contained in section 55, a Labuan foundation may, in pursuance of any such provision as referred to in subsection 53(2), indemnify any such council

member, supervisory person, officer or secretary against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under subsections (2), (3) and (4) in which relief is granted to him by the Court.

(2) If, in any proceedings for negligence, default, misconduct, omission or breach of duty against a council member, a supervisory person, an officer or a secretary of a Labuan foundation, it appears to the Court that he is or may be liable in respect of the negligence, default, misconduct, omission or breach of duty, but that he has acted honestly and reasonably and exercised due diligence, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, misconduct, omission or breach of duty, the Court may relieve him, either wholly or partly, from his liability on such terms as the Court thinks fit.

(3) Where a council member, a supervisory person, an officer or a secretary of a Labuan foundation has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, misconduct, omission or breach of duty, he may apply to the Court for relief, and the Court shall, on any such application, have the power to grant him relief in respect of such negligence, default, misconduct, omission or breach of duty.

(4) Where any case to which subsection (2) applies is being tried by a judge, the judge after hearing the evidence, may, if he is satisfied that the council member, supervisory person, officer or secretary ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part and forthwith direct judgment to be entered for him on such terms as to costs or otherwise as the judge may think proper.

### **Money or other property from illegal activities**

**57.** (1) A Labuan foundation shall not accept—

- (a) any money or other property originating from a transaction, operation or other activity which is a criminal offence under the laws of Malaysia or which, had it been carried out in Malaysia, would have been such an offence; or

- (b) any money or other property the receipt, ownership or control of which is or would be an offence as mentioned in paragraph (a).

(2) It shall be the duty of a council member, a supervisory person, an officer, or a secretary of a Labuan foundation to forthwith bring it to the notice of the Authority where he—

- (a) has reason to believe that the Labuan foundation has property or has income accruing to it or derived by it and originating from a transaction, operation or other activity which is a criminal offence under the laws of Malaysia or which, had it been carried out in Malaysia, would have been such an offence; or
- (b) has received or has in its possession or control money or other property the receipt, ownership or control of which is or would be an offence as mentioned in paragraph (a).

(3) Any council member, supervisory person, officer, or secretary of a Labuan foundation who without reasonable excuse fails to observe the requirements of subsection (1) or fails to comply with the requirements of subsection (2) commits an offence and shall, upon conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

(4) All moneys or property described in subsections (1) and (2) shall be forfeited to the Government and become its property absolutely.

### **Fraudulent disposition**

**58.** (1) Where it is proven that a Labuan foundation established or registered in Labuan, or property disposed of to such Labuan foundation—

- (a) was so established or registered or disposed of by or on behalf of the founder with the principal intent to defraud a creditor of the founder; and
- (b) did, at the time such establishment or registration or disposition took place, render the founder insolvent or without property by which the creditor's claim, if successful, could have been satisfied,

then such establishment, registration or disposition shall not be void or voidable and the Labuan foundation shall be liable to satisfy the creditor's claim to the extent of the interest that the founder had in the property prior to the establishment, registration or disposition, and any accumulation to the property, if any, subsequent to it.

(2) For the purposes of subsection (1), in determining whether a Labuan foundation established or registered or a disposition has rendered the founder insolvent or without property by which a creditor's claim, if successful, may be satisfied, regard shall be had to the fair market value of the founder's property, at the time immediately after such establishment, registration or disposition.

(3) In the event that the fair market value of the property referred to in subsection (2) exceeded the value of the creditor's claim, at that time after the establishment, registration or disposition, then the Labuan foundation so established or registered or the disposition shall for the purposes of this Act be deemed not to have been so established or registered, or the property disposed of, with principal intent to defraud the creditor.

(4) A Labuan foundation established or registered in Labuan and a disposition of property to such Labuan foundation shall not be fraudulent as against a creditor of a founder—

- (a) if its establishment or registration, or the disposition took place before the creditor's cause of action against the founder accrued or had arisen;
- (b) if its establishment or registration, or the disposition, takes place after the expiration of two years from the date the creditor's cause of action accrued; or
- (c) if its establishment or registration, or the disposition, takes place before the expiration of two years from the date the creditor's cause of action accrued and the creditor fails to commence such action before the expiration of one year from the date of such establishment or registration, or disposition.

(5) A founder shall not have imputed to him an intent to defraud a creditor solely by reason that—

- (a) the founder has established or registered a Labuan foundation or has disposed of property to such Labuan foundation within two years from the date of the creditor's cause of action accruing; or
- (b) the founder is a beneficiary.

(6) Where a Labuan foundation is liable to satisfy a creditor's claim in the manner provided for in subsection (1) but is unable to do so by reason of the fact that the property has been disposed of, other than to a *bona fide* purchaser for value, then any such disposition shall be void.

(7) For the purposes of this section, the date of the cause of action accruing shall be—

- (a) the date of that act or omission which shall be relied upon either partly or wholly to establish the cause of action; and if there is more than one act or the omission is a continuing one, the date of the first act or the date on which the omission first occurred, as the case may be; and
- (b) in the case of an action upon a judgment, the date of that act or omission, or where there is more than one act or the omission is a continuing one, the date of the first act or the date on which the omission first occurred, as the case may be, which gave rise to the judgment itself.

(8) In this section, the term "creditor" includes any person who alleges a cause of action.

### **Accounts to be kept**

**59.** (1) A Labuan foundation shall cause to be kept proper accounting and other records as will sufficiently explain the transaction and financial position of the Labuan foundation.

(2) Every Labuan foundation and the officers of the Labuan foundation shall cause appropriate entries to be made in the accounting and other records of the Labuan foundation within sixty days of the completion of the transactions to which they relate.

(3) The accounting and other records of a Labuan foundation shall be kept at the registered office of the Labuan foundation or at such other place in Labuan as the officers think fit and shall at all times be open to inspection by the council members, supervisory person, officers, and the approved auditor, if one is appointed.

(4) An officer of a Labuan foundation who fails to take all reasonable steps to secure compliance by the Labuan foundation with the requirements of this section, or has by his own wilful act been the cause of any default by the Labuan foundation under this section, commits an offence and shall, upon conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) Any founder, council member, supervisory person, officer and secretary of a Labuan foundation shall be entitled to be furnished, within seven days after he has made a request to the Labuan foundation, with a copy of the financial statements, accounts and records and report of approved auditor, if any, at no charge and if default is made in furnishing such a copy, the Labuan foundation and every officer is deemed to commit an offence and shall, upon conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Audit of Labuan foundation**

**60.** (1) Where, on an application to the Court by a founder, a council member, a supervisory person, an officer, a secretary or a beneficiary, the Court is satisfied that there is *prima facie* evidence of a failure to comply with the constituent document or the requirements of this Act in the conduct of a Labuan foundation, the Court may order the appointment of an approved auditor to carry out an audit of the Labuan foundation.

(2) The appointment of an approved auditor under subsection (1) may be made conditional on the lodging by the applicant with the Court of an amount, to be determined by the Court, by way of security, for the costs of carrying out the audit.

(3) The approved auditor appointed under this section shall submit his report to the Court within such time as the Court may determine.

(4) The Court shall make such order as to costs as it thinks fit, taking into account whether or not the application was well-founded, and where the application was not well-founded, the Court may order that any loss or cost occasioned to the Labuan foundation by the audit be met by the applicant.

### **Unenforceability of foreign claim or judgment**

**61.** (1) All questions arising with regard to a Labuan foundation established and existing under this Act or in regard to any disposition of property to it shall be determined in accordance with this Act, without reference to the laws of any other jurisdictions with which the Labuan foundation or disposition may be connected, including questions as to—

- (a) the capacity of the founder;
- (b) any aspect of the validity of the Labuan foundation or disposition or the interpretation or effect of the Labuan foundation;
- (c) the administration of the Labuan foundation, whether the administration be conducted in Labuan or elsewhere, including questions as to the powers, obligations, liabilities and rights of the governing bodies or supervisory persons of the Labuan foundation and their appointment and removal; and
- (d) the existence and extent of powers, conferred or retained by the founder, including powers of variation or revocation of the charter of the Labuan foundation and the validity of any exercise of such powers.

(2) Where a Labuan foundation is validly established in accordance with its constituent document or as provided by this Act, the Court shall not vary it or set it aside or recognise the validity of any claim against the property of the Labuan foundation pursuant to the law of another jurisdiction or the order of a Court of another jurisdiction in respect of the following:

- (a) the personal and proprietary consequences of marriage or the termination of marriage;
- (b) succession rights, whether testate or intestate, including the fixed shares of spouses or relatives;

- (c) any claims or orders of a Court with regard to those matters referred to in paragraph (a) or (b) in reference to the personal laws of the founder or the beneficiaries; and
- (d) the claims of creditors in an insolvency subject to the provisions of this section.

## PART VII

### BENEFICIARIES

#### **Rights of beneficiary to information pertaining to his interest**

**62.** (1) A beneficiary who has a vested interest in the property of a Labuan foundation shall have the right to request from the council members, supervisory person or officers of the Labuan foundation information and documents pertaining to his interest and shall in particular be entitled—

- (a) to receive, on request, information from the Labuan foundation in respect of the fulfilment of the purposes and objects of the Labuan foundation;
- (b) on request, to inspect and to be supplied with a copy of—
  - (i) the charter of the Labuan foundation and any amendment made to the charter;
  - (ii) the articles of the Labuan foundation and any amendment made to the articles;
  - (iii) any audit report, including special audit reports, books of account, reports on the financial position of the Labuan foundation and its annual accounts.

(2) The request to receive information or inspect documents referred to in subsection (1) shall be made in writing.

(3) The information and documents referred to in subsection (1) shall include—

- (a) all documents relating to the vested interest of the beneficiary in which the terms of the Labuan foundation or any exercise of power or discretion is to be found; and

- (b) all financial statements of the Labuan foundation as they relate to the interest of the beneficiary.

### **Rights of beneficiary to confidentiality**

**63.** (1) When disclosing any information or document to any beneficiary, the council members, supervisory person or officers of the Labuan foundation shall—

- (a) if other beneficiaries have requested confidentiality; or
- (b) if the council members, supervisory person or officers in their absolute discretion determine confidentiality to be in the best interest of the other beneficiaries,

take all reasonable steps to secure the rights to confidentiality of the other beneficiaries by providing such beneficiaries only with such document or information so as to enable the beneficiary's own entitlement and interest or benefits under the Labuan foundation to be determined.

(2) The information and documents may include copies or certified extracts of the constituent document or other documents and copies of advices or statements from which the names and interests of other beneficiaries have been edited or deleted to preserve the confidentiality to which such other beneficiaries are entitled.

### **Court may order information to be made available to beneficiary**

**64.** (1) In the event that a Labuan foundation does not comply with a request for information under section 62 or does not make the documents available for inspection in accordance with sections 62 and 63 within a reasonable time, the Court may, upon application by the beneficiary, order—

- (a) the provision of the information requested; and
- (b) the inspection of the documents, if appropriate, by a person professionally qualified to assess the information contained in the documents and report to the beneficiary by whom the application to the Court was made.

(2) Any council member, supervisory person or officer of a Labuan foundation who fails to take all reasonable steps to secure compliance by the Labuan foundation with the requirements of this section, or has by his own wilful act been the cause of non-compliance, is himself liable for the act of non-compliance and shall be committed to any order as the Court deems fit.

### **Distribution of property to beneficiary**

**65.** (1) Except where the constituent document otherwise provides, no distribution to a beneficiary shall be validly made unless it is signed by all the officers then appointed.

(2) The officers of a Labuan foundation shall authorise a distribution to a beneficiary only in accordance with this Act and the constituent document of the Labuan foundation.

(3) No distribution to a beneficiary shall be made for the purpose of defeating, or where the effect of so doing would be to defeat, the claim of any creditor of the Labuan foundation.

### **Delegation of power to authorise distribution to beneficiary by officer**

**66.** (1) Except where the constituent document otherwise provides—

(a) the officers acting unanimously may delegate to any one of themselves by a document signed by each of them, the power of the officers to authorise a distribution to a beneficiary; and

(b) the power so delegated under paragraph (a) shall be exercised as provided for in the document of delegation.

(2) Subsection (1) shall apply to the officer to whom the power is delegated in the exercise of that power as if the reference in that subsection to the officer exercising the delegated power was a reference to the officers acting jointly.

PART VIII

DISSOLUTION

**Dissolution**

**67.** (1) A Labuan foundation shall be dissolved on the occurrence of the following events and upon the officers passing a resolution to that effect:

- (a) the Labuan foundation is established for a fixed duration and that duration expires;
- (b) the purpose of the Labuan foundation is fulfilled or becomes incapable of fulfillment, or
- (c) any provision of the charter of the Labuan foundation so requires.

(2) Where it is proposed to dissolve a Labuan foundation pursuant to the provisions of subsection (1), the officers, or such other person as may be authorized by the charter of the Labuan foundation to supervise the dissolution of the Labuan foundation shall make a declaration to the effect that they have made an inquiry into the affairs of the Labuan foundation and have formed the opinion that the Labuan foundation will be able to pay its debts in full upon its dissolution.

(3) A declaration so made under subsection (2) shall have no effect unless it is made within thirty days immediately preceding the passing of the resolution under subsection (1).

(4) The officers shall cause to be lodged with the Authority the declaration made pursuant to subsection (2) together with a copy of the resolution made pursuant to subsection (1) within thirty days from the passing of the said resolution.

(5) Unless the Court otherwise directs under subsection 68(2), the officers shall do all things that are necessary for the orderly winding up of the affairs of the Labuan foundation, and shall collect the properties of the Labuan foundation, and after discharging or making adequate provision for the discharge of the obligations of the Labuan foundation, shall distribute the remaining properties in the manner provided in section 69.

**Power of Court to order dissolution**

**68.** (1) Without prejudice to section 65, the Court may, on the application of the Labuan foundation, or by a creditor or creditors of the Labuan foundation or by the Authority, order the dissolution of a Labuan foundation if the Court is of the opinion that it is just and equitable that the Labuan foundation be dissolved.

(2) Where a Court orders that a Labuan foundation be dissolved under this section, the Court may appoint a person who is an approved liquidator under section 12 of the Labuan Companies Act 1990 to supervise the dissolution of the Labuan foundation and may, from time to time, direct the manner in which the dissolution is to be conducted.

**Distribution of property**

**69.** (1) Subject to subsection (2), where a Labuan foundation is dissolved and there remains some properties after its dissolution, those properties shall be the property of the beneficiary who, according to the constituent document of the Labuan foundation, is entitled to receive any remaining property after the dissolution of the Labuan foundation.

(2) In the absence of a provision to the contrary in the constituent document of the Labuan foundation, where there is more than one remaining beneficiary entitled to receive the remaining property, the remaining property shall be divided equally between them.

(3) Any remaining property shall be dealt with in accordance with any law relating to unclaimed moneys as may be in force in Malaysia in the event that—

- (a) there is no beneficiary who is entitled to receive the remaining property of the Labuan foundation as provided in subsection (1);
- (b) the beneficiary who is entitled to receive the remaining property refuses to accept the transfer of the remaining property; or
- (c) there is no relevant provision in the constituent document of the Labuan foundation.

PART IX

GENERAL PROVISIONS

**Fees**

**70.** (1) The Authority may prescribe fees in respect of any services provided by the Authority under this Act and in respect of any fee required to be prescribed under this Act.

(2) A Labuan foundation shall pay such annual fee as may be prescribed, on or before each anniversary of the date of its registration.

(3) If a Labuan foundation fails to pay the annual fee referred to in subsection (2) on or before the expiration of a period of six months from the annual fee payment date, there shall be payable in addition to the annual fee an amount equivalent to fifty per cent of the annual fee.

(4) Any fees collected by or paid to the Authority under this Act shall form part of and credited into the Fund established under section 29 of the Labuan Financial Services Authority Act 1996.

**Secrecy**

**71.** (1) No person who has by any means access to any record, book, register, correspondence, document, material or information, relating to the business and affairs of the Labuan foundation, shall give, divulge, reveal, publish or otherwise disclose to any person such record, book, register, correspondence, document, material or information.

(2) All proceedings, other than criminal proceedings, relating to any Labuan foundation commenced in any Court under the provisions of this Act and any appeal from such proceedings, shall, unless the Court otherwise orders, be heard *in camera* and no details of the proceedings shall be published by any person without leave of the Court.

(3) The provisions of subsection (1) shall not apply where disclosure—

- (a) is required pursuant to an order by any court of competent jurisdiction in any proceedings, where the order has been obtained by an *ex-parte* application, the Labuan foundation may notify the person affected by the order and upon receipt of such notification, the affected person may file the necessary application to the court to contest the order or otherwise comply with the order accordingly;
- (b) is required for the purpose of the performance of the supervisory function of the Authority as may be provided for under the Labuan Financial Services Authority Act 1996;
- (c) is pursuant to section 22 of the Labuan Business Activity Tax Act 1990; or
- (d) is with the consent of the Labuan foundation.

(4) Subject to subsection (3), any person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(5) Nothing in this section shall prevent any Court from exercising its discretion to require any person to produce any document or to give any evidence in any proceedings before the Court which is relevant to those proceedings.

### **Right to information**

**72.** (1) Subject to the other provisions of this section, the officer or secretary of a Labuan foundation shall, on receipt of a request, provide accurate information as to the state and amount of the property of the Labuan foundation and the administration of the Labuan foundation—

- (a) to the Court;
- (b) to the Authority pursuant to the provisions of the Labuan Financial Services Authority Act 1996; and
- (c) to the founder, council member, supervisory person, or beneficiary, unless the officer has reason to believe that such person is making the request under duress.

(2) Notwithstanding the terms of the constituent document, the Court may, on an application made to the Court, restrict the rights of the founder, council member, supervisory person, beneficiary or any other person to information relating to the Labuan foundation or may make such other order as it thinks fit.

(3) Where any founder, council member, supervisory person, officer, secretary, or beneficiary is required by or under this Act to submit, produce or provide to the Authority any information, statistic, return or document, the Authority may specify that it shall be submitted, produced or provided in such form and manner and within such period or at such intervals or times, not inconsistent with any provision of this Act or the regulations made under this Act, as the Authority may set out in the specification, and the founder, council member, supervisory person, officer, secretary, or beneficiary shall not submit, produce or provide as true and accurate any information, statistic, return or document which he knows, or has reason to believe, to be false, inaccurate or misleading.

(4) Any person who fails to comply with subsection (3) commits an offence and shall, upon conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

### **Confidentiality**

**73.** (1) Except as is required, permitted or otherwise provided by this Act, the Court, or the constituent document of the Labuan foundation or as may be necessary for the purposes of the Labuan foundation, and notwithstanding the provisions of any other law—

- (a) every council member, supervisory person, officer, or secretary of a Labuan foundation shall at all times regard and deal with all documents and information relating to a Labuan foundation as secret and confidential; and
- (b) no council member, supervisory person, officer, or secretary of a Labuan foundation shall at any time be required to produce to or before any Court, tribunal, board, committee of inquiry or any other authority or to divulge to any such authority any matter or thing coming to his notice or being in his possession for any reason, where such matter or thing relates to a Labuan foundation.

(2) Any council member, supervisory person, officer, or secretary of a Labuan foundation who, except as is required, permitted or otherwise provided by this Act, the Court, or the constituent document, at any time communicates or attempts to communicate any matter or thing relating to a Labuan foundation to any person commits an offence and shall, upon conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

### **Prosecution**

**74.** No prosecution in respect of any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

### **Offences relating to the documents of Labuan foundation**

**75.** Any person who makes a statement in any document, material, evidence or information which is required to be kept or which is required to be served on the Authority under this Act that is false or misleading with respect to any material fact or that omits to state any material fact commits an offence and shall, upon conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

### **Offences by body corporate**

**76.** (1) If a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director or officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence

unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

- (i) that the offence was committed without his knowledge, consent or connivance; and
- (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—

- (a) by that person's employee in the course of his employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

### **Power to compound**

**77.** (1) The Authority may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Authority of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in his written offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or such extended time as the Authority may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any document or thing seized in connection with the offence may be released or forfeited by the Authority, subject to such terms and conditions as he deems fit to impose in accordance with the conditions of the compound.

(4) All sums of money received by the Authority under this section shall be paid into the Federal Consolidated Fund.

### **Power to impose administrative penalties**

**78.** (1) The Authority may impose administrative penalties on any person who fails to comply with any provisions of this Act.

(2) The Authority shall, before making a decision to impose any administrative penalty on a person, serve on him a written notice giving him an opportunity to show cause why the administrative penalty should not be imposed on him.

(3) If a satisfactory explanation is not received within such period as may be specified in the written notice, the Authority may impose an administrative penalty in an amount not exceeding five hundred ringgit for each day of non-compliance and such amount shall not in total exceed the sum of ten thousand ringgit.

(4) Where a person has failed to pay an administrative penalty imposed by the Authority under subsection (3), the penalty imposed by the Authority may be sued for and recovered as a debt due to the Authority.

### **General power to prescribe and specify**

**79.** Where anything is required to be prescribed or specified under this Act and no mode is mentioned, it shall be prescribed or specified, as the case may be, in writing, and different provisions may be made for different persons, classes, categories or descriptions of persons.

### **Power of Minister to make regulations**

**80.** (1) The Minister may, on the recommendation of the Authority, make regulations as may be necessary or expedient for the better carrying out of the provisions of this Act.

(2) The regulations made under this Act may provide for any act or omission in contravention of the regulations to be an offence and may provide for penalties of a fine not exceeding twenty five thousand ringgit.

### **Power of Minister to amend Schedule**

**81.** (1) The Minister may, on the recommendation of the Authority, from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend the Schedule and upon such publication, such Schedule as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

(2) The Minister may, in varying, deleting or substituting any of the Schedules referred to in subsection (1), impose such terms and conditions as he thinks necessary.

### **Power of Minister to exempt**

**82.** The Minister may, on the recommendation of the Authority, exempt any Labuan foundation from any of the provisions of this Act and may, in granting such exemption, impose such terms and conditions as the Minister thinks fit.

### **Procedure where none laid down**

**83.** In the event that any act or step is required or permitted to be done or taken under this Act and no form is prescribed or procedure laid down either in this Act or the regulations made under this Act, application may be made to the Authority for directions as to the manner in which the same may be done or taken, and any act or step done or taken in accordance with its directions shall be a valid performance of such act or step.

**Application of the Labuan Financial Services Authority Act 1996**

**84.** In the event of any conflict or inconsistency between the provisions of this Act and the Labuan Financial Services Authority Act 1996, the provisions of the Labuan Financial Services Authority Act 1996 shall prevail.

## FIRST SCHEDULE

[Subsection 8(2)]

## Particulars of Charter

1. Name of the Labuan foundation
2. Name and address of the founder or where the founder is a body corporate or corporation, the place where it is incorporated and its registered or principal office or place of business
3. Purpose or object of the Labuan foundation
4. Identity of the beneficiary or the identification of a body by which the beneficiary is to be ascertained, or a statement that the Labuan foundation is to benefit the public at large
5. Duration, if any, for which the Labuan foundation is to exist or, if the Labuan foundation is to exist for an indefinite duration, a statement to that effect
6. Name and address in Labuan of the secretary of the Labuan foundation which shall be the address of the registered office of the Labuan foundation in accordance with section 44

## SECOND SCHEDULE

[Subsection 8(3)]

## Provisions of Charter

1. Reservation of rights or powers of the founder
2. Amendment of charter
3. Requiring or permitting the making of articles
4. Addition or removal of beneficiaries

5. Appointment of a council, council member or supervisory person either *in lieu* of or in addition to the council, and their roles and powers
6. Regulation of any supervisory person of the Labuan foundation
7. Appointment, removal, tenure of office and representative authority of officers of the Labuan foundation
8. Appointment, removal and tenure of office of the approved auditor of the Labuan foundation at the discretion of the council
9. Revocation of the charter by the founder and the return of the property to the founder

### THIRD SCHEDULE

[Subsection 10(1)]

#### Articles of Labuan Foundation

1. Distribution of property to beneficiaries
2. Identification of any initial beneficiaries or any beneficiaries to be designated at a later date
3. The minimum value of the property of the Labuan foundation in the absence of which no distribution to any beneficiary may be made
4. Identification of the remaining beneficiary upon the dissolution of the Labuan foundation

### FOURTH SCHEDULE

[Subsection 14(1)]

#### Documents for Registration of Labuan Foundation

1. A statement signed by the secretary of the Labuan foundation containing the following particulars extracted from the charter:
  - (a) the name of the Labuan foundation
  - (b) the date of the charter and the date of any amendment made to the charter
  - (c) the purpose and objects of the Labuan foundation
  - (d) the date of the articles of the Labuan foundation, if any, and the date of any amendment made to the articles
  - (e) the name and address of the secretary of the Labuan foundation

- (f) the address of the registered office of the Labuan foundation
  - (g) the duration for which the Labuan foundation is established
  - (h) an original copy of the charter of the Labuan foundation
2. A list containing the names and addresses of the officers of the Labuan foundation
  3. A statutory declaration by the secretary of the Labuan foundation of compliance with all relevant requirements of this Act

#### FIFTH SCHEDULE

[Sections 26 and 36]

#### Council Meetings and Meetings of Officers

##### **Council meetings and meetings of officers**

1. (1) Subject to any limitations in the constituent document, the council members and officers of a Labuan foundation may convene meetings in such manner and at such times and places within or outside Labuan as may be necessary.

(2) Subject to any limitations in the constituent document, a council meeting and a meeting of officers of a Labuan foundation may be held at more than one venue using any technology that allows all council members and officers a reasonable opportunity to be heard.

##### **Council meetings**

2. (1) The following provisions shall have effect in so far as the constituent document of a Labuan foundation do not make other provision in respect of a council meeting:

- (a) a council meeting may be called by seven days notice in writing;
- (b) a notice of the council meeting shall be served on every founder and council member in writing in person, by post, by facsimile or electronically at the address last supplied to the Labuan foundation for the purpose of serving any notice;
- (c) any council member may call a meeting;
- (d) a quorum shall be at least two council members;
- (e) the council members present shall elect a chairman amongst themselves; and
- (f) subject to the provisions of this Act, the council members shall pass resolutions, by a simple majority of the votes cast by the council members, each council member having one vote and the chairman having a casting vote in case of an equality of votes.

(2) All minutes of the council meetings shall be recorded and kept in the registered office.

(3) Any such minute as provided for in subsection (2), if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(4) Where minutes of council meetings have been made in accordance with the provisions of this section, the meeting shall be deemed to have been duly held and convened, until the contrary is proven.

(5) This paragraph shall not apply in the case of a single council member, and any reference to minutes of council meeting shall be evidence of a decision or direction of the council in relation to any matter pertaining to any of the affairs of the Labuan foundation.

### **Annual meeting of officers and meeting of officers**

3. (1) The Labuan foundation shall, in each year, hold at least one meeting of the officers as its annual meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling for the meeting.

(2) The founder, and the council members or supervisory person shall be entitled—

- (a) to be notified of the meeting;
- (b) to table business to be considered at the meeting; and
- (c) to attend and be heard at the meeting, but shall not be entitled to vote at such meeting.

### **Notice of meeting of officers**

4. A meeting of officers may be called by seven days notice in writing and the notice of meeting shall be served on every founder, council member or supervisory person, officer, by post, by facsimile or electronically at the address last supplied to the Labuan foundation for the purpose of serving any notice.

### **Requisition of meeting**

5. (1) The officer of a Labuan foundation, notwithstanding anything in the constituent documents of the Labuan foundation, shall, on the requisition of the founder, council member or supervisory person forthwith proceed to convene a meeting of the officers.

(2) The requisition shall—

- (a) state the objects of the meeting;
- (b) be signed by the person making the requisition; and
- (c) be deposited at the registered address of the Labuan foundation.

(3) If the officers do not, within twenty one days from the date of the requisition, convene a meeting, the person making the requisition may convene the meeting, provided that the said meeting is held within sixty days from the date of requisition.

(4) A meeting convened under this paragraph by the person making the requisition shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the officers.

(5) Any reasonable expenses incurred by the person making the requisition by reason of the failure of the officers to convene a meeting shall be repaid to the person making the requisition by the Labuan foundation, and any sum so repaid shall be retained by the Labuan foundation out of any sums due or to become due from the Labuan foundation by way of fees or other remuneration in respect of service to such of the officers as were in default.

### **Quorum**

6. (1) The quorum for a meeting of officers shall be that fixed in the constituent document of the Labuan foundation.

(2) Where no quorum is fixed in the constituent document, a meeting of officers shall be properly constituted for all purposes if at the commencement of the meeting one half of the total number of officers are present in person or by alternate.

### **Chairman of meeting of officers**

7. The officers present at a meeting shall elect a chairman from amongst themselves.

### **Resolution**

8. The officers at a meeting of officers shall pass resolutions, subject to the requirements of this Act, by a simple majority of the votes cast by the officers, each officer having one vote and the chairman having a casting vote in case of an equality of votes.

### **Action by consent of officers in writing**

9. Subject to any limitations in the constituent document, an action that may be taken by the officers at a meeting of officers may also be taken by a resolution of all officers consented to in writing, or by telex, telegram, facsimile, cable or other written electronic communication, without the need for any notice.

**Alternates for officers**

10. (1) Subject to any limitations in the constituent document, an officer may by a written instrument appoint an alternate who need not be an officer.

(2) An alternate for an officer appointed under subparagraph (1) is entitled to attend meetings in the absence of the officer who appointed him and to vote or consent in the place of the officer.

**Minutes of meetings**

11. (1) Each Labuan foundation shall cause minutes of all meetings of officers to be entered in a book kept for that purpose.

(2) The minutes made of meetings of officers, if duly signed, shall be evidence of the proceedings and shall be admissible as *prima facie* evidence of the facts stated in the minutes without further proof.

(3) Where minutes of meetings of officers have been made in accordance with the provisions of this paragraph, the meeting shall be deemed to have been duly held and convened, and all proceedings which took place at that meeting to have duly taken place until the contrary is proven.

