

Key Changes to Labuan IBFC's Leasing Regulations

22 March 2018

Outline

❶ Guiding Principles

❷ Areas of Revision:

- (a) New Policies: OECD's Forum on Harmful Tax Practices (FHTP)
Compliance
- (b) Amended Policies: Enhanced Operational Requirements

Guiding Principles... *addressing concerns for harmful tax practices under OECD's FHTP*

FHTP concerns on Labuan Leasing

01

MYR transaction restrictions

02

Implicit prohibition from **dealing with domestic**

03

No **substantial activities** requirement

Revised Policies

- ✓ **Remove currency restriction** for dealings with residents
- ✓ **Harmonise** requirements between non-residents & residents leasing:
 - ⇒ **Impose annual fee**
 - ⇒ **Prior approval** for subsequent leasing transactions
 - ⇒ **Impose fee for approved subsequent leasing transaction(s)**
- ✓ **Impose minimum** substance requirements

Areas of Revisions...*changes needed to conform with international standards & best practices*

Revised Guidelines for Labuan Leasing Business (issued on 29 December 2017)

A



**NEW
POLICIES**

FHTP Compliance Requirements

- Operational office
- Substantial activities
- Employment
- Annual business spending

B



**AMENDED
POLICIES**

Enhanced Operational Requirements

- Harmonised requirements (R & NR dealings)
- Definition of leased assets
- Stamping of leasing agreement(s)
- Effective date

A

New Policies... *minimum substance requirements to spur real economic spinoffs*

Past Policies

Revised Policies

1

Operational Office

Maintain a registered office

- To establish a physical business presence in Labuan island.
- Secretarial office (*i.e. address of appointed Labuan trust company*) is not deemed as having an operational office in Labuan.

2

Substantial Activities

Nil

- Core income generating activities to be conducted out of Labuan operational office.

Examples:

- ⇒ *identify/acquire assets, negotiate terms, solicit lessees, management/financing of leased assets; or*
- ⇒ *signing of leasing agreements, strategic business discussions and decision making, Board meetings etc.*
- Labuan FSA's prior approval required for any outsourcing arrangements.

Past Policies

Revised Policies

3

Employment

Nil

- Adequate number of employee(s) to commensurate with business operations.
- The employee(s) must be a dedicated staff to serve the Labuan leasing company.

4

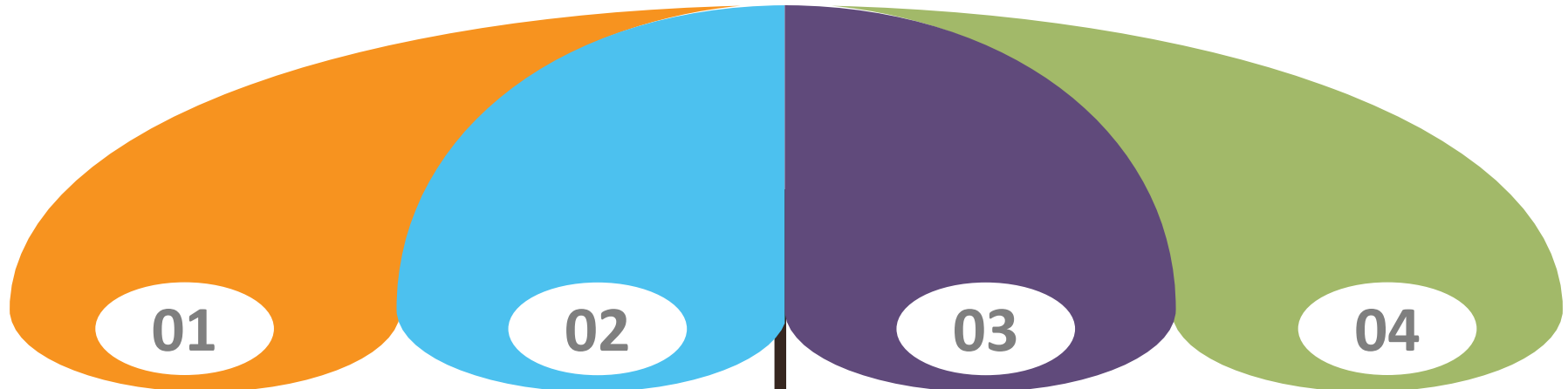
Annual Business Spending

Nil

- Expenses incurred in Labuan / Malaysia to support the operations of the leasing business.
- May include office rentals, defraying payments (*e.g. staff salary, service providers' services etc*) and statutory fee payments.

SHARED OFFICE IN LABUAN

Allowed for leasing companies within the same group (i.e. related companies)



Related companies

- ✓ Holding company of the leasing companies;
- ✓ Another subsidiary established by the same holding company;
- ✓ Subsidiary/branch of the leasing company

Employees

- ✓ Same employee can serve all the related party companies

Business activities

- ✓ Business activities undertaken by the related companies can be housed under one office

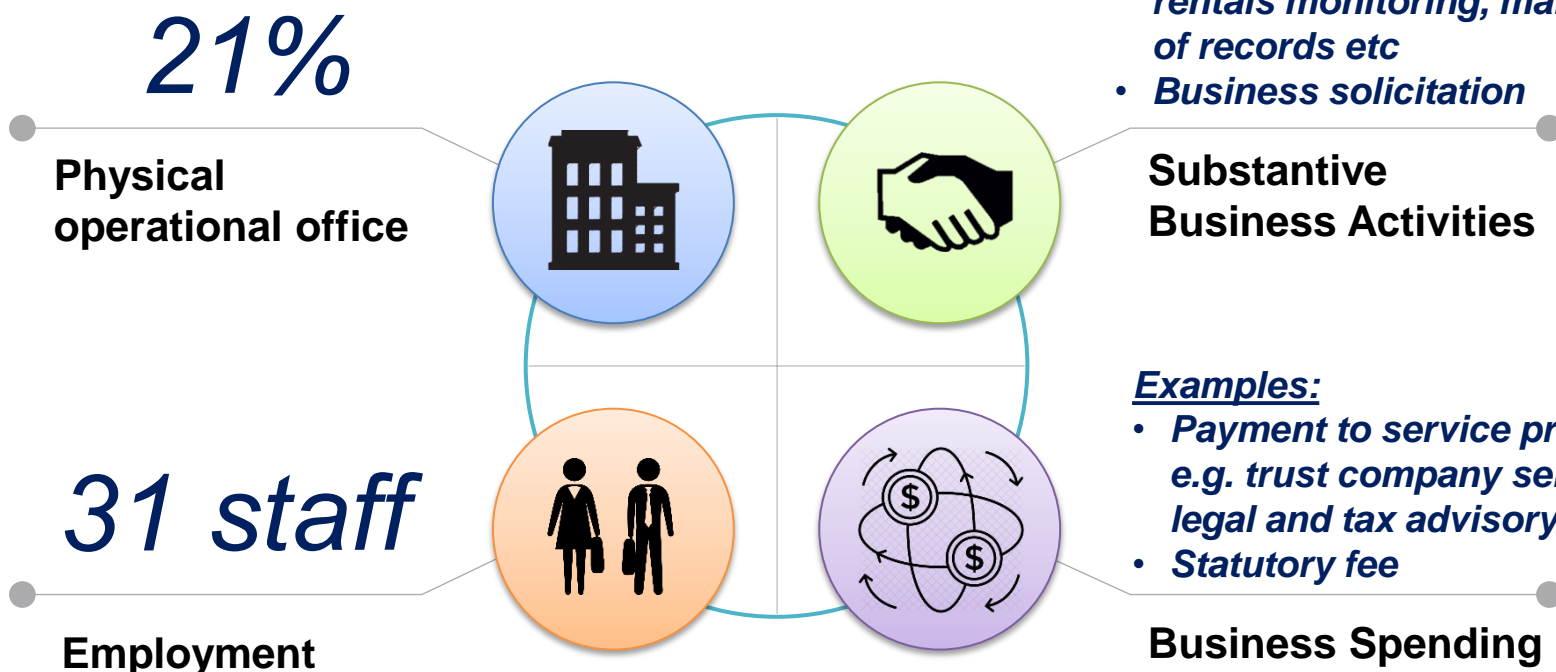
Accounting and business records

- ✓ Proper segregation of records for each leasing companies

Total of 380 Labuan leasing licensees (2017)
 ⇒ O&G (63%), Aviation (28%), Others (9%)

Examples:

- *Board meetings*
- *Strategic business discussion*
- *Management of leases – e.g. rentals monitoring, maintenance of records etc*
- *Business solicitation*



Examples:

- *Payment to service providers – e.g. trust company services, legal and tax advisory etc*
- *Statutory fee*

Past Policies

Revised Policies

1

Harmonised Requirements

Annual licence fee and subsequent transaction fee are only applicable for resident dealing

- All dealings with resident & non-resident are subjected to annual licence fee and subsequent transaction(s) fee.

2

Definition of Assets

Outright definition from legislation

Added new definition of assets to be leased:

- Big ticket items: *high value assets used for O&G, aviation, shipping and other sectors:*
 - ⇒ *oil rigs, private and commercial aircrafts, tugboats and etc.*
- Specialised assets: assets intended for pecuniary or specific purpose, e.g a state-of-the-art technology that is not available in Malaysia or assets with supply shortage
 - ⇒ *submarine or aviation simulators, hyperbaric diving chamber, seabed sonar mapping devices and etc.*

B Amended Policies... *clarification on operational requirements*

...CONT'D

Past Policies

Revised Policies

3 **Agreement Stamping**
Stamping at any IRBM branch in Malaysia

- To be stamped at the IRBM, Labuan branch only

4 **Effective Date**

N/A

- All existing Labuan leasing companies (including those without any new leasing transactions and dormant companies) shall comply with the revised Guidelines by 1 January 2018.
- One-year transition period for substance requirements for existing and new Labuan leasing companies by 1 January 2019.
- All approvals granted prior to the revised guidelines remain valid.



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THANK YOU

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