

FREQUENTLY-ASKED QUESTIONS

GUIDELINES ON BENEFICIAL OWNERSHIP FOR LABUAN ENTITIES

A. IDENTIFICATION OF BENEFICIAL OWNERSHIP

1. What is the rationale behind the comprehensive approach adopted by the the Authority in identifying beneficial owner?

The Authority adopts a more prudent and comprehensive approach in identifying Labuan entities' beneficial owners (BOs). This approach meets the FATF concept of ownership and control of BO.

2. Company Commission of Malaysia has an ownership threshold of 20% while Labuan FSA provides a 25% threshold. If a Labuan entity is a part of a domestic group, which threshold will be applicable?

This will depend on the decision at the group level. Nonetheless, by adopting the domestic threshold, the Labuan entity would be deemed in compliance with the Labuan's BO Guidelines.

B. DUTIES OF A LABUAN ENTITY AND A BENEFICIAL OWNER

3. Who should determine the beneficial owner(s) of Labuan entity?

Labuan entity is obligated to comply with the Guidelines requirements. In this regard, the entity must appoint an authorised person of whom shall be responsible in identifying and compiling the relevant information to be shared with its Labuan Trust Company as its Authorised Agent.

4. For interim measures as provided under paragraph 6.8 of the Guidelines, can the senior management be listed permanently in the register of beneficial owners?

No. Interim measures are only used when no natural person can be identified. The entity must continue taking reasonable steps to determine the actual BO and update the register once that person is identified.

5. What should a Labuan entity do if no BO is identified through ownership or entity-level control, and finds that a position in the public office exercises control?

If no BO is identified through ownership or entity-level control, the Labuan entity should assess whether control rests with a public office. Where it is verified that a person holding a public office exercises such control, that position may be declared as the BO. The Labuan entity must maintain proper documentation and ensure that BO information remains accurate and up-to-date through periodic reviews and verification and demonstrate that the position provides the control.

C. DUTIES OF AN AUTHORISED AGENT

6. Who does the authorised agent refer to?

The authorised agent refer to the Labuan trust company that provides secretarial services to Labuan entities in carrying out administrative or statutory responsibilities. This includes acting as the resident secretary for Labuan companies and Labuan protected cell companies, an officer for foreign Labuan companies, the secretary for Labuan foundations, the trustee for Labuan trusts, or the appointed trust company for Labuan partnerships.

7. If the Labuan entity is in the process of winding up/liquidation, how does it comply with the guidelines requirements?

Once the Labuan entity enters a winding-up/liquidation process, the entity is no longer subjected to the Guidelines. However, if the winding-up process is cancelled or reversed (reinstated), the Labuan entity will again be subjected to the Guidelines.

D. OTHERS

8. What does the Financial Action Task Force (FATF) Recommendations 24 and 25 entail for Labuan entities?

Labuan entities are obligated to keep and maintain adequate, accurate and up-to-date information on beneficial ownership and control that can be obtained or accessed in a timely manner by law enforcement agencies.

9. How does FATF define beneficial owner for legal persons?

The BO concept under FATF is based on the principle of ownership and control:

- Ownership means the natural person who ultimately owns the legal person; and
- Control refers to the ability of making decision or influence decision-making process of the legal person and imposed those decisions.

10. If the Labuan entity is a public listed company will it be exempted from the Guidelines?

No, the Guidelines is applicable to all Labuan entities.