



LAWS OF MALAYSIA

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Act 545

LABUAN OFFSHORE FINANCIAL SERVICES AUTHORITY ACT 1996

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**LABUAN OFFSHORE FINANCIAL SERVICES
AUTHORITY ACT 1996**

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ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

THE AUTHORITY

3. The Authority and its objectives
4. Functions and powers of the Authority
5. Membership of the Authority
6. Tenure of office
7. Resignation and revocation
8. Vacation of office
9. Power of the Minister to give directions and require information
10. Authority to determine its own procedure
11. Authority may invite others to meetings
12. Remuneration or allowance
13. Common seal
14. Delegation of Authority's function or powers
15. Authority may establish committees
16. Minutes
17. Disclosure of interest
18. Appointment of officers and servants of the Authority

Section

- 18A. Establishment of staff welfare fund
- 19. Power to grant loans and make advances to its officers and servants
- 20. Disciplinary committees
- 21. Appeal against decision of disciplinary committee
- 22. Power to make disciplinary regulations
- 23. Imposition of surcharge
- 24. Notification of surcharge
- 25. Withdrawal of surcharge
- 26. Recovery of surcharge
- 27. Composition of the Authority in special cases
- 28. Public servants

PART IIA

SUBMISSION AND PRESERVATION OF INFORMATION

- 28A. Interpretation in relation to Part IIA
- 28B. Submission of information
- 28C. Examination
- 28D. Appointment of investigating officer, powers, functions and duties

PART III

FINANCE

- 29. The Fund
- 30. Expenditure to be charged on the Fund
- 31. Conservation of Fund
- 32. Levies
- 32A. Power to impose and collect fee
- 33. Accounts and reports
- 34. Power to borrow
- 35. Investment

PART IV

GENERAL

Section

36. Indemnity

36A. The Authority to appoint officer or employee to appear in court on behalf of the Authority

36B. Compounding of offences

36C. Liability of director, officer, controller, *etc.*

37. Power to make regulations

38. Power of the Minister to make modifications

39. Savings and transitional

LAWS OF MALAYSIA

Act 545

LABUAN OFFSHORE FINANCIAL SERVICES AUTHORITY ACT 1996

An Act to establish the Labuan Offshore Financial Services Authority and to provide for its functions and powers, and for matters connected therewith.

[15 February 1996, P.U. (B) 66/1996]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Labuan Offshore Financial Services Authority Act 1996 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint; and the Minister may appoint different dates for the coming into force of different provisions of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“accounting officer” includes every officer and servant who is charged with the duty of collecting, receiving, or accounting for, or who in fact collects, receives or accounts for, any money of the Fund, or who is charged with the receipt, custody or disposal of, or the accounting for, any store and property of the Authority or who in fact receives, holds or disposes of such store and property;

“Authority” means the Labuan Offshore Financial Services Authority established under section 3;

“Bank” means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 [*Act 519*];

“Chairman” means the Chairman appointed under section 5;

“committee” means any committee established by the Authority under subsection 15(1);

“dependant”, in relation to an officer or servant of the Authority, means the spouse, parent, children, including adopted children or step-children, or such other person as may be specified by the Authority with the consent of the Minister from time to time by notice published in the *Gazette*;

“Fund” means the Fund established under subsection 29(1);

“Labuan” means the Kawasan Lembaga Pembangunan Labuan defined in section 2 of the Lembaga Pembangunan Labuan Act 1992 [*Act 480*];

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

“offshore financial institution” means any person providing offshore financial services;

“offshore financial services” means any service provided by—

- (a) an offshore company or foreign offshore company registered under the Offshore Companies Act 1990 [*Act 441*];
- (b) any domestic company or foreign company registered under the Labuan Trust Companies Act 1990 [*Act 442*];
- (c) any person licensed or registered, as the case may be, under the Offshore Banking Act 1990 [*Act 443*], the Offshore Insurance Act 1990 [*Act 444*], or any other law relating to offshore financial services;
- (d) an offshore limited partnership established under the Labuan Offshore Limited Partnerships Act 1997 [*Act 565*];
- (e) a fund established or a fund manager licensed or a fund administrator registered under the Labuan Offshore Securities Industry Act 1998 [*Act 579*];
- (f) any person under any law as may be prescribed by the Minister in the *Gazette*, on the recommendation of the Authority;

“Registrar” means the Registrar of Companies under the Companies Act 1965 [Act 125], and includes any Regional Registrar, Deputy Registrar or Assistant Registrar of Companies.

(2) The expressions “domestic company”, “foreign company”, “foreign offshore company” and “offshore company” have the meanings respectively assigned to them in the Offshore Companies Act 1990.

PART II

THE AUTHORITY

The Authority and its objectives

3. (1) There is hereby established a body corporate by the name of “Labuan Offshore Financial Services Authority” with perpetual succession and a common seal, which may sue and be sued in its name and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Authority upon such terms as it deems fit.

(2) The objectives of the Authority are—

- (a) to promote and develop Labuan as a centre for offshore financial services;
- (b) to develop national objectives, policies and priorities for the orderly development and administration of offshore financial services in Labuan, and to make recommendations to the Minister in respect thereof.

Functions and powers of the Authority

4. (1) The functions of the Authority shall be—

- (a) to administer, enforce, carry out and give effect to the provisions of—
 - (i) the Offshore Companies Act 1990;
 - (ii) the Labuan Trust Companies Act 1990;

- (iii) the Offshore Banking Act 1990;
 - (iv) the Offshore Insurance Act 1990; and
 - (v) any other law relating to offshore financial services in Labuan;
- (b) to exercise, discharge and perform such powers, duties and functions under the laws referred to in paragraph (a);
 - (c) to ensure that offshore financial transactions are conducted in accordance with laws relating to offshore financial services and in accordance with established norms of good and honourable conduct, and to preserve and maintain the good repute of Labuan as a centre for offshore financial services;
 - (d) to carry out research and commission studies on offshore financial services in Labuan;
 - (e) to make recommendations for the creation and improvement of any facility likely to enhance the attraction of Labuan as a centre for offshore financial services;
 - (f) to co-operate with offshore financial institutions and professional and industry associations in Labuan to promote and provide offshore financial services and to foster high standards of offshore financial services in Labuan;
 - (g) to advise the Minister generally on matters relating to offshore financial services in Labuan.

(2) The Authority shall have power to do all things expedient or reasonably necessary for, or incidental to, the performance of its functions and, in particular, but without prejudice to the generality of the foregoing—

- (a) to appoint such agents as it deems fit for the purpose of performing its functions;
- (b) to impose fees or any other charges it deems fit for giving effect to any of its functions or powers;
- (c) to do such other things as it deems fit to enable it to carry out its functions and powers effectively.

(3) For the avoidance of doubt it is hereby declared that the Authority shall also have the following functions, that is—

- (a) to license or register persons carrying on offshore financial services in Labuan;
- (b) to regulate and supervise the conduct of offshore financial services in Labuan.

(4) The Authority may, with the written approval of the Minister, establish or participate in any body corporate—

- (a) for the purpose of promoting research and training in relation to offshore financial services;
- (b) for the purpose of enhancing the development of offshore financial services; or
- (c) if such establishment or participation is expedient or reasonably necessary for, or incidental to, the performance of the Authority's functions provided under this Act.

(5) Notwithstanding any provision to the contrary in any other law relating to offshore financial services, when the Authority is satisfied that it is necessary to do so for the purpose of giving effect to the objectives of the Authority, the Authority may issue directions to an offshore financial institution in respect of all or any of the following matters:

- (a) the policy to be followed by the offshore financial institution relating to the conduct of the institution's business in Labuan;
- (b) the supervision and regulation of the offshore financial institution pursuant to the law relating to offshore financial services;
- (c) the monetary policy to be given effect to by the offshore financial institution.

(6) Any offshore financial institution who fails to comply with any direction issued under subsection (5) shall be guilty of an offence and shall be liable, on conviction—

- (a) in the case of an individual person—
 - (i) to a fine not exceeding two hundred and fifty thousand ringgit; and

- (ii) for a continuing offence, to a fine not exceeding two thousand and five hundred ringgit for every day during which the offence continues after conviction; and
- (b) in the case of a body corporate or partnership—
 - (i) to a fine not exceeding five hundred thousand ringgit; and
 - (ii) for a continuing offence, to a fine not exceeding five thousand ringgit for every day during which the offence continues after conviction.

Membership of the Authority

5. (1) The Authority shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman;
- (b) the Director General; and
- (c) not less than three and not more than seven other persons, two of whom shall be from the public sector.

(2) The members appointed under paragraph (1)(c) shall be from amongst persons who possess relevant experience in financial, commercial or legal matters.

(3) The Director General shall be the chief executive officer of the Authority and shall be entrusted with the day-to-day administration of the Authority.

(4) In the event of the Director General being absent or unable to act due to illness or any other cause, the Chairman shall appoint any member of the Authority to carry out the functions of the Director General.

Tenure of office

6. Subject to such conditions as may be specified in his instrument of appointment, a member of the Authority shall, unless he sooner resigns or vacates his office or his appointment is sooner revoked, hold office for a term not exceeding three years and is eligible for reappointment.

Resignation and revocation

7. (1) The appointment of any member may at any time be revoked by the Minister.

(2) A member may at any time resign his office by a written notice addressed to the Minister.

Vacation of office

8. The office of a member of the Authority shall be vacated—

- (a) if he dies;
- (b) if he has been convicted of any offence under any law;
- (c) if he becomes a bankrupt;
- (d) if he is of unsound mind or is otherwise incapable of discharging his duties; or
- (e) if he absents himself from three consecutive meetings of the Authority without leave of the Chairman or in the case of the Chairman, without leave of the Minister.

Power of the Minister to give directions and require information

9. (1) The Minister may, from time to time, give to the Authority directions of a general character not inconsistent with the provisions of this Act and such directions shall be binding on the Authority.

(2) The Minister may, from time to time, require the Authority to furnish the Minister with such returns, accounts and information with respect to the performance of any of its functions under this Act and any other law relating to offshore financial services and the Authority shall comply with such requirement.

Authority to determine its own procedure

10. Subject to this Act and the approval of the Minister, the Authority shall determine its own procedure.

Authority may invite others to meetings

11. The Authority may invite any person to attend any meeting or deliberation of the Authority for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

Remuneration or allowance

12. Members of the Authority or any person invited to attend any meeting or deliberation of the Authority under section 11 may be paid such remuneration or allowance as the Minister may determine.

Common seal

13. (1) The Authority shall have a common seal and such seal may from time to time be broken, changed, altered and made anew as the Authority thinks fit.

(2) Until a seal is provided by the Authority, a stamp bearing the words “Labuan Offshore Financial Services Authority” may be used and shall be deemed to be the common seal of the Authority.

(3) The common seal shall be kept in the custody of the Chairman or such other person as may be authorized by the Authority, and shall be authenticated by either the Chairman or such authorised person or by any officer authorized by the Chairman in writing; and all deeds, documents and other instruments purporting to be sealed with the said seal, authenticated as aforesaid, shall, until the contrary is proven, be deemed to have been validly executed:

Provided that any document or instrument which, if executed by a person not being a body corporate, would not be required to be under seal may in like manner be executed by the Authority, and any such document or instrument may be executed on behalf of the Authority by any officer or servant of the Authority generally or specially authorized by the Authority in that behalf.

(4) The common seal of the Authority shall be taken judicial notice of for all official purposes.

Delegation of Authority’s function or powers

14. (1) The Authority may delegate any of its functions or powers to—

- (a) any member of the Authority;
- (b) any committee established by the Authority; or
- (c) any officer or servant of the Authority.

(2) A delegation under this section shall not preclude the Authority itself from performing or exercising at any time any of the functions or powers so delegated.

Authority may establish committees

15. (1) The Authority may establish such committees as it considers necessary or expedient to assist it in the performance of its functions under this Act.

(2) The Authority may appoint any person to be a member of any committee established under subsection (1).

(3) A committee established under this section may elect any of its members to be chairman and may regulate its own procedure and, in the exercise of its powers under this subsection, such committee shall be subject to and act in accordance with any direction given to the committee by the Authority.

(4) Meetings of a committee established under this section shall be held at such times and places as the chairman of the committee may, subject to subsection (3), determine.

(5) A committee may invite any person, for the purpose of advising it on any matter under discussion, to attend any meeting of the committee but the person so invited shall not be entitled to vote at any such meeting.

(6) Members of a committee or any person invited to attend any meeting of a committee may be paid such allowances and other expenses as the Authority may determine.

(7) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for reappointment.

(8) The Authority may revoke the appointment of any member of a committee without assigning any reason therefor.

(9) A member of a committee may at any time resign by giving notice in writing to the Chairman of the Authority.

Minutes

16. (1) The Authority or a committee shall cause minutes of all their meetings to be maintained and kept in proper form.

(2) Any minutes made of meetings of the Authority or a committee, if duly signed, shall, in any legal proceedings, be admissible as *prima facie* evidence of the facts stated therein and every meeting of the Authority or a committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

Disclosure of interest

17. (1) Any member of the Authority or a committee who has or acquires, directly or indirectly, by himself, or his spouse or children, or his partner or his agent—

(a) any share or interest in any offshore financial institution;

(b) any share or interest—

(i) in any contract made with the Authority;

(ii) in any work done for the Authority; or

(iii) in any company or firm with which the Authority proposes to enter into a contract in respect of any undertaking; or

(c) any beneficial interest in land proposed to be acquired, purchased, leased or otherwise dealt with by the Authority, which he knows to be affected or is likely to be affected by any project, scheme or enterprise approved or proposed to be approved by the Authority,

shall declare the nature and extent of his share or interest to the Authority or the committee, as the case may be.

(2) Subject to subsection (7), the declaration required to be made by a member under subsection (1) shall be made—

(a) in the case of paragraph (1)(a), at the first meeting of the Authority or committee held after he acquires such share or interest;

(b) in the case of paragraphs (1)(b) and (c)—

- (i) at a meeting of the Authority or committee at which any question relating to the contract, acquisition, purchase, lease, dealing, project or scheme referred to in those paragraphs is first taken into consideration;
- (ii) if the member does not have any such share or interest as is referred to in subparagraph (i) at the date of the meeting mentioned in that subparagraph, at the next such meeting held after he acquires such share or interest; or
- (iii) if a member acquires any share or interest in any contract with the Authority after it has been made, at the first meeting held after that member acquires such share or interest.

(3) For the purposes of this section, a general notice given to the other members by a member to the effect that he is a shareholder or director of any specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with or by that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) A notice given under subsection (3) shall be of no effect unless it is given at a meeting of the Authority or the committee, as the case may be, or the member concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the Authority or the committee after it is given.

(5) Every declaration made in pursuance of subsection (1) shall be recorded in the minutes of the meeting at which it was made or read.

(6) No member of the Authority or committee shall—

- (a) take part in any deliberation (except by invitation of the Authority or the committee, as the case may be) on any matter affecting any offshore financial institution in which he has any share or interest, whether or not he has declared his share or interest, or in any decision relating thereto or in any matter incidental thereto; or

- (b) vote upon any resolution or question relating to any contract, acquisition, purchase, lease, dealing, project or scheme in which he has any share or interest, whether or not he has declared his share or interest, or take part in any deliberation (except by invitation of the Authority or the committee, as the case may be) or any decision relating thereto or any matter incidental thereto,

and if he does so—

- (aa) his vote shall not be counted; and
(bb) he shall not be counted in the quorum present at the meeting of such deliberation, resolution or question.

(7) A member who, before his appointment as a member of the Authority or a committee, has already acquired the share or interest referred to in subsection (1) shall declare the nature and extent of his share or interest to the Authority or committee, as the case may be, immediately upon his appointment by a general notice to be given to the Authority or the committee.

(8) Any member of the Authority or a committee who fails to disclose his share or interest as provided under this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Appointment of officers and servants of the Authority

18. (1) The Authority may, from time to time, employ persons who shall be paid such remuneration and allowances and shall hold their employment on such other terms and conditions as the Authority may determine.

(2) The Authority may make arrangements for the payment to its officers and servants and their dependants of such retirement benefits, gratuities or other allowances as it may determine.

Establishment of staff welfare fund

18A. (1) The Authority may, with the written approval of the Minister, out of the funds of the Authority, create and maintain a trust account to be known as the “Labuan Offshore Financial Services Authority Staff Welfare Fund” for the benefits of its officers and employees including their dependants.

(2) The Labuan Offshore Financial Services Authority Staff Welfare Fund shall be utilized for such purposes conducive to the welfare of the officers and employees of the Authority, including their dependants, as may from time to time be provided in trust directions to be issued by the Authority with the approval of the Minister, and such directions may provide for the manner and the procedure for the making of the grant, loans or other payments from such Fund.

Power to grant loans and make advances to its officers and servants

19. The Authority may grant loans and make advances to its officers and servants on such terms and conditions as the Authority may determine.

Disciplinary committees

20. (1) The Authority shall have disciplinary authority over all its officers and servants and shall exercise disciplinary control in respect of all such persons in accordance with this Act and any regulations made under section 22.

(2) For the purposes of this section—

(a) there shall be established a disciplinary committee of the Authority in respect of the Director General consisting of—

(i) the Chairman, who shall be the chairman of the committee; and

(ii) at least two members of the Authority, which shall not include the Director General, as shall be determined among the members themselves; and

(b) the Authority may, by notification in the *Gazette*, establish different disciplinary committees for different categories of officers or servants of the Authority.

(3) The following shall apply to any disciplinary committee established pursuant to paragraph (2)(b):

(a) such committee shall consist of any number of members of the Authority, other than the Chairman of the Authority, or officers of the Authority, or any combination of such members and officers; and

(b) an officer who is a member of a disciplinary committee shall not be lower in rank than any officer or servant over whom the committee of which he is a member has disciplinary authority.

(4) The committee established pursuant to paragraph (2)(b) shall exercise its powers in all matters relating to the discipline of officers and servants placed under its jurisdiction.

(5) In the exercise of its disciplinary functions and powers, a disciplinary committee referred to under subsection (2) shall have the power to take disciplinary action and impose any disciplinary punishment or any combination of two or more disciplinary punishments as may be provided for under any regulations made under section 22.

Appeal against decision of disciplinary committee

21. (1) A decision of the disciplinary committee under paragraph 20(2)(a) shall be appealable to the Minister.

(2) A decision of the disciplinary committee under paragraph 20(2)(b) shall be appealable to the Disciplinary Appeal Board which shall consist of the following members:

(a) the Chairman of the Authority, who shall be the chairman of the Disciplinary Appeal Board and having a casting vote; and

(b) three members of the Authority, not being members of the disciplinary committee whose decision is the subject matter of the appeal, to be appointed by the chairman of the Disciplinary Appeal Board with the approval of the Authority for the purpose of the appeal.

(3) The Minister or the Disciplinary Appeal Board, as the case may be, may confirm, reverse or vary the decision of the disciplinary committee.

(4) When the Disciplinary Appeal Board considers an appeal under subsection (2), a member of the disciplinary committee against whose decision the appeal is made who is also a member of the Authority shall not be present or in any way participate in any proceedings relating to that appeal.

(5) The decision of the Minister or the Disciplinary Appeal Board under subsection (3) shall be final and conclusive.

Power to make disciplinary regulations

22. (1) The Authority may, with the approval of the Minister, make such regulations as it deems necessary or expedient to provide for the discipline of the officers and servants of the Authority.

(2) The disciplinary regulations made under this section—

- (a) may create disciplinary offences;
- (b) may provide for disciplinary punishments as the Authority may deem appropriate, and the punishments may extend to warning, fine, forfeiture of emoluments, a deferment of salary movement, reduction of salary, reduction in rank and dismissal;
- (c) shall provide for an opportunity to the person against whom disciplinary proceedings are taken to make representations against the disciplinary charge laid against him before a decision is arrived at by the disciplinary committee except in the following cases:
 - (i) where an officer or servant of the Authority is dismissed or reduced in rank on the ground of conduct in respect of which a criminal charge has been proved against him;
 - (ii) where the Authority, on the recommendations of the Minister charged with home affairs, is satisfied that in the interest of the security of the Federation or any part thereof it is not expedient to carry out the requirements of this paragraph; or
 - (iii) where there has been made against an officer or servant of the Authority any order of detention, supervision, restricted residence, banishment or deportation, or where there has been imposed on such officer or servant of the Authority any form of restriction or supervision by bond or otherwise, under any law relating to the security of the Federation or any part thereof, prevention of crime, preventive detention, restricted residence, banishment, immigration, or protection of women and girls;

- (d) may provide for the interdiction with reduced emoluments of an officer or servant of the Authority during the pendency of a criminal proceedings against him or disciplinary proceedings against him with the view to his dismissal or reduction in rank; and
- (e) may provide for the suspension without emoluments of an officer or servant of the Authority where the officer or servant has been convicted by any criminal court or where an order of detention or restriction has been made in respect of or imposed on the officer or servant.

Imposition of surcharge

23. (1) A person who is or was in the employment of the Authority may be surcharged if it appears to the Authority that the person—

- (a) has failed to collect money owing to the Authority for the collection of which he is or was responsible;
- (b) is or was responsible for any improper payment of money from the Authority or for any payment of money which is not duly approved;
- (c) is or was responsible, directly or indirectly, for any deficiency in, or for the destruction of, any money, store or other property of the Authority;
- (d) being or having been an accounting officer, fails or has failed to keep proper accounts or records; or
- (e) has failed to make any payment, or is or was responsible for any delay in the payment from the Authority, of money to any person to whom such payment is due under any law or under any contract, agreement or arrangement entered into between that person and the Authority.

(2) The Authority shall, before the person is surcharged, serve on him a written notice calling on him to show cause why he should not be surcharged.

(3) If a satisfactory explanation is not received within fourteen days from the date of service of the aforesaid notice, the Authority may—

- (a) in the case of paragraphs (1)(a), (b) and (c), surcharge against the person a sum not exceeding the amount not collected, or of the improper payment made, or of the deficiency in or destruction of the property caused; and

- (b) in the case of paragraphs (1)(d) and (e), surcharge against the person, such sum as the Authority may think fit.

Notification of surcharge

24. The Authority shall notify the person surcharged in respect of any surcharge made under subsection 23(3).

Withdrawal of surcharge

25. Notwithstanding subsection 23(3) and section 24, the Authority may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made, and the Authority shall forthwith notify the person surcharged of the withdrawal.

Recovery of surcharge

26. The amount of any surcharge made under subsection 23(3) and not withdrawn under section 25 shall be a debt due to the Authority from the person surcharged and may be sued for and recovered in any court at the suit of the Authority and may also, if the Authority so directs, be recovered by deduction—

(a) from the salary of the person surcharged; or

(b) from the pension of the person surcharged,

by equal monthly instalments not exceeding one-fourth of the total monthly salary or pension, as the case may be, of that person.

Composition of the Authority in special cases

27. In any action for surcharge against the Director General, the composition of the Authority for the purposes of sections 23 to 26 shall not include the Director General.

Public servants

28. All members of the Authority or any of its committees or any officer, servant or agent of the Authority while discharging their duties as such member, officer, servant or agent shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

PART IIA

SUBMISSION AND PRESERVATION OF
INFORMATION**Interpretation in relation to Part IIA**

28A. In this Part, unless the context otherwise requires—

“authority” means any authority situated within or outside Malaysia;

“credit facility” has the meaning assigned to it in the Offshore Banking Act 1990;

“criminal offence” means any offence under—

- (a) any law in Malaysia relating to offshore financial services, if such offence is punishable with imprisonment;
- (b) the Penal Code;
- (c) the Dangerous Drugs Act 1952 [Act 234];
- (d) the Dangerous Drugs (Forfeiture of Property) Act 1988 [Act 340]; or
- (e) the Kidnapping Act 1961 [Act 365];

“depositor” means any person who has placed a deposit or deposited a sum of money in a licensed offshore bank;

“domestic law enforcement agency” means the Royal Malaysia Police as defined in the Police Act 1967 [Act 344];

“financial institution” means a licensed offshore bank, licensee, trust company or fund manager;

“fund manager” means a manager as defined in the Labuan Offshore Securities Industry Act 1998;

“home monetary authority” has the meaning assigned to it in the Offshore Banking Act 1990, and includes the Bank;

“home supervisory authority” means any body or authority which is responsible for the supervision of a licensee in any country;

“licensed offshore bank” has the meaning assigned to it in the Offshore Banking Act 1990;

“licensee” has the meaning assigned to it in the Offshore Insurance Act 1990;

“trust company” has the meaning assigned to it in the Labuan Trust Companies Act 1990.

Submission of information

28B. (1) The Authority may, in exercise of its supervisory functions under this Act or under any other law relating to offshore financial services, require any financial institution or any corporation related to any financial institution to submit to the Authority any information which the Authority deems necessary or expedient for the performance of such supervisory functions, but the Authority shall not require any information which discloses the affairs, identity or account of a customer of such institution or corporation.

(2) The Authority may disclose any information submitted under subsection (1)—

- (a) to any person in a consolidated or aggregated manner if it deems fit so to do, but the disclosure shall be confined to such information which does not relate to an individual institution; or
- (b) to the home monetary authority of the institution, and the disclosure may include any information which relates to an individual institution under the supervision of the home monetary authority.

(3) Nothing in subsections (1) and (2) shall be construed so as to prevent the exercise by the Authority of its power to require the submission of any information relating to the identity or particulars of any person who has obtained any credit facility from a licensed offshore bank, if the Authority is satisfied that such information is necessary for or incidental to its supervisory functions, and the Authority may disclose all or any part of such information—

- (a) to the home monetary authority of the bank if the Authority is satisfied that such information is necessary for and incidental to the supervisory functions of the home monetary authority and it has secrecy provisions in the home monetary authority constituent documents to safeguard whatever information supplied to it from any unlawful disclosure; or

- (b) to the domestic law enforcement agency if the Authority is satisfied, based on the evidence made available to the Authority, that fraud or criminal offence has been or is likely to be committed.

(4) Without prejudice to subsections (1) and (3), if the Authority is satisfied, based on the evidence made available to the Authority, that fraud or criminal offence has been or is likely to be committed, the Authority may require the submission of any information relating to—

- (a) the affairs, identity or account of any particular depositor of any licensed offshore bank;
- (b) the affairs, identity or account of any policy owner of a licensee;
- (c) the affairs, account, dealing or particular of a customer of or any person involved in the ownership or management of or deal with a trust company; or
- (d) the affairs, identity or account of any particular customer of a fund manager or the subscriber of the fund administered or managed by the fund manager.

(5) Notwithstanding subsections (2) and (3), if the Authority is satisfied, based on the evidence made available to the Authority, that fraud or criminal offence has been or is likely to be committed, the Authority may give information of such commission or convey any or all information in relation to such commission—

- (a) in the case of information provided under paragraph (4)(a), to the home monetary authority or domestic law enforcement agency;
- (b) in the case of information provided under paragraph (4)(b), to the home supervisory authority or domestic law enforcement agency; or
- (c) in the case of information provided under paragraph (4)(c) or (4)(d), to the domestic law enforcement agency.

(6) Subject to subsections (3), (4) and (5), any information obtained by the Authority under subsections (1), (3) and (4) or any other provision of this Act shall be a secret between the Authority and the person supplying it, and no person who has any information or document which to his knowledge has been disclosed in contravention of this subsection shall in any manner disclose the information or document to any other person.

(7) Without prejudice to any other provision in this Act, the Authority may receive any information from any person or authority in the course of carrying out any power or duty under this Act or any other law relating to offshore financial services.

(8) For the purpose of this Part, no action, suit or prosecution or other proceeding shall lie or be brought or maintained in any court or before any other authority against any person for complying with any provision of this Part.

(9) This Part shall have full force and effect, notwithstanding anything inconsistent therewith or contrary thereto in this Act or in any provision under any other law relating to offshore financial services.

(10) Any offshore financial institution who fails to comply with this section shall be guilty of an offence and shall be liable, on conviction—

(a) in the case of an individual person to a fine not exceeding one million and five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both; and

(b) in the case of a body corporate or partnership to a fine not exceeding three million ringgit.

(11) Any person who fails to keep information secret as required under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Examination

28c. (1) The Director General or any person authorized by the Authority may examine and inspect, under condition of secrecy, any financial institution or any corporation related to any financial institution for the purpose of verifying information submitted under subsections 28B(1), (3) and (4).

(2) Where there is a conflict between the provision of this section and the provision of any other law relating to offshore financial services, the provision of this section shall prevail.

Appointment of investigating officer, powers, functions and duties

28d. (1) For the purposes of carrying out investigation of any offence under this Act or under any other law relating to offshore financial services, the Authority may appoint, by an instrument in writing, any officer or employee of the Authority or any other suitable person to be an investigating officer.

(2) Subject to subsection (3), an investigating officer appointed under subsection (1) shall have all the powers, functions, and duties conferred on an investigating officer under this Act, and where such investigating officer is not an officer or employee of the Authority, he shall, in relation to such powers, functions and duties—

(a) be subject to; and

(b) enjoy such rights, privileges, protections, immunities and indemnities as may be specified in,

the provision of this Act or other written law applicable to an officer or employee of the Authority.

(3) An investigating officer shall be subject to the direction and control of the Authority and the Director General, or of such other officer of the Authority as may be authorized by the Authority to act on behalf of the Authority, and of any other investigating officer or officers superior to him in rank, and shall exercise his powers, perform his functions, and discharge his duties referred to in subsection (2) in compliance with such directions, instructions, conditions, restrictions or limitations as the Authority or Director General, or an officer of the Authority authorized to act on behalf of the Authority or an investigating officer superior to him in rank, may specify orally or in writing, either generally, or in any particular case or circumstance.

(4) The Director General shall have all the powers, functions and duties of an investigating officer.

(5) An investigating officer carrying out any investigation under this Part shall have the power to administer an oath or affirmation to the person who is being investigated.

(6) Any person who obstructs any investigating officer from exercising his duties under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

PART III

FINANCE

The Fund

29. (1) There is hereby established, for the purposes of this Act, a fund to be administered and controlled by the Authority.

(2) The Fund shall consist of—

- (a) such sums as may be provided from time to time for the purposes of this Act by Parliament;
- (b) sums borrowed by the Authority for the purposes of meeting any of its obligations or discharging any of its duties;
- (c) levies payable under section 32;
- (d) fees, costs or other charges imposed by the Authority under this Act or other laws relating to offshore financial services;
- (e) any compound paid under this Act or other laws relating to offshore financial services; and
- (f) all other sums or property which may in any manner become payable to or vested in the Authority in respect of any matter incidental to its functions and powers.

Expenditure to be charged on the Fund

30. The Fund shall be expended for the purpose of—

- (a) paying any expenditure lawfully incurred by the Authority, including legal fees and costs and other fees and costs, and the remuneration of officers and servants of the Authority, including the granting of loans, superannuation allowances or gratuities;

- (b) paying any other expenses, costs or expenditure properly incurred or accepted by the Authority in the performance of its functions or the exercise of its powers under this Act;
- (c) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under this Act;
- (d) repaying any moneys borrowed under this Act and the interest due thereon; and
- (e) generally, paying any expenses for carrying into effect the provisions of this Act.

Conservation of Fund

31. It shall be the duty of the Authority to conserve the Fund by so performing its functions and exercising its powers under this Act as to secure that the total revenues of the Authority are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital taking one year with another.

Levies

32. (1) An offshore financial institution shall be liable, in the case of any offshore financial service provided by it, to pay a levy to the Authority.

(2) For the purpose of subsection (1), the Minister may, by order published in the *Gazette*, specify such rates of levy as is necessary to meet the administrative and operating costs of the Authority; and different rates may be specified in respect of different classes of offshore financial services.

(3) The amount of any levy payable under this section shall be recoverable as a civil debt due to the Authority.

(4) The Minister may make regulations providing for—

- (a) the payment of levies under this section;

- (b) subject to the provisions relating to secrecy under any written law relating to offshore financial institutions, the keeping, examination and audit of the accounts of the offshore financial institutions relating to the collection of such levies.

Power to impose and collect fee

32A. Notwithstanding any provision under any other law relating to offshore financial services, the Authority may, with the approval of the Minister, by order published in the *Gazette*, impose and collect any fee for any service provided by or on behalf of the Authority under this Act or any other law relating to offshore financial services and for the grant or issuance of any licence, permit, registration, approval or exemption which the Authority may grant or issue under any law.

Accounts and reports

33. (1) The Authority shall cause proper accounts of the Fund and proper reports of its activities to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared—

- (a) a statement of accounts of the Authority which shall include a balance sheet and an account of income and expenditure; and
- (b) a statement of its activities,

for that financial year.

(2) The Authority shall as soon as possible send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before both Houses of Parliament.

(3) The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Authority.

Power to borrow

34. The Authority may from time to time, with the approval of the Minister, borrow, at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Minister may approve, any sums required by the Authority for meeting any of its obligations or performing any of its functions under this Act.

Investment

35. The moneys of the Authority shall, in so far as they are not required to be expended by the Authority under this Act, be invested in such manner as the Authority deems fit.

PART IV

GENERAL

Indemnity

36. The Authority, any member of the Authority or of any committee established by the Authority, any person appointed by the Authority under this Act and any officer or servant of the Authority shall not be liable to any action or other proceedings for damages for or on account of, or in respect of, any act done or statement made, omitted to be done or made, in pursuance of or in execution of this Act or in the performance of any function, or in exercise of any power, conferred by or under any written law relating to offshore financial services:

Provided that such act, statement, performance of function or exercise of power was done or made in good faith.

The Authority to appoint officer or employee to appear in court on behalf of the Authority

36A. (1) Notwithstanding the provisions of any other written law—

- (a) in any civil proceedings by or against the Authority; or
- (b) in any other civil proceedings in which the Authority is required or permitted by the court to be represented or to be heard, or is otherwise entitled to be represented or to be heard,

any member, officer or employee of the Authority who has been admitted as an advocate and solicitor under the Legal Profession Act 1976 [*Act 166*] and authorized by the Authority for the purpose, may, on behalf of the Authority, institute such proceedings or appear as an advocate therein and may make and do all acts in respect of such proceedings on behalf of the Authority.

(2) Notwithstanding any provision to the contrary in this Act, the Authority may appoint an advocate and solicitor for the purpose provided in subsection (1).

Compounding of offences

36B. (1) The Director General may, with the written consent of the Public Prosecutor, in a case where he deems it fit and proper so to do, compound any offence committed by any person which is punishable under this Act by making a written offer to such person to compound the offence on payment to the Director General, within such time as may be specified in the offer, of an amount which shall not exceed fifty per centum of the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(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.

(3) Where the amount specified in the offer under subsection (1) is not paid within the time specified in the offer, or within such extended period as the Director General may grant, prosecution of the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall be instituted after that in respect of such offence against the person to whom the offer to compound was made.

Liability of director, officer, controller, etc.

36c. Where any offence against any provision of this Act has been committed by any offshore financial institution, any person who at the time of the commission of the offence was a director, officer, or controller, of the offshore financial institution 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 such offshore financial institution, or was assisting in such management, shall be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Power to make regulations

37. (1) The Minister may make such regulations as may be expedient or necessary for carrying out or giving effect to the provisions of this Act.

(2) Regulations made under this section—

- (a) may provide that any contravention of any provision thereof shall be an offence; and
- (b) may provide for the imposition of penalties which shall not exceed twenty-five thousand ringgit for any offence thereunder.

Power of the Minister to make modifications

38. (1) Subject to subsection (2), the Minister may, whenever it appears to him necessary or expedient so to do whether for the purpose of removing difficulties or in consequence of the passing of this Act, by order make such modifications to any provision in any law relating to offshore financial services as he may think fit.

(2) The Minister shall not exercise the power conferred under subsection (1) after the expiration of two years from the commencement of this Act.

Savings and transitional

39. (1) All regulations, instructions, directions, orders or decisions made by the Registrar or the Bank, as the case may be, under any law relating to offshore financial services existing before the commencement of this Act shall be deemed to have been made by the Authority unless amended or revoked or until the date upon which they expire.

(2) All regulations, instructions, directions, orders or decisions made by the Minister responsible for the Offshore Companies Act 1990 and the Labuan Trust Companies Act 1990 under those Acts existing before the commencement of this Act shall be deemed to have been made by the Minister charged with the responsibility for finance unless amended or revoked or until the date upon which they expire.

(3) All applications, approvals or decisions pending before the Registrar or the Bank, as the case may be, under any law relating to offshore financial services shall, upon the commencement of this Act, be dealt with by the Authority.

(4) All applications, approvals or decisions pending before the Minister responsible for the Offshore Companies Act 1990 and the Labuan Trust Companies Act 1990 under those Acts shall, upon the commencement of this Act, be dealt with by the Minister charged with the responsibility for finance.

(5) All instruments, certificates or documents lodged with the Registrar or the Bank, as the case may be, under any law relating to offshore financial services before the commencement of this Act shall, upon the commencement of this Act, be deemed to be lodged with the Authority.

LAWS OF MALAYSIA**Act 545****LABUAN OFFSHORE FINANCIAL SERVICES
AUTHORITY ACT 1996**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A1036	Labuan Offshore Financial Services Authority (Amendment) Act 1998	15-10-1998

LAWS OF MALAYSIA**Act 545****LABUAN OFFSHORE FINANCIAL SERVICES
AUTHORITY ACT 1996****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
2	Act A1036	15-10-1998
4	Act A1036	15-10-1998
18A	Act A1036	15-10-1998
28A-28D	Act A1036	15-10-1998
29	Act A1036	15-10-1998
32A	Act A1036	15-10-1998
36	Act A1036	15-10-1998
36A	Act A1036	15-10-1998
36B	Act A1036	15-10-1998
36C	Act A1036	15-10-1998

