LHDN.AG.600-1/7/3

GUIDELINES

SUBSTANCE REQUIREMENTS
FOR FIT AND PROPER FULL-TIME EMPLOYEES
OF LABUAN ENTITIES

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GUIDELINES OF THE DIRECTOR GENERAL

Section 17A of the Labuan Business Activity Tax Act 1990 (LBATA) provides that the Director General is empowered to issue Guidelines which the Director General thinks is expedient or necessary.

A Guideline is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It provides the Director General's clarification on specific provisions of the tax law, facilitate compliance with the law or address any other related matters.

The Director General may revoke, review or amend the whole or any part of this Guideline by publishing a new Guideline.

Director General of Inland Revenue,
Inland Revenue Board of Malaysia.

1. OBJECTIVE

The objective of this guideline is to provide clarification on the criteria for a fit and proper full-time employee of a Labuan entity for the purpose of complying with the substance requirements as stipulated under the Labuan Business Activity Tax Act 1990 (LBATA) [*Act 445*] and all subsidiary legislations pertaining to Labuan taxation that impose and elaborate on such substance requirements for fit and proper full-time employees.

The relevant subsidiary legislations are as follows:

(a) Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 [P.U.(A) 423/2021];

(b) Labuan Business Activity Tax (Requirements for Labuan International Commodity Trading Company) Regulations 2021 [P.U.(A) 482/2021];

(c) Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations (Amendment) Regulations 2025 [P.U.(A) 325/2025]; and

(d) Labuan Business Activity Tax (Requirements for Labuan International Commodity Trading Company) (Amendment) Regulations 2025 [P.U.(A) 326/2025].

This guideline is issued in accordance with section 17A of LBATA.

2. SUBSTANCE REQUIREMENTS

A Labuan entity carrying on a Labuan business activity under paragraph 2B(1)(b) of LBATA shall employ an adequate number of fit and proper full-time employees and shall incur a sufficient amount of annual operating expenditure in Labuan.

3. CRITERIA FOR A FIT AND PROPER FULL-TIME EMPLOYEE

3.1. The criteria for a full-time employee to meet the substance requirements are as follows:

(a) The employee meets the fit and proper criteria;

(b) The employee is employed on a permanent or contractual basis by the Labuan entity; and

(c) The employee performs his or her work physically for the Labuan entity in Labuan.

3.2. A full-time employee is deemed to meet the fit and proper criteria when:

(a) The work performed by the full-time employee is relevant to the Labuan business activity carried out by the Labuan entity. Such work shall comprise office-related duties and shall not include general duties.

An employee performing office-related duties refers to an individual who carries out management, secretarial, clerical, semi-skilled, or other skilled tasks predominantly undertaken in an office setting.

The list of office-related and general duties includes, among others, the following:

Office-Related Duties	General Duties
▪ Director ▪ Manager ▪ Secretary ▪ Administrative / accounting clerk	▪ Receptionist ▪ Despatch clerk ▪ Office cleaner ▪ Tea lady

Example 1

Altit Fort (Labuan) Ltd. is an investment bank incorporated under the Labuan Companies Act 1990. Altit Fort (Labuan) Ltd. employs three full-time employees in Labuan consisting of a company manager, a secretary and an accounting clerk. Thus, Altit Fort (Labuan) Ltd. has fulfilled the substance requirements for fit and proper full-time employees for a Labuan entity under LBATA, P.U.(A) 423/2021 and P.U.(A) 325/2025.

Example 2

Skardu (Labuan) Ltd. is a newly established company carrying out a Labuan business activity as a Labuan trust company. In carrying out the business operation in Labuan, Skardu (Labuan) Ltd. has employed several employees, consisting of a managing director, a general clerk and an office cleaner. Skardu (Labuan) Ltd. does not meet the substance requirements for a Labuan entity under LBATA, P.U.(A) 423/2021 and P.U.(A) 325/2025, as the office cleaner does not qualify as a full-time employee who meets the fit and proper criteria.

(b) The full-time employee shall possess sufficient and appropriate competence and capability in performing their duties. This includes having qualifications, skills and work experience relevant to their role in relation to the Labuan business activity carried out by the Labuan entity; and

(c) The full-time employee shall not have any conflict of interest in performing their duties with the Labuan entity. A conflict of interest arises when there are personal interests or other responsibilities outside the Labuan business activity undertaken by the Labuan entity that could potentially interfere with the employee's ability to discharge their duties and responsibilities as a full-time employee of the Labuan entity.

3.3. A fit and proper full-time employee serving a Labuan entity shall have a contract of service with that Labuan entity. Any method of employment through outsourcing, whether for permanent or contractual staff, is not included under the criteria of fit and proper full-time employees for the purpose of meeting the substance requirements.

Example 3

Baltit Fort (Labuan) Ltd. is a financial company incorporated under the Labuan Companies Act 1990. Baltit Fort (Labuan) Ltd. has engaged contract workers through an employment agency, PIA Management Sdn. Bhd., to work in Labuan. The salaries of these contract workers are paid by Baltit Fort (Labuan) Ltd. through PIA Management Sdn. Bhd.

Baltit Fort (Labuan) Ltd. does not meet the substance requirements for fit and proper full-time employees for a Labuan entity under LBATA, P.U.(A) 423/2021 and P.U.(A) 325/2025, as it employs workers through outsourcing and there is no contract of service between the contract workers and Baltit Fort (Labuan) Ltd.

3.4. The full-time employees shall physically perform work related to the Labuan business activity undertaken by the Labuan entity in Labuan throughout the basis period in order to meet the substance requirements. The physical presence of the full-time employee in Labuan may be supported by documents recording working hours (timesheets), time attendance systems, and other appropriate methods.

3.5. Labuan entities within the same group of companies may operate in Labuan by sharing office premises, however, they must segregate fit and proper full-time employees according to each respective Labuan business activity for each Labuan entity. The segregation method applied by each Labuan entity shall be consistent.

4. NON-COMPLIANCE WITH SUBSTANCE REQUIREMENTS

A Labuan entity that does not meet the substance requirements in respect of the number and criteria of fit and proper full-time employees shall be deemed non-compliant with the substance requirements and shall not be entitled to enjoy the 3% tax rate for the Labuan trading activity or the non-chargeability to tax for the Labuan non-trading activity. Such Labuan entity shall be subject to the tax rate of 24% under subsection 2B(1A) of LBATA.

LEMBAGA HASIL DALAM NEGERI MALAYSIA

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