

Labuan Trust Companies Act 1990

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LAWS OF MALAYSIA

REPRINT

Act 442

LABUAN TRUST COMPANIES

ACT 1990

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LABUAN TRUST COMPANIES ACT 1990

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Act 442

LABUAN TRUST COMPANIES ACT 1990

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LAWS OF MALAYSIA

Act 442

LABUAN TRUST COMPANIES ACT 1990

An Act to provide for the registration of offshore companies as trust companies in Labuan, for the prescription of their powers and duties and for matters connected therewith or incidental thereto. [1 October 1990, P.U. (B) 590/1990]

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

1. This Act may be cited as the Labuan Trust Companies Act

1990. Interpretation

2. In this Act, unless the context otherwise requires-- "auditor" means an approved company auditor as defined in the Companies Act 1965 [Act 125];

"Court" means the High Court or a judge thereof;

"director" has the meaning assigned to it in the Offshore Companies Act 1990 [Act 441];

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"estate" means any property, whether real or personal, which is committed to the administration or management of a trust company as executor, administrator, trustee, receiver, committee, guardian or agent;

"Labuan" means the Federal Territory of Labuan;

*"Minister" means the Minister for the time being charged with the responsibility for trade and industry;

"non-resident" means a person who is not a citizen or permanent resident of Malaysia and who does not engage in a trade or business in Malaysia, and includes any offshore company incorporated under the Offshore Companies Act 1990 and any foreign offshore company registered under that Act;

"officer", in relation to a trust company, includes-- (a) any director, secretary or employee of the trust company; (b) a receiver and manager of any part of the undertaking of the trust company appointed under a power contained in any instrument; and

(c) any liquidator of a trust company appointed in a voluntary winding up,

but does not include--

(A) any receiver who is not also a manager;

(B) any receiver and manager appointed by the Court; or (C) any liquidator

appointed by the Court or by the creditors; **"Registrar" means the Registrar of Companies under the Companies Act 1965 and includes any Regional Registrar, Deputy Registrar or Assistant Registrar, of Companies;

"trust company" means any company registered to carry on business as a trust company under section 4;

*NOTE--In its application to Labuan, "Minister" means the Minister for the time being charged with the responsibility for Finance ?see Labuan Offshore Financial Services Authority (Modification of Offshore Companies Act 1990, Labuan Trust Companies Act 1990, Offshore Banking Act 1990 and Offshore Insurance Act 1990) Order 1996 [P.U. (A) 72/1996]. **NOTE--In its application to Labuan, "Registrar" means the Labuan Offshore Financial Services Authority established under the Labuan Offshore Financial Services Authority Act 1996?see Labuan Offshore Financial Services Authority (Modification of Offshore Companies Act 1990, Labuan Trust Companies Act 1990, Offshore Banking Act 1990 and Offshore Insurance Act 1990) Order 1996 [P.U. (A) 72/1996].

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"trust company business" means the business of carrying on any economic activity by a company as a trustee, agent, executor or administrator pursuant to the objects of the company and, without limiting the generality of the foregoing, includes-- (a) establishing or using a share transfer office or share registration office;

(b) administering, managing or otherwise dealing with property as an agent, legal personal representative or trustee, whether by servant or agent or otherwise;

(c) maintaining an agent for the purpose of soliciting or procuring business, whether or not the agent is continuously resident in Labuan;

(d) maintaining an office, agency or branch, whether or not that office, agency or branch is also used for any purpose by another company;

(e) the provision of--

(i) management and accounting services to; or

(ii) directors, secretaries and registered offices for, offshore companies incorporated under the Offshore Companies Act 1990 and foreign offshore companies registered under that Act;

(f) incorporating or registering companies under the Offshore Companies Act

1990 and generally acting as a loading agent for any document required to be lodged by a company or person under that Act; and

(g) providing such other services as may be approved by the Registrar from time to time, to or on behalf of any person. Registration required to carry on business as trust company in Labuan

3. (1) No company shall carry on trust company business in Labuan unless that company is registered so to do under this Act. (2) Nothing in this Act shall be deemed to affect in any way the operation of the Public Trustee established under the *Public Trustee Act 1950 [Act 247].

*NOTE--The Public Trustee Act 1950 [Act 247] has since been repealed by the Public Trust Corporation Act 1995 [Act 532].

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Registration of trust companies

4. (1) Any person incorporated or registered under the Offshore Companies Act 1990 may apply to the Registrar, in the prescribed form and accompanied by the prescribed fee, for registration to carry on trust company business in Labuan.

(2) An application for registration under subsection (1) may be considered if--

(a) the authorized capital of the applicant is not less than five hundred thousand ringgit or its equivalent in any foreign currency divided into shares of not less than ten ringgit or its equivalent in that foreign currency each;

(b) at least one-half of the amount of every share issued by the applicant remains unpaid and is not liable to be called up, except in the event and for the purpose of the winding up or dissolution of the applicant;

(c) at least one hundred and fifty thousand ringgit or its equivalent in any foreign currency of the authorized capital has been bona fide paid up;

(d) the applicant either--

(i) has obtained, or will obtain any professional indemnity insurance policy with a coverage of not less than one million ringgit or its equivalent in any foreign currency or such other amount as may

be determined by the Registrar, and remain

indemnified under such policy throughout its

operation as a trust company; or

(ii) has deposited with the Registrar security to the value of one hundred thousand ringgit or such

other amount as may be determined by the Registrar; (e) the applicant is able to meet its obligations including its liabilities to its shareholders; and

(f) the directors and officers of the applicant designated under subsection (3), who are responsible for the management of the trust company in Labuan, are fit and proper persons and remain as such throughout their appointment with the trust company.

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(3) A trust company shall have in Labuan--

(a) its registered office;

(b) a place of business; and

(c) at least two officers approved and designated as trust officers by the Registrar; and

(4) The provisions of paragraphs (3) (b) and (c) shall not apply to a trust company that is managed by another trust company. Terms and conditions of registration

5. (1) The Registrar may approve the application for registration as a trust company subject to such terms and conditions (if any) as he may deem fit.

(2) Every trust company shall, upon registration or on or before 15 January of each year during the period of its registration, pay to the Registrar such registration fees as may be prescribed in the regulations made under section 25.

(3) The provisions of the Trust Companies Act 1949 [Act 100] shall not apply to a company registered as a trust company under this Act.

Additional requirements for trust companies

6. (1) A company incorporated outside Malaysia and registered as a trust company under this Act shall maintain such minimum level of capital and

reserves in Labuan as may be prescribed. (2) Every trust company to which subsection 4(3) applies shall, within seven days, lodge a notice in the prescribed form with the Registrar of any change of--

- (a) its office in Labuan; or
- (b) either or both of its authorized agents.

(3) Every trust company shall, when and as often as any alteration is made to its memorandum or articles of association or to any other instrument whereunder the trust company was incorporated, within seven days, lodge with the Registrar the full particulars in writing of such alteration, verified by an affidavit made or declaration sworn, as the case may be, by an officer of the trust company. 10 Laws of Malaysia ACT 442

(4) No trust company shall open any office or acquire or establish any subsidiary outside Labuan without the prior written consent of the Registrar.

Compliance with Offshore Companies Act 1990

7. Except as otherwise expressly provided in this Act, the provisions of the Offshore Companies Act 1990 shall apply to a trust company. Restriction on trust companies

8. (1) A trust company shall provide service to non-residents only.

(2) Notwithstanding subsection (1), a trust company may provide service to a resident, but only for such purposes as may be permitted under the Offshore Companies Act 1990.

Supply of information and inspection

9. (1) Every trust company shall submit to the Registrar such information, data and returns as may be specified by the Registrar. (2) Notwithstanding section 23, the Registrar may, for the purpose of satisfying himself that the provisions of this Act are being complied with and that the trust company is in a sound financial position, have access to and inspect the books, records, vouchers, documents, cash and securities of any trust company and call for any information from any officer of the trust company as may be necessary.

(3) The Minister may in writing authorize any other person to assist the Registrar in the performance of his functions under this section.

(4) Any officer of the trust company who obstructs or hinders the Registrar or

any person so authorized while exercising any of the powers referred to in subsection (2) shall be guilty of an offence against this Act.

Penalty: Three thousand ringgit.

(5) Any officer of the trust company who, in supplying any information as required under subsection (2), knowingly or recklessly makes any statement which is false in any material particular shall be guilty of an offence against this Act.

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Penalty: Three thousand ringgit.

Cancellation of registration

10. (1) If the Registrar is satisfied that any trust company-- (a) has contravened or failed to comply with any term or condition of its registration;

(b) is in contravention of any of the provisions of this Act or of any regulation made thereunder;

(c) has contravened any other law which imposes duties or obligations upon it; or

(d) has been convicted of an offence, whether in Malaysia or elsewhere, and sentenced to a fine of not less than two thousand ringgit,

and the Registrar considers that, having regard to the nature of the contravention, failure or offence, it is undesirable that the trust company should continue to be registered, he shall notify the trust company of his opinion and of the reasons therefor and shall require the trust company to make representations within thirty days as to why the registration of the trust company should not be cancelled.

(2) Upon receipt of any representations made under subsection (1) and after due consideration of those representations, or on expiry of the time prescribed in that subsection if no such representations are made, the Registrar shall cancel the registration of the trust company or take any other action as he may deem fit.

(3) Where the Registrar decides to cancel the registration of a trust company under subsection (2)--

(a) he shall inform the trust company of his decision and of the reasons therefor; and

(b) the trust company may, not later than thirty days after being informed of the Registrar's decision, appeal to the Minister who may confirm, vary or reverse the decision. (4) Where the Minister has confirmed the Registrar's decision to cancel the registration of a trust company or where a trust company has been informed of the Registrar's decision to cancel 12 Laws of Malaysia ACT 442

its registration and has not appealed within the time prescribed, the Registrar shall cause a notice of the cancellation to be published in the Gazette and the trust company shall cease to carry on business from the date of cancellation specified in that notice. (5) The Registrar may cancel the registration of any trust company, on such terms and conditions as may be specified by the Registrar, upon a request from the trust company for the cancellation. (6) The trust company under subsection (5) shall satisfy the Registrar that it has made adequate provision in respect of all its liabilities and shall also appoint a date on which the cancellation takes effect.

(7) The trust company shall, not later than twenty-one days before the date appointed under subsection (6), publish an advertisement of the proposed cancellation of its registration in at least one widely circulated Malaysian newspaper and one international financial newspaper.

Temporary continuation for winding up

11. Notwithstanding subsection 10(4), the Registrar may authorize in writing the trust company to carry on business to such extent and for such duration as he may specify in the authorization for the purpose only of enabling the trust company to wind up its affairs consequent upon the cancellation of its registration. Application to High Court to facilitate agreement or arrangement to transfer the whole business of trust company being given effect to

11A. (1) Any trust company whose business is to be transferred (in this section referred to as "the transferor") and any other trust company to whom the transfer is to be made (in this section referred to as "the transferee") may make a joint application to the Court by way of an ex parte originating summons for such order of the Court as may be required by them to facilitate or enable the agreement or arrangement being given effect to.

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(2) On the hearing of an application under subsection (1), the Court may grant an order in the terms applied for, or with such modifications or variations as the Court deems just or proper in the circumstances of the case.

(3) Where the order of the Court under subsection (1) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from the transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or other related proceedings.

(4) The order of the Court made under subsection (1) shall, subject to the directions of the Court, be published by the transferee in at least one widely circulated Malaysian newspaper and one international financial newspaper.

(5) The transferor shall lodge, within thirty days of the making of the order of the Court under subsection (1), an authenticated copy of such order together with an authenticated copy of the agreement or arrangement, with--

(a) the Registrar; and

(b) the appropriate authority, if any, concerned with the registration or recording of dealings in any movable property, or any interest in any movable property transferred pursuant to the order.

(6) The Registrar, upon receipt of the documents mentioned in subsection (5), shall cancel the registration of the transferor as a trust company.

(7) Where an order of the Court under subsection (1) vests any alienated land, or any share or interest in any alienated land, in the transferee--

(a) the Court shall, where such alienated land is in Peninsular Malaysia, pursuant to subsection 420(2) of the National Land Code [Act 56/1965], cause a copy of the order to 14 Laws of Malaysia ACT 442

be served on the Registrar of Titles or the Land

Administrator, as the case may be, immediately after the making of the order so that the Registrar of Titles or the Land Administrator, as the case may be, gives effect to the provisions of subsections 420(2), (3) and (4) of the Code;

(b) where such alienated land is in Sabah, the transferee shall, as soon as practicable, after the order has been made, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided for under the Land Ordinance of Sabah [Sabah Cap. 68]; or

(c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been made, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land in the transferee as provided for under section 171 of the Land Code of Sarawak [Sarawak Cap. 81].

(8) An order of the Court under subsection (1) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgements that may exist between Malaysia and the country, territory or place outside Malaysia in which such property or business is, or where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

(9) For the purpose of this section--

"business" means any activity carried on for the purpose of gain or profit and includes all property derived from, or used in or for the purpose of, carrying on such activity and all rights and liabilities arising from such activity;

"security" includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent.

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PART II

POWERS OF TRUST COMPANIES

Trust company's power to act as executor

12. Where any trust company is appointed either alone or jointly with any other person as executor in the last will of any testator or in a codicil

thereto (whether the will or codicil was made before or after the commencement of this Act), the trust company may act as executor and may apply for probate of such will and any codicil thereto, and may do and discharge all the acts and duties of an executor as fully and effectively as any other executor. Trust company's power to act as administrator

13. (1) In any case in which a person may apply for a grant of letters of administration of the estate of a deceased person (whether with or without the will annexed), that person may-- (a) join with a trust company in an application for a grant of letters of administration of the estate to himself and the trust company jointly; or

(b) instead of himself applying, authorize a trust company to apply for a grant of letters of administration of the estate. (2) Where administration of any estate (whether with or without the will annexed) is granted to a trust company either alone or jointly with any other person, the trust company may do and discharge all acts and duties which belong to the office of an administrator or joint administrator, as the case may be, notwithstanding its incorporation.

Additional powers of a trust company

14. A trust company may be appointed as agent or trustee under any settlement or other instrument creating a trust, or to perform any trust or duty which it is authorized, by this Act or by its memorandum or articles of association or by any instrument where under the trust company was incorporated, to undertake, and may be so appointed, whether the settlement or instrument creating the trust or imposing the duty was made or came into operation before or after the commencement of this Act, and whether as an original trustee, a new trustee or an additional trustee, and may do and discharge all the acts and duties of a trustee as fully and effectively as any other trustee.

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Trust company's power to act as sole trustee

15. (1) A trust company may be appointed or continue to act as sole trustee notwithstanding that it is provided by the terms of the instrument creating the trust or any power or otherwise that there shall be more than one trustee to perform the trust. (2) A trust company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly--

(a) forbids the appointment of a trust company;

(b) provides that there shall be another trustee in addition to a trust company; or

(c) provides that a trust company shall not be appointed to act as sole trustee.

Trust company's power to act as joint trustee, etc., with another

16. (1) A trust company may act as trustee, executor or agent jointly with another trust company or person if-- (a) the instrument under which it acts so provides; (b) it is authorized or required to do so by law; or (c) the Court so orders.

(2) A trust company shall not be liable for breach of trust or loss resulting from any act or omission of a joint trustee, executor or agent with whom it is acting, unless the trust company has itself actively participated in, or assented to, such breach of trust. Delegation to trust company

17. (1) It shall be lawful for any executor, administrator, trustee or agent to delegate by deed or in writing to a trust company either alone or jointly with any other company or person, as his attorney, all such trusts and powers as may be lawfully delegated by him. (2) All acts done by the trust company as such delegatee shall, as against any person dealing with the trust company without notice of the revocation of such authority by such executor, administrator, trustee or agent, be valid and effectual notwithstanding such revocation.

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PART III

MISCELLANEOUS

Trust company subject to same control, etc., as any other executor, etc.

18. Where a trust company has been appointed as executor, administrator, trustee, agent or attorney, it shall be subject in all respects to the same control and to removal or restraint from acting, and generally to the jurisdiction of the Court, in the same manner as any other executor, administrator, trustee, agent or attorney.

Affidavit of officer

19. In all cases in which a trust company is required or authorized to make

any affidavit, declaration or statement, it may do so by any of its officers appointed for the purpose.

Examination of books and accounts of a trust company

20. (1) Any person who-- (a) satisfies the Court that he has an interest under any trust which is for the time being under the control or management of a trust company; and

(b) objects to an act or decision of the trust company on the basis that there was some irregularity or impropriety by the trust company in doing that act or making that decision, may apply to the Court to have such entries in the books and accounts of the trust company as are related to that act or decision examined.

(2) Where the Court receives an application under subsection (1), it may appoint an auditor to examine such entries in the books and accounts of the trust company and the auditor shall report his findings to the Court.

(3) Where it is established by the findings of the auditor that there has been an irregularity or impropriety by the trust company, the Court may make such order as it thinks fit.

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Money paid to a trust company to be held in trust

21. (1) Any money or other valuable consideration paid or given to a trust company pursuant to any instrument creating a trust shall be held by the trust company, separate from its own money and other valuable consideration, in trust for the purposes for which it was paid or given and the trust company shall account for it separately.

(2) A trust company which fails to comply with the requirement of subsection (1) and every officer of that trust company who is in default shall be guilty of an offence against this Act. Penalty: Thirty thousand ringgit or five years imprisonment or both.

Commission, fees, charges and expenses levied by a trust company

22. (1) A trust company shall be entitled-- (a) where it holds an estate on behalf of any person, to receive out of the estate a commission, in addition to all moneys properly expended by the trust company and fees payable to it and chargeable against the estate; and (b) in all other cases, to levy fees, charges and expenses in respect of any work performed by the trust company for

or on behalf of any person.

(2) Where the Court is of the opinion that any commission, fee, charges or expenses levied in respect of any estate or in respect of any work performed by the trust company are excessive, the Court may, on the application of any person, on whose behalf the estate is held, or on whose behalf the work was performed, review that commission, fee, charges or expenses, and may reduce it as it thinks fit.

(3) The commission, fee, charges or expenses which a trust company is entitled to receive under this section shall not in any way be affected or diminished by the fact that any other person may be entitled to a commission, fee, charges or expenses in respect of the work performed.

(4) A trust company shall have the right to share the commission, fee, charges or expenses to which it is entitled under this section with any other person.

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Secrecy

23. (1) No person shall without the written consent of the trust company or its customer concerned, disclose to any person any such information relating to the affairs of the trust company or the customer concerned except--

(a) for the purpose of the performance of his duties or the exercise of his functions under this Act;

(b) for the purpose of the performance of his duties within the scope of his employment;

(c) when lawfully required to make such disclosure by any court or under the provisions of any law being enforced by the Registrar; or

(d) for the purpose of the performance of the Registrar's supervisory functions as may be provided for under any written law.

(2) The Registrar may, as may be permitted under the Labuan Offshore Financial Services Authority Act 1996 [Act 545] or the Anti-Money Laundering Act 2001 [Act 613], provide any information relating to a trust company or a customer of a trust company to any domestic or foreign supervisory authority or law enforcement agency.

(3) Any person who contravenes subsection (1) shall be guilty of an offence

against this Act.

Penalty: Thirty thousand ringgit or five years imprisonment or both.

Compounding of offences

24. (1) The Registrar may, in a case where he deems it fit and proper to do so, compound any offence committed by any person under this Act, by making a written offer to such person to compound the offence by paying to the Registrar within such time as may be specified in the offer such sum of money as may be specified in the offer which shall not exceed fifty per cent of the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

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(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 where the amount specified in the offer is not paid within the time specified in the offer, or during such extended period as the Registrar may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

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

Regulations

25. The Minister may make regulations generally as may be necessary or expedient for the purpose of carrying out, or giving effect to, the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, for prescribing such forms, notices, fees, charges and anything as are required by this Act to be prescribed or as he may deem necessary.

Procedure where none laid down

26. 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 for the purpose either in this Act or any regulation made thereunder, application may be made to the Registrar for directions as to the manner in which the act or step may be done or taken, and any act or step done or taken in accordance with his directions shall be a valid performance of such act or step.

Translation of instruments, etc.

27. (1) Where any instrument or document required to be lodged with the Registrar is in a language other than in the national or English language, the instrument or document shall be accompanied by a verified or certified translation thereof either in the national or English language.

(2) Where any accounts or other records required to be kept under this Act are not kept in the national or English language, the directors of the trust company shall cause a true translation of Labuan Trust Companies 21

such accounts and records to be made from time to time at intervals of not more than seven days and shall cause such translations to be kept with the original accounts and records.

Minister's power to exempt

28. The Minister may, on the recommendation of the Registrar and by notice in writing, subject to any condition that he may impose, exempt any person from all or any of the provisions of this Act.

Non-application of certain existing provisions

29. Without prejudice to section 152 of the Offshore Companies Act 1990, the following provisions shall not apply to a trust company: (a) paragraphs 7(3) (a) and (f) of the Offshore Companies Act 1990;

(b) paragraph 7(3) (c) of the Offshore Companies Act 1990 where the trust company receives service fee in dealings with residents; and

(c) subsection 147(2) of the Offshore Companies Act 1990 where the domestic company referred in that subsection does not provides legal, accounting, book-keeping, managerial or resident director services to another domestic company.

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LIST OF AMENDMENTS

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P. U. (A) 72/1996 Labuan Offshore Financial 15-02-1996 Services Authority
(Modification

of Offshore Companies Act 1990,

Labuan Trust Companies Act 1990,

Offshore Banking Act 1990 and

Offshore Insurance Act 1990)

Order 1996

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