

CFL1

Administration of Offshore Centres

10 OCTOBER 2000

1. Time allowed : Three (3) hours
2. Total number of questions : Five (5) questions
3. Number of questions to be answered : All five (5) questions [20 marks each]
4. Begin each answer to a new question on a fresh page.
5. Answer **all** questions in **English**.

ANSWER ALL FIVE (5) QUESTIONS

1. (a) State the motivating factors why individuals and corporations consider moving their business operations to an offshore financial centre. [10]
(b) List the advantages of setting up a business operation in an offshore financial centre. [10]
(Total:20 marks)
2. (a) State any **ten** general requirements for the operation of an offshore company in Labuan. [10]
(b) Define the meaning of “resident” under the Offshore Companies Act 1990. [10]
(Total:20 marks)
3. Describe the role of Labuan Offshore Financial Services Authority (LOFSA) vis-à-vis the development of Labuan as an International Offshore Financial Centre (IOFC).
(Total:20 marks)
4. Explain the process of money laundering and how offshore banks should safeguard themselves from being used as a conduit for this activity.
(Total:20 marks)
5. Explain what are Floating Rate Certificates of Deposits (FRCs). Describe the purpose of issuing FRCs, the product features and other attributes identifying this offshore foreign currency loan product.
(Total:20 marks)

OUTLINE ANSWERS

Question 1

A well answered question. This question being the key to offshore operations examines the motivating factors and advantages of conducting business in an offshore financial the overall mark for this question.

Motivating factors include:

- high taxes in the home country
- overseas employment contracts
- secrecy
- political considerations
- re-routing export sales
- depositing surplus funds
- income accumulation prior to retirement

Advantages may include:

- lower tax rates
- no income tax
- strict laws of secrecy
- no currency exchange controls for non-residents
- availability of financial advisers

Question 2

This factual two-part question was also well attempted. Candidates provided good and complete answers on the rules governing the operations of offshore companies. Similarly, the question on the definition of a “resident” under the Offshore Companies Act 1990, was answered without difficulty.

2. (a) The general requirements for the operation of an offshore company include:
- (i) every offshore company shall be a company limited by shares;
 - (ii) there is no minimum capital requirement and the offshore company may issue shares of different classes with different rights but the value has to be expressed in a foreign currency;
 - (iii) no offshore company is allowed to issue bearer shares or shares of no par value;
 - (iv) the minimum number of shareholders in an offshore company is one who does not have to be a resident;
 - (v) there must be at least one director, who does not need to be a resident director or a natural person as a corporate director is permissible;
 - (vi) an offshore company must have at least one resident secretary, who must be an officer of a trust company;
 - (vii) the registered office of an offshore company must be in Labuan, which must be the principal office of a trust company;
 - (viii) there is no requirement for the offshore company to hold meetings of its directors or members in Labuan;
 - (ix) an offshore company is required to file annual returns in the prescribed form to the Registrar;
 - (x) it shall employ the services of a trust company to discharge its statutory obligations.
- (b) “Resident” is defined as:
- (i) a citizen or permanent residence of Malaysia; or
 - (ii) a person who has established a place of business and operating, in Malaysia; and
 - (iii) a declared person pursuant to Section 43 of the Exchange Control Act 1953.

Question 3

All candidates were able to state the role of Labuan Offshore Financial Services Authority (LOFSA) as to promotion of Labuan, a processing agency, a licensing agency, etc. However, most missed out the part where LOFSA is also empowered to enforce action in respect of administering the legislations.

3. Labuan Offshore Financial Services Authority (LOFSA) was established under the Labuan Offshore Financial Services Authority Act, 1996, on 15 February 1996 and commenced its operation on March 1996.

Role of LOFSA

- (i) one-stop agency for setting up operations in Labuan;
- (ii) responsible for promoting Labuan and liaising with offshore institutions to enhance offshore industries;
- (iii) endowed with specific authority to process and supervise, etc; and
- (iv) administers and enforces legislations.

Question 4

This question on the process of money laundering and how offshore banks safeguard themselves was generally well answered. A better answer which received more marks are from those candidates providing some description of the processes involved in money laundering i.e. placement, layering and integration, rather than just mentioning the three steps.

4. Money laundering is a process of changing the identity of illegally obtained money from illegal sources such as fraud funds, dope trafficking, underground gambling operations, etc, into a legal source. The process involves three stages namely; placement, layering and integration.

Offshore banks protect themselves from being a part of this process by adopting the 'know your customer policy' [students are to elaborate on this]. Banks also scrutinise the original credited accounts of their potential customers for the past 3-year period to justify the financial position of the company. Verification and authentication of documents are also part of the process.

Question 5

This question calls for product knowledge. Only the candidates who had read this area on Floating Rate Certificates of Deposits (FRCDs) had no difficulties in answering this question. However, the others gave average answers because they were unclear about the product.

5. FRCDs are medium-term financing instruments. It is usually issued by banks to raise working funds and have maturity of between 3 to 5 years. It pays a variable coupon rate and are issued to investors.

FRCDs may be raised domestically and in the case of an issue from Labuan is internationally. It attempts to tap the international capital market at more competitive rates.

FRCDs have the following features:

- usually denominated in multiples of USD250,000 depository;
- bearer certificates but kept by authorised depository;
- coupon rates pegged at either 1, 3 or 6 months intervals, above LIBOR;
- maturity period of 3 to 5 years; and
- requires BNM approval for Malaysian bank issuers.

The benefits to an investor is partial income protection and for an issuer, an alternative source of cheaper funds.

The principal agreements governing an FRCD issues are:

- agency agreement,
- reference and paying agency agreement,
- a deposit/subscription agreement, and
- an information memorandum.