



Legal Arrangement Risk Assessment (LARA) 2024



Overview

LARA 2024 expanded the scope of previous risk assessment (LARA 2020 on onshore and Labuan trust) to include foreign-created legal arrangements with sufficient links to Malaysia. This is an alignment with the updated requirements of the Financial Action Task Force Recommendation 25.

The overall inherent risk of Malaysian legal arrangement (LA) being misused for ML/TF purposes remains at Medium. LA remains less attractive domestically as reflected in the preference to set up trust overseas. Consequentially, presence of LA with sufficient foreign link is also negligible.

Despite the low number of cases on LA's abuse, initiatives taken since LARA 2020 to update relevant legislations to strengthen the LA regulatory regime are ongoing.

Landscape

- The size of Malaysia LA remains immaterial as compared with banking sector.
- While there was an increase of the size (at RM3.7 trillion) in 2022 as compared to 2020 (RM2.1 trillion), it only constitutes less than 3% of the banking sector. In addition, out of this value, RM2.8 trillion is in commercial trust, which is also included in the banking sector.
- Similarly, foreign trust with sufficient link to Malaysia is low (at RM23 billion), and predominantly in commercial trust.

Type of Trust

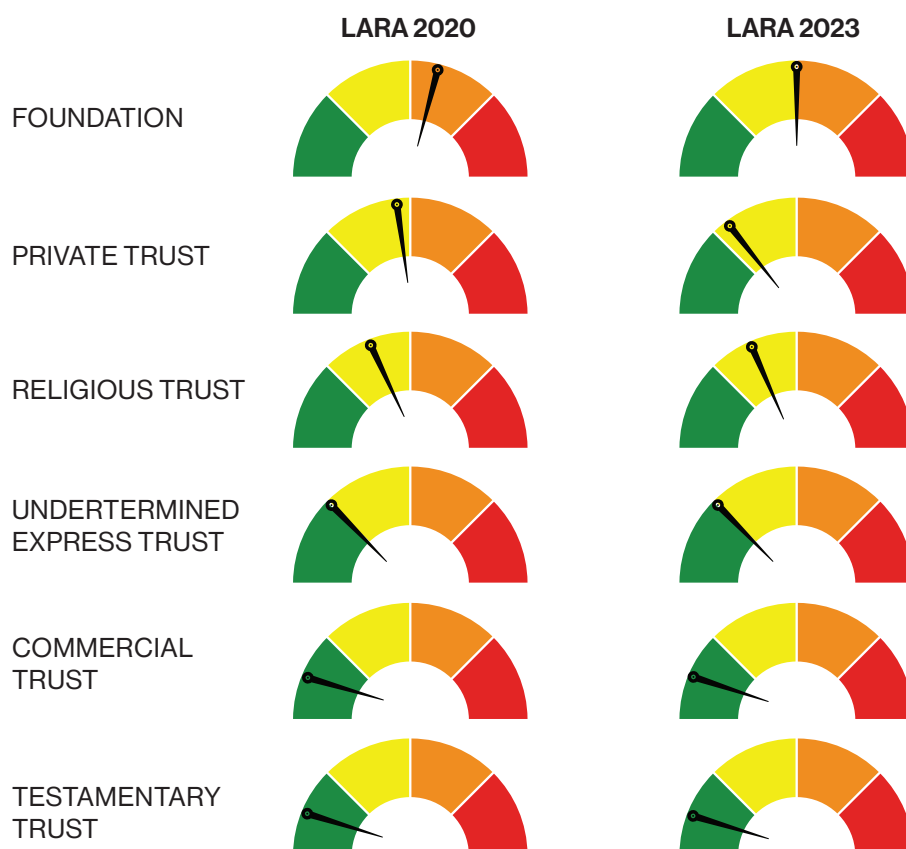
Private Trust
Commercial Trust
Testamentary Trust
Foundation*
Religious Trust (Waqf)
Labuan Trust

*Foundations in Labuan are not legal arrangement

Key Findings

ONSHORE TRUST RISK RATING

Inherent Risk (IR) remains unchanged at Medium.



❶ Similar risk drivers / key factors as LARA 2020

However, some changes which further reduced the risk for the following categories of trust:

- Lower cash intensity for foundation.
- Lower foreign exposure and higher risk customers for private trust.
- Insignificant compared to the banking sector.
- Except for trust companies, the involvement of other DNFBPs is primarily limited to providing trust-related advice rather than becoming a trustee.
- While the proposed law amendments to ensure comprehensive legislation governing LA have yet to complete, the risk is not heightened as onshore LA remains less attractive compared with overseas trust.

❷ Low likelihood to be abused for ML/TF similar as LARA 2020

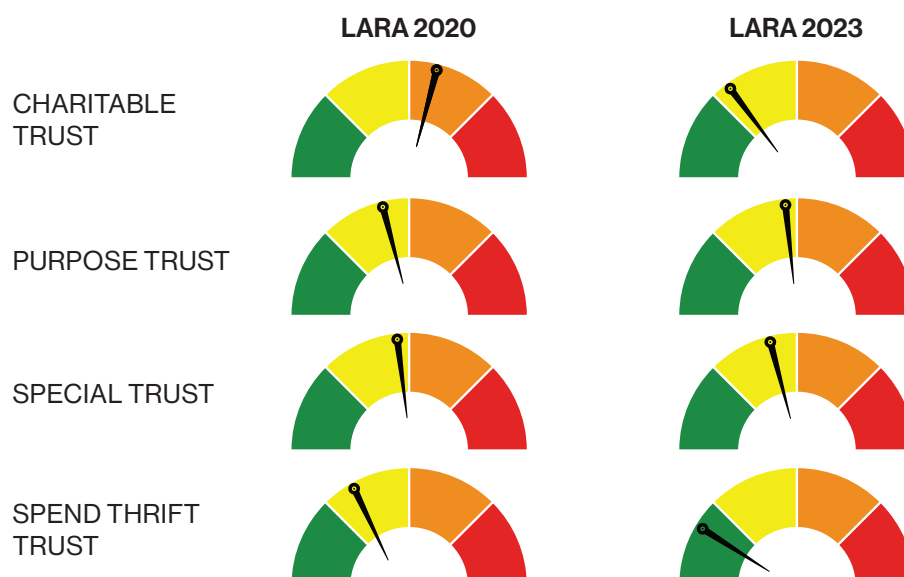
- Low number of STR - primarily reactive reporting pursuant to LEAs investigation order.
- Low number on investigation and prosecution involving LA. In addition, the cases were about abuse of funds by trustee (criminal breach of trust) rather than abuse of LA as instrument for ML/TF.

❸ New observations

- Low number of foreign trust with sufficient link to Malaysia. Foreign trust is estimated to be only around 1% of the total onshore LA and mostly in commercial trust.
- LHDN has enhanced transparency of LA, by updating the tax form to ensure BO information in tax return and all parties' records are kept accurate and up-to-date.

LABUAN TRUST RISK RATING

Labuan trust IR remains unchanged at Medium.



❶ Similar risk drivers / key factors as LARA 2020

- However, some changes which further reduced the risk for the following categories of trust:
 - Lower exposure to foreign customer for charitable trust and preference for setting up Labuan foundation for charitable purposes.
 - Reduced number of spendthrift trust due to the effort by LFSA in promoting Labuan foundation.
- Main drivers are the value and volume, as well as level of foreign exposure.
- Labuan LA is not an attractive product in Labuan. This is reflected through the small size of Labuan trust sector.
- Risk is mitigated by measures imposed under Labuan laws that have subjected Labuan trust company (LTC) to AML/CFT regulations and supervision.

❷ Low likelihood to be abused for ML/TF similar as LARA 2020

- There have been sufficient control measures by LTC, resulting in detection of suspicious transaction and STR submission (those STRs were however, submitted in their capacity as company secretary).
- Low likelihood that offshore LA is abused for ML/TF i.e. no STR, investigation and prosecution.

❸ New observation

- Issuance of the Guidelines on Beneficial Ownership for Labuan Legal Persons and Legal Arrangements in 2021, requiring the beneficial ownership reporting requirements by the Labuan trust companies.

Recommendations

To complete legislation amendments since LARA 2020 to enhance transparency on the beneficial owner of trust or power / provision:

- Ensure effective implementation of supervisory and oversight.
- Undertake enforcement actions on cases of non – compliance.

