

## **GUIDELINES ON THE ESTABLISHMENT OF LABUAN FUND MANAGER**

### **1.0 Introduction**

- 1.1 The purpose of the Guidelines is to clarify the application procedure, operational and regulatory requirements for Labuan fund managers<sup>1</sup> in Labuan International Business and Financial Centre (IBFC).
- 1.2 A Labuan fund manager is defined as a person, for valuable consideration, provides management services which may include investment advice or administrative services in respect of securities for the purposes of investment, including dealing in securities. For a Labuan fund manager undertaking Islamic fund management activities, its operation shall also comply with Shariah principles.

### **2.0 Applicability**

- 2.1 The Guidelines is applicable to any person approved or licensed by Labuan FSA, including new application for a Labuan fund manager license, to carry on fund management activities pursuant to section 40 of Labuan Financial Services and Securities Act 2010 (LFSSA) or section 45 of Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).
- 2.2 This Guidelines shall be read together with the Guidelines on the Establishment of Labuan Mutual Funds including Islamic Mutual Funds and other related guidelines issued by Labuan FSA from time to time.

### **3.0 Legal Provision**

- 3.1 The Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to provide clarification to the provision under Part III of LFSSA and Part IV of LIFSSA.

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<sup>1</sup> Including Labuan fund manager that undertakes Islamic fund management activities.

- 3.2 Any person who fails to comply with the Guidelines may be punishable under section 36B and section 36G of LFSAA.

#### **4.0 Effective Date**

- 4.1 The Guidelines shall come into effect immediately and would remain effective and applicable unless amended or revoked.
- 4.2 The Guidelines will supersede the Guidelines on the Establishment of Fund Management Companies in Labuan issued in April 1998 (updated on 2 September 2010) by Labuan FSA.
- 4.3 All approvals granted by Labuan FSA relating to Labuan fund managers prior to the commencement of this Guidelines shall remain valid unless revoked.

#### **5.0 Eligibility**

- 5.1 The eligible applicant to carry on business as a Labuan fund manager in Labuan IBFC include:
- 5.1.1 An individual who holds a relevant degree or professional qualification to carry on fund management activities. Labuan FSA may also consider an applicant with at least minimum qualification of diploma holder and 3 years' relevant experiences in capital market or direct experiences in fund management activities;
  - 5.1.2 An approved fund manager or any provider of such services from a country or jurisdiction who is a member of the International Organization of Securities Commission (IOSCO); or
  - 5.1.3 A person who does not fulfill paragraph 5.1.1 and 5.1.2 may also be considered, provided that the fund management activities are run and managed by suitably qualified and experienced individuals.
- 5.2 Upon receiving of approval from Labuan FSA, the applicant is required to establish a Labuan company incorporated or registered under Labuan Companies Act 1990 (LCA).

- 5.3 For Labuan fund manager licensed under subsections 40(1) or (2) of LFSSA, Islamic fund management activities can be undertaken with prior approval of Labuan FSA.
- 5.4 In addition, Labuan FSA would also consider other factors in assessing the application for Labuan fund manager as per Appendix A.

## **6.0 Permitted Activities**

6.1 The permitted activities for a licensed Labuan fund manager may include:

### 6.1.1. Management services

- (a) Acting or offering to act as portfolio manager on behalf of the clients for a portfolio of securities including funds<sup>2</sup>.
- (b) Managing activities in the acquisition or disposal of a portfolio of securities including funds<sup>3</sup>.
- (c) Managing clients' discretionary accounts including Labuan private funds.

### 6.1.2. Investment advices

- (a) Conducting securities analysis and making investment recommendations based on client's investment objectives and financial situation.
- (b) Providing advice concerning securities including the issuance or promulgation of research report and analysis.
- (c) Providing consultancy and advisory services relating to corporate finance and financial planning matters for corporate clients.

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<sup>2,3</sup> Including any foreign fund that has obtained approval from its home regulator of an IOSCO member country.

#### 6.1.3. Administrative services

- (a) Making submissions on behalf of clients to Labuan FSA in respect of securities including any other reporting requirements.
- (b) Issuing any documents which are deemed to be a prospectus under the LFSSA/LIFSSA and the LCA.

#### 6.1.4. Dealing in securities

- (a) Quoting two way prices and dealing in securities.
- (b) Arranging for the sale or purchase of securities including that are not listed on a stock market of a stock exchange, issued by, belonging to or on behalf of clients.
- (c) Underwriting of securities and placement out of such underwritten securities to be commensurated with the adequacy of its financial resource. Hence, the Labuan fund manager shall ensure that its risk management plan also clearly sets out the extent of financial requirements to sustain its operational business based on the risk appetite or tolerance levels in relation to the fund management strategies. This has to be reviewed at least on a yearly basis in line with its business plan.
- (d) Other dealing in securities as permitted under section 2 of LFSSA/LIFSSA.

6.1.5. Any other activity as may be permitted by Labuan FSA from time to time.

## **7.0 Licensing Requirements**

- 7.1 Submit a duly completed application form (Form LSCM) and all the relevant supporting documents as stipulated in the Form LSCM, which is downloadable from Labuan FSA's website ([www.labuanfsa.gov.my](http://www.labuanfsa.gov.my)).
- 7.2 Provide a business plan covering the business intentions, types of services to be provided, target market, three years revenue projections and manpower,

including the equity structure of company in regard to the percentage of shareholding.

- 7.3 Demonstrate the existence of both adequate financial resources and insurance coverage as specified in paragraphs 8.1 and 8.2 of this Guidelines.
- 7.4 The applicant<sup>4</sup>, proposed directors and principal officer including any other relevant person are fit and proper persons as per the Guidelines on Fit and Proper Person issued by Labuan FSA.
- 7.5 Subject to the merit of each application, additional information may be requested by Labuan FSA to facilitate the processing of the application.

## **8.0 Operational Requirements**

- 8.1 The Labuan fund manager must maintain a paid-up capital unimpaired by losses of at least RM300,000 equivalent in any foreign currency throughout its operations. Where the Labuan fund manager has Asset Under Management (AUM) of more than RM150 million, it must maintain additional capital equivalent to 0.2% of the AUM in excess of RM150 million.
- 8.2 Maintain a professional indemnity insurance policy with coverage of not less than RM1 million or its equivalent in any foreign currency throughout its operations.
- 8.3 Maintain a registered office in Labuan and ensure that the business must be carried on in, from or through Labuan. For Labuan fund manager that plans to establish a marketing office at Kuala Lumpur and/or Iskandar Malaysia, the Guidelines for Establishment of Marketing Office in Kuala Lumpur and Iskandar Malaysia issued by Labuan FSA should be observed.
- 8.4 Ensure that the shareholder(s), director(s), principal officer, representative<sup>5</sup> including any other relevant person meet the requirement of the Guidelines on Fit and Proper Person issued by Labuan FSA.
- 8.5 Ensure the compliance of the duties of a Labuan fund manager including segregation of client's assets as stipulated under Division 4, Part III of LFSSA and Chapter 4, Part IV of LIFSSA.

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<sup>4</sup> Including shareholders and person in control.

<sup>5</sup> Individual who undertakes fund management role in the company.

- 8.6 Establish an adequate internal policies and procedures for its operations, compliances, internal controls, corporate governance and risk management, including its business continuity plan. These have to be regularly reviewed to ensure that they remain appropriate, relevant and prudent.
- 8.7 Appoint an approved auditor to carry out an annual audit of its accounts in respect of the business operations pursuant to section 174 of LFSSA and section 135 of LIFSSA.
- 8.8 Conduct its business in any foreign currency other than Ringgit Malaysia unless permitted under Section 7(4) of LCA.
- 8.9 Conduct its business with due diligence and sound principles, maintain adequate and proper records and books of accounts in Labuan in line with the Directive on Accounts and Record-keeping Requirement for Labuan Entities issued by Labuan FSA and indicate clearly its name and license or registration number on its letterhead, stationery and other documents.
- 8.10 Appointment of qualified person<sup>6</sup> to its internal Shariah advisory board for Labuan fund manager undertaking Islamic fund management activities is required to ensure that its management and operation are in compliance with Shariah principles. In this regard, the Directive on Islamic financial business in Labuan IBFC shall also be observed.
- 8.11 Obtain prior approval from Labuan FSA on the following:
- 8.11.1 Changes of its identity, place of business or office in Labuan or outside Labuan, ownership and shareholding of the fund manager.
- 8.11.2 Appointment of director(s) and shareholder(s). The Labuan fund manager must have at least two directors.
- 8.12 Notify Labuan FSA in writing for the following:
- 8.12.1 Any amendment or alteration to any of its constituent documents within thirty (30) days of the changes being affected including the business plan.

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<sup>6</sup> Includes a corporation having in its employment at least one individual that possesses the necessary qualifications and expertise in Islamic commercial law and Islamic jurisprudence in line with section 2 of LIFSSA.

- 8.12.2 For Labuan fund manager undertaking Islamic fund management activities, notification is required within thirty (30) days from the appointment of its internal Shariah advisory board.
- 8.13 Comply with relevant laws and regulations of the jurisdiction where it intends to operate in.
- 8.14 Comply with the relevant directive, guidelines and reporting requirements issued by Labuan FSA from time to time.

## **9.0 Market Conduct and Practices**

9.1 The Labuan fund manager shall adhere with the following requirements to promote market integrity and investors' confidence.

### 9.1.1. Integrity and fair dealing

- (a) Conduct its business with integrity and fair dealing to avoid misleading and deceptive acts or representation.
- (b) Conduct its business in a manner that promotes a fair and orderly market.
- (c) Avoid any conflict of interest arising or, where a conflict arises, should ensure just treatment to all their clients by disclosure, internal rules on confidentiality or other accepted practices as deem fit.

### 9.1.2. Skills, care and diligence

- (a) Conduct its business with due care, skill and diligence.
- (b) Act competently and diligently in regard to all transactions between themselves and their clients.
- (c) Demonstrate that the advice provided, or exercise of discretion, are appropriate for the clients.

### 9.1.3. Acting in client's interest

- (a) Act in the best interest of its clients and must not jeopardise or prejudice clients' interests.

- (b) Provide relevant information to its clients in a manner that is fair, accurate and timely.

#### 9.1.4. Complaints

- (a) Have procedures in place, to deal with clients' complaints effectively and fairly through a simple and equitable process. These procedures should be well disclosed and easily accessible.
- (b) Details of the complaints, responses and any action taken must be recorded and maintained by Labuan fund manager.

#### 9.1.5. Compliance

- (a) Establish proper compliance function pursuant to the Guidelines on Compliance Function for Labuan Licensed Entities issued by Labuan FSA to ensure its business complies with the relevant directive, guidelines and reporting requirements issued by Labuan FSA from time to time.
- (b) Ensure compliance with the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 and Guidelines on Anti-Money Laundering and Counter Financing of Terrorism which is relevant to Labuan IBFC.
- (c) Ensure proper policies and procedures are in place to ensure a sound compliance framework which safeguards clients' interests.
- (d) Take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management and supervisory system.

## **10.0 Reporting Requirement**

10.1 The Labuan fund managers are required to submit to Labuan FSA the following :

- 10.1.1. Submit a copy of its audited financial statements to the Supervision and Enforcement Department (sed@labuanfsa.gov.my) within six (6) months after the closure of each financial year, either in hardcopy or digital format; and
- 10.1.2. Other statistics and information as Labuan FSA may require from time to time.



## **11.0 Annual Licence Fee**

- 11.1 The annual license fee payable for Labuan fund manager is RM5,000 upon the grant of licence.
- 11.2 The subsequent payment of annual licence fee is payable not later than 15 January of each year.

## **12.0 Submission for Application and Enquiries**

- 12.1 Any submission of application or enquiries on the Labuan fund managers may be forwarded to the following contact details:-

Business Management Department  
Labuan Financial Services Authority  
Level 17, Main Office Tower  
Financial Park Complex  
Jalan Merdeka  
87000 Federal Territory of Labuan

Telephone no. : 087 591200  
Fax no. : 087 453442/413328  
Email : [business\\_operations@labuanfsa.gov.my](mailto:business_operations@labuanfsa.gov.my)

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### **Additional factors in Assessing the Application for Labuan Fund Manager**

- 1.0 The character and integrity of the applicant or, if the applicant is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good governance and integrity.
- 2.0 The soundness and feasibility of the business plans of the applicant for the future conduct and development of the business.
- 3.0 The business will be operated responsibly by adequate human resources with the competence and experience suitable to undertake such services as stipulated under the paragraph 6.0 of the Guidelines.
- 4.0 The nature and sufficiency of the financial resources of the applicant as a source of continuing financial support for the business.
- 5.0 For Labuan fund manager undertaking Islamic fund management activities, the aims and operation of the business which is desired to be carried on will not involve any element which is contrary to Shariah principles.