

## **GUIDELINES ON THE ESTABLISHMENT OF LABUAN MUTUAL FUNDS INCLUDING ISLAMIC MUTUAL FUNDS**

### **1.0 Introduction**

- 1.1 The Guidelines is issued to clarify the procedures, operational and regulatory requirements for Labuan mutual funds<sup>1</sup> in Labuan International Business and Financial Centre.
- 1.2 Labuan mutual funds which can either be in the form of public fund or private fund can be structured as a Labuan company, a corporation incorporated under the laws of any recognised country or jurisdiction, who is a member of the International Organization of Securities Commissions (IOSCO), a partnership, a protected cell company, a foundation or a unit trust.
- 1.3 Labuan Islamic mutual funds shall operate in compliance with Shariah principles.

### **2.0 Applicability**

- 2.1 Labuan mutual fund as governed under Part III of the Labuan Financial Services and Securities Act 2010 (LFSSA);
- 2.2 Labuan Islamic mutual fund as governed under Part IV of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA); and
- 2.3 The Guidelines shall be read together with the Guidelines on the Establishment of Labuan Fund Manager 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 (LFSA) to clarify the provisions under Part III of LFSSA and Part IV of LIFSSA.

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<sup>1</sup> Include Islamic mutual funds.

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

#### **4.0 Effective Date**

- 4.1 The Guidelines shall come into effect on 1 January 2014 and would supersede the Guidelines on Mutual Funds in Labuan issued in April 1998 and updated on 19 August 2013 by Labuan FSA.
- 4.2 All registrations, consents, notifications or exemptions (whichever relevant) granted by Labuan FSA to existing Labuan mutual funds under the superseded guidelines shall continue to remain valid unless revoked.

#### **5.0 Labuan Private Fund**

- 5.1 Labuan private funds are mutual funds whose securities are not offered to the general public and are owned or held by:
- 5.1.1 Not more than 50 investors where the first time investment of each of such investors is not less than RM250,000 equivalent in any foreign currency; or
  - 5.1.2 Any number of investors where the first time investment of each such investors is not less than RM500,000 equivalent in any foreign currency.
- 5.2 Labuan private funds, prior to its launching shall notify Labuan FSA in writing pursuant to section 28 of LFSSA and section 33 of LIFSSA, and lodge an information memorandum through either one of these licensed entities, i.e. Labuan trust company, Labuan bank including Islamic bank, Labuan investment bank including Islamic investment bank or Labuan fund manager which shall reasonably be satisfied that:-
- 5.2.1 The information memorandum or such other offering document refer to a Labuan private fund; and
  - 5.2.2 There is no element of fraud involved in the establishment of the Labuan private fund.

## **6.0 Information Memorandum of Labuan Private Fund**

The information memorandum of the Labuan private fund should provide full, true and plain disclosure of all facts and circumstances that would facilitate a reasonable assessment by a prospective investor in determining whether to purchase or subscribe to the private fund and shall contain at least the following disclosures:-

### **6.1 General information**

- 6.1.1 General description of the fund including date of issuance, mandate/objective, legal form and structure, tenure, target fund size and geographical focus. For Labuan Islamic private fund, the description must state that the fund shall only participate in operations, administrations, investments and all other activities that are in compliance with Shariah principles.
- 6.1.2 Where all or any part of the information memorandum is not in the national language of Malaysia or English language, a translation into the national language of Malaysia or English language of the information memorandum or that part of the information memorandum, verified in a manner satisfactory to the Labuan FSA.
- 6.1.3 Names, address, profiles and relevant information of the director/general partner/designated partner/trustee/council member (Board of the private fund), as the case may be depending on the structure of the fund.
- 6.1.4 The profile of the promoter/custodian/trustee/fund manager, whichever applicable.
- 6.1.5 The profile of the qualified person<sup>2</sup> as its Shariah adviser in the case of Labuan Islamic private fund.
- 6.1.6 All fees and costs that will be borne by the investors.
- 6.1.7 The capital and income distribution policy of the fund.

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<sup>2</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.

6.1.8 A statement in the information memorandum containing the following:

*“Labuan FSA takes no responsibility for the contents of this information memorandum, makes no representations as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon any part of the contents of this information memorandum.*

*An investor is advised to clearly understand the risk(s) of the investment, seek professional consultancy, if necessary and request for sufficient information to enable them to make a reasonable evaluation of the investment.”*

## 6.2 Investment strategy

6.2.1 The investment strategy including the investment policies and objectives and type of securities in which the fund intends to invest.

6.2.2 The names of all underwriters and amount proposed to be underwritten by each underwriter.

6.2.3 Summary of the key features of the fund which can facilitate an investor in considering and comparing any similar investments on offer which shall include at least the following information:

- a) Issue price of the shares.
- b) Nature and significant expenses to be incurred by the fund.
- c) Statement of the potential risks of investing the fund.

6.2.4 The extent to which it intends to invest in derivatives and unlisted securities. If it is intended for the fund not to invest in any of such investments, the information memorandum must include an appropriate statement to that effect.

6.2.5 The investment and borrowing limitations of the fund. Where applicable, this should include an analysis of the risks by its nature including the risks of the country and region where the fund intends to invest.

### **6.3 Financial results**

6.3.1 The financial projections of the fund including projected cash flows and profits, given its nature, investment policies and objectives.

6.3.2 The proposed minimum subscription proceeds net of costs (e.g. underwriting fees related to the offer).

6.3.3 The fund's policy on submission of financial reports including interim results and annual financial statements of the fund to its subscribers.

### **6.4 Redemption policy**

6.4.1 Information on fund redemption policy, which include but not limited to the procedure for redemption, timing, events where redemption right is suspended and pricing redemption or subscription of unit/shares of the fund.

### **6.5 Material changes**

6.5.1 If there is any change which materially affects any of the matters required to be disclosed in the information memorandum, or the matters disclosed in the information memorandum, the fund manager of the Labuan private fund shall within 30 days incorporate such changes to the information memorandum and provide a copy of supplementary/amended information memorandum to each of investors and Labuan FSA.

## **7.0 Operational Requirement for Labuan Private Fund**

7.1 Submit an audited financial statement of its promoter and fund manager, where applicable, for the three preceding years along with the lodgment of information memorandum.

7.2 The issuer of the private fund must provide a copy of the information memorandum to each of the investor.

7.3 A private fund may appoint its fund manager, fund administrator or other service providers.

- 7.4 The shareholder and every members of the Board of the private fund including any other relevant person must be fit and proper persons in accordance with the Guidelines on Fit and Proper Person issued by Labuan FSA.
- 7.5 Labuan private funds that have reached their maturity period shall notify Labuan FSA in writing within one month after its maturity.
- 7.6 Ensure fair and orderly winding down of the matured fund including having an auditor to ensure that all assets have been properly returned to investors.
- 7.7 Comply with the relevant laws and regulations in the jurisdictions where it intends to operate including obtaining the necessary approval.
- 7.8 Maintain adequate and proper accounting and other records in line with the Directive on Accounts and Record-Keeping Requirement for Labuan Entities issued by Labuan FSA that will sufficiently explain its transaction and financial position and indicate clearly its names on its letterhead, stationery and other documents.
- 7.9 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.
- 7.10 Ensure proper policies and procedures are in place to ensure a sound compliance framework which safeguards clients' interests.

## **8.0 Existing Labuan Private Fund Granted Consent under LOSIA**

- 8.1 Existing Labuan private funds previously granted consent under Labuan Offshore Securities Industry Act 1998 (LOSIA) which do not comply with the new requirement under LFSSA or LIFSSA may remain status quo until the maturity period of the fund. However, these private funds are still required to notify Labuan FSA in writing within one month after the maturity.

## **9.0 Labuan Public Fund**

- 9.1 Labuan public funds are those whose securities are offered for subscription to any member of the general public.
- 9.2 Labuan public funds may commence business after being registered under section 33(1)(a) of LFSSA or section 38(1)(a) of LIFSSA.
- 9.3 Labuan public funds which have been granted provisional acceptance under section 33(1)(b) of LFSSA or section 38(1)(b) of LIFSSA are not allowed to accept subscription monies or make investments until being granted registration. They are allowed to use the provisional acceptance only for promotional or publicity purposes.
- 9.4 A public fund lawfully registered under the laws of any jurisdiction, who is a member of IOSCO, need not be registered as a public fund under section 33 of LFSSA or section 38 of LIFSSA so long as the public fund is administered or managed in Labuan by a fund administrator, a custodian, a trustee or a fund manager, who is licensed, registered or eligible to do so under LFSSA and/or LIFSSA. However, it shall notify Labuan FSA of its operations in Labuan IBFC and lodge a prospectus of the public fund which shall include the minimum information as per paragraph 11.0 of the Guidelines.

## **10.0 Application for Registration of Labuan Public Fund**

- 10.1 An applicant of a public fund must submit a duly completed application form (Form LSCM) and all the relevant supporting documents as stipulated in the Form LSCM, which is downloadable from the website of Labuan FSA ([www.labuanfsa.gov.my](http://www.labuanfsa.gov.my)).
- 10.2 In addition, the applicant is also required to submit to Labuan FSA the following:-
- 10.2.1 A copy of the memorandum and articles of association/partnership agreement/ trust deed/charter/other constituent document as the case may be of the fund.

- 10.2.2 Names, addresses, profiles and relevant experience of the director/ general partner/ designated partner/ trustee/ council member of the fund (Board of the public fund), whichever applicable. The appointment of any members of the Board of the public fund requires prior written approval from Labuan FSA.
- 10.2.3 The profile of the promoter/custodian/trustee/fund manager, whichever applicable.
- 10.2.4 An audited annual account of the promoter and fund manager, where applicable, for the three preceding years along with the application.
- 10.2.5 The profile of the qualified person as its Shariah adviser in the case of Labuan Islamic public fund.
- 10.2.6 A signed declaration by the Board of the public fund on confidentiality and secrecy in regard to the operation and administration of the fund.
- 10.2.7 A certificate from an expert as required under section 11 of LFSSA or section 16 of LIFSSA that includes a statement certifying that the Labuan public fund complies with the requirements under Part III of LFSSA or Part IV of LIFSSA and the Guidelines.
- 10.2.8 A copy of the prospectus of the Labuan public fund which should comply with section 35 of LFSSA or section 40 of LIFSSA, either in draft or final form.

## **11.0 Prospectus of Labuan Public Fund**

The prospectus of the Labuan public fund should provide full, true and plain disclosure of all facts and circumstances that would facilitate a reasonable assessment by a prospective investor in determining whether to purchase or subscribe to the public fund and shall contain at least the following disclosures:-

### **11.1 General information**

- 11.1.1 General description of the fund including date of issuance, mandate/objective, legal form and structure, tenure, target fund size and geographical focus. For Labuan Islamic public fund, the description must state that the fund shall only participate in operations, administrations, investments and all other activities in compliance with Shariah principles.



11.1.2 Where all or any part of the prospectus is not in the national language of Malaysia or English language, a translation into the national language of Malaysia or English language of the prospectus or that part of the prospectus, verified in a manner satisfactory to the Labuan FSA.

11.1.3 Information on the full details of the experience, the terms of appointment and termination of the Board of the public fund, managers, custodian and trustee of the fund, whichever applicable and their key personnel. The information shall also include particulars of:-

- a) Any shares held by them in the fund.
- b) Any borrowings given by them to the fund.
- c) Any other obligations of the fund to them.

11.1.4 Profile of the qualified person as its Shariah adviser in the case of Labuan Islamic public fund.

11.1.5 Details of taxes or zakat to be levied on income and/or capital of the fund and any taxes or zakat to be deducted from distributions to shareholders.

11.1.6 The capital and income distribution policy of the fund.

11.1.7 A statement in the prospectus containing the following:

*“Labuan FSA takes no responsibility for the contents of this prospectus, makes no representations as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon any part of the contents of this prospectus.*

*An investor is advised to clearly understand the risk(s) of the investment, seek professional consultancy, if necessary and request for sufficient information to enable them to make a reasonable evaluation of the investment.”*

## 11.2 Investment strategy

11.2.1 The investment strategy including the investment policies and objectives and type of securities in which the fund intends to invest.

11.2.2 The names of all underwriters and amount proposed to be underwritten by each underwriter.

11.2.3 Summary of the key features of the public fund which can facilitate an investor in considering and comparing any similar investments on offer which shall include at least the following information:

- a) Issue price of the shares.
- b) Nature and significant expenses to be incurred by the fund.
- c) Statement of the potential risks of investing the fund.

11.2.4 The extent to which it intends to invest in derivatives and unlisted securities. If it is intended for the fund not to invest in any of such investments, the prospectus must include an appropriate statement to that effect.

11.2.5 The investment and borrowing limitations of the fund. Where applicable, this should include an analysis of the risks by its nature including the risks of the country and region where the fund intends to invest.

### **11.3 Financial results**

11.3.1 The financial projections of the fund including projected cash flows and profits, given its nature, investment policies and objectives.

11.3.2 The proposed minimum subscription proceeds net of costs (e.g. underwriting fees related to the offer).

11.3.3 The fund's policy on submission of financial reports including interim results and annual financial statements of the fund to its subscribers.

### **11.4 Asset valuation policy**

11.4.1 The fund's policy pertaining to asset valuation including the financial reporting standards used in for the preparation of the financial statements and the methods on valuing assets.

### **11.5 Investor care framework**

11.5.1 Establishment of an investor care framework that shall cover the following areas:-

- a) Descriptions of the rights of investors of the public fund which shall also incorporate the requirements stipulated in sections 36 of LFSSA or section 41 of LIFSSA.

- b) A complaint handling process.
- c) A comprehensive policy on conflict of interest including its disclosure policy in ensuring investor protection.

11.5.2 All fees and costs that will be borne by the investors.

## 11.6 Related party transaction

11.6.1 The fund's policy on related party transactions including its disclosure policy.

## 11.7 Redemption policy

11.7.1 Information on fund redemption policy, which include but not limited to the procedure for redemption, timing, events where redemption right is suspended and pricing redemption or subscription of unit/shares of the fund.

## 11.8 Material changes

11.8.1 If there is any change which materially affects any of the matters required to be disclosed in the prospectus, or the matters disclosed in the prospectus, the fund manager of the Labuan public fund shall within 30 days incorporate such changes to the prospectus and provide a copy of the supplementary/amended prospectus to each of investors and Labuan FSA.

## 12.0 Operational Requirement for Labuan Public Fund

12.1 Must appoint a fund manager, trustee, administrator and custodian (service provider) that are approved by Labuan FSA.

12.2 The duties of fund manager and custodian or trustee of Labuan public fund must be independent from each other. The duties of fund manager for public fund are provided under sections 47, 48, 49 and 50 of LFSSA and sections 46, 47, 48 and 49 of LIFSSA.

12.3 Maintain a registered office in Labuan. For a Labuan public fund which is permitted to be managed by a non-Labuan licensed fund manager, at least one of the service providers must be approved by Labuan FSA.

- 12.4 All subscriptions shall be repaid immediately if the minimum level of subscription required is not met within the stipulated time.
- 12.5 Conduct its business with due diligence and sound principles.
- 12.6 The shareholder and every members of the Board of the public fund including any other relevant person must be fit and proper persons in accordance with the Guidelines on Fit and Proper Person issued by Labuan FSA.
- 12.7 Maintain adequate and proper accounting and other records in line with the Directive on Accounts and Record-Keeping Requirement for Labuan Entities issued by Labuan FSA that will sufficiently explain its transaction and financial position and indicate clearly its names and registration number on its letterhead, stationery and other documents.
- 12.8 Appoint an approved auditor to carry out an annual audit of the accounts in respect of the business operations and submit the audit report to the investors and Labuan FSA pursuant to section 174 of LFSSA and section 135 of LIFSSA within six months after the close of each financial year.
- 12.9 Comply with the requirements of section 53 of LFSSA and section 54 of LIFSSA with regards to its accounts and the audit requirement.
- 12.10 Provide half yearly reporting to the investors, which includes (but not limited to) the following:
- 12.10.1 Portfolio valuation report showing actual portfolio mix of the fund;
  - 12.10.2 The net asset value of the investment;
  - 12.10.3 Independent verification/confirmation of existence of the fund's assets;
- and
- 12.10.4 Other pertinent information to the investor with regard to the fund's performance.
- 12.11 Notify Labuan FSA of any amendment or alteration to any of its constituent document within 30 days of the changes being affected including its business plan.
- 12.12 Obtain approval of Labuan FSA for any change of the members of the Board of the public fund.

- 12.13 Ensure fair and orderly winding down of the matured fund including having an auditor to ensure that all assets have been properly returned to investors.
- 12.14 Comply with the relevant laws and regulations in the jurisdictions where it intends to operate including obtaining the necessary approval.
- 12.15 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.
- 12.16 Ensure proper policies and procedures are in place to ensure a sound compliance framework which safeguards clients' interests.

### **13.0 Investment and Borrowing Limitations for Labuan Public Fund**

- 13.1 Labuan public funds are required to establish investment and borrowing limitations of its fund which must also contain a comprehensive and clear statement of the risks involved.
- 13.2 The investment and borrowing limitations of the fund must be defined and approved by the Board of the public fund or fund manager. It must then be disclosed in the constituent document/prospectus.
- 13.3 If any of the limits on investment and borrowing is breached, the Board of the public fund or fund manager should take all necessary steps within a reasonable time to remedy the situation, taking due account of the interests of the investors.

### **14.0 Reporting Requirement for Labuan Public Fund**

- 14.1 The Labuan public funds are required to submit to Labuan FSA the following:
  - 14.1.1 Two copies of its audited financial statements to the Supervision and Enforcement Department ([sed@labuanfsa.gov.my](mailto:sed@labuanfsa.gov.my)) within six (6) months after the closure of each financial year, either in hardcopy or digital format; and
  - 14.1.2 Other statistics and information as Labuan FSA may require from time to time.

## **15.0 Fees**

### **15.1 Labuan Private Fund**

15.1.1 The Labuan private fund is required to pay a one-off lodgment fee of RM2,000 for each information memorandum lodged with Labuan FSA.

15.1.2 If the Labuan private fund uses a structure based on a protected cell company (PCC) incorporated under the Labuan Companies Act 1990, the annual fee payable are as follows:-

- a) RM5,000 (General assets or “Core”); and
- b) RM2,000 (Each cell).

15.1.3 The subsequent payment of annual fee for Labuan private fund using PCC structure is payable not later than 15 January of each year during which the registration is valid.

### **15.2 Labuan Public Fund**

15.2.1 The Labuan public fund is required to pay a lodgment fee of RM2,000 for each prospectus registered with Labuan FSA and an annual fee of RM2,000.

15.2.2 If the Labuan public fund uses a structure based on a protected cell company incorporated under the Labuan Companies Act 1990, the annual fees payable are as follows:-

- a) RM5,000 (General assets or “Core”); and
- b) RM2,000 (Each cell).

15.2.3 The subsequent payment of annual fee is payable not later than 15 January of each year during which the registration is valid.

## **16.0 Submission for Application and Enquiries**

16.1 Any submission of notification, application or enquiries on the Labuan mutual funds 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)

Labuan Financial Services Authority

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