

GUIDELINES ON WORK PERMIT APPLICATION IN LABUAN IBFC FOR NON-LICENSED ENTITY

1.0 Introduction

- 1.1 The purpose of the Guidelines is to facilitate the application of work permits for expatriates working for a non-licensed entity in Labuan International Business and Financial Centre (Labuan IBFC).

2.0 Applicability

- 2.1 The Guidelines is applicable to all Labuan non-licensed entities which are incorporated or registered under Labuan Companies Act 1990 (LCA), Labuan Trusts Act 1996 (LTA), Labuan Foundations Act 2010 (LFA), Labuan Limited Partnership and Limited Liability Partnership Act 2010 (LPLLP) or Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

3.0 Legal Provision

- 3.1 The Guidelines is issued pursuant to section 4A of Labuan Financial Services Authority Act 1996 (LFSAA).
- 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.
- 3.3 The Guidelines should be read in conjunction with the provisions of the relevant Labuan laws as well as written directions, guidelines and circulars that Labuan FSA may issue from time to time and any related policies issued by Immigration Department of Malaysia.

4.0 Effective Date

- 4.1 The Guidelines shall come into effect on 1 March 2015 and would remain effective and applicable unless amended or revoked.

4.2 With the issuance of the Guidelines, the following policy documents are superseded:

4.2.1 Circular on Applications for Work Permit for Expatriates Working in Labuan Companies issued on 2 June 2010 (Circular No. 109/2010/ALTC);

4.2.2 Circular on Applications for Work Permit for Expatriates Working in Labuan Companies issued on 6 July 2011 (Circular No. 124/2011/ALTC);

4.2.3 Guidelines on Work Permit Applications in Labuan IBFC issued on 6 July 2011; and

4.2.4 Circular on Clarification of the Guidelines on Work Permit Application in Labuan IBFC issued on 15 July 2011 (Circular No. 126/2011/ALL).

5.0 Eligibility Criteria

5.1 The expatriate shall be paid a minimum salary of RM10,000 per month or its equivalent in any foreign currency.

5.2 The application for work permit should be in respect of the following positions in Labuan entity as specified by the Immigration Department of Malaysia:

5.2.1 Top management e.g. Executive Director, Managing Director, Principal Officer, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer.

5.2.2 Professional e.g. Accountant, Lawyer, Consultant, Underwriter, Economist, Engineer, Actuary.

5.2.3 Technical expert e.g. IT Specialist or other specialists related to Labuan trading activity.

5.3 The applicant should have the corresponding competencies or relevant working experience related to the position applied in line with the fit and proper requirements as per Appendix 1.

5.4 The paid-up share capital of Labuan company or contribution by member(s) of Labuan partnership, must be at least **RM250,000** or its equivalent in any foreign currency.

6.0 Application Requirement

6.1 An application for work permit shall be submitted to Labuan FSA according to the latest checklist provided by Immigration Department of Malaysia which is downloadable from Labuan FSA's website (<http://www.labuanibfc.com>) and supporting documents must be certified by the following authorised officer in Malaysia:

- 6.1.1 Commissioner for oaths;
- 6.1.2 Notary public;
- 6.1.3 Certified public accountant;
- 6.1.4 Advocates or solicitor;
- 6.1.5 Company secretary; or
- 6.1.6 Malaysian/foreign embassies.

Where documents are not in the national language of Malaysia or in English, it must be accompanied with duly certified/notarised English translated version of the documents. The translation of the documents can be made in the country where the applicant is residing and certified by Malaysian high commission/embassy in the country.

6.2 In addition to paragraph 6.1, the following documents shall be also be certified and submitted to Labuan FSA:

- 6.2.1 Business plan of Labuan company which include:
 - a. Description of business undertaken.
 - b. Organisation chart.
 - c. Job description of the applicant.
- 6.2.2 A copy of employment contract or letter of appointment between the company and the applicant.
- 6.2.3 A copy of banker's certificate issued by a bank in Labuan to verify the amount of paid up share capital of Labuan company or cash contribution by member(s) of Labuan partnership, whichever applicable.
- 6.2.4 Bank account number with a bank in Labuan.
- 6.2.5 Income tax reference number:
 - a. Labuan entity's tax reference (C/OBA.);
 - b. Employer tax reference (E.); and
 - c. Employee tax reference (SG.).

Items under paragraphs 6.2.4, 6.2.5 (b) and 6.2.5 (c) are required to be submitted within 30 working days from the date of their registration with the bank or Inland Revenue Board of Malaysia (IRB), respectively.

6.3 Application for work permit must be submitted to Labuan FSA through the appointed Labuan Trust Company (LTC).

6.4 The LTC must provide a Statutory Declaration in relation to Work Permit Application (SD) as attached in the Appendix 2 together with a copy of document as a proof that due diligence process has been conducted by attaching, World-check result or its equivalent to support the application and declare that they have conducted the necessary due diligence on the applicant and satisfied with the result thereof. The SD must be signed by the approved trust officer of the appointed Labuan trust company.

- 6.5 For renewal application, the applicant is required to submit to Labuan FSA according to the latest checklist provided by Immigration Department of Malaysia which is downloadable from Labuan FSA's website (<http://www.labuanibfc.com>) including the following:
- 6.5.1 Certified true copy of the latest three months' salary slips and bank statements.
 - 6.5.2 Certificate of Good Conduct issued by Ministry of Foreign Affairs Malaysia.
 - 6.5.3 Letter from IRB to verify the tax reference number of the applicant and the applicant has duly submitted the tax return to IRB.
- 6.6 The application for work permit must be submitted together with a non-refundable processing fee of RM1,000/USD350.

7.0 Operational Requirement

- 7.1 The applicant from high-risk jurisdiction as listed by the Financial Action Task Force (<http://www.fatf-gafi.org>) and other countries as may be specified by Labuan FSA may be required to attend an interview session which will be conducted by Labuan FSA.
- 7.2 The applicant is required to provide the address of the company/employer and the residential address in Malaysia, as required by the Immigration Department of Malaysia. The company's address/employer's address must be an office that falls under one of the following category:
- 7.2.1 Operational office in Labuan;
 - 7.2.2 Marketing office as per the Guidelines on the Establishment of Marketing Office in Kuala Lumpur and Iskandar Malaysia; or
 - 7.2.3 Co-located office as per the Guidelines on Co-location of Labuan Holding Company.
- 7.3 The registered office address shall not be used as residential address for renewal application. However, once approved, the appointed LTC is required to provide the applicant's residential address in Malaysia certified by its approved trust officer within 30 working days from the date of approval.
- 7.4 The recommendation for work permit application is for a maximum period of two years. Renewal of application must be submitted to Labuan FSA at least three months before the work permit expires.
- 7.5 All LTCs are required to notify Labuan FSA for any change to the applicant's address in Malaysia within 30 working days from the date of change.

8.0 Compliance Requirement

- 8.1 The applicant shall **ONLY** undertake activities as specified under the Labuan laws including LCA, LTA, LFA, LPLLP, LIFSSA and other relevant laws.
- 8.2 The approved work permit is only allowed to be used to undertake activities of the Labuan entity.
- 8.3 All applicants must also comply with fit and proper requirement as specified in the Appendix 1 of the Guidelines.
- 8.4 Failure to adhere to these compliance requirements may result in revocation of the recommendation for work permit by Labuan FSA and initiation of other punitive measures by Labuan FSA, relevant domestic regulators and law enforcement agencies in Malaysia.

9.0 Submission for Application and Enquiries

- 9.1 Any submission of application, notification or enquiry on the application for work permit may be forwarded to the following contact details:

Director
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 : roc@labuanfsa.gov.my

Labuan Financial Services Authority
25 February 2015

Fit and Proper Person Requirements

For the purpose of determining whether a person is a fit and proper person, the following may be taken into consideration:

- (A) Integrity;
- (B) Competency;
- (C) Soundness of judgement; and
- (D) Financial standing of the person.

(A) Integrity

Integrity is a set of qualities that are demonstrated over time. These attributes demand a disciplined, on-going commitment to high standards of behaviour and honesty. In determining the integrity of the relevant person, the following factors would be the minimum criteria:

(i) Inference to offence committed or deemed to have been committed by relevant person

Whether the person:

- (a) is or has been the subject of any proceedings of a disciplinary or criminal in nature, or has been notified of any impending proceedings or of any investigation, which might lead to such proceedings;
- (b) has been charged or convicted in any court of any criminal offence including an offence relating to dishonesty, fraud, financial crime or other criminal acts or been involved in any acts of misfeasance or serious misconduct;
- (c) has been found liable in any civil suits in any court in relation to fraud or misfeasance;
- (d) has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies, which are of the nature or significance that may have his fitness and propriety; or
- (e) has contravened any provisions made by or under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice.

(ii) Inference to adverse situations where the relevant person is involved

Whether the person:

- (a) or any business in which he has controlling interest or exercises significant influence, has been investigated, disciplined, suspended or criticised by a regulatory or professional body, a court of tribunal, whether publicly or privately;

- (b) has been associated, in ownership or management capacity with a company, partnership or other business association that has been refused registration, authorisation, membership or a licence to conduct trade, business or profession or has had a registration, authorisation, membership or licence revoked, withdrawn or terminated;
- (c) has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authorisation as a result of the removal of the licence, registration or other authority mentioned in (b) above; or
- (d) has held a position of responsibility in the management of a business that has gone into receivership, insolvency, or involuntary liquidation while the person was connected with that business.

(iii) Inference to punitive actions taken against the relevant person

Whether the person:

- (a) has been dismissed, asked to resign or resigned from the employment or from a position of trust, fiduciary appointment or similar position because of question about his honesty and integrity;
- (b) has been disqualified, under the companies legislation or any other legislation or regulation, from acting as a director or serving in a managerial capacity; or
- (c) has been subjected to any adverse report based on any information or documents made available to Labuan FSA by any reliable sources.

(iv) Inference to situation that shows doubt on the relevant person's probity

Whether the person:

- (a) has at any time shown strong opposition or lack of willingness to maintaining effective internal control system;
- (b) has not been fair, trustful and forthcoming in his dealings with his customers, superiors, auditors and regulatory authority in the past; or
- (c) does not demonstrate readiness or willingness to comply with the legal or regulatory requirements; or professional standards; or has shown a strong objection or lack of willingness to cooperate with regulatory authorities.

(B) Competency

In determining competency of a person, the following considerations would be taken into account, including but not limited to, whether the person:

- (i) has demonstrated, through his qualifications and experience, the capacity to successfully undertake the cognate responsibilities of the position, including the establishment of effective control regime;
- (ii) has ever been disciplined by a professional, trade or regulatory body, or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement; or

(iii) has a sound knowledge of the business and responsibilities attached to it.

(C) Soundness of judgement

In determining a person's soundness of judgement, all relevant factors would be considered, including but not limited to:

- (i) has shown an adequate degree of balance, rationality and maturity, demonstrated in conduct and decision making, especially with respect to previous business practices;
- (ii) has soundness of judgement that may be derived from the lack of adverse information;
- (iii) does not have a record or evidence of previous business conduct and activities of a deceitful, oppressive or otherwise improper in nature, or which otherwise raises concerns about the individual's methods of conducting business; or
- (iv) is free from any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgement when acting in the capacity of a key responsible person which would be disadvantageous to the LFI or the LFI's interest.

(D) Financial standing

In determining a person's financial standing, all relevant factors would be considered, including but not limited to, whether the person at any time during the preceding ten years has:

- (i) been the subject of any adverse judgement or award in Labuan or elsewhere, that remains outstanding or was not satisfied within a reasonable period;
- (ii) made any arrangement or composition with his creditors, and members or have had a petition presented in any court for its winding up, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of the above in Labuan or elsewhere; or
- (iii) been a senior officer of a company or a shareholder in a position to exercise significant influence in the company that:
 - (a) has been the subject of any adverse judgement or award, in Labuan or elsewhere, that remains outstanding or was not satisfied within a reasonable period; or
 - (b) has in Labuan or elsewhere made any arrangements or composition with its creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of the foregoing.

The fact that a person may be of limited financial means will not, in itself, affect his ability to satisfy the financial standing criteria.

Statutory Declaration in Relation to a Work Permit Application:

Name of Applicant: _____
Name of Labuan Company: _____
(Co. No.: _____ **)**

I,of NRIC/Passport No:....., an approved trust officer do hereby solemnly and sincerely declare, for and on behalf of _____(name of Labuan Trust Company) that in relation to the above application-

- a. I have taken reasonable measures to verify by reliable means:
 - i. the identity of the above Applicant; and
 - ii. the authenticity and originality of the documents and information submitted in relation of this application.

- b. I have conducted relevant vetting on the Applicant and satisfied that the Applicant fulfilled the relevant requirements of fit and proper person as stipulated by Labuan FSA.

- c. I have sighted, verified and have in our possession relevant documents in relation to paragraph (a) and (b) above and Labuan FSA may request or inspect the documents at any time for any purpose.

- d. All information or document submitted to Labuan FSA or the Malaysian Immigration Department for this application is valid and genuine.

- e. I am satisfied that all requirements of the relevant laws and regulation in respect to the above application have been complied with and hereby recommend for this application.

I make this solemn declaration conscientiously believing the same to be true and knowing that it is of the same force and effect as if made under oath by virtue of the provisions of the Statutory Declaration Act 1960.

Subscribed and solemnly declared by
the above named

At

In the State of

This ...day of 20..

.....

Signature

Before me,

.....
(Commissioner for Oath)