



## GUIDELINES FOR LABUAN TRUST OFFICERS

### 1.0 Introduction

- 1.1 The Guidelines for Labuan Trust Officers (the Guidelines) sets out the requirements on the key roles and responsibilities of a Labuan approved trust officer (TO).
- 1.2 In addition, the Guidelines also clarifies on the requirements relating to the approval of a TO including the duties expected of the Labuan trust company (LTC) appointing the TO.
- 1.3 Labuan FSA expects the Guidelines to be adhered by the TO, and to a certain extent by the LTC, so as to uphold the professionalism amongst the trust and corporate service providers in Labuan International Business and Financial Centre (IBFC).

### 2.0 Applicability

- 2.1 The Guidelines is applicable to all TOs engaged by LTC (both full-fledged and managed) under the Labuan Financial Services and Securities Act 2010 (LFSSA).

### 3.0 Legal Provision

- 3.1 The Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) for the purpose of clarifying the regulatory requirements for TOs including the responsibility of LTCs in relation to TOs.
- 3.2 Any TO and LTC who fails to comply with the Guidelines is deemed as committing an offence that is punishable under Section 36B and 36G of the LFSAA.

### 4.0 Effective Date

- 4.1 The Guidelines shall come into effect on **1 January 2019** and would remain effective and applicable unless amended or revoked.

## **5.0 Definition of TO**

5.1 TO is defined as an officer of a Labuan trust company who is approved and designated as a TO by Labuan FSA.

## **6.0 Approval Requirements**

6.1 Every application will be determined on its own merits and in accordance with the criteria set by Labuan FSA as follows:

- (i) Meeting the eligibility criteria as provided under the LFSSA Regulation 2010, section 10(2)(d) – Application for a Licence as a Labuan Trust Company;
- (ii) Complying with the fit and proper person requirements issued by Labuan FSA; and
- (iii) Conforming to any other requirements to be imposed by Labuan FSA on case by case basis.

6.2 In terms of the approval process, subject to meeting the criteria set under paragraph 6.1, the applicant must pass the:

- (i) Trust Officer Examination organised by Labuan FSA<sup>1</sup>; and
- (ii) interview session conducted by Labuan FSA<sup>1</sup>.

6.3 The approval of a person as a TO is in respect of the employer trust company that submits the application and such approval is not transferable to any other employment that the person subsequently secures.

6.4 Where the LTC wishes to appoint a former TO<sup>2</sup>, the LTC must submit a separate application in respect of the person by ensuring full compliance with the requirements for the appointment as a TO. It should be noted that the previous approval of a person as a TO with his former LTC is in itself not a guarantee that Labuan FSA will grant subsequent approval of the person as a TO in respect of the LTC that he newly joins with.

6.5 An applicant that has ceased to be a TO and/or resigned from the LTC within one (1) year from the date of the cessation/resignation i.e. former TO is not required to undertake the trust officer examination with Labuan FSA should he apply to be a TO for the new LTC. The applicant is exempted from undertaking the trust officer examination and the interview session with Labuan FSA if he has ceased to be a TO and/or resigned from the LTC within six (6) months from the date of his application. Further explanation on this requirement is provided in the table below:

---

<sup>1</sup> The applicants are required to observe the Procedures for the Examination and Interview Session for Labuan Trust Officer which is available at [www.labuanibfc.com](http://www.labuanibfc.com).

<sup>2</sup> This refers to a person who was a TO but has resigned from a trust company or ceased to be a TO.

<b>Timeline of Application</b>	<b>TO's Examination</b>	<b>Interview with Labuan FSA</b>
Application by a former TO who has ceased as TO/resigned from LTC within <b>6 months or less</b>	<b>Exempted</b>	<b>Exempted</b>
Application by a former TO who has ceased as TO/resigned from LTC <b>more than 6 months but up to 12 months</b>	<b>Exempted</b>	Required
Application by a former TO who has ceased as TO/resigned from LTC for <b>more than 12 months</b>	Required	Required

- 6.6 Following the approval of a TO, there may be new facts or developments that are deemed material and may affect Labuan FSA's consideration of his application. In such circumstances, the LTC of the TO shall within seven (7) working days of becoming aware of the new material fact or circumstance, notify the Labuan FSA in writing of the same.
- 6.7 A new fact or development in relation to a TO is considered material if the nature of it is as such that had it occurred or been known at the time of the approval of a TO it would have been considered relevant to his fitness and propriety of the application process. The materiality may relate, but not limited, to any of the following:
- (i) Conviction of the TO for a criminal offence<sup>3</sup>;
  - (ii) Where the TO is the subject of a criminal investigation or an extradition request;
  - (iii) Liability of the TO in a civil suit which elicits unlawful or dishonest conduct;
  - (iv) Bankruptcy of the TO;
  - (v) Where any documentary or other evidence presented in support of an application for approval of TO is discovered to be false, not entirely accurate or to have been unlawfully obtained;
  - (vi) Where the TO has resigned from or been relieved of his duty with the LTC, irrespective of whether or not the TO has taken up employment with another person;
  - (vii) Where disciplinary action has been taken against the TO by the LTC or, where the TO is a member of a professional institution, by that institution; and

<sup>3</sup> For the purpose of the guidelines, traffic offence in which the TO is sentenced to a fine is excluded from the consideration for material offence.

- (viii) Where the role of the TO has changed significantly as to diminish or impair his position within the LTC.

## **7.0 Right to Rescind an Approval**

- 7.1 Labuan FSA may at any time after granting approval of a TO rescind the approval if, in its opinion, the person approved as the TO no longer qualifies pursuant to this Guidelines.
- 7.2 Where Labuan FSA rescinds an approval in relation to a TO, the Authority shall, within seven (7) working days of the rescission, notify in writing the LTC concerned.

## **8.0 Roles and Responsibilities**

The Guidelines is not meant to be exhaustive and in situation where the TOs roles are extended beyond the minimum requirements set out in this Guidelines arising from the varying business focus of LTCs, Labuan FSA expects the roles to be undertaken in an effective and professional manner.

### **8.1 General Expectation**

In addition to the specific roles and responsibilities of TOs, Labuan FSA expects all TOs to:

- (i) be conversant with the permitted activities, business dealings and transactions that can be undertaken in Labuan IBFC;
- (ii) be well-versed with the products and services available in Labuan IBFC;
- (iii) be familiar with the licensing and regulatory requirements in Labuan IBFC;
- (iv) be fully aware and understand clients' business plan and proposed business activities;
- (v) advise and remind clients on relevant regulatory requirements to ensure that the clients are aware of the need to be in compliance with the regulatory and reporting requirements at all times;
- (vi) be subjected to the same roles and accountability as specified under the Guidelines when appointed as the TO for a Labuan managed trust company; and
- (vii) preserve the confidentiality of the LTC clients' information pursuant to section 178 of LFSSA.

## 8.2 Incorporation or Registration of Labuan Entity<sup>4</sup>

**Principle 1:** When establishing a business relationship with a client, the TO should identify and verify the client's identity using reliable, independent source documents, data or other information. This includes identifying the beneficial owners or the persons who control the entity. In addition, the TO should obtain any other information that are relevant to the services to be rendered to the clients.

- (i) Prior to accepting any clients for the incorporation or registration of any Labuan entity, the TO shall ensure that effective Customer Due Diligence (CDD) including Enhanced Customer Due Diligence (ECDD) for high risk clients<sup>5</sup> is carried out in line with the *Guidelines on AMLCFT - Trust Company Sector* including exercising the necessary measures for:
  - (a) client identification and verification using reliable, independent source documents or information;
  - (b) risk profiling of client (e.g. politically exposed persons, high risk and non-cooperative jurisdictions);
  - (c) establishing the source of wealth or funds;
  - (d) adequate documentation to meet CDD or ECDD requirements; and
  - (e) ensuring that the information on the ultimate beneficial owner and/or controller of companies, partnerships and other legal entities, and the settler/protector/beneficiaries of trusts are up-to-date, accurate and adequately documented and maintained within the LTC.
- (ii) TOs hold the duty to advise entities, that are in the process of applying for licence, approval or registration under the Labuan legislations, against commencing any business activities until such time the necessary approval or consent has been granted by Labuan FSA. The TO shall immediately report to Labuan FSA at any point of time when he becomes aware of any non-compliance in this regard.

<sup>4</sup> Labuan entity includes all entities specified under section 2B of the Labuan Business Activity Act 1990.

<sup>5</sup> Examples include clients that are identified as politically exposed persons, or clients originating from high risk and non-cooperative jurisdictions published by the Financial Action Task Force (FATF).

### 8.3 Trust Administration

**Principle 2: In administering the trusts, the TO is expected to be familiar with the terms of the trusts and the laws governing them to ensure that the duties are executed in a professional manner. Depending on the business proposition and strategy of the trust company, some TOs are not involved in the core activities of the trusts but merely providing administration services relating to trusts established in Labuan IBFC or in other international financial centres.**

In carrying out the roles as the authorised agent of the LTC in relation to trust administration services, the TO must:

- (i) understand the terms of the trust instrument as far as necessary to administer the trust;
- (ii) exercise the level of care and skill in administering the trust;
- (iii) implement procedures for keeping and maintaining accurate records and accounts relating to the trust;
- (iv) provide promptly to clients information to which they are entitled about a trust;
- (v) be familiar with the trust property and have made all appropriate arrangements for its management and security; and
- (vi) maintain confidentiality except where disclosure of information is required or permitted by an applicable law or by guidelines published by Labuan FSA, or authorised by the person(s) to whom the duty of confidentiality is owed.

### 8.4 Administration or Corporate Services

**Principle 3: In providing the administration and corporate services to clients, the TO is expected to exercise the highest level of integrity in accordance with the law and the contractual agreement with clients. The role includes acting as the resident director, secretary or officer for a Labuan entity.**

- (i) A TO must deal fairly with all clients and seek to ensure that they are not misled as to the service being provided and the duties and obligations of the LTC he represents.

- (ii) Generally a TO should avoid situations in which a conflict of interest arises between the trust company business and that of its clients. Similarly and unless authorised to do so, TO shall not enter into transactions in which he has a material interest without first disclosing it to the relevant parties. Where conflicts of interest arise, the TO must ensure that the circumstances are properly disclosed to those affected including the management of the LTC and must act at all times to ensure that the interests of the clients are fairly protected.
- (iii) In order to ensure clients are dealt with fairly and are informed, the TO should facilitate the discussion on the terms of business with each prospective client and ensure that a written record of the terms of the agreement with each client is properly kept, including evidence of the client's agreement to those terms. In doing so, the TO must ensure that agreement includes, but not limited to, the following provisions:
  - (a) A clear description of the services to be provided, fees to be charged and the manner in which fees are expected to be deducted or paid;
  - (b) A general description of how and by whom requests for action are to be given; and
  - (c) A general description of any provisions for the termination of the agreement and the consequences of termination.
- (iv) As one of the key officers in the LTC, TO holds the responsibility to safeguard information regarding the LTC's clients by ensuring that the information is readily available, accurate, up-to-date and accessible at all times. As the authorised agent of the LTC, the TO shall undertake the necessary measures to ensure that:
  - (a) the information on the ultimate beneficial owner and/or controllers of companies, partnerships and other legal entities, and the trustees, settler, protector/beneficiaries of trusts is known and properly recorded;
  - (b) any change of client control/ownership is promptly monitored and updated (e.g. where a LTC is administering a corporate vehicle or nominee shareholdings are involved);
  - (c) adequate, effective and appropriate mechanism is implemented for information to be made available to all the relevant authorities; and
  - (d) CDD/ECDD and transactions information regarding the clients including AML/CFT related matters are maintained at the office of the LTC in Labuan IBFC.

- (v) A TO who is appointed as a resident secretary, director or officer of a Labuan entity is required to:
  - (a) observe the duty and liability of officers under the relevant Labuan laws such as section 92 of the Labuan Company Act 1990 and section 38 of Labuan Foundation Act 2010; and
  - (b) ensure timeliness, accuracy and completeness of information or documents submitted to Labuan FSA for clients.

## 9.0 Continuing Professional Development

**Principle 4: Continuing professional development (CPD) provides a platform for TOs to keep their knowledge and skills current so that they can deliver the high quality of service that safeguards and meets the expectations of clients and the requirements of their profession on ongoing basis. Labuan FSA will take into account the TO's adherence to CPD requirements through an annual programme of trainings and professional development as part of its on-going annual assessment on TOs.**

9.1 The LTCs must ensure that their TOs undertake an annual CPD that is appropriate for their work taking into account the TOs' job description, current duties and future development needs where relevant. For the purpose of the CPD, TOs are required to observe the following requirements:

- (i) All TOs are required to complete a minimum of **30 CPD hours**<sup>6</sup> per year on any training programme (course, workshop, seminar, masterclass, lecture series or conference) conducted in Malaysia including Labuan IBFC or overseas that are relevant to their works. For this purpose, the LTC is required to maintain CPD records for all its TOs (although it is permissible for the LTC to require its TOs to keep their own records and account to the LTC on a regular basis) for Labuan FSA inspection.
- (ii) The training programme may include any of the following areas:
  - (a) Corporate affairs including company secretarial;
  - (b) Company law;
  - (c) Trust and foundation;

<sup>6</sup> For training programmes without the pre-identified CPD hours by the training providers, the CPD hours would be computed based on when the training session is held i.e. anytime during half day session either morning or afternoon will be accorded four (4) CPD hours and a full day training would be entitled for eight (8) CPD hours. This rule applies for both training programme participated by TO and where TO becomes the presenter or part of the panel discussion for the programme.



- (d) Accounting and finance;
  - (e) Insurance and takaful;
  - (f) Banking including Islamic banking;
  - (g) Anti-money Laundering and Counter Terrorism;
  - (h) Taxation; and
  - (i) Any other areas as may be published by the Association of Labuan Trust Companies (ALTC) from time to time.
- (iii) The CPD hours may include the training hours obtained by TOs in maintaining their professional membership with any professional bodies specified under the LFSSA Regulation 2010, section 10(2)(d) (i) to (iii) – *Application for a Licence as a Labuan Trust Company*.

9.2 The LTC is required to submit the Statement of CPD Compliance as attached in the Appendix **no later than 15 January** every year. New TOs that are approved after quarter one (1) (after the effective date of the Guidelines) are exempted from the CPD requirements during the year of approval.

## 10.0 Cessation of TO

- 10.1 In accordance to the Guidelines, a person ceases to be a TO if he is no longer in the employment of the LTC in respect of whom he was approved as a TO. In order to safeguard the interest of the former LTC, Labuan FSA expects the TO, where applicable, to observe the Non-Disclosure Agreement<sup>7</sup> that he has signed with the former LTC when he gets employed and becomes a TO at another LTC.
- 10.2 Where a person ceases to be a TO, the LTC in respect of whom the person was approved as TO shall, within seven (7) working days after the effective date of the cessation, notify Labuan FSA in writing and submit Form 5 (Notice of Change of Authorised Agents) as per LFSSA Regulations 2010 section 12. The LTC may provide the reasons for the cessation of the TO upon request by Labuan FSA.
- 10.3 All LTCs must have a minimum of two (2) TOs, one of whom shall be based in Labuan pursuant to section 61(3)(a) LFSSA. If the cessation of TO results in LTC having less than the minimum number as provided under the law, the affected LTC must appoint the new TO immediately.

<sup>7</sup> This is a legal contract between TO and LTC through which the parties agree not to disclose information covered by the agreement.

## **11.0 Submission of Application and Notification**

11.1 The application for the appointment of a TO and the notification on his cessation shall be made to the following address:

Head of Business Operations Unit  
17<sup>th</sup> Floor, Main Office Tower  
Financial Park Complex  
Jalan Merdeka  
87000 Federal Territory of Labuan  
Malaysia

Telephone no.: 087 591 200  
Email: bou@labuanfsa.gov.my

**Labuan Financial Services Authority**  
**24 November 2017**

## Appendix

### Statement of Continuing Professional Development (CPD) Compliance for Trust Officer for the year ended 31 December XX

*[This form shall be submitted to the Labuan FSA's Supervision and Monitoring Department by 15 January every year]*

I hereby declare that, pursuant to the requirements specified under the Guidelines for Trust Officers, the following information is correct and complete:

#### **Training Programmes Attended**

No.	Name of the Approved Trust Officer	Date of Approval	Trust Company Represented (both full-fledged or managed)	Title of Training Attended	Training Date & No. of Days	CPD hours
1.	e.g. Alexa Smith	1/1/2016	(i) ABC Labuan Trust Co. (ii) DEF Managed Trust Co.	1. Introduction to trusteeship 2. Labuan FSA Seminar on AML/CFT 3. MAICSA annual conference 2016: sustainability - shaping the future	1-2/4/16 (2 days) 4-5/6/16 (1.5 days) 1-9/8/16 (2 days)	16 12 18
2.						
<b>Total CPDs hours obtained for the year</b>						46

Name of Trust Company	
Principal Officer	
Signature	
Date	