



GUIDELINES ON COMPLIANCE FUNCTION FOR LABUAN LICENSED ENTITIES

1.0 Introduction

- 1.1 Compliance is a key corporate culture which concerns all stakeholders within an organisation and should be viewed as part of its core functions. This Guidelines sets out Labuan FSA's minimum expectation on the compliance function as an integral part of the corporate governance in addressing compliance risk within a Labuan Licensed Entity (LE) as well as developing and enforcing strong compliance culture. The "compliance risk" in the context of this Guidelines refers to the risk of financial losses due to legal or regulatory sanctions, or reputational loss due to its non-compliance to the applicable requirements of the laws, regulation, or code of conduct related to the LE's activities.
- 1.2 The role of the compliance function of an LE is to provide independent assurance to the Board of Directors (the Board)¹ and the senior management² on the state of compliance of the LE with regard to the legal and regulatory requirements as well as internal policies of the LEs. In this regard, the Compliance function is also expected to work with its senior management and staff to identify and manage legislative, regulatory as well as operational compliance risk.
- 1.3 In view of the criticality of the compliance function to an LE, Labuan FSA expects that the Board and Principal Officer (PO)³ to be ultimately responsible in ensuring the appropriate compliance framework is instituted based on the nature and complexity of the LE's business, structure and operations.

2.0 Applicability

- 2.1 This Guidelines is applicable to the following LEs:

¹ For the purpose of this Guidelines, in relation to an LE of a branch status; the Board can refer to the regional office or head office overseeing the management of the branch LE.

² Officers who have primary or significant responsibility for the management and performance of the business activities of the LE including the PO.

³ The officer that is ultimately responsibility for managing the overall affairs of the LE and is equivalent to a role of a Chief Executive Officer (CEO).

- (i) Labuan banks and Labuan investment banks licensed under Part VI of the Labuan Financial Services and Securities Act 2010 (LFSSA) excluding Labuan Financial Business;
- (ii) Labuan Islamic banks and Labuan Islamic investment banks licensed under Part VI of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA) excluding Labuan Islamic Financial Business;
- (iii) Labuan insurers and reinsurers licensed under Part VII of the LFSSA excluding Labuan Captive Insurance Business;
- (iv) Labuan takaful operators and Labuan retakaful operators licensed under Part VII of the LIFSSA excluding Labuan Captive Takaful Business;
- (v) Fund managers licensed under Part III of the LFSSA;
- (vi) Islamic fund managers licensed under Part IV of the LIFSSA;
- (vii) Labuan Trust Companies licensed under Part V of LFSSA excluding Managed Trust Companies; and
- (viii) Any other persons or licensed entities that Labuan FSA may specify 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) for the purpose of clarifying the requirement, duties and responsibilities of a compliance function.
- 3.2 Any LEs which fail 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 June 2014 and would remain effective and applicable unless amended or revoked.
- 4.2 The Guidelines should be read together with the following circular and guidelines:
 - (i) Circular on the Information on Designated Compliance Officer dated 3 September 2003; and
 - (ii) Guidelines on Anti-Money Laundering and Counter Financing of Terrorism which is relevant to Labuan IBFC dated 4 January 2007.

5.0 REQUIREMENTS FOR COMPLIANCE FUNCTION

5.1 Sufficient Resources

- 5.1.1 Compliance function must have adequate and competent resources to carry out its responsibilities effectively.
- 5.1.2 The staff of the compliance function shall have the skills, knowledge and expertise necessary for the discharge of their responsibilities or tasks. In addition to formal qualifications, the main requirement is the ability of the staff to perform his role, which may be gained through working experience. In this regard, it is recommended that they have at least two (2) years of relevant experience in the respective financial sector that their LE is operating in.
- 5.1.3 Notwithstanding the minimum requirements in paragraph 5.1.2, the Compliance Officer shall possess sufficient understanding on the nature of the business of the LE and the industry which it operates to commensurate its key role within the compliance function.
- 5.1.4 LEs operating as part of a group may leverage on their group's centralised compliance function, taking into account the LEs' unique business operations and Labuan's legal and regulatory requirements. Where the LE's compliance function is leveraged on the group's centralised compliance function, Labuan FSA expects that the LE will be able to manage its compliance risk in a more effective manner. Any centralisation arrangements shall only be effected with prior approval of Labuan FSA.
- 5.1.5 Labuan FSA acknowledges the existence of small-sized LEs that have insufficient resources to carry out the compliance function. In this regard, an LE may outsource its compliance function to a third party service provider, subject to Labuan FSA's prior approval and the LE is required to adhere to the outsourcing requirements under **Appendix I**. An LE that has obtained prior approval for the outsourcing of compliance function to third party service provider shall also have a dedicated officer overseeing the outsourced compliance function.

5.1.6 As the outsourcing requirements in the **Appendix I** serve as mitigants to key risks arising from an outsourcing arrangement, an LE which leverages on its group's centralised compliance function would also need to adhere to the same requirements to the extent that these are practicable and applicable. Necessary modifications to these requirements may be made to suit the extent and nature of the arrangement the LE has with its Group's centralised compliance function.

5.1.7 Notwithstanding any approvals that may be accorded for a compliance centralisation arrangement and the outsourcing to third party service provider under paragraphs 5.1.4 and 5.1.5, Labuan FSA expects for the Board and the PO of an LE to remain responsible for the effectiveness of the LE's outsourced compliance function.

5.2 Independence of Compliance Function

5.2.1 The compliance function shall be sufficiently independent to carry out its role and responsibilities as intended by the Guidelines.

5.2.2 To ensure the independence of the compliance function, the following elements need to be adhered to:

(i) Status

The compliance function should be accorded a formal status within the LE to give it the appropriate standing, authority and independence.

(ii) Not Placed in a Position of Conflict

The staff of the compliance function must not be placed in a position or situation of potential conflict of interest vis-à-vis their responsibilities. In addition, these staff should not be susceptible to undue influence regarding the manner and extent to which they are expected to perform their compliance duties.

(iii) Have access to information and personnel

The compliance function shall have the right to communicate with any LE's Board, senior management and staff with unimpeded access to information to enable it to carry out its responsibilities.

5.3 Appointment of a Compliance Officer

5.3.1 An LE shall appoint a Compliance Officer to head its compliance function and notify Labuan FSA of the appointment. The Compliance Officer's role can also be part of the LE's arrangement with its group's centralised compliance function as stated in paragraph 5.1.4. In this regard, all LEs are required to submit the particulars of their Compliance Officer to Labuan FSA using the attached format in **Appendix II**.

5.3.2 LEs must be satisfied that the Compliance Officer is a fit and proper person in accordance with the Guidelines on Fit and Proper Person issued by Labuan FSA.

5.3.3 It is the responsibility of the LE to ensure that the proposed Compliance Officer has the relevant qualities, experience and skills to perform his duties.

5.3.4 Labuan FSA is aware that some LEs may have limited manpower size. As such, a person who has been appointed as a Designated Compliance Officer for Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) purpose, may also function as the Compliance Officer under the Guidelines. In such cases, the LE is responsible to ensure that the requirements of Labuan FSA's Guidelines on AML/CFT as per paragraph 4.2(ii) are fully complied with. In addition, the LE shall inform Labuan FSA of the dual role played by its Compliance Officer to Labuan FSA as part of the notification requirement under paragraph 5.3.1.

6.0 DUTIES AND RESPONSIBILITIES

6.1 Responsibilities of the Board and Senior Management

6.1.1 The Board of an LE shall be responsible in relation to the following compliance matters:

- (i) to approve and oversee implementation of the LE's compliance policy as well as its continual relevance, including establishing a permanent and effective compliance function;
- (ii) to ensure that the compliance function remains sufficiently independent at all times to carry out its mandate;
- (iii) to ensure that any tabled compliance agenda is given sufficient deliberation by the Board;

- (iv) to ensure that any compliance issues are resolved effectively and expeditiously by the PO and the senior management, with the assistance of the compliance function; and
- (v) to assess on an annual basis the overall performance of the compliance function and the Compliance Officer. The assessment shall take into account, among others, the overall effectiveness of the compliance function as an internal control within the LE and any compliance-related initiatives conducted to instill awareness and better compliance culture amongst the staff.

6.1.2 In complementing the Board, the PO and the senior management are responsible for the following compliance matters:

- (i) to carry out the directives or decisions of the Board in respect of compliance-related matters; and
- (ii) to ensure that the compliance function has adequate and competent resources to carry out its role and responsibilities effectively.

6.2 Responsibilities of the Compliance Function

6.2.1 The compliance function, on an on-going basis; identifies, assesses, advises, monitors and reports on LE's compliance with Labuan's legislative and regulatory requirements as well as its internal policies. This duty extends to identifying violations of all applicable regulatory requirements. The Labuan FSA expects that the staff of the compliance function should be knowledgeable of the relevant requirements of Labuan legislations, as well as guidelines and circulars issued by Labuan FSA at all times.

6.3 Manual of Compliance Policies, Procedures and Systems

6.3.1 The Compliance Officer shall be responsible for establishing and maintaining a compliance manual containing policies, procedures including procedures on dealing with non-compliance and systems which must be approved by the Board of the LE and available for inspection or examination by Labuan FSA.

6.3.2 At the minimum, the manual shall cover the following items:

- (i) Identify procedures to be followed when breaches of legal or regulatory requirements or internal policies are detected.

(ii) All legal and regulatory obligations of the LE which include processes to allow staff to report the violation or non-compliance confidentially to the Compliance Officer.

(iii) A paragraph stating the following:

“No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any Court or any tribunal or proceedings against the staff who report such violation or non-compliance provided that such act was done or made in good faith”.

6.3.3 The Compliance Officer shall ensure the requirements of the manual is complied with by the staff of the LE.

6.3.4 Any non-compliance matter shall be recorded; indicating the nature, form and period of non-compliance are to be immediately reported to the LE’s senior management and its Board. Any non-compliance matters which are deemed material by the Board shall be *immediately* reported to Labuan FSA along with the LE’s rectification plans.

6.4 **Conducting Reviews and Assessments**

6.4.1 The compliance function shall undertake, but not limited to, the following:

- (i) Establish, communicate, monitor and enforce effective compliance policies and procedures to address legislative and regulatory requirements. These include ongoing monitoring and assessment of new requirements which are periodically reported to the LE’s Board and senior management;
- (ii) Carry out structured reviews of compliance arrangements and control systems and make regular assessment reports to the senior management;
- (iii) Identify any deficiencies; and
- (iv) Make recommendations for any updates or revisions to the manual subject to a minimum submission of once a year.

6.5 Training and Awareness Programme

- 6.5.1 The staff of the compliance function should continuously attend relevant training programme at least once a year to update themselves on the latest legal/regulatory requirements; relevant industry developments or any pertinent compliance matters, in order to enhance their professional skills and carry out their role effectively.
- 6.5.2 In addition, the compliance function must also ensure that all directors, senior management and staff are familiar with and understand the Labuan's legislative and regulatory requirements which are relevant to the LE. For this purpose, the Compliance Officer shall organize periodic internal briefings or training sessions to create awareness on the said relevant requirements amongst the LE's officers.

6.6 Compliance Report

- 6.6.1 The Compliance Officer shall prepare and submit the Compliance Report to the Board on regular basis. The minimum areas that the Compliance Officer should cover in the Compliance Report are outlined in **Appendix III**. The Compliance Report should be maintained with all other books and records of the LE.
- 6.6.2 In addition, at the end of each calendar year, the Compliance Officer shall prepare an Annual Compliance Report which incorporates a summary of key compliance deliberations or observations which have been earlier highlighted to the Board during the year.
- 6.6.3 The LE shall submit a copy of the Annual Compliance Report to Labuan FSA at the following address within thirty (30) days after the Board meeting in which the said report was tabled at.

Director
Supervision and Enforcement
Labuan Financial Services Authority (Labuan FSA)
17th Floor, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Federal Territory of Labuan, Malaysia

Telephone no: 087 591 200
Facsimile no: 087 453 442/ 413 328
Email: sed@labuanfsa.gov.my

7.0 OTHER MATTERS

7.1 Removal and Vacancy of the Compliance Officer

- 7.1.1 Labuan FSA may direct for the removal of a Compliance Officer if he does not fulfill the requirements under Paragraph 5.0 of the Guidelines. In such cases, the LE shall identify another officer, who is suitably qualified, within sixty (60) days from the date of removal. In the interim, the LE shall immediately appoint an officer to undertake the compliance function, and notify Labuan FSA accordingly.
- 7.1.2 In any other situations where the compliance officer's role was left vacant, the LE shall notify Labuan FSA within ten (10) working days on the vacancy and shall identify the replacement officer within thirty (30) days from the date of the vacancy. In the event that vacancy was due to the dismissal of the Compliance Officer by the LE, the notification to Labuan FSA shall also be accompanied by an explanation for the Compliance Officer's dismissal.

Labuan Financial Services Authority
6 November 2013

OUTSOURCING REQUIREMENTS

The following requirements shall be complied with in respect of outsourcing of LE's compliance function to third party service provider. To the extent practical and applicable, these requirements shall also be adhered to by an LE which leverages on its group centralised compliance function with permitted modifications as provided in paragraph 5.1.6 of the Guidelines.

A. *Due diligence on selection process*

An LE must, in appointing a third party service provider, consider the service provider's-

- (i) knowledge of the legal and regulatory requirements which are relevant to the LE;
- (ii) adequacy of resources and ability to efficiently conduct the function, including having a dedicated officer to conduct the outsourced compliance function;
- (iii) policies and procedures in preventing abuse of clients' confidential information;
- (iv) ability to manage any conflict of interest; and
- (v) present and potential litigation proceedings, which may have potential impact on its performance of the outsourced compliance function.

B. *Service Level Agreement (SLA)*

The compliance outsourcing arrangement must be formalised via a written and binding SLA with the service provider. The SLA shall include, but not limited to, the following matters:

- (i) Roles and responsibilities of the service provider, and its liability for any breaches of the SLA;
- (ii) Scope, terms and conditions of the outsourcing arrangement including mechanisms to resolve any disputes;
- (iii) Reporting and monitoring mechanisms between service provider and LE which includes the service/performance levels expected;
- (iv) The rights of Labuan FSA and LE's to conduct examination and to have access to the service provider's records and documents relating to the outsourced compliance function;
- (v) Proper maintenance of the records and documents relating to the outsourced function;

- (vi) Termination of contract, ownership of intellectual property following termination and specifications relating to transfer of compliance records and information back to the LE;
- (vii) Protection of confidentiality of the LE's and clients' information as well as requirement for immediate notification for any confidentiality breach; and
- (viii) Prohibition for sub-contracting of any parts of the outsourced compliance function to another party.

C. *Continuous monitoring mechanism*

- (i) An LE must have policies and procedures to monitor the performance of the compliance service provided by the service provider including periodical review of the SLA's adherence.
- (ii) An LE must perform an assessment on a service provider on a periodic basis which should include-
 - (a) the service provider's adherence to the SLA and rendering of service vis-à-vis the expectation of the LE; and
 - (b) any new material risk arising from the outsourcing arrangement and mitigating actions to manage such risk.
- (iii) An LE must submit a report on the assessment to its Board and senior management, and should be part of the evaluation on the compliance function as stated under paragraph 6.1.1 (iv) of the Guidelines.

D. *Outsourcing Abroad*

Where a third party service provider is located outside of Malaysia, an LE must-

- (i) analyse the economic, legal and political conditions of the country that the service provider is operating from, which may impact the undertaking of the outsourced compliance functions;
- (ii) refrain from outsourcing to jurisdictions where the Labuan FSA is hindered from having prompt access to information; and
- (iii) commit to retrieve information from the service provider in a timely manner should Labuan FSA request for such information.

APPOINTMENT OF COMPLIANCE OFFICER

Name of Institution :

Type of License :

PROFILE OF COMPLIANCE OFFICER <i>Important: All fields are mandatory and should not be left blank</i>	
Section A : Personal Details	
Name <i>(as per NRIC/passport)</i>	
NRIC Details <i>(for Malaysian)</i>	Old IC No.:
	NRIC No.:
Passport Details <i>(for Non-Malaysian)</i>	Passport No.:
	Country of Issue:

Do you also serve as the Designated Compliance Officer under Section 19(4) of the Anti Money Laundering and Terrorism Financing Act 2001?

Yes

No

Section B : Education and Professional Qualification			
Qualification	Awarding Institution/ Professional Body	Year obtained	

Section C : Past and Current Work Experience				
Date <i>(dd/mm/yy)</i>		Name of Employer	Designation	Key Areas of Responsibilities
From	To			

Section D : Directorship Held in Other Company(s)			
Name of Corporation	Place of Incorporation	Date of Appointment <i>(dd/mm/yy)</i>	Nature of Appointment <i>(executive or non-executive)</i>

**STATUTORY DECLARATION BY COMPLIANCE OFFICER
ON FIT AND PROPER PERSON**

Important: All fields are mandatory and should not be left blank

I,NRIC/Passport No:....., a proposed compliance officer of.....(name of the Labuan Licensed Entity), do hereby solemnly and sincerely declare that:

1. I have read Section 4 of the Labuan Financial Services and Securities Act 2010 (LFSSA) /Section 4 of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA) and the Guidelines on Fit and Proper Person issued by Labuan FSA (the Guidelines).
2. to the best of my knowledge and belief in making this declaration and/or submitting the attached documents in relation to this declaration, that I am a fit and proper person based on the criteria stated under the said Section 4 of LFSSA /Section 4 of LIFSSA and the Guidelines.
3. the information given in this declaration and in the attached documents (if any) are accurate, true and complete.
4. I understand that if it is found that I have made false declaration herein and/or in the attached document (if any), Labuan FSA is entitled to take any legal action including disqualifying myself from acting in the capacity expressly mentioned herein.

And I make this solemn declaration conscientiously believing the same to be true and 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 Oaths/Notary Public)

COMPLIANCE REPORT

The minimum areas to be included in the Compliance Report are:

- I. Compliance programme / activities carried out for the year under review.
- II. Executive summary on the compliance status for the following:
 - Compliance with Labuan Laws, Regulations and LFSA guidelines.
 - Compliance with AMLATFA.
 - Compliance with company's internal policy and procedure.
- III. Detailed report covering:
 - Instances of non-compliance.
 - Action taken to rectify the non-compliance instances.
- IV. Training / awareness programme conducted or attended by the company's staff
- V. Any other pertinent compliance matters.

Please take note that the above are not the report template or exhaustive; but rather specifying the minimum coverage areas for the Compliance Report. The Compliance Officer may decide to present the report in a format deemed appropriate for the understanding of their Board.