



## GUIDELINES ON FIT AND PROPER PERSON REQUIREMENTS

### 1.0 Introduction

- 1.1 Labuan Financial Services Authority (Labuan FSA) expects that the relevant persons whom this Guidelines is applicable to are competent, honest, possess integrity and have sound financial standing. This provides Labuan FSA with the assurance that such persons are able to fulfil their statutory obligations under the relevant legislations and to act effectively, honestly, fairly and in the best interest of their organisation's stakeholders. The suitability of relevant persons of a Labuan Financial Institution (LFI) is an extension of a sound corporate governance framework and is aimed at ensuring that the LFI is managed by persons of integrity, credibility and competency.
- 1.2 It is the responsibility of each relevant person to establish, on reasonable grounds, that the relevant person is a fit and proper person rather than for Labuan FSA to show otherwise. If the relevant person fails to satisfy Labuan FSA that the relevant person is fit and proper, Labuan FSA may refuse the person's application, revoke the person's authorisation or exemption, or take other appropriate regulatory action, as deemed necessary.
- 1.3 The Guidelines on Fit and Proper Person Requirements (the Guidelines) also sets out the requirements on the obligations of LFIs to assess and determine the fitness and propriety of relevant persons by defining:
- (i) the minimum fit and proper criteria to be fulfilled; and
  - (ii) the responsibilities of LFIs, and the board<sup>1</sup> to adopt as well as to ensure effective compliance to the fit and proper requirements.
- 1.4 The Guidelines serves as a framework for assessing a person's capacity to act as a fit and proper person. It is meant to provide general guidance and not intended to replace or override any legislative provision but to be read in conjunction with the relevant provisions of the laws in Labuan IBFC.

<sup>1</sup> For the purpose of the Guidelines, in relation to LFI of a branch status, or any other entity which does not have a board of directors; the "board" shall refer to the LFI's regional/head office or an equivalent person, whichever is relevant.

## 2.0 Scope of Persons Subjected to Fit and Proper Person Requirements

2.1 Pursuant to Section 4B of Labuan Financial Services Authority Act 1996 (LFSA) and relevant legal provisions of Labuan Financial Services and Securities Act 2010 (LFSSA) and Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA), where applicable on a fit and proper person, the following relevant persons shall be subjected to fit and proper person requirements as shown below:

Labuan Financial Institutions (LFIs)	Relevant Persons
<b>I. Labuan Licensed Entities (LEs)</b>	
1. Labuan banks including Labuan Investment banks	Persons in control, directors and officers
2. Labuan Islamic banks including Labuan Islamic Investment banks	Persons in control, directors and officers
3. Labuan insurers	Persons in control, directors and officers
4. Labuan takaful operators	Persons in control, directors and officers
5. Fund managers	Persons in control, directors and officers (including representatives)
6. Labuan trust companies	Persons in control, directors and officers
7. Money-broking companies	Persons in control, directors, principal officer and directors of the applicant
8. Leasing companies	Directors and officers
9. LEs carrying other Labuan financial business and Islamic financial business <sup>2</sup>	Directors and principal officer
10. Labuan insurance-related companies	Persons in control, directors and officers
11. Labuan takaful-related operators	Persons in control, directors and officers
12. Fund administrators	Directors and principal officer
13. Securities licensees and Islamic securities licensees	Directors and principal officer
14. Company managements	Directors and principal officer
15. Self-regulatory organisations	Persons in control and officers

<sup>2</sup> This refers to LEs carrying on building credit business, Islamic building credit business, credit token business, Islamic credit token business, factoring business, Islamic factoring business, development finance business and Islamic development finance business.

Labuan Financial Institutions (LFIs)	Relevant Persons
16. Islamic self-regulatory organisations	Persons in control and officers
<b>II. Other Entities</b>	
1. Charitable foundations	Council members, founders, officers, secretary and supervisory person

2.2 The fit and proper person requirements shall apply to any person(s) who is:

- (i) A “persons in control” as defined in LFSSA and LIFSSA, where applicable;
- (ii) A “director” as defined in LFSSA, LIFSSA and Labuan Companies Act 1990 (LCA), where applicable;
- (iii) An “officer” as defined in LFSSA, LIFSSA and LCA, where applicable includes a Principal Officer; or any person performing a senior management function who are principally accountable for:
  - (a) making decisions that affect the whole, or a substantial part of, the LFI’s business;
  - (b) implementing and enforcing policies and strategies approved by the board including Head of Department or any equivalent designated person; or
  - (c) internal controls and processes of the LFI.

2.3 The relevant person in paragraph 2.2(iii)(c) includes a compliance officer<sup>3</sup>, designated compliance officer<sup>4</sup>, shariah adviser<sup>5</sup>, member of Internal Shariah Advisory Board<sup>5</sup>, chief internal auditor, appointed actuary and head of risk management.

2.4 The Guidelines is also applicable to persons that are mainly accountable or responsible for key function(s)<sup>6</sup> that are performed outside the LFI (via centralised group or outsourcing arrangements).

2.5 In addition to the above, Labuan FSA may specify any other person to be subjected to the Guidelines pursuant to Section 4B of the LFSAA.

<sup>3</sup> Pursuant to the Guidelines on Compliance Function for Labuan Licensed Entities issued by Labuan FSA.

<sup>4</sup> Pursuant to Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) issued by Labuan FSA.

<sup>5</sup> Pursuant to the Directive on Islamic Financial Business in Labuan IBFC issued by Labuan FSA.

<sup>6</sup> Key functions relate to the core or primary activities of the LFIs such as investment management, internal audit and compliance functions, risk management and financial management.

### **3.0 Legal Provision**

- 3.1 The Guidelines is issued pursuant to Section 4A of the LFSAA to set out the fit and proper requirements for relevant persons. In addition, Section 4(3)(d) of LFSSA and LIFSSA allows Labuan FSA to further specify the criteria which form part of the fit and proper person requirements.
- 3.2 Labuan FSA reserves the right to determine whether any person is in compliant or not in compliant with any provision of this Guidelines, based on the information or document made available to it.
- 3.3 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 2015 and would remain effective and applicable unless amended or revoked.
- 4.2 In this regard, the Guidelines on Fit and Proper Person which was issued on 23 March 2010 shall remain applicable until 31 December 2014 and will be superseded thereafter.

### **5.0 Application of the Guidelines**

- 5.1 The senior management of the LFI is responsible in developing and effecting the internal policies relating to the fit and proper person requirements. This includes policies on ethical behaviour, codes of conduct, as well as any necessary disclosures. In this regard, the board of the LFI is ultimately responsible in approving and ensuring that these internal policies are effectively carried out on on-going basis.
- 5.2 The internal policies and procedures on the fit and proper person requirements of the LFI must incorporate the following, but not limited to:
- (i) minimum fit and proper person criteria including as set out in paragraph 6.1 of the Guidelines;
  - (ii) procedures and processes for conducting fit and proper person assessments;

- (iii) factors considered in assessing whether a person is fit and proper for a specific position as set out in paragraphs 6.2, 6.3, 6.4 and 6.5 of the Guidelines;
- (iv) actions to be taken, including internal governance process requirements, where a relevant person is assessed to be of no longer fit and proper for a specific position; and
- (v) list of officers of the LFI whom this Guidelines is applicable to.

The LFI should exercise its discretion to ensure that its policy and procedures are appropriate to commensurate with its business circumstances. In doing so, the LFI should always ensure that its practices are in line with the objectives of the Guidelines.

- 5.3 In accordance to Section 4(2) of LFSSA and LIFSSA; if any director, principal officer or trust officer ceases to be a fit and proper person, the licensed entity and such director, principal officer or trust officer, where applicable, shall as soon as reasonably practicable, notify Labuan FSA in writing of the same, together with details of the change to the following address:

Senior Director  
Business Operations Unit  
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: *business\_operations@labuanfsa.gov.my*

## 6.0 Criteria of Fit and Proper Person

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

- (i) Integrity;
- (ii) Competency;
- (iii) Soundness of judgement; and
- (iv) Financial standing of the person.

### 6.2 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.

### 6.3 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.

### 6.4 Soundness of judgement

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

- (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.



## 6.5 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.