



LEMBAGA PERKHIDMATAN KEWANGAN LUAR PESISIR LABUAN
(LABUAN OFFSHORE FINANCIAL SERVICES AUTHORITY)

Circular No.: 104/2010/ALL

23 March 2010

Chairman of Association of Offshore Banks Labuan (AOB)
Chairman of Labuan International Insurance Association (LIIA)
Association of Labuan Trust Companies (ALTC)
Labuan Investment Banks
Labuan Fund Managers



Dear Sirs/Madams,

Guidelines on Fit and Proper Person

The above matter refers.

The Labuan Financial Services Authority (Labuan FSA) is pleased to inform the issuance of new "Guidelines on Fit and Proper Person". The Guidelines is issued in line with the new provisions under the Labuan Financial Services and Securities Act 2010 (LFSSA) and Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA). A copy of the Guidelines is attached for your information.

In this regard, the "Guidelines on Fit and Proper Persons Acting as Directors/Controllers/Principal Officers in the Labuan IOFC" issued on 21 February 2002 is now superseded.

Should you require further clarification on the Guidelines, please do not hesitate to contact Mohd Ridzuan Zulkifli at 087-591 333 (email: ridzuan@lofsa.gov.my) or Khairunnisa Abdul Karim at 087-591 311 (email: khairunnisa@lofsa.gov.my).

Kindly inform your members accordingly.

With kindest regards.

Yours sincerely,

(Md. Yunus Bin Atip)

Director

Financial Services and Policies Department

18/09/0/kak



GUIDELINES ON FIT AND PROPER PERSON

1.0 Introduction

- 1.1** The Guidelines is issued pursuant to section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to set out the fit and proper person requirements in the Labuan International Business and Financial Centre (Labuan IBFC).

2.0 Objective

- 2.1** Labuan Financial Services Authority (Labuan FSA) wants to ensure that the persons whom this Guidelines is applicable to are competent, honest, persons of 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 acted effectively, honestly, fairly and in the best interest of their clients.
- 2.2** It is the responsibility of each relevant person to establish, on reasonable grounds, that a 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 it or he 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.
- 2.3** This 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.

3.0 Who is subject to fit and proper person requirement?

LICENSED ENTITIES

- 3.1** The fit and proper person requirement is applicable to any person who holds the following positions in any licensed entity as follow-

3.1.1 Labuan trust companies

Directors and officers who are responsible for the management of the Labuan trust company in Labuan.
(ref: section 61(2)(d) of the Labuan Financial Services and Securities Act 2010 (LFSSA))

3.1.2 Labuan bank and Labuan Islamic bank including Labuan Investment bank and Labuan Islamic Investment bank

Director and principal officer who are responsible for the management of Labuan banks/Labuan Islamic bank.
(ref: section 88(2)(f)(iii) of the LFSSA and section 63(2)(f)(iii) of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA))

3.1.3 Labuan insurance companies and Labuan takaful operators

Person in control, director and principal officer of Labuan insurers, reinsurers, insurance-related companies, takaful operators, retakaful and takaful-related operators.
(ref: section 103(1)(d) and 104(1)(a) of the LFSSA; and section 78(1)(d) and 79(1)(a) of the LIFSSA)

3.1.4 Fund managers and fund administrators

Director and principal officer of a fund manager or a fund administrator of a public fund. (ref: section 44(4) of the LFSSA)

3.1.5 Self-regulatory organisations & Islamic self-regulatory organisations

Officers or persons in control of such corporation or organisation. (ref: section 156(2)(d) of the LFSSA and section 113(1)(d) of the LIFSSA).

3.2 Criteria of Fit and Proper Person

3.2.1 The directors, principal officers or officers of the relevant licensed entities must remain as fit and proper persons throughout their appointment with the licensed entity.
(Ref: section 4(1) of LFSSA and LIFSSA)

3.2.2 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.
(Ref: section 4(2) of the LFSSA and LIFSSA)

3.2.3 In determining whether a person is a fit and proper person, the following may be taken into consideration:

- a) integrity, competence, soundness of judgment and financial standing of the person;
- b) whether the person has been adjudged bankrupt, in Malaysia or elsewhere; or
- c) whether the person has been convicted of a criminal offence in Malaysia or elsewhere and where the penalty imposed is imprisonment of one year or more, whether in itself or in addition to a fine.

(Ref: section 4(3) of the LFSSA and LIFSSA)

3.2.4 Integrity

Integrity is qualities that are demonstrated over time. These attributes demand a disciplined, on-going commitment to high standards of behavior and honesty. In determining a person's integrity, the following factors would be considered but not limited to whether the person:

- a) is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or of any investigation, which might lead to such proceedings;
- b) 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;
- c) 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 license to conduct trade, business or profession or has had a registration, authorisation, membership or license revoked, withdrawn or terminated;

- d) 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 (c) above;
- e) 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;
- f) has been found liable in any civil suits in any court in relation to fraud or misfeasance;
- g) has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies, which are of the nature and or significance that may have his fitness and propriety;
- h) 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;
- i) has been disqualified, under the companies legislation or any other legislation or regulation, from acting as a director or serving in a managerial capacity;
- j) has at any time shown strong opposition or lack of willingness to maintaining effective internal control system;
- k) has been fair, trustful and forthcoming in his dealings with his customers, superiors, auditors and regulatory authority in the past;
- l) demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory or professional requirements and standards; or

- m) has been subjected to any adverse report based on any information or documents made available to Labuan FSA by any reliable sources.

3.2.5 Competency

In determining competency of a person, the following consideration would be taken into accounts, but not limited to, whether the person has:

- a) demonstrated, through his qualifications and experience, the capacity to successfully undertake the cognate responsibilities of the position, including the establishment of effective control regime;
- b) 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
- c) a sound knowledge of the business and responsibilities attached to it.

3.2.6 Soundness of judgment

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

- a) The individual should show an adequate degree of balance, rationality and maturity, demonstrated in conduct and decision making, especially with respect to previous business practices;
- b) Soundness of judgment may be derived from the lack of adverse information; or
- c) The individual should 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.

3.2.5 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:

- a) been the subject of any adverse judgment or award in Labuan or elsewhere, that remains outstanding or was not satisfied within a reasonable period;
- b) 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
- c) been a senior officer of a company or a shareholder in a position to exercise significant influence in the company that:
 - i. has been the subject of any adverse judgment or award, in Labuan or elsewhere, that remains outstanding or was not satisfied within a reasonable period; or
 - ii. 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.

LABUAN COMPANIES

3.3 In complying with this Guideline, the directors, person in control or principal officers of a Labuan company which is not a licensed entity must:

- a) have sufficient skills, knowledge and soundness of judgment to undertake and fulfill the particular duties and responsibilities;

- b) have not at any time been convicted of any offence by any court in relation to his work, business and employment;
- c) have not at any time during preceding ten years been adjudicated as a bankrupt by any court of law and remains as a bankrupt until present;
- d) have not at any time been held liable in any civil suit for any fraud or misfeasance;
- e) have never been subjected to any form of disciplinary proceedings or action by any supervisory authority; or
- f) not at any time during the preceding ten years, have had a petition presented in any court for its winding up, if the director or person in control is a company.

4.0 Labuan FSA's Discretionary Power

Notwithstanding the above, Labuan FSA reserves the right to:

- 4.1 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; or
- 4.2 specify any person who holds any position in any Labuan entities/ financial institution to be subjected to this Guidelines.

5.0 Commencement

This Guideline shall come into effect from 1 April 2010.

6.0 Non-applicability

The Guidelines on Fit and Proper Persons Acting as Directors / Controllers / Principal Officers in the Labuan IOFC issued in February 2002 is now repealed.