



## LABUAN OFFSHORE FINANCIAL SERVICES AUTHORITY

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### GUIDELINES ON MUTUAL FUNDS IN LABUAN

#### **I. Application**

Applications for carrying out mutual fund activities in Labuan can be made to:

Director-General  
Labuan Offshore Financial Services Authority (LOFSA)  
Level 17, Main Office Tower  
Financial Park Labuan  
Jalan Merdeka  
87000 W.P. Labuan

#### **II. Introduction**

The governing legislation of mutual funds business and operations in Labuan is the Labuan Offshore Securities Industry Act 1997 (LOSIA). These guidelines set out the requirements and procedures for setting up mutual funds in Labuan. They also spell out the terms, conditions, restrictions or limitations in operating the funds.

Mutual fund can be structured as a company, partnership or unit trust. The company can be incorporated as an offshore company under the Offshore Companies Act 1990 or under the laws of any recognised country or jurisdiction. The establishment of a partnership can be done under the Labuan Offshore Limited Partnership Act 1997. Two types of funds are prescribed under LOSIA - Private funds and Public funds

### III. Definition

- Private funds are those
  - a) whose shares are not offered to the general public and are owned or held by:
    - i. not more than 100 investors where the first time investment of each of such investors is not less than RM100,000 or its equivalent in any foreign currency; **or**
    - ii. any number of investors where the first time investment of each such investors is not less than RM500,000 or its equivalent in any foreign currency; **or**
  - b) that are designated by the Minister of Finance as private funds.
  
- Public Funds are those whose shares are offered for subscription to any member of the general public.

### IV. Private Funds

A consent under section 8 of LOSIA is needed for a private fund to carry on business in Labuan. Application for such consent should be made to LOFSA.

#### Consent Requirements

An applicant fund must submit a duly completed Form 1/PRF. The applicant fund is also required to submit to LOFSA the following:-

- details of the proposed fund covering:-
  - ◇ a general description of the proposed fund;
  - ◇ the investment policies and objectives which will be observed by the fund;
  - ◇ the proposed minimum subscription proceeds net of costs (e.g. underwriting fees, related to the offer);

- ◇ the underwriting arrangements;
  - ◇ the distribution policy of the fund;
  - ◇ expenses expected to be borne by the fund including fund management fees, advisory fees and custodian fees;
  - ◇ details of taxes levied on income or capital of the fund and taxes deducted from distribution to shareholders;
  - ◇ names, addresses and relevant experience of the directors/general partners/trustees of the fund. The controller or director or Chief Executive Officer of the applicant fund must be fit and proper persons. The appointment of the board of directors and CEO also require prior approval from LOFSA;
- a copy of the memorandum and articles of association/partnership agreement/trust deed of the fund;
  - audited annual accounts of the promoter, where applicable, for the 3 years immediately preceding the application;
  - a signed declaration by the directors/general partners of the applicant fund on confidentiality and secrecy;

## **V. Public Funds**

No public fund shall carry on business in or from within Labuan unless it has been granted registration under section 11(1)(a), LOSIA. Application for registration to carry on business should be made to LOFSA.

### Registration Requirements

Applicant fund must submit a duly completed Form 2/PBF. The applicant is also require to submit to LOFSA the following:-

- a copy of the memorandum and articles of association/trust deeds/partnership agreement of the fund;

- audited annual accounts of the promoter, where applicable, for the 3 years immediately preceding the application;
- names, addresses and relevant experience of the directors/general partners/trustees of the fund. The controller or director or Chief Executive Officer of the applicant fund must be fit and proper persons. The appointment of the board of directors and CEO also require prior approval from LOFSA;
- a signed declaration by the directors/general partners of the applicant fund on confidentiality and secrecy;
- in the event that its proposed minimum paid up capital exceeds RM1 million, if the minimum level of subscription required failed to be received within the stipulated time, all subscriptions shall be repaid immediately;
- a copy of the draft prospectus. The prospectus of a fund should comply with section 17 of LOSIA and shall contain at least the following information:-
  - ◇ a general description of the proposed fund;
  - ◇ the investment policies and objectives which will be observed by the fund;
  - ◇ the prospects for the fund given its nature, investment policies and objectives. Where applicable, this should include an analysis of the risks by its nature and the risks of the country and region where the fund intends to invest;
  - ◇ the proposed minimum subscription proceeds net of costs (e.g. underwriting fees, related to the offer);
  - ◇ the names of all underwriters and amount proposed to be underwritten by each underwriter;
  - ◇ the distribution policy of the fund;
  - ◇ details of taxes to be levied on income and/or capital of the fund and any taxes to be deducted from distributions to shareholders;
  - ◇ a statement summarising the rights of investors as provided by section 18, LOSIA;

- ◇ a key data page giving a summary of the key features of the particular fund which can assist an investor in considering and comparing any similar investments on offer. The key data page in the prospectus shall include at least the following information:
  - a) issue price of the shares;
  - b) nature and significant expenses to be incurred by the fund;
  - c) statement of the potential risks of investing in the fund.
- ◇ information on the securities to be offered by the fund;
- ◇ information on the managers and custodian of the fund and their key personnel, full details of the experience of the managers and custodian, the terms of appointment and termination. The information shall also include particulars of:-
  - I) any shares held by them in the fund;
  - II) any borrowings given by them to the fund;
  - III) any other obligations of the fund to them.
- ◇ the extent to which it intends to invest in derivatives and unlisted securities. If it intended not to invest in any of such investments, the prospectus must include an appropriate statement to that effect;
- ◇ all other information affecting the fund's business;

## **VI. Operational Requirements**

- All public funds must appoint a fund manager, trustee, administrator and custodian that are approved by LOFSA;
- The applicant fund must maintain a registered office in Labuan. For a Labuan fund which is permitted to be managed by a fund manager from a recognised country or jurisdiction, at least one of the fund-related businesses such as custodian, trustee or fund administration must be based in Labuan;
- Public funds which have been granted provisional acceptance under section 11(1)(b) are not allowed to accept subscription monies or make investments

until being granted registration. They are allowed to use the provisional acceptance only for promotional or publicity purposes;

- The applicant fund shall conduct business in only foreign currency and not in ringgit except solely for the purpose of defraying administrative and statutory expenses;
- The applicant fund shall appoint an approved auditor;
- The applicant fund must notify LOFSA of any amendment or alteration to any of its constituent document;
- The applicant fund must conduct its business with due diligence and sound principles, maintain adequate and proper records and books of accounts, comply with the local laws and regulations where it serviced its clients and indicate clearly its names and license number on its letterhead, stationery and other documents;
- A public fund must comply with the requirements of section 16 of LOSIA with regards to its accounts and the auditing of the same; and
- All funds must obtain approval of LOFSA for any change of business plan.

### **Investment and Borrowing Limitations**

The following are the basic investment limitations and prohibitions applicable to public funds authorised in Labuan. The provisions do not apply to recognised jurisdiction schemes where similar restrictions were imposed by the laws of the jurisdiction in which such funds are established.

- (i) The value of a fund's holding of securities issued by any single issuer may not exceed 10% of its net asset value. Government securities are exempted from this requirement;
- (ii) A fund may not hold more than 10% of any class of security issued by any single issuer;
- (iii) The value of a fund's holding of unlisted securities may not exceed 15% of its net asset value;
- (iv) A fund may not invest in land or interest in land (or options, rights or interests in respect thereof);
- (v) A fund may not invest in a security of any class in any company or body if any director or officer of the managers individually owns more than 0.5% of the total nominal amount of all the issued securities of that class or collectively such directors and officers own more than 5% of such securities;
- (vi) A fund may not make any investment carrying unlimited liability;
- (vii) A fund may not make any short sale which would have the consequence that the fund's liability to deliver securities exceeds 10% of its net asset value;
- (viii) A fund may not acquire any nil or partly-paid securities unless any call thereon could be met in full out of cash or near cash held by the fund;
- (ix) A fund may not assume, guarantee, endorse or otherwise become directly or contingently liable for, or in connection with, any obligation or indebtedness of any person in respect of borrowed money without the prior consent of the trustee / custodian; and
- (x) A fund shall not borrow in excess of 25% of its net asset value.

**Malaysian Investment Limits**

- (i) The applicant fund is prohibited from making an offer for subscription or purchase of shares in a mutual fund to residents of Malaysia other than those approved by relevant authorities and those classified as exempt purchasers under section 29(8), LOSIA.
- (ii) For offshore funds with majority subscribed by Malaysian, the aggregate value of investments in Malaysian assets should not exceed 30% of the investment value of the fund. Offshore funds majority owned by non-residents are not subject to this requirement.

**Investments and dealings in futures and options**

- (i) The value of a fund's investment in warrants and options not held for hedging purposes may not exceed 15% of its net asset value;
- (ii) The writing of call options on portfolio investments may not exceed 25% of a fund's net asset value in terms of exercise price;
- (iii) A fund may enter into financial futures contracts and invest in options and warrants for hedging purposes;
- (iv) A fund may enter into futures contracts on an unhedged basis provided that the net total aggregate value of contract prices, whether payable to, or by, the fund under all outstanding futures contracts, together with the aggregate value of holdings referred to in the next paragraph, does not exceed 20% of the total net asset value of the fund; and
- (v) No fund shall write uncovered options.

**VII. Reporting Requirement**

The applicant fund is to submit to LOFSA within six months after the close of each financial year, 2 copies of its audited annual balance sheet and profit and loss account. The applicant fund is also expected to provide statistics and information required from time to time by LOFSA in relation to prudential information, general business conduct and volume and direction of business in Labuan.

Labuan Offshore Financial Services Authority

April 1998