

GUIDELINES ON LABUAN SECURITIES TOKEN OFFERING

1.0 Introduction

- 1.1 The emerging technologies in financial industry have reshaped the capital market sector where participants are now seeking for a digital way of raising funds via Securities Token Offering (STO). Labuan FSA recognises the innovative potential of Distributed Ledger Technology (DLT) in the financial sector and is highly supportive of Fintech-related initiatives in Labuan International Business and Financial Centre (Labuan IBFC).
- 1.2 The Guidelines on Labuan Securities Token Offering (Guidelines) applies to any person that intends to issue or offer securities token as a method of raising funds in Labuan IBFC. The modus operandi of securities token offering is similar to traditional securities offering except that the token is issued, listed and traded in a digital platform and the investor's rights are represented in the form of the digital smart contract. STO can be categorised into the public or private offering. This Guidelines also applies to both conventional and Shariah-compliant as well as Environmental, Social and Governance (ESG) issuances to accept digital innovations to transform businesses beyond the traditional model in order to improve market access and promote greater financial inclusivity.
- 1.3 Issues or offers of securities token is subject to the same set of regulations applicable to securities under Part II or Part III of Labuan Financial Services and Securities Act 2010 (LFSSA) and Part III or Part IV of Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA). Nevertheless, this Guidelines should be read together with the requirements of the relevant Guidelines and Circulars including those listed under the **Appendix I**.

2.0 Legal provision

- 2.1 The Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to clarify the provisions of Part II or Part III of LFSSA and Part III or Part IV of LIFSSA.
- 2.2 Any person who fails to comply with the Guidelines may be subject to an administrative penalty and/or other enforcement actions under section 36B and section 36G of the LFSAA.

3.0 Effective date

- 3.1 The Guidelines shall come into effect immediately and will remain effective and applicable unless otherwise amended or revoked.
- 3.2 All approvals granted by Labuan FSA prior to the effective date of this Guidelines shall remain valid unless otherwise revoked.

4.0 What is a “securities token”?

- 4.1 A “securities token” refers to “securities” as defined under Section 2 of LFSSA and LIFSSA which is represented in digital format and recorded on a distributed digital ledger whether cryptographically-secured or otherwise and subject to the same regulatory regime applicable to securities offering under LFSSA or LIFSSA.
- 4.2 Any other names or wordings that carry the features under paragraph 4.1 would be deemed as securities token and must comply with all requirements specified under this Guidelines.

4.3 A securities¹ may include:

- (i) shares², debentures³, funds⁴, units, interests in a limited partnership or limited liability partnership or unit trust or foundation or protected cell company or corporation;
- (ii) debentures, bonds or notes of or issued by anybody (incorporated or unincorporated), government, local government or public authority; and
- (iii) certificates of interest or participation in, temporary or interim certificates for, receipts for or warrants to subscribe to or purchase any of the investments described in paragraphs (i) and (ii).

4.4 Further to the above definition, the security token may be used to represent a right or interest of a person in any arrangement made for the purpose of, or having the effect of, providing facilities for the person, where:

- (i) the person receives the token in exchange for consideration.
- (ii) the consideration or contribution from the person, and the income or returns, are pooled.
- (iii) the income or returns of the arrangement are generated from the acquisition, holding, management or disposal of any property or assets or business activities.
- (iv) the person expects a return in any form from the trading, conversion or redemption of the securities token or the appreciation in the value of the token.
- (v) the person does not have day-to-day control over the management of the property, assets or business of the arrangement.

¹ Including securities as defined in LIFSSA

² Shares that represent ownership or economic rights of the holders of the security token in a limited partnership or limited liability partnership or unit trust or foundation or protected cell company or corporation

³ Debentures that constitutes evidence of indebtedness of the security token's issuer for borrowed monies

⁴ Funds or mutual funds that represent the rights to collect and pool securities token for the purpose of collective investment and issues interests in a security token which entitles the holder to redeem his investments.

5.0 Classification of securities token offering

5.1 Private securities offering is as defined under section 8(5) of LFSSA or section 13(5) of LIFSSA as follows:

(i) an offer or invitation of securities under section 8(5)(a) of LFSSA or section 13(5)(a) of LIFSSA, where—

(a) the offer or invitation is addressed to an identifiable category⁵ of persons to whom it is directly communicated by the person making the offer or invitation or by his appointed agent; or

(b) the members of that category to which the offer or invitation is made are the only persons who may accept the offer or invitation and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer or invitation,

and the number of persons to whom the offer or invitation is communicated **does not exceed 50**.

(ii) an offer or invitation of debentures⁶ under section 8(5)(b) of LFSSA or section 13(5)(b) of LIFSSA, where—

(a) the first-time investment of each of the initial debenture holders is **not less than RM250,000** or the equivalent in any other currency and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer or invitation; or

(b) the first-time investment of each of the initial debenture holders is **less than RM250,000** or the equivalent in any other currency and the number of persons to whom the offer or invitation is communicated **does not exceed fifty** and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer or invitation

(iii) an offer or invitation of private funds⁷ under section 8(5)(c) of LFSSA or section 13(5)(c) of LIFSSA.

(iv) an offer or invitation of securities under section 8(5)(d) of LFSSA or section 13(5)(d) of LIFSSA, pursuant to a take-over offer which complies with the relevant law applicable to such offer.

⁵ Identifiable category includes “professional” or “sophisticated” investor as guided by Labuan FSA

⁶ Also referring to Sukuk under LIFSSA.

⁷ For private fund offering, refer to the requirements under Part III of the LFSSA and Part IV of the LIFSSA

- (v) an offer or invitation of securities or such classes or categories of securities as may be specified by the Authority.

5.2 Public securities offering is other than private securities offering.

6.0 Application procedure

6.1 Private securities token offering

Submit a notification for securities token that falls under Section 8(5)(a),(b) and (d) of LFSSA or Section 13(5)(a), (b) and (d) of LIFSSA.

6.2 Public securities token offering

Submit an application for approval under Section 8(1) of LFSSA or Section 13(1) of the LIFSSA for offering of securities. The application can be made by submitting *Application for Licence to Carry On Labuan Securities Licensee and Capital Market Business* which is downloadable from www.labuanfsa.gov.my.

7.0 Eligibility of issuer

7.1 Any person⁸ can make an offer or invitation to subscribe for securities token in or from within Labuan IBFC.

7.2 Any offer or invitation to subscribe to securities token with debenture or sukuk features shall comply with the requirements specified under Part II, Division 3 of LFSSA and Part III, Chapter 2 of LIFSSA.

7.3 Issuer of public STOs in or from within Labuan shall have the following:

- (i) minimum capital of RM500,000 or equivalent in any foreign currency and must be maintained at all times.
- (ii) the issuers, issuers' directors, Chief Executive Officer, controller and any person who is primarily responsible for their operations or financial management shall be fit and proper persons.
- (iii) the issuers shall be able to manage risks associated with their business and operation including demonstrating the processes and contingency arrangement in the event the issuers are unable to carry out their operations.

⁸ "Person" includes a corporation, partnership, a body of persons, corporate or unincorporated and a corporation sole.

- (iv) the issuers shall have sufficient financial, human and other resources for their operation at all times.
- (v) the issuers shall have the appropriate security arrangements which include maintaining a secured environment.

8.0 Appointment of intermediaries

8.1 The following are the type of intermediaries that facilitate issues or offers of security tokens:

- (i) a person who operates a platform at which securities token are traded (trading platform).
- (ii) a person who provides financial advice in respect of any securities tokens.
- (iii) a Labuan trust company or a bank licensee or an Islamic bank licensee⁹.

8.2 Intermediaries are reminded to implement adequate systems and controls to ensure compliance with the requirements before they engage in the distribution of STOs. Failure to do so may affect their fitness and properness to remain licensed or registered and may result in disciplinary action by Labuan FSA.

8.3 Private STOs may appoint any competent agent, trustee, custodian, fund manager, fund administrator or other service providers which may not necessarily be licensed or approved by Labuan FSA, but must be registered or licensed by other competent Authority.

8.4 For public STOs:

- (i) the agent shall be a bank licensee or a Labuan trust company.
- (ii) the trustee shall be a Labuan trust company. Any other person may be appointed as a trustee together with Labuan trust company subject to prior approval of Labuan FSA.

⁹ Where a corporation allots or issues or agrees to allot or issue to a person any securities under subsection 8(1) of LFSSA or subsection 13(5) of LIFSSA, and where such an offer is not excluded under subsection 8(5) of LFSSA or subsection 13(5) of LIFSSA, the offer or invitation of securities shall be made through its agent which shall be a Labuan trust company or a bank licensee or an Islamic bank licensee

- (iii) an issuer shall also appoint and have at all times in place the following functionaries:
 - (a) an IT Auditor;
 - (b) a Tokenisation Technology Provider¹⁰; and
 - (c) a Compliance Officer, where applicable.

8.5 An issuer shall ensure that its appointed intermediaries:

- (i) have sufficient knowledge and experience in the field of information technology, distributed ledger technology (DLT) assets and their underlying technologies; and
- (ii) maintain sufficient knowledge and understanding of the issuer's business to enable them to discharge their functions in a diligent manner.

8.6 The issuer shall disclose the identity of the functionaries it appoints within the prospectus / whitepaper. Should any functionary be removed or replaced, such changes shall be immediately disclosed to the public.

9.0 Prospectus / whitepaper requirements

9.1 For securities that falls under section 8(1) of LFSSA or section 13(1) of LIFSSA, the issuer must not offer a securities token to any person unless the offer is also accompanied with a prospectus / whitepaper for securities token offering.

9.2 A prospectus / whitepaper must contain such information that would enable an investor to make an informed assessment of the securities token before subscribing to the securities token, including:

- (i) details of the issuer, including the name, registered address and registered number, the issuer's objectives, the group of undertakings the issuers belong to, and if applicable, the members who directly or indirectly exercise, or could exercise, a role in the issuer's administration;
- (ii) brief description of the directors, senior management, key personnel and advisers including name, designation, nationality, address, professional qualifications and related experience;

¹⁰ Tokenization technology provider is responsible for the tokenization, issuance and management of the tokens

- (iii) the issuer's principal activities, and any legal proceedings against the issuer that would impact the issuer's financial position;
- (iv) audited financial statements of issuers that have been established for three or more years, and where audited financial statements are unavailable, certified financial statements or information by the issuer's senior management;
- (v) the reason behind the offering;
- (vi) a technical description of the platform and its benefits;
- (vii) the objective or purpose of the STOs, including detailed information on the underlying business or project to be managed and operated by the issuer;
- (viii) detailed description of the sustainability and scalability of the underlying business or project;
- (ix) business plan of the issuer;
- (x) the challenges, risks, and mitigating measures of the offering;
- (xi) key characteristics of securities token;
- (xii) the targeted amount to be raised through the STOs, and subsequent use and application of the proceeds;
- (xiii) any rights, conditions or functions attached to securities tokens including any specific rights attributed to a token holder;
- (xiv) discussion on the determination of the accounting and the valuation treatments for the securities token including all valuation methodology and reasonable presumptions adopted in such calculation;
- (xv) in relation to the distribution of the securities token and where applicable, the distribution policy of the issuer;
- (xvi) security safeguards against cyber threats;
- (xvii) the life cycle of the offering;
- (xviii) the targeted investor base;
- (xix) the exchange rate of the securities token;
- (xx) how funds raised through the offering will be allocated;

- (xxi) the time during which the offer is open;
 - (xxii) any restrictions on the transferability of the securities token;
 - (xxiii) any soft or hard cap for the offering, and how investors can retrieve their money if the cap is not met; and
 - (xxiv) the risks associated with the offering.
- 9.3 An issuer must ensure that all information submitted or contained in its prospectus is true and accurate and shall not contain any information or statement that is false or misleading or from which there is a material omission.
- 9.4 A statement in the prospectus / whitepaper containing the following:
- “Labuan FSA takes no responsibility for the contents of this prospectus / whitepaper, makes no representations as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon any part of the contents of this prospectus / whitepaper.***
- An investor is advised to clearly understand the risk(s) of the investment, seek professional consultancy, if necessary and request for sufficient information to enable them to make a reasonable evaluation of the investment.”***
- 9.5 Registration of prospectus / whitepaper shall be accompanied by a fee of USD600.

10.0 Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT)

- 10.1 The issuer and intermediaries involved in the STO shall ensure that the offering and operations of the securities token comply with the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 and any relevant guidelines issued relating to AML/CFT.
- 10.2 Measures that can be undertaken may include the following:
- (i) take appropriate steps to identify, assess and understand the Money Laundering/Terrorism Financing (ML/TF) risks.
 - (ii) develop policies, controls and procedures to manage and mitigate ML/TF risks in relation to the conduct of customer due diligence and transaction monitoring, screening, reporting suspicious transactions and record keeping to manage and mitigate the risks.

- (iii) perform enhanced measures where higher ML/TF risks are identified, to effectively manage and mitigate those higher risks.

11.0 Market conduct

11.1 The issuer and intermediaries shall:

- (i) conduct its business with due diligence and sound principles, safeguarding market integrity which is an essential prerequisite for an efficient, transparent and integrated financial market.
- (ii) ensure proper policies and procedures are in place to ensure a sound compliance framework which safeguards clients' interests.
- (iii) communicate with its investors in a fair, clear and not misleading manner.
- (iv) conduct its business with due skill, care and diligence.
- (v) identify and manage any conflict of interest that may arise.
- (vi) have effective arrangements in place for the protection of investors' funds.
- (vii) have effective administration arrangements.
- (viii) maintain all of its systems and security access protocols to appropriate international standards; and be considered as a subject person.

11.2 Any market abuses including but not limited to insider dealing, fraudulent behaviours, false trading or market rigging shall be prohibited.

11.3 Co-operate with the Labuan FSA in an open and honest manner and shall provide the Authority with any information it may require.

12.0 Listing and trading

12.1 Securities token may be listed and traded on any approved exchanges that accept securities token. However, it is encouraged that Labuan securities token to be listed and traded on Labuan approved exchanges.

12.2 The issuer or exchange provider shall prepare and cause to be published on the exchange platform an annual report and semi-annual report which contain necessary information to enable token holders to evaluate the performance of the issuer which include but not limited to the following:

- (i) the total amount of securities token issued and in circulation;
- (ii) the status of the utilisation of the securities token's proceeds by the issuer;
- (iii) the status of the project; and
- (iv) audited financial statements for the latest financial year.

13.0 Other requirements

13.1 Operational requirements

- (i) For private STOs that have reached their maturity period, to notify Labuan FSA in writing within one month after its maturity. It shall ensure fair and orderly winding down of the matured securities including having an auditor to ensure that all assets have been properly returned to investors.
- (ii) Maintain adequate and proper accounting and other records in line with the Directive on Accounts and Record-Keeping Requirement for Labuan Entities issued by Labuan FSA that will sufficiently explain its transaction and financial position.
- (iii) Comply with the relevant laws and regulations in the jurisdictions where it intends to operate including obtaining the necessary approval.
- (iv) Comply with any relevant circulars, guidelines, or other policy documents issued by Labuan FSA from time to time.

13.2 Investor awareness

- (i) Investors are urged to be wary of the potential risks involved in virtual assets. Virtual assets are exposed to heightened risks of insufficient liquidity or volatility, opaque pricing, hacking, and fraud which are also applicable to securities token.
- (ii) As STOs are a nascent form of fundraising and the market is still evolving, investors should be cautious when deciding whether to invest.
- (iii) Investors may be exposed to significant financial losses in trading securities token. If investors cannot fully understand the risks and bear the potential losses, they should not make an investment.

13.3 Managing conflict of interest

An issuer must establish a framework that sets out the policies and procedures to effectively and efficiently manage issues of conflict of interest including potential conflicts of interest and any related party transactions which may arise in the course of the securities token's project.

13.4 Material changes

Where a material change occurs affecting the securities token's project or the issuer, the issuer must, not later than fourteen (14) days after the occurrence of the event, inform the Labuan FSA of such change for purposes of the announcement.

13.5 Reporting

- (i) An issuer must prepare and cause to be published on the trading platform an annual report and semi-annual report which contain necessary information to enable token holders to evaluate the performance of the issuer.
- (ii) The issuer's reports must contain information on the performance of the underlying business or project, including–
 - (a) the total amount of securities tokens issued and in circulation;
 - (b) the status of the utilisation of the securities token's proceeds by the issuer;
 - (c) the status of the project; and
 - (d) audited financial statements for the latest financial year

13.6 Advertisements, marketing and promotion

- (i) No advertisement offering, or calling attention to an offer or intended offer of, securities under subsection 8(1) of LFSSA or subsection 13(1) of LIFSSA, being an offer of securities not excluded under subsection 8(5) of LFSSA or subsection 13(5) of LIFSSA, shall be published in Labuan until it has been approved by the Labuan FSA.
- (ii) An application for approval of an advertisement shall be lodged with Labuan FSA together with a copy of the advertisement verified in such manner as the Authority directs.

- (iii) Any person who publishes or causes to be published in Labuan an advertisement without prior approval of Labuan FSA commits an offence and shall, on conviction, be liable to a fine not exceeding RM10,000.
- (iv) An issuer must ensure that all information disseminated for marketing or promotion is consistent with the contents of its prospectus/whitepaper for investors are appropriately displayed in all marketing and promotional materials including its website.
- (v) An issuer must not engage any third-party individual(s) or entity, to endorse or represent the issuer with the intended purpose of marketing, promoting, gaining publicity or soliciting funds for its securities token offering.
- (vi) All marketing materials (including speeches and press statements) provided by the issuer must be clear, fair and not misleading.

13.7 Utilisation of proceeds

- (i) An issuer must provide a confirmation to Labuan FSA that the drawdowns have been utilised for the purposes stated in the prospectus / whitepaper in such form and manner as Labuan FSA may specify.
- (ii) An issuer must not make any changes to the drawdown and utilisation of proceeds post the issuance of the securities tokens that affects the token holder's rights unless prior approval of the majority of the token holder representing 75% of the total amount of tokens held by all token holders present and voting has been obtained.

13.8 Cyber-security framework

- (i) Issuer shall establish a "Cyber-Security Framework" which includes:
 - (a) information and data security roles and responsibilities;
 - (b) access management policy;
 - (c) sensitive data management policy;
 - (d) threats management policy;
 - (e) business continuity plan;
 - (f) response and recovery plan; and
 - (g) security education and training.

- (ii) The Cyber-Security Framework shall comply with internationally recognised cyber security standards.

14.0 Shariah-compliant STOs

- 14.1 Islamic finance is one of the fastest-growing segments of the global financial industry. As a result, the emergence of new asset classes in the world of financial technology, such as securities token, is driving the industry away from traditional finance. It is now in the stage of global integration to be adopted as an international digital financial system.
- 14.2 This Guidelines will also be applicable for the issuance of Shariah-compliant token which will facilitate and enable business diversification through the internalisation of the digital spectrum in the entire Islamic financial ecosystem.
- 14.3 Shariah-compliant STO shall be approved and endorsed by a Shariah adviser to ensure compliance with Shariah principles on all its documentation, structuring, investment as well as other administrative and operational matters.

15.0 Environment, Social and Governance (ESG) STOs

- 15.1 The importance of ESG analysis in the investment process is on the rise. Gaining a deeper understanding of the businesses the company invests in is a major drive for investment professionals to examine ESG issues as part of their financial analyses. ESG investing can also assist portfolios in avoiding holding companies that engage in risky or unethical practises.
- 15.2 Tokenisation can help to increase ESG data transparency by tracking the origin and verifying its authenticity and credibility. Tokens, as a financial instrument, can encapsulate value and data on the blockchain and be passed on or traded in an efficient and traceable manner almost instantly.
- 15.3 Any person who intends to issue ESG STOs, the issuer has to ensure that the element shall be aligned with any recognised international standards for ESG framework as per **Appendix II**.

16.0 Submission of application and enquiries

16.1 The application for approval of public STO or notification of private STO can be submitted to:

Head of Authorisation and Licensing Unit
Labuan Financial Services Authority
17th Floor, Main Office Tower
Financial Park Complex, Jalan Merdeka
87000 Federal Territory of Labuan, Malaysia

16.2 Any enquiries or clarification may be directed to the following contact details:

Telephone no. : 03-8873 2000
E-mail : bpu@labuanfsa.gov.my (Guidelines)
licensing@labuanfsa.gov.my (Application)

Labuan Financial Services Authority

6 October 2023

List of Relevant Guidelines and Circulars

The following are the list of Guidelines/Directives/Circulars that are applicable to Labuan Securities Token Offering:

1. Guidelines on the Establishment of Labuan Mutual Funds including Islamic Mutual Funds.
2. Notification Requirement for the Issuance of Debentures and Sukuk in Labuan International Business and Financial Centre.
3. Clarification Note for Guidelines on the Establishment of Labuan Mutual Funds including Islamic Mutual Funds.
4. Guidelines on the Establishment of Labuan Fund Managers.
5. Directive on Accounts and Record-Keeping Requirement for Labuan Entities.
6. Guidelines on Digital Governance Framework.
7. Guiding Principles on Business Continuity Management.
8. Shariah Pronouncement on Labuan Islamic Digital-Based Solution by the Shariah Supervisory Council of Labuan FSA.

Note: The above lists are not exhaustive and may be amended from time to time.

Recognised international standards for ESG framework

1. International Capital Market Association (ICMA)'s Green Bond Principles, Social Bond Principles and Sustainability Bond Guidelines;
2. Climate Bonds Initiative (CBI) Climate Bonds eligibility taxonomy and Climate Bonds Standards;
3. ASEAN Capital Markets Forum (ACMF) ASEAN Green, Social and Sustainability Bond Standards;
4. People's Bank of China Green Bond Endorsed Project Catalogue; and
5. Other aligned frameworks.

Note: The above lists are not exhaustive and may be amended from time to time.