

GUIDELINES ON MONEY BROKING BUSINESS IN LABUAN IBFC

1.0 Introduction

- 1.1 Due to rapid developments in the financial sector, the importance of intermediaries' presence such as money brokers is key for ensuring that the money market and foreign exchange transactions are carried on in an effective and efficient manner so as to preserve the soundness of the financial system.
- 1.2 Money broking business is defined as the business of arranging transactions between buyers and sellers in the money or foreign exchange markets as an intermediary in consideration for brokerage fees paid or to be paid. This does not include the buying or selling of Ringgit or foreign currencies as a principal in such markets.
- 1.3 The purpose of the Guidelines is to clarify the application procedures, operational and regulatory requirements for money broking business¹ that is carried on in the Labuan International Business and Financial Centre (Labuan IBFC).

2.0 Applicability

- 2.1 The Guidelines is applicable to any person licensed by Labuan Financial Services Authority (Labuan FSA), including new applications, to carry on money broking business pursuant to Sections 90 and 92 of Labuan Financial Services and Securities Act 2010 (LFSSA) or Sections 65 and 67 of Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

3.0 Eligibility

- 3.1 The eligible applicant to carry on money broking business in Labuan IBFC may include:
- (i) an individual or institution with money broking expertise and has good track records in carrying on such business, including sufficient number of years of experience²;

¹ Including Islamic money broking business.

² Typically, Labuan FSA would expect such applicant to have at least three-year experience in money broking business. Notwithstanding this, all applicants would be assessed holistically based on their own merits of the application.

- (ii) a regulated money broker or any provider of such services from other jurisdictions and has good track records in carrying on such business, including sufficient number of years of experience². A Letter of Awareness or any equivalent written consent has been obtained from its home supervisory authority for conducting money broking business in Labuan IBFC; or
- (iii) any licensed institutions including approved money broker under the Financial Services Act 2013 with prior approval from the Central Bank of Malaysia.

4.0 Legal Provision

- 4.1 The Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to clarify the provisions of Part VI of LFSSA and Part VI of LIFSSA.
- 4.2 Any person who fails to comply with the Guidelines commits an offence upon which Labuan FSA may undertake appropriate enforcement action to the extent provided by the law.

5.0 Effective Date

- 5.1 The Guidelines shall come into effect on 1 January 2018 and would remain effective and applicable unless amended or revoked.
- 5.2 Any application submitted to Labuan FSA prior to 1 January 2018 and the existing Labuan money brokers licensed before the effective date shall comply with the Guidelines by 1 July 2018.

6.0 Permissible Money Broking Activities

- 6.1 In carrying on the money broking business, the licensee is expected to:
 - (i) bring together the counterparties on mutually acceptable terms for the same financial products in money or foreign exchange market to facilitate the conclusion of a transaction;
 - (ii) receive payment for its service in the form of brokerage or commission fees. The fees charged must be adequate and appropriate; and
 - (iii) act as a mediator and strictly not permitted to act as a principal³.

³ Principal will 'deal for their own account and based on its own risk'. This Guidelines restricts position-taking by the Labuan money broker.

7.0 Licensing Requirements

- 7.1 Submit a duly completed application form with the relevant supporting documents as stipulated in the Form LFB-MB, which is downloadable from Labuan FSA's website (www.labuanibfc.com).
- 7.2 Provide a certificate of evidence to certify that the paid-up capital as specified under paragraph 8.1 has been deposited with a bank in Labuan or Malaysia for the money broking operation.
- 7.3 The persons in control, directors and principal officer of the applicant must be fit and proper persons.
- 7.4 Labuan FSA may require from the applicant such other information or documents for the purpose of determining the merits of the application.

8.0 Operational Requirements

- 8.1 Maintain a paid-up capital unimpaired by losses of at least RM500,000 or its equivalent in any foreign currency. Labuan FSA may also exercise its discretion to require additional capital to commensurate with the business operations of the Labuan money brokers, taking into account the risk profile as well as nature, scale, complexity and diversity of their business activities.
- 8.2 Maintain an operational office in Labuan. The operational office should be used for business purposes only and must be appropriately furnished with office equipment.
- 8.3 Ensure that the persons in controls, directors and principal officer meet the fit and proper person requirements as specified in the Guidelines on Fit and Proper Requirements issued by Labuan FSA. It is expected that the employees employed to transact in the money broking business are competent and possess sound knowledge of the services offered.
- 8.4 Establish an adequate set of internal policies and controls for its operations, compliances, corporate governance and risk management. These need to be regularly reviewed to ensure that they remain appropriate, relevant and prudent.
- 8.5 Ensure that the counterparties, i.e. principal broker and liquidity provider are regulated by a recognised supervisory or regulatory authority.

- 8.6 Labuan money broking business is intended to serve the institutional investors and high-net worth individuals. In this regard, the Labuan money broker is expected to impose a maximum leverage limit of 100:1 on its clients' trading transactions that would translate to a minimum of 1% margin deposit to enable the opening of a trade position. For illustration purpose, assuming that the transacted volume is USD100,000, the minimum margin requirement will be equivalent to USD1,000.
- 8.7 Appoint a Labuan approved auditor to carry out an annual audit of its accounts in respect of the business operations pursuant to LFSSA and LIFSSA.
- 8.8 Ensure compliance with the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 and the Guidelines on Anti-Money Laundering and Counter Financing of Terrorism – Banking sector issued by Labuan FSA.
- 8.9 Maintain adequate and proper records and books of accounts in Labuan as required by the Directive on Accounts and Record-keeping Requirement for Labuan Entities issued by Labuan FSA. Its name and company number must be clearly indicated on its letterhead, stationery and other documents.
- 8.10 Obtain prior approval from Labuan FSA on the following matters:
- (i) change of ownership and shareholding structure;
 - (ii) appointment of its directors and principal officer;
 - (iii) change of its place of business or office in or outside Labuan and business plan;
 - (iv) establishment of additional office; and
 - (v) any outsourcing arrangement.
- 8.11 For Labuan money broker's business model/customer interface which is exclusively or substantially electronic, proper management of technology risk must be in place:
- (i) data/system security and arrangements for IT systems maintenance, resilience and support must be supported by a dedicated IT staff;
 - (ii) notify Labuan FSA as soon as possible, upon discovery of any incident of system malfunction and intrusion; and

- (iii) a root cause and impact analysis report must be submitted to Supervision and Monitoring Department within 14 days or such longer period as the Authority may allow, from the discovery of the incident. The report shall contain:
 - a) an executive summary of the relevant incident;
 - b) an analysis of the root cause and the description of the impact of the relevant incident to the money broking business; and
 - c) a description of the remedial measures taken to address the root cause and consequences of the relevant incident.

8.12 For Labuan money broker that undertakes Islamic money broking business, is required to appoint a qualified person⁴ to its internal Shariah advisory board to ensure that its management and operation are in compliance with Shariah principles. In this regard, the Directive on Islamic Financial Business in Labuan IBFC shall also be observed.

8.13 Notwithstanding the above, Labuan FSA may impose any additional operational requirements depending on the riskiness level of the money broking business operations on a case by case basis.

8.14 Comply with applicable laws, rules and regulations relevant to the money broking business activity, including relevant guidelines issued by Labuan FSA, regulatory requirements of the jurisdictions where the Labuan money broker is authorised to operate in as well as the Malaysian Foreign Exchange Administration rules, at all times. In this regard, the Labuan money broker is expected to obtain the necessary approvals from the authorities in the markets it intends to operate in prior to commencing its business in those respective markets and shall provide a copy of the said approval to Labuan FSA.

9.0 Conduct Requirements

9.1 The Labuan money broker shall abide by the following conduct requirements to promote good professionalism and clients' confidence in the Labuan money broking market:

- (i) Integrity and Fair Dealing: Conduct its business with honesty, fairness, integrity and professionalism.
- (ii) Skills, Care and Diligence: Act competently and diligently in regard to all transactions between themselves and their clients.

⁴ may include its employee who possesses the necessary qualifications and expertise in Islamic commercial law and Islamic jurisprudence in line with section 2 of LIFSSA.

- (iii) Handling of confidential information: treat information relating to the deals transacted or being transacted as confidential and limit access to such information. Subject to applicable laws and regulations, confidential information may be disclosed where the disclosure is:
 - (a) with the explicit permission from the parties involved; or
 - (b) required by laws, a court of law or relevant supervisory authorities.

The employees employed to transact in the money broking business must not reveal confidential information even following termination of employment.

- (iv) Professional Client Management: Act in the best interest of its clients and must not jeopardise or prejudice clients' interests. Any information provided to its clients must be fair, accurate and timely.
- (v) Dispute Mechanism and Complaint Handling: have in place dispute mechanism and adequate complaint handling procedure. The complaints received shall be handled in a fair, timely and appropriate manner. Details of the complaints, responses and actions taken must be recorded and maintained.

9.2 In addition to the requirements under paragraph 8.4, the Labuan money broker that deals in foreign exchange market shall also ensure that it has risk mitigating measures such as stop loss orders that serve as safeguards in preventing undue exposures arising from excessive leveraging and unexpected losses of its clients.

9.3 The Labuan money broker shall conduct proper due diligence on its clients, principal broker or liquidity provider as well as the trading platform providers. The due diligence efforts must commensurate with the level of exposure of the counterparties.

9.4 In relation to handling of client monies, the Labuan money broker is required to:

- (i) keep client's monies accounts separate from its own account and marked in the books of the money broker relating to each client's account. Such monies shall at no time be mixed with the general assets of the Labuan money broker. The client's monies shall be readily identified at any time. In this regard, any withdrawal of client's monies is expected to be completed within three (3) working days from the date of the client's withdrawal request.

- (ii) maintain proper record of the client's monies accounts. The balance of client's monies accounts needs to be reconciled with internal records and clients' records on a monthly basis so as to ensure accuracy and consistency.
 - (iii) client's monies shall not be available for the payment of debts of the Labuan money broker or liable to be paid or taken in execution under an order of process of court for payment of the debt of the Labuan money broker.
- 9.5 The Labuan money broker must always make it absolutely clear to its clients, the capacity in which the institution is acting. Written agreement with the clients has to be in place which detailed out its duties and responsibilities. The Labuan money broker shall provide full and true disclosure to the clients for any actual or potential conflicts of interest arising from any connection to or association with any service providers (e.g. principal broker or liquidity provider), including any material information or facts that might compromise their objectivity or independence in carrying on its activities as a Labuan money broker.
- 9.6 The Labuan money broker must make clear whether the price or rate quoted for the financial products in money or foreign exchange market is firm or merely indicative. No frivolous quote is allowed which the Labuan money brokers have no intention of honouring.
- 9.7 The Labuan money broker shall disclose, at the minimum but not limited to, the following to its clients:
- (i) list of authorised introducing brokers⁵ on a publicly accessible medium, e.g. website. This shall include the roles and responsibilities of the introducing brokers. In this instance, the Labuan money broker is expected to have in place a written agreement with the introducing brokers which sets out the roles and responsibilities in details. The Labuan money broker shall also ensure its appointed introducing broker undertake its functions in a professional manner. This may be undertaken based on the "best execution" principles⁶;
 - (ii) risk disclosure and spreads charged; and
 - (iii) any other fees or charges related to the client's trading transactions.

⁵ Intermediary acting as an agent on behalf of the Labuan money brokers.

⁶ "Best execution" principles may include:

- (a) the usage of clear language in communicating with a client
- (b) requirements to be truthful and transparent when communicating with a client; and
- (c) prompt and fair execution the order based on the client's instruction.

- 9.8 The Labuan money broker shall ensure that the clients are well updated on their trading performance on a monthly basis. The performance updates may be in a form of a self-prepared manual report or a report generated from the money broking platform.

10.0 Requirements of Labuan Office

- 10.1 The Labuan office shall entail the deployment of resources with sufficient knowledge and expertise to deliver, but not limited to, the following roles and functions:

(i) Finance and Accounting

Preparation and maintenance of proper accounting records relating to the client's monies.

(ii) Statistical Submission

Preparation and submission of audited account and periodic statistical returns to Labuan FSA.

(iii) Preparation and Maintenance of Records

- a) Preparation and maintenance of documents that record any business or corporate decisions made;
- b) Preparation and maintenance of all records which include the client's trading records, books and accounts relating to its business operation; and
- c) Ensure the records and books of account including its service level agreement of outsourcing (if any) are readily available and easily retrievable for inspection by Labuan FSA.

(iv) Contact Person Stationed at Labuan office

For official communication with Labuan FSA, the contact person may be the Principal Officer or any other senior officer who has the authority and responsibility for planning, directing or controlling the activities of the money broking business e.g. operation manager or any other similar functionaries.

11.0 Reporting Requirements

11.1 Labuan money brokers are required to submit to Labuan FSA the following:

- (i) one (1) hardcopy and one (1) soft copy of its audited financial statements within six (6) months after the closure of each financial year; and
- (ii) statistics and information as Labuan FSA may require from time to time.

12.0 Annual Licence Fee

12.1 The annual licence fee payable for Labuan money broker is RM5,000 upon the grant of its licence.

12.2 The subsequent payment of annual licence fee is payable on or before 15 January of each year.

13.0 Submission of Application and Enquiries

13.1 The licence application for money broking business should be submitted to:

Head of Business Operations Unit
Legal and Business Management Department
Labuan FSA
17th Floor, Main Office Tower
Financial Park Complex, Jalan Merdeka
87000 Federal Territory of Labuan, Malaysia

(E-mail: bou@labuanfsa.gov.my)

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

Telephone no. : 087 591 200
Fascimile no. : 087 453 422 / 422 300
E-mail : bou@labuanfsa.gov.my (Licence application)
bpu@labuanfsa.gov.my (Guidelines)

Labuan Financial Services Authority

24 November 2017 (Revised)