

GUIDELINES ON CLIENT MONEY FOR LABUAN TRUST COMPANIES

1.0 Introduction

- 1.1. A Labuan trust company (LTC) plays a pivotal role in delivering corporate and trust services in Labuan International Business and Financial Centre (IBFC). This includes ensuring the administration and holding of client money is carried out in an effective and professional manner.
- 1.2. The *Guidelines on Client Money for Labuan Trust Companies* (the Guidelines) are intended to provide the minimum regulatory standards for handling of client money to be observed by the LTC. This includes the money that the LTC receives, keeps and controls on behalf of its clients while acting in the capacity of a fiduciary for them in the course of carrying out the trust company business in Labuan IBFC.
- 1.3. The requirements put forth by the Guidelines are consistent with expectations on client money regulation which are embedded within the international standards set by the Group of International Finance Centre Supervisors (GIFCS)¹.

2.0 Applicability

- 2.1 The Guidelines are applicable to the LTC licensed under Part V of the Labuan Financial Services and Securities Act 2010 (LFSSA) excluding Labuan Private Trust Companies.

¹ The GIFCS is a long-established group of financial services supervisors since 1980 with a core interest of promoting the adoption of international regulatory standards especially in the banking, fiduciary and AML/CFT arena.

2.2 The Guidelines would need to be read together with the following guidelines:

No.	Guidelines	Reference Paragraph	Issuance Date
1.	Governance and Market Conduct Framework for Labuan Trust Companies	<ul style="list-style-type: none">• Para. 8.1 (ii) & (vii)• Para. 8.12• Para. 8.16• Para. 16.1	21 August 2015
2.	Guidelines for the Establishment of Labuan Trust Companies	<ul style="list-style-type: none">• Para. 3.0• Para. 5.1.4• Para. 5.1.8	18 December 2015
3.	Guidelines for the Establishment of Labuan Managed Trust Companies	<ul style="list-style-type: none">• Para. 6.3• Para. 6.4	18 December 2015
4.	Directive on Internal Audit Requirement for Labuan Managed Trust Companies	<ul style="list-style-type: none">• Para. 2.1• Para. 2.8	28 September 2016

3.0 Legal Provision

- 3.1. The Guidelines are issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSSA) to specify the minimum prudential standards to be implemented by Labuan trust companies licensed under Part V of the LFSSA.
- 3.2. The Guidelines are intended to specify the client money management by the LTCs pursuant to Section 83 of the LFSSA. The clause requires that the money paid or given to or held by the LTC in a fiduciary capacity would need to be kept separate from its own money at all times with proper record keeping to distinguish it from those of the LTC.
- 3.3. Any person who fails to comply with the Guidelines may be subject to enforcement actions which include a compound and/or an administrative penalty under Section 36B and Section 36G of the LFSSA.

4.0 Regulatory Requirements

- 4.1 The application and observance of the principles specified under the Guidelines are to be achieved by the LTC through the minimum requirements and to be complemented by the recommended best practices:
- (i) Minimum requirements must be complied with by all LTCs. For completeness, these applications may refer to relevant regulatory requirements that have been issued by Labuan FSA as set out under paragraph 2.2; and
 - (ii) The best practices are broad guidance on other more advanced client money management practices observed in international markets. Although these best practices are not made mandatory, LTCs are encouraged to adopt them as their business operations grow and mature over time.

5.0 Effective Date

- 5.1 The Guidelines shall come into effect on **1 July 2024** and would remain effective and applicable unless amended or revoked. Notwithstanding this, LTCs that intend to early adopt the requirements of the Guidelines are highly encouraged.

6.0 Definitions

Board	Refers to the board of directors of the LTC; or any equivalent person or body with the authority to oversee the LTC.
Client	In respect of LTC carrying on trust company business, means: (a) A person who has made arrangements with LTC for the provision of services rendered; or (b) A person who has benefitted or may receive the benefit from the services provided or arranged by the LTC.
Client Money	Refers to money paid to, held or received by LTC in relation to its fiduciary capacity, on behalf of its client, for the purpose of conducting trust company business, in which LTC has control of and is responsible for it to be safeguarded.
Client Money Account	Refers to a bank account that is opened and maintained by the LTC for the purpose of segregating the client money.
Money	Refers to the medium of exchange in the form of cash, cheques and other payable orders including electronic transfer and money deposited in accounts, in each case, in any currency.
Senior Management	Refers to the principal officer (PO), any officer(s) or committee performing a senior management function who are principally accountable for: (a) Making decisions that affect the whole, or a substantial part of, the LTC'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 or other key functionaries of the LTC which include compliance, AML/CFT compliance, Shariah advisory, internal audit and risk management.

Trust Money	Refers to money held or received by LTC which is not Client Money and which is subject to a Labuan trust of which the LTC is appointed as a trustee.
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7.0 Board Oversight

Principle 1: The Board of Directors (Board) is ultimately accountable and responsible to oversee the effective handling and control over client money by LTCs through sound internal policies and procedures.

Minimum Requirements

- 7.1 The Board is expected to be responsible for ensuring appropriate governance within the LTC which include to:
- (i) approve client money policies and procedures in setting out the basic principles and sound internal controls to protect over client money;
 - (ii) ensure adherence with the legal and regulatory requirements pertaining to client money transacted in Labuan IBFC;
 - (iii) establish internal governance structure that provides effective oversight and management of client money; and
 - (iv) ensure sufficient risk management framework is implemented in order to minimise potential weakness and risks associated with managing client money including Money Laundering/Terrorism Financing (ML/TF) risk that may arise from client money transactions.

8.0 Senior Management Responsibilities

Principle 2: The Senior Management ensures that the approved policies and procedures for managing client money are implemented and observed by the relevant functions within the LTC.

Minimum Requirements

8.1 Key roles of the senior management in managing client money include to:

- (i) develop and implement policies, procedures and controls in managing the client money;
- (ii) exercise diligence, professionalism and high integrity in handling client money pursuant to the objectives of the trust company;
- (iii) ensure organisational adherence to the client money policies and procedures as mandated by the Board;
- (iv) safeguard and maintain the confidentiality of client money records pursuant to Section 178 of LFSSA;
- (v) adopt absolute strict discretion on the sensitive data of client money, in which it is stored securely and poses no operational risk in a way that preserves the secrecy; and
- (vi) provide timely updates to the Board on matters that materially affect the client money management to facilitate strategic decision making.

Best Practices

1. The Board may conduct self-assessment to maintain the personnel professionalism and confidentiality standards on sensitive information.
2. The Board and senior management of LTC may include the requirements and responsibilities of personnel that handle client money as part of its internal policy or procedures to promote prudent handling of client money.
3. The senior management may consider to set performance metric on dedicated personnel to uphold the highest standards with utmost care when dealing with client money in accordance with client interest and direction.

9.0 Client Money Management

Principle 3: The LTC would need to have in place effective controls for the administration and holding of client money which are subject to periodic review. This is to ensure the client money is appropriately safeguarded and utilised only for the intended contractual purposes.

Minimum Requirements

- 9.1 The LTC is required to establish internal controls aimed at facilitating prudent and effective business operations and processes which includes holding or receiving the money on behalf of the client. In this regard, the LTC is required to maintain and implement the following requirements:

I. Segregation of Account

- 9.2 The LTC must ensure clear segregation of the client money that it has received in its capacity as the trust service provider from those of its own.
- 9.3 The LTC must maintain the client money in a separate client account and trust money in a separate trust account from any of the LTC accounts with a bank at all times.
- 9.4 In the event that the personnel become aware of the client money has been inadvertently mingled with the LTC's, it must be separated and kept at client money account as soon as practicable.
- 9.5 Client money can be held either centrally pooled into single account in the name of the LTC in the title of which the word "client" appears or multiple accounts for diverse clients. In this regard, the LTC would need to ensure that its clients have no objection with the client money arrangement. For instance, some clients would prefer for the client money to be maintained in a Shariah compliance bank account.

Best Practices

1. In order to ensure a clear separation between the client money and LTC's, the inadvertently mingled client money should be deposited back into client account within five (5) working days from the date of discovery.
2. The LTC may implement internal measures or checklist for its personnel to check, verify and monitor the transactions under the clients account on daily basis to minimise the risk of co-mingling of funds

II. Money Paid into Client Account

- 9.6 The LTC shall not hold money other than client money in the client money account, unless such other money are:
- (i) the minimum sum required to open the accounts or maintenance purposes;
 - (ii) interest (or profit in the case of a Shariah compliant account) credited to the accounts which exceed the amount due to clients as interest which has not yet been withdrawn by the LTC; or
 - (iii) money credited to the client money account to make good any shortfall to the accounts caused by discrepancies incurred for maintaining the account such as bank charges and not due to misappropriation and mishandling of client money by the LTC.
- 9.7 The LTC must ensure that the client money is accounted for promptly, typically on the day of receipt or the next working day.

III. Disclosure to Clients

- 9.8 The LTC would need to demonstrate proper disclosure and transparent communication with its clients of the terms upon which client money is held.
- 9.9 The LTC must ensure the clients are well informed on the risk associated with handling client money and how the unidentified and unclaimed funds are dealt with on transparent basis.
- 9.10 All records relating to the disclosure to clients shall be kept physically in client file or stored electronically by the LTC.

Best Practices

1. The LTC may consider to insert a clause under the contractual document with its clients on the manner of which the disclosure on the client money terms will be made as well as the risks associated with the handling of the client money by the LTC.
2. The LTC may encrypt the electronic documents with a password to secure and protect the clients' data from any unauthorised modification or destruction.

IV. Reconciliation

- 9.11 The LTC is required to perform a reconciliation of any receipt or transaction of client money account promptly at least on monthly basis, including to have client suspense account, where relevant.
- 9.12 The LTC must also ensure that the client money account is part of the annual financial audit and the scope shall include compliance with the:
- (i) requirements of this Guidelines; and
 - (ii) contractual agreements between the LTC and its clients pertaining to the handling of client money.
- 9.13 The LTC is required to maintain the reconciliation record for a period of at least six (6) years, following the termination or cessation of the client's business relationship.

V. Controls

- 9.14 At the minimum, the LTC is required to enforce dual authorisation for withdrawal of client money from the client money account.
- 9.15 Any request on the withdrawal of client money is expected to be completed within five (5) working days from the date of the client's withdrawal request.
- 9.16 There need to be adequate internal controls to be established with regard to proper handling of client money, which prevent improper use of them for other purposes such as settlement and disbursement of LTC's dues.
- 9.17 The LTC is accountable to ensure the client money is not utilised for other unrelated customers or for its own interest.
- 9.18 The senior management must be immediately notified for any concern relating to lost or misplaced client money. Such events could be attributable to:
- (i) misconduct by the LTC's personnel; and
 - (ii) perpetration by third party.

Best Practices

1. The LTC may implement a systematic communication method and procedure by actively monitor and respond to potential misinformation and misinterpretation of handling of client money in all communication and media platforms that may adversely affect its transparency to the clients.
2. The LTC may establish efficient training programs to ensure its personnel consistency in demonstrating professional behaviour in terms of handling client money on an ongoing basis.
3. The LTC may consider to purchase Fidelity Guarantee Insurance as precautionary measure to protect against any acts of forgery, fraud or dishonesty by their personnel in handling client money.

VI. Audit Review

- 9.19 The LTC must implement a scheduled review of the control over client money, on a risk-based approach to address any key control deficiencies that could compromise the effectiveness of the LTC in managing its clients' money.
- 9.20 The comprehensive review shall be conducted to validate the efficiency of LTC in controlling and safeguarding of client money, particularly in addressing precautionary measures to avoid possible loss, misappropriation and mishandling of client money.
- 9.21 The independent review of the controls over client money can be undertaken for at least on an annual basis either through an internal or external assessment.
- 9.22 The auditors shall be given full access to relevant information with regards to the management of client money for audit and review purposes and responsible to observe the secrecy of the data.
- 9.23 The audit report must be recorded and tabled to the Board within three (3) months of the completion of the audit.

Best Practices

1. The LTC may establish an audit committee to represent the Board in carrying out and assessing the audit and independent review matters including deliberating on its findings and recommendation.
2. The LTC is encouraged to maintain a proper documentation of the past audit trail and records for future reference.

VII. Client Suspense Account

- 9.24 The LTC is required to have in place a suspense ledger or separate bank account to hold the old and unidentified client money.
- 9.25 The LTC must ensure the breakdown of the balance reflecting the duration of each amount has been held in the account are documented and made available for future inspection.
- 9.26 The LTC must ensure the suspense account is up-to-date and cleared out once the issue is addressed, at which time the money is moved to the designated accounts.

Best Practices

1. The LTC is encouraged to conduct a clearing-out process of the client suspense ledger at least on monthly basis.
2. It is recommended for the LTC to periodically trace and analyse the old unidentified money in the suspense account and not to keep it for longer than seven (7) years.
3. The LTC may refer to the Registrar of Unclaimed Moneys for any submission of unclaimed money pursuant to the Unclaimed Moneys Act 1965.

Labuan Financial Services Authority

22 December 2023