

GOVERNANCE AND MARKET CONDUCT FRAMEWORK FOR LABUAN TRUST COMPANIES

1.0 Introduction

- 1.1 The *Governance and Market Conduct Framework for Labuan Trust Companies* (the Guidelines) is designed to provide the minimum standards that needed to be adhered by a trust company operating in Labuan International Business and Financial Centre (IBFC). As trust companies have a critical role in providing the corporate and trust services to the Labuan companies, Labuan financial institutions and legal entities established in Labuan IBFC, it is imperative that they operate within a culture of robust corporate governance and professional manner.
- 1.2 The Guidelines is intended to reflect Labuan FSA's minimum expectations in relation to the various attributes of a Labuan trust company in terms of its governance, management, internal controls, obligations and responsibilities as well as its market conduct practices vis-à-vis its clients.

2.0 Applicability

- 2.1 The Guidelines is applicable to Labuan Trust Companies (LTC) licensed under Part V of the Labuan Financial Services and Securities Act 2010 (LFSSA) excluding Labuan Managed Trust Companies and Labuan Private Trust Companies.
- 2.2 The Guidelines should be read together with the following guidelines:
- (i) Guidelines for the Establishment of Labuan Trust Companies;
 - (ii) Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) for Trust Company Sector;
 - (iii) Guidelines on Fit and Proper Person Requirements; and
 - (iv) Guidelines on Compliance Function for Labuan Licensed Entities.

- 2.3 With the implementation of the Guidelines, the following Guidelines and Directive will be superseded:
- (i) Guidelines for a Trust Company issued in January 2005; and
 - (ii) Directive on Internal Audit Requirement for Labuan Trust Companies dated 20 April 2011.

3.0 Legal Provision

- 3.1 The Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to clarify the minimum prudential standards to be observed by Labuan trust companies licensed under Part V of LFSSA.
- 3.2 Any LTCs which fail to comply with the Guidelines may be guilty of an offence punishable under Section 36B and 36G of the LFSAA.

4.0 Coverage

- 4.1 The Guidelines establishes basic principles of prudential management standards for LTC focusing on the processes and structures used to direct and manage the business and affairs of the LTCs. The Guidelines comprises the following three parts:
- (i) **Part I** of the Guidelines describes the *Corporate Governance* that refers to the set of principles on how the LTC should be directed or controlled to fulfil its goals and objectives in a manner that adds to the value of the company and is also beneficial for all its stakeholders in the long term. The set of principles include:
 - (a) Board Responsibility and Oversight
 - (b) Senior Management Accountability
 - (c) Internal Controls and Operational Risk Management
 - (d) Professionalism Development

- (ii) **Part II** of the Guidelines describes the *Market Conduct* that defines the responsibilities and proper practices to be implemented by LTCs. The standards include:
 - (a) Integrity and Fair Dealing
 - (b) Skills, Care and Diligence
 - (c) Handling Clients' Information
 - (d) Terms of Business
 - (e) Complaints Handling
 - (f) Advertisement
- (iii) **Part III** of the Guidelines on *Reporting Requirement* covers the areas in which LTCs are required to notify Labuan FSA regarding any changes pertinent to their business details.

4.2 The application of the prudential management principles is to be achieved by the LTCs through the prescriptive requirements of the Guidelines, and be enhanced over time via the recommended best practice standards:

- (i) Prescriptive requirements must be complied with by all LTCs. For completeness, the prescriptive applications may refer to relevant regulatory requirements of other existing guidelines that have been issued by Labuan FSA, but are included in the Guidelines to ensure cohesiveness in their collective application; and
- (ii) On relevant areas, best practice applications are recommended, but not made mandatory as their application needs to suit the different size, nature and complexities of the individual LTC. Alternative applications may be adopted by LTCs provided that they satisfy the requirements of the Guidelines' principles. However, LTCs are encouraged to strive towards adopting the best practice standards over time to raise their governance practices to the international norm.

5.0 Effective Date

- 5.1 The Guidelines, except for the requirements of paragraph 6.1(iii) shall come into effect on 1 July 2016 and would remain effective and applicable unless amended or revoked.
- 5.2 Paragraph 6.1(iii) of the Guidelines shall come into effect on 1 July 2017 to provide sufficient transition period for the LTCs to comply with the requirement therein.
- 5.3 The Guidelines and Directive provided under paragraph 2.3 shall continue to be applicable until the effective date of the Guidelines.

PART I: CORPORATE GOVERNANCE

Good corporate governance ensures that the LTC maintains appropriate policies and processes for directing and managing its business and affairs. This would also form a foundation for an ethical and professional culture to permeate within the company.

6.0 Board Responsibility and Oversight

Principle 1: The LTC must be headed by an effective Board charged with the responsibility of leading the company in an appropriate manner.

Prescriptive requirements

- 6.1 An effective Board of Directors (the Board) provides appropriate direction for the LTC in terms of determining its corporate objectives and business strategies. To enable this to be undertaken in an effective manner:
- (i) the Board shall collectively comprise an appropriate balance of skills, knowledge and competences in relevant fields such as law, accounting, trust and financial services, company secretarial, taking into account its members experience which is suited to the business carried out by the LTC;
 - (ii) at the minimum there shall be two (2) directors sitting in the Board. To ensure an effective, functioning Board; it is also expected that the decision making of the Board be made with a fair representation of the views of the Board members;
 - (iii) to ensure there is sufficient impartiality in the oversight of the LTC, there must be appropriate representation of non-executive directors in its Board as follows:
 - (a) All LTCs shall have a **minimum of one (1) non-executive director**¹.

¹ Non-executive director is a director who is not a staff of an LTC and not under the LTC's payroll. He is not involved in the daily management of the LTC, and is sufficiently independent from the other members in the LTC's Board.

- (b) Notwithstanding paragraph 6.1(iii)(a), Labuan FSA has the discretion to impose higher Board requirements where it deems necessary based on its supervisory assessment of the LTC concerned.
- (iv) the Chairman needs to undertake the crucial role of Board leadership and responsibility in the overall functioning of the Board. It is expected for the Chairman to possess sufficient requisite experience and competencies to carry out his overseeing role in an effective manner;
- (v) the Board has a collective duty to understand applicable legislations and regulatory requirements to enable effective discharge of its responsibilities; and
- (vi) the Board shall meet regularly, at least half yearly, with due notice given of issues to be discussed. The Board should, prior to each meeting, be duly furnished with all relevant information and statistics necessary to enable it to properly consider issues to be discussed, and the proceedings of meetings and decisions of the Board should be recorded.

6.2 The powers, duties and responsibilities of the Board shall include the following:

- (i) approving business objectives, plans and strategies as well as monitoring of strategy implementation and ongoing corporate performance;
- (ii) approving the LTC's policies and procedures as well as manpower planning to deliver professional and quality services to its clients;
- (iii) ensuring that the management comprises fit and proper persons as stipulated in the Guidelines on Fit and Proper Person Requirements and there is an adequate succession planning in place;
- (iv) monitoring and addressing any potential conflicts of interest within the Board, the management, and the LTC;
- (v) ensuring the integrity of the LTC's financial reporting, information system and appropriate controls are in place;
- (vi) monitoring the effectiveness of the governance practices under which it operates and making changes as needed;

- (vii) overseeing the process of disclosure and communications; and
- (viii) ensuring that the management undertakes proper safeguarding of clients' needs in accordance with the contractual agreement and terms of business.

6.3 Where functions have been delegated by the Board, such functions must be recorded and well maintained. The Board is responsible for the delegated functions and its execution.

Best practice recommendations

6.4 To ensure a well-functioning and sufficiently impartial Board in overseeing the LTC, the following best practices can be adopted:

- (i) majority of the Board should be independent non-executive directors;
- (ii) the directors of the LTC's Board shall be a natural person i.e. not a corporate director;
- (iii) to strengthen the chairman impartiality, the Chairman should not be an executive officer of the LTC including chief executive officer;
- (iv) conflict of interest policy is well-documented which sets out standards of expected behaviour amongst functionaries within the LTC including treatment of non-compliance with the policy;
- (v) formation of two-tier board structure via dedicated board committees for nomination, remuneration, risk management and investment committees;
- (vi) the Board undertakes a self-assessment of their effectiveness; and
- (vii) in the situation where the LTC appoints its Trust Officers (TOs) as Board members (referred to as "TO-Director"), the TO-Directors shall abstain from any Board's decision making on areas under their work purview.

7.0 Senior Management Accountability

Principle 2: The Senior Management is accountable to ensure all corporate objectives, policies and business strategies or plans are approved by the Board and all Board's decisions are implemented.

Prescriptive requirements

- 7.1 The sound operations of the LTC depend critically on the effectiveness of its senior management. Based on the corporate objectives, business plans and strategies as approved by the Board; the responsibility of the senior management is to manage the overall affairs of the LTC and the day-to-day operations in a sound and appropriate manner.
- 7.2 The senior management, regardless of size, needs to be integrally involved in the development and implementation of Board's approved policies and decisions. In this regard, it is expected that the senior management undertakes enabling roles which may include the following functions:
- (i) monitor and regularly review the execution of the business strategies or plans against the predetermined objectives;
 - (ii) ensure that relevant information on the LTC's business strategies or plans are appropriately communicated to the relevant personnel to enable effective implementation;
 - (iii) develop appropriate measures to gauge the performance of the LTC against the approved business strategies and plans;
 - (iv) ensure organisational compliance to the LTC's policies and procedures as approved by the Board;
 - (v) allocate adequate resources to carry out the business strategies or plans of the LTC. This includes ensuring that there is sufficient manpower to enable the LTC to deliver professional, quality services to its clients at all times; and

- (vi) undertake proper safeguarding of clients' assets, trusts, foundations and other services rendered and acting in accordance with the trust deed, charter or contractual agreement as part of LTC's duties as a trustee, fiduciary and/or administrator.

Best practice recommendations

7.3 Senior management should endeavour to improve the organisational performance and capabilities by adopting the following:

- (i) commit towards continuous improvement of the LTC's services and internal processes so as to meet the changing demands of their clients as well as to enhance its business repute; and
- (ii) adopt consultative approach with personnel in the collective goal setting and implementation of the LTC's business strategies or plan to cultivate sense of ownership. This may also include full personnel participation in relation to developing their individual goals for performance appraisal purposes.

Principle 3: There should be a clear documented organisational structure that shows lines of reporting responsibility and authority and this should be well communicated to and understood throughout the organisation

Prescriptive requirements

7.4 To ensure clarity in the distinctive roles played by individuals in the senior management team, the organisational structure needs to be clear as regards the areas of accountability and lines of management reporting. There should be no gap in reporting lines and effective management control should be maintained at all levels of the LTC. For this purpose, the senior management is responsible to:

- (i) develop the organisational structure with concurrence from the Board. The senior management would also ensure that the organisational structure remains appropriate to the size, complexity and business nature as well as the operations of the LTC;

- (ii) ensure clear decision making process exists and that any delegation of authority is explicitly outlined and documented to complement the organisational structure;
- (iii) plan and direct the work of personnel, monitoring their work and taking corrective action when necessary based on their respective areas of responsibility. To ensure clarity, the allocation of duties and responsibilities needs to be reflected in individual personnel's job descriptions; and
- (iv) ensure that the interdependencies of different functional areas within organisational structure is made clear throughout all levels within the LTC.

Best practice recommendations

7.5 In promulgating a clear management structure within the LTC, the Senior Management is encouraged to:

- (i) structure a formal dedicated review of its organisational structure to ensure its suitability to the LTC's operations and that updated information is reflected;
- (ii) incorporate authority limits and other functional boundaries as complementary documentations to the organisational structure to be approved by the Principle Officer, instead of by any member of the senior management as well as endorsed by the Board; and
- (iii) clear decision making process exists and that any delegation of authority is explicitly outlined and documented, particularly for the job descriptions of individual personnel.

Principle 4: Persons empowered with decision-making authority should exercise care to avoid situations that may give rise to a conflict of interest. Where such situations arise, appropriate disclosure would need to be made.

Prescriptive requirements

- 7.6 Situations of conflict of interest pertained to instances where a question can be raised as to whether the person involved is able to act objectively in discharging his duty for the best interest of the LTC and its stakeholders. In such situations, whether the person's professional judgement has been impaired is a matter to be judged by the senior management or the Board of the LTC taking cognisance of the persons' responsibilities and the internal controls that exist. To enable this, appropriate disclosure of the conflict needs to be made to the senior management and the Board and the person involved in the circumstances shall not be a party to the decision making of the matter.
- 7.7 The senior management in overseeing the well-running of the LTC is responsible in preventing or minimising situations of conflict of interest by ensuring that appropriate segregation of duties is embedded within the organisational structure. This is to allow for necessary "check and balance" governance to be in place within the LTC.
- 7.8 On ongoing basis, the senior management needs to establish a policy of identifying, preventing or addressing situations of conflict of interest. This will also include the procedure for the management to assess and respond to disclosures made by personnel in such situations.

Principle 5: The LTC should employ persons of calibre, credibility and integrity with the necessary skills, competence and experience.

Prescriptive requirements

- 7.9 As LTCs provide critical fiduciary services to legal entities established in Labuan and hold the statutory duties as required under the laws, it is important that they

employ qualified and suitably competent persons and establish necessary internal policies and procedures in line with the requirements of the Guidelines on Fit and Proper Person Requirements. For this purpose, the senior management is responsible to ensure that:

- (i) personnel are competent to perform their role and their competence is regularly reviewed;
- (ii) appropriate managerial oversight is accorded to personnel;
- (iii) the level of personnel competency of key personnel is appropriate to the nature and size of the business undertaken by the LTC; and
- (iv) appropriate professional development programmes are accorded to personnel as stipulated under paragraph 9.0 of the Guidelines.

8.0 Internal Controls and Operational Risk Management

Principle 6: The LTC should develop internal policies and procedures within the company that collectively integrates controls into the daily operations of the LTC involving all levels of personnel and should cover the entire spectrum of the business processes.

Prescriptive requirements

8.1 The LTC needs to develop integrated controls aimed at facilitating prudent and effective business operations and processes. On this premise, the LTC should ensure that:

- (i) sufficient internal controls are instituted that are capable of identifying, assessing and addressing material risks faced by the LTC which may impair its performance or financial condition;
- (ii) the operations of the LTC's business are conducted in a sound and effective manner in accordance to the established and well-documented internal policies and procedures as approved by the Board. This includes adequate policies and procedures in respect of opening, maintaining

clients' monies in a separate trust account and authorisation to place into or withdraw clients' monies from the trust account are established;

- (iii) regular reviews of the company's operations are undertaken to detect and address any potential risks of losses, errors and omissions as well as operational weaknesses within the LTC;
- (iv) an effective compliance function to be instituted pursuant to the Guidelines on Compliance Function for Labuan Licensed Entities;
- (v) effective communication is present enabling the senior management to be continually and timely apprised of the company's operations, financial position and risks that it is exposed to and the weaknesses detected therein;
- (vi) the LTC maintains adequate insurance cover as part of its sound risk management. This includes procuring a professional indemnity insurance (PII) with a sufficient coverage and sums assured that commensurate with the LTC's nature of business and volume; and
- (vii) the LTC establishes and document clear policies and procedures that ensure:
 - (a) they act with professional skill care and diligence with regard to the handling of its clients assets;
 - (b) there is a segregation of clients assets from those of the LTC; and
 - (c) there is a reconciliation of any receipt or movements of assets of the clients administered by the LTC.

Best practice recommendations

8.2 The LTC should ensure that the policy formulation, supervisory and internal review or advisory duties are completely segregated from the front-line operational duties where possible.

8.3 A risk management function should be established within the LTC in order to have a dedicated oversight on all, and not just material, risks that could detrimentally affect the company. This may include:

- (i) establishing a sufficient framework that embeds the risk management philosophy, policies and procedures which also entail establishment of the LTC's risk appetite and tolerance level. This can be in the form of prudential limits on risk exposure detailing clear types of business that can be accepted by the LTC and extent to which a particular risk can be undertaken by the LTC ; and
- (ii) designating an officer, from amongst its personnel, as the chief risk officer to head the risk management function and operationalise the risk management policies.

8.4 In assessing the PII policy, the LTC may consider the following relevant matters:

- (i) procuring extensions of cover to include fidelity guarantee and director's and officer's insurance to allow for more comprehensive insurance protection;
- (ii) capital or additional capital the LTC must have to cover any excess losses on a policy; and
- (iii) liabilities in excess of the policy cover that can be absorbed by the LTC, or its Group (where it is part of a group). Appropriate contractual arrangements must be in place to ensure that the LTC is fully covered for such liabilities.

Principle 7: There should be a reliable and secured information system in place within the LTC that cover its significant activities. This system is to be adequately maintained, allows for information verification and is backed by sufficient contingency arrangements.

Prescriptive requirements

- 8.5 There should be adequate information systems to support the communication and operational needs of the LTC. These systems comprise those which are manually stored information as well as those that operate on electronic data form. Such systems are important as the backbone infrastructures for the LTC, as a custodian of key information for and on behalf of their clients with regard to the secretarial, administrative or directorship services that they render.
- 8.6 To ensure the integrity, security, availability, reliability and thoroughness of all information, including documentation and electronically stored data, relevant to the company's business operations, the LTC shall ensure that:
- (i) well-designed and controlled information systems (electronic or non-electronic forms) that cover the full range of major activities of the LTC are established;
 - (ii) there is an adequate audit trail of both financial and non-financial information processed through such systems;
 - (iii) the operating and information systems meet its needs and operate in an adequately controlled environment in order to avoid disruptions to business and potential losses which includes ensuring:
 - (a) compliance with the statutory requirements e.g. personal data protection;
 - (b) security against theft, unauthorised access, loss or destruction;
 - (c) suitable backup and disaster recovery arrangements exist and can be practically implemented; and

- (d) sufficient resumption plan to ensure that the LTC can continue to operate key functions in the event of an emergency situation or a system failure. These plans would need to be periodically tested to ensure the effectiveness.

Best Practice recommendations

8.7 To ensure information system of a LTC remains ongoingly robust, it should:

- (i) formulate formal IT policies to detect the occurrence of errors, omissions or unauthorised insertion, alteration or deletion into the company's data and data processing system.
- (ii) testing of resumption plan is undertaken on annual basis with realistic simulated scenarios and assumptions to ensure these plans are implementable.

Principle 8: There need to be an effective and comprehensive internal audit of the LTC's internal control system which will be carried out by independent and competent personnel. The internal audit function must have direct access to the Board and the Senior Management and its audit review would need to be appropriate to the nature and complexity of, as well as risks arising from, the LTC's activities.

Prescriptive requirements

8.8 The internal audit function plays a critical role in monitoring and providing check and balance oversight over the operations of the LTC in the following manner:

- (i) assisting the Board in discharging its responsibilities relating to the oversight of internal controls and risks, adequacy of financial reporting as well as complementing the LTC's compliance function with regard to assessing the company's compliance to relevant legislative and regulatory requirements; and

- (ii) maintaining through regularly scheduled meetings, a line of communication between the LTC's Board and the senior management; and the external auditors.
- 8.9 The internal audit function shall be supported by adequate personnel in terms of necessary technical competencies and manpower size so as to ensure that the function operates in an effective manner.
- 8.10 The internal audit function shall be headed by a sufficiently independent internal auditor that would enable him to exercise judgement, express opinions and present recommendations impartially.
- 8.11 The internal auditors should be functionally responsible to the Board where all internal audit functions; including but not limited to, the appointment, audit planning, audit scope and audit report; shall be reported to the Board.
- 8.12 The internal auditors are, at all times, given access to relevant information and property of the LTC for audit and review purposes. Notwithstanding this, the LTC must ensure that the internal auditors observe the provision of secrecy as stipulated under section 178 of LFSSA.

Eligibility of persons

- 8.13 The internal audit function of the LTC can be undertaken by any of the following persons:
- (i) Its own internal auditor;
 - (ii) The internal auditor of the head office or holding company² or any related corporation³ of the LTC; or
 - (iii) Third party which is not the external auditor of the LTC.
- 8.14 Where the internal audit function is performed by the internal auditor of the LTC's holding company, related corporation or outsourced to a third party, clearly prescribed terms of reference are developed which sets out the scope,

² As defined under section 3 of the Labuan Companies Act 1990 (LCA).

³ As defined under section 4 of the LCA.

objectives, approach, reporting requirements and the working relationship between management and the external party. Labuan FSA may request for the terms of reference and other relevant documents to be made available for review and direct the LTC to undertake action pertaining to such outsourcing arrangements as deemed necessary.

Internal Audit Report

- 8.15 The internal audit report shall contain the internal auditor's assessments on the adequacy and effectiveness of the LTC's system of internal control, adequacy of policies and procedures, level of compliance to external and internal requirements, adequacy and effectiveness of risk management measures and accomplishment of established objectives and goals. A summary of the actions taken on the significant findings from the previous audit review must also be included in the internal audit report.
- 8.16 Internal audit reports must be tabled to the Board within three (3) months of the completion of the audit.
- 8.17 The internal auditor is required to arrange for an exit meeting with Labuan FSA immediately upon completion of the internal audit exercise to highlight preliminary significant audit findings and ensures that the internal audit report is submitted within three (3) months from the completion of the internal audit to:

Director
Supervision and Monitoring Department
Labuan Financial Services Authority (Labuan FSA)
Level 17, Main Office Tower,
Financial Park Complex
87000 Federal Territory of Labuan, Malaysia
Telephone no: 087 591 200
Facsimile no: 087 453 442 / 413 328
Email: *sed@labuanfsa.gov.my*

Audit Scope

8.18 The LTC may adopt any appropriate approach to suit its risk management policy and to ensure its operations are sound on ongoing basis. The scope of the internal audit would need to take into account the following critical areas and the frequency and intensiveness of the auditable areas may be determined by the LTC in line with its risk management policy and sound governance practices:

- (i) Evaluation and appraisal of internal control system which include;
 - (a) effectiveness of system of internal control;
 - (b) reliability and integrity of information, including the accuracy and timeliness of information submitted to Labuan FSA;
 - (c) safeguarding of assets; and
 - (d) detection of frauds, errors, omissions and other irregularities.
- (ii) Adequacy of policies and procedures;
- (iii) Compliance with laws and regulations, policies, directives, guidelines and the LTC's own policies and procedures to complement the compliance function within the company. It is necessary for the internal audit function to work closely with the compliance function, as the latter operates to minimise the risk of non-compliance on a proactive basis;
- (iv) Adequacy and effectiveness of risk management measures; and
- (v) Accomplishment of established objectives and goals.

8.19 The internal audit exercise is to be undertaken annually at the minimum.

Best Practice recommendations

8.20 To have an effective internal audit function, LTCs are encouraged to establish an Audit Committee (AC) to represent the Board in reviewing all internal audit matters which include deliberations on audit findings and recommendations.

8.21 The AC should be governed by a formal written audit charter that identifies the purpose, authority, scope, independence and responsibility of the internal audit

function. In addition to providing clear terms of reference detailing its scope and responsibilities as approved by the Board, the audit charter serves to inform the Senior Management and all levels of management on the role, duties and responsibilities of internal auditors.

9.0 Professionalism Development

Principle 9: Appropriate professionalism and skills enhancement policies are established by the LTC with adequate consideration given to training needs of its personnel. This includes ensuring personnel are competent in carrying out their roles and work responsibilities as well as conforming to the LTC's policies and procedures. This should be seen as an internal capacity building exercise so as to meet the increasingly, sophisticated needs of their clients and the global standards and best practices.

Prescriptive requirements

- 9.1 No personnel shall be appointed as TOs⁴ of the LTC unless he or she has fulfilled the *Procedures for the Examination and Interview Session for Labuan Trust Officer* as prescribed by Labuan FSA.
- 9.2 In fostering personnel's professionalism and skills development, the LTC shall ensure that:
- (i) an adequate training suitable for the specific duties which personnel perform is provided both at the start of their employment and on an on-going basis;
 - (ii) the training programme provided would allow personnel to acquire appropriate knowledge and practical experience through structured courses and "on-the-job" training. This would ensure that personnel are

⁴ Pursuant to section 61(3) of LFSSA and the definition prescribed under Guidelines on Fit and Proper Person Requirements.

well equipped in terms of skill sets and knowledge to enable the LTC to provide quality, professional services to its clients continuously;

- (iii) the type and extent of training provided would need to take into account the complexity of services rendered by the LTC and be consistent with the LTC's business plans and procedures; and
- (iv) their personnel keep abreast of any changes in the legislation and regulation as well as the latest prevailing requirements to better advise their clients.

Best Practice recommendations

9.3 To effectively carry out the training initiatives, the LTC is encouraged to:

- (i) establish training policies to ensure that professional development of the personnel touches on pertinent areas and is provided on an ongoing basis. This includes conducting periodic review of the collective training needs to structure and chart out the skillsets or knowledge to be acquired over a period of time; and
- (ii) have a personnel development plan on an annual basis that includes programmes aimed at enhancing the individual skills and capabilities. This can be via job rotation, cross-functional attachment, mentoring, and external internships.

PART II: MARKET CONDUCT

Good market conduct guidance would reinforce the laws and provide basic standards to heighten clients' confidence and protection. It will also provide direction and mechanism to LTCs as to what practices are deemed acceptable in carrying out their business in a professional manner. In this regard, the following Principles 10, 11 and 12 of the Guidelines shall also be applicable to a resident director and resident secretary appointed by the LTC pursuant to section 87 and section 93 of the Labuan Companies Act 1990, respectively.

10.0 Integrity and Fair Dealing

Principle 10: LTC should at all times act honestly and in a transparent manner when dealing with their clients.

Prescriptive requirements

- 10.1 In upholding honest and transparent dealings with its clients, the LTC shall:
- (i) adhere to high standards of integrity and fair dealing in their business conducts at all times and avoid misleading and deceptive acts or representation. The LTC should not unfairly place their own interests above their clients;
 - (ii) assume the responsibility and liability to a client that it has under the legislative framework and/or accepted practices;
 - (iii) avoid any conflict of interest from arising and ensure just treatment to all their clients via disclosure, internal policies on confidentiality or other accepted practices as deem fit. In this regard, the LTC should identify any relevant situations of conflicts of interest within their organisation and address them in their internal policies; and
 - (iv) ensure that all transactions or decisions entered into or taken by or on behalf of clients are appropriately authorised and handled by persons with an appropriate level of knowledge, experience and status properly to effect such transactions or make the proper decisions

according to the nature and status of the transactions or decisions involved.

11.0 Skills, Care and Diligence

Principle 11: In conducting its business activities, the LTC should act with due skill, care and diligence.

Prescriptive requirements

- 11.1 LTCs should operate with due skills, care and diligence in conducting their business activities. They have a duty to act competently and diligently in regard to all transactions between themselves and their clients.
- 11.2 As LTCs are responsible for providing professional advice or exercising discretion on behalf of their clients, they must be able to demonstrate that the advice, or exercise of discretion, are appropriate for their clients' needs. In this regard, the LTC needs:
- (i) to provide the client it advises relevant information needed to enable him to make a balanced and informed decision; and
 - (ii) to provide clients with a full and fair account of the fulfilment of its contractual responsibilities, when requested by them.

12.0 Handling Clients' Information

Principle 12: The LTC should have procedures in place to handle the information of their clients and ensure that records are maintained in an appropriate manner.

Prescriptive requirements

- 12.1 There should be proper provision for holding, having access to and sharing of information, including ensuring the following:
- (i) adequate information on the ultimate beneficial owner and/or controllers of

companies, partnerships and other legal entities, and the trustees, settlor, protector/beneficiaries of trusts is known to the LTC and is properly recorded in accordance to Labuan legislations and the Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) for Trust Company Sector;

- (ii) any change of client control or ownership is promptly monitored and updated in the record;
- (iii) there is an adequate, effective and appropriate mechanism in place for information to be made available to all the relevant authorities and there should be no barrier to the appropriate flow of information to the authorities as permitted under the law;
- (iv) obtain relevant information from its clients which might reasonably be expected to enable the LTC to fulfil its responsibilities to them;
- (v) where records are kept other than in the form of a printed document or hard copy of a document, whether bearing original signatures or not (or a photocopy of the same) (i.e. they are held by electronic means only), they must be stored in such a way as to remain admissible as evidence before a relevant Court;
- (vi) maintain all records on a continual basis so that they are accessible and up-to-date at all times as far as is reasonably practical;
- (vii) record information likely to be required by Labuan FSA in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the LTC, in particular in such manner as to enable early identification of balances and of the particular items which make up those balances;
- (viii) ensure that all records are arranged, filed and indexed so as to permit prompt access to any particular record;
- (ix) adequate records identifying relevant financial transactions should be kept following the termination or the cessation of the business relationship with

the client for a minimum period as specified under the law from the last of these events; and

- (x) ensure that any record shall be maintained not less than six (6) years from the date of the termination or cessation of the business relationship with the client.

12.2 In handling the information of their clients, LTC shall:

- (i) take reasonable care that the information is accurate in all material respects, not misleading and easily understandable;
- (ii) maintain adequate procedures for the maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the LTC or others so that they are admissible before a relevant Court and reasonably safeguarded against loss, unauthorised access, alteration or destruction; and
- (iii) records of its own transactions should be maintained for no less than six (6) years or as long as is needed to meet its legal and professional obligation.

13.0 Terms of Business

Principle 13: The LTC shall have written terms of business with its clients for whom it has agreed to act on behalf.

Prescriptive requirements

13.1 The terms should provide:

- (i) description of the services to be provided;
 - (ii) the fees to be charged and the basis of the calculation of those fees;
 - (iii) any exit fee and the basis upon which it is calculated;
 - (iv) the means by which complaints about the LTC's services can be made;
- and

- (v) for the LTC to continue to be responsible to its client until such time the relationship is terminated. The LTC should only terminate a relationship with its clients on reasonable notice.

14.0 Complaints Handling

Principle 14: The LTC should support a system of complaints handling where applicable.

Prescriptive requirements

- 14.1 The LTC should have procedures in place, to deal with clients' complaints effectively and fairly through a simple and equitable process. These procedures should be well disclosed and easily accessible.
- 14.2 Details of the complaints, responses and any action taken must be recorded and maintained by the LTC.
- 14.3 There should be a dedicated complaint handling system to ensure all complaints received are reviewed and where necessary, actions are taken to address valid complaints on a timely manner.
- 14.4 The complaint handling system shall incorporate the following:
 - (i) A log system to register all complaints received with the assignment of a reference number upon each complaint;
 - (ii) Categories of all complaints received;
 - (iii) Procedure manual to ensure consistency and standardised approach in handling of complaints;
 - (iv) Proper filing of all correspondences in regard to complaints investigation;
 - (v) Reports to Senior Management with regard to the statistic/data of complaints received; and
 - (vi) Client charter that would include, amongst others, the time frame for the following phases of complaints review:
 - (a) Acknowledgement of receipt;

- (b) Time required to respond on whether the LTC is pursuing the complaint or not;
- (c) Time required in resolving a particular type of complaints (given its complexity); and
- (d) Periodic correspondence to complainant to inform on the status of the complaint where it is not addressed and resolved within a specified period of time.

15.0 Advertisement

Principle 15: The LTC should ensure that the advertising of services are clear and outline of benefits is not misleading.

Prescriptive requirements

- 15.1 The LTC must ensure that every advertisement is designed to disclose all relevant subject material and shall conform to the expected prudence and fairness level for the trust and corporate service providers. It must be clearly recognisable as an advertisement.
- 15.2 The LTC should ensure, as far as possible, that its advertisements, or those of affiliates and third parties undertaken on its behalf, do not place the Labuan IBFC at risk or bring it into disrepute.
- 15.3 Where appropriate, the LTC shall:
- (i) ensure that linked advertisements with third-parties are verified and approved by the senior management; and
 - (ii) seek to include appropriate disclaimers in their advertising.

PART III: REPORTING REQUIREMENTS

Principle 16: The LTC shall co-operate with Labuan FSA by dealing in an open and honest manner. The LTC should ensure that any required reporting and submissions to the Authorities are accurate, timely and conform to the relevant laws and regulations.

- 16.1 The LTC is required to submit the audited financial statements within six (6) months after its financial year end to Labuan FSA (Supervision and Monitoring Department as per paragraph 8.17) on annual basis.
- 16.2 The LTC must notify Labuan FSA immediately in writing of any of the following matters:
- (i) the presentation of any application to the court for the winding up of the LTC or of a company which is a subsidiary or holding company of the LTC, or the summoning of any meeting to consider a resolution to wind-up the LTC, or a company which is subsidiary, or holding company of the LTC;
 - (ii) the application by any person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country in respect of the LTC;
 - (iii) the making or any proposals for the making of a composition or arrangement with creditors of the LTC;
 - (iv) the imposition of disciplinary measures or disciplinary sanctions on the LTC in relation to its regulated business by any relevant supervisory authority;
 - (v) the conviction of the LTC or any of its employees for any offence, under legislation of any country, involving fraud or dishonesty;
 - (vi) if the LTC, its director or management is being investigated by any law enforcement agency;

- (vii) if the LTC, its director or management is brought to court for criminal or civil action involving fraud or dishonesty or the matter has significant impact to the LTC's operations;
- (viii) the re-registration of the LTC incorporated with unlimited liability as a limited liability company;
- (ix) the granting or refusal of any application for, or revocation of, authorisation to carry on any regulated business in any country or territory outside Malaysia;
- (x) the withdrawal or revocation of the membership of a principal person by any relevant professional body in any jurisdiction;
- (xi) the appointment of inspectors (howsoever named) by a statutory or other regulatory authority to investigate the affairs of the LTC;
- (xii) any other matter which the registered person considers would be material to the requirements placed on the LTC, any of its principal persons, or any of its regulated business employees by the relevant laws; and
- (xiii) any matter that might reasonably be expected to affect their licence or be in the interests of clients to disclose.

16.3 The LTC must give written notice within seven (7) days to Labuan FSA of any changes in the information originally provided to Labuan FSA on the form of application for registration relating to name, good reputation or character. This includes any change to the LTC's:

- (i) TOs that is resigning from the LTC; and
- (ii) place of business⁵ and address in Labuan IBFC or marketing office.

16.4 The LTC is required to provide written notice within fifteen (15) days to Labuan FSA on the disposal or dissolution of a subsidiary specifying the subsidiary's name and its principal business including its representative office, if any.

⁵ Pursuant to section 62(2)(a) of LFSSA

- 16.5 LTCs with branches outside Malaysia should discuss and obtain Labuan FSA's written confirmation on the applicability of the reporting requirements specified under Part III to the branches.
- 16.6 The reporting under paragraphs 16.2 to 16.5 shall be submitted to the following:

Director
Business Operations Unit
Labuan Financial Services Authority (Labuan FSA)
Level 17, Main Office Tower,
Financial Park Complex
87000 Federal Territory of Labuan, Malaysia

Telephone no: 087 591 200
Facsimile no: 087 453 442 / 413 328
Email: *bou@labuanfsa.gov.my*

Labuan Financial Services Authority
21 August 2015 (Revised)
January 2005 (1st Issuance)