



## FREQUENTLY-ASKED QUESTIONS

### GUIDELINES ON ANTI-MONEY LAUNDERING, COUNTERING FINANCING OF TERRORISM AND TARGETED FINANCIAL SANCTIONS FOR LABUAN KEY REPORTING INSTITUTIONS (AML/CFT AND TFS FOR LABUAN KRIs)

#### A. APPLICATION OF RISK-BASED APPROACH

1. **What is the expectation for Labuan Key Reporting Institution (Labuan KRI) in conducting the institutional risk assessment (IRA)? Can the IRA be thematic and how frequent must it be conducted?**

Paragraph 6.4 of the Guidelines requires Labuan KRI to identify, assess and understand their ML/TF risk in relation to the following parameters:

- (i) customers;
- (ii) countries or geographical areas;
- (iii) products, services, transactions or delivery channels; and
- (iv) other relevant risk factors.

Labuan KRI's first IRA must be comprehensive, covering all the abovementioned parameters i.e. customers, countries/geographical areas and products/services/transactions and delivery channel, at a minimum. Labuan KRI may choose to update the IRA on a thematic basis. Labuan KRI may consider to set the frequency of the IRA on a specific period e.g. every 1 to 2 years or where circumstances have changed that may warrant a refresh of the IRA, e.g. material changes in risk profile, significant internal audit finding, changes in business direction, new typologies suggested by authorities or the Financial Action Task Force, or when embarking on new technologies, etc.

## **B. AML/CFT Compliance Programme**

### **2. Which individual qualifies to be appointed as a Compliance Officer?**

Labuan KRI may appoint an individual that hold management position or having management responsibilities within the entity. The person appointed must satisfy the criteria provided under paragraph B.2.4. of the Guidelines. The appointed Compliance Officer must have sufficient stature, authority and seniority within the Labuan KRI to participate and be able to effectively influence decisions relating to AML/CFT matters.

### **3. Once the Guidelines comes into effect, is the Labuan KRI required to resubmit the appointment of a Designated Compliance Officer which had been submitted to Labuan FSA prior to the implementation of the Guidelines?**

With the implementation of the Guidelines, Labuan KRI is not required to resubmit the appointment of the designated compliance officer which had been submitted to Labuan FSA prior to the enforcement of the Guidelines. However, should there be any material changes on the appointment of the designated compliance officer, the Labuan KRI is required to submit the application to Labuan FSA by using the format as set out in Appendix III of the Guidelines.

### **4. Can Labuan KRI seek for an extension on the appointment of Compliance Officer as specified under paragraph 7.17?**

In an exceptional situation where the Labuan KRI is unable to comply with the appointment timeline, it shall request for an extension of time subject to the following measures:

- (i) Proper arrangement is made to ensure the compliance function is continuously effective; and
- (ii) Principle Officer shall remain fully responsible and accountable for all AML/CFT compliance matters during the absence of the compliance officer.

## 5. Can a Labuan KRI utilise its Group's resources to undertake Compliance Officer's role and function?

A Labuan KRI may wish to engage its Group's expertise (i.e. group insourcing) for the purpose of carrying out the role of its Compliance Officer. In this regard, the Labuan KRI must ensure that said individual is fit and proper to carry out the roles and responsibilities of a Compliance Officer as intended under paragraph B.2.4 of the Guidelines. The application of this limited permissibility will be as follows:

- (i) For Labuan KRIs that are subjected<sup>1</sup> to the *Guidelines on External Service Arrangements for Labuan Financial Institutions (ESA)*, they are required to comply with the requirements of the ESA, other than paragraph 9.4, 9.5 and 9.6 of the ESA. In addition, Labuan KRIs must provide access to Labuan FSA to ensure effective supervision of the insourcing arrangements.
- (ii) For Labuan KRIs other than 5(i) above (i.e. beyond the scope of the ESA), they must ensure that the Service-Level Agreement (SLA) of the group insourcing, at the minimum, would address the following matters:
  - Duration of the SLA;
  - Expected services to be rendered by the appointed Compliance Officer to the Labuan KRI; and
  - Periodic review of the services during renewal of the SLA.
- (iii) Labuan KRIs to have contingency measures in the event of any failure or shortfall in the group insourcing arrangements that can compromise the Compliance Officer's role;
- (iv) The Labuan KRIs shall remain responsible and accountable in ensuring the effectiveness of the compliance functions; and
- (v) Labuan KRIs are required to formally pre-notify Labuan FSA's Supervision & Enforcement Department together with justification to support the group insourcing arrangements within 30 days before it takes effect. Unless Labuan FSA communicated otherwise to the Labuan KRI (within the 30 days window), it can proceed with the proposed arrangements.

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<sup>1</sup> *Labuan Banks and Investment Banks*

*Labuan Islamic Banks and Islamic Investment Banks*

*Labuan Insurers and Reinsurers*

*Labuan Takaful and Retakaful Operators*

*Labuan Fund Managers*

**6. Does Labuan KRI required to conduct an annual independent audit?**

Reference is made to paragraph 7.31 of the Guidelines, the frequency of the audit depends on the Labuan KRI's assessment of its ML/TF risk exposure and is determined by the Board. On the scope of the independent audit, Labuan KRI is to refer to the requirements under paragraph 7.33 of the Guidelines. Further, Labuan KRI must also consider whether there were previous non-compliances under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) which resulted in enforcement actions being taken against the Labuan KRI.

**7. Can screening be differentiated for different employees? What are the methods to conduct the screening?**

Yes, the screening of employees can be differentiated on a risk-based basis, depending on the position, job scope or other relevant factors related to the employee. Labuan KRI is expected to assess the employees' vulnerability to money laundering, terrorism financing, fraud and bribery risks, and use various sources of information to assist in the screening process to ensure that employees do not abuse their position or be vulnerable or used as a conduit to facilitate ML/TF activities.

Labuan KRI may choose any suitable method to conduct employee screening and be guided by the requirements in paragraph B.2.5 of the Guidelines. Examples of methods for the conduct of employee screening may include:

- (i) face-to-face meeting;
- (ii) phone or video interviews;
- (iii) online checks;
- (iv) skills test;
- (v) submission of documents or statutory declarations;
- (vi) criminal checks with relevant authorities;
- (vii) consumer credit reports;
- (viii) transaction monitoring; or
- (ix) obtaining employment reference.

## **C. CUSTOMER DUE DILIGENCE (CDD)**

### **8. Under the enhanced CDD, does Labuan KRI need to establish source of fund or source of wealth for every customer?**

No. The requirement to obtain information on source of funds and/or source of wealth applies when overall ML/TF risks are assessed as higher risk. Labuan KRI is not expected to establish source of wealth for each and every customer or transaction. Generally, Labuan KRI is required to enquire on source of funds and/or source of wealth, as part of the enhanced CDD under the following scenarios:

- (i) subsequent to the conduct of customer risk profiling, when a customer is assessed as having higher ML/T risks, regardless of any amount of transaction;
- (ii) for all foreign politically exposed persons (PEPs) or when a domestic PEP is assessed as having higher ML/TF risks, in which case, both source of fund and wealth must be obtained; or
- (iii) when providing nominee services to the clients, i.e. nominee shareholding, directorship or partnership services.

## **D. HIGHER RISK COUNTRIES**

### **9. Labuan KRI is required to submit an annual report with a summary of exposure of customers and beneficial owners from the country concerned as prescribed under paragraph 14.4(iv) of the Guidelines. Is “Nil” report required to be submitted by the Labuan KRI?**

“Nil” report on the summary of exposure of customers and beneficial owners from the country concerned as specified in Appendix VII of the Guidelines is not required to be submitted to Labuan FSA.

Labuan KRI is required to submit the report on the summary of exposure of customers and beneficial owners from the country concerned by 31 March of the following year.

## **E. DISCLOSURE OF SUSPICIOUS TRANSACTION REPORT AND RELATED INFORMATION**

**10. Reference is made to paragraph 18.4 of the Guidelines, does Labuan KRI need to make a written application to Labuan FSA for any disclosure of reports and related information pursuant to section 14A(3)(d) of the AMLA?**

Labuan KRI is only required to obtain written approval from the Financial Intelligence and Enforcement Department (FIED), Bank Negara Malaysia (BNM) for any disclosure of reports and related information pursuant to section 14A(3)(d) of the AMLA. Notwithstanding this, Labuan KRI is encouraged to notify the AML Policy Unit, Labuan FSA for the same.

**11. Can Labuan KRI share the Suspicious Transaction Reports (STRs) with its internal auditor?**

This shall be based on the Labuan KRI's discretion of which depends on its assessment whether such disclosure to its internal auditor is warranted and in accordance with the exemption provided under section 14(A) of AMLA.

Notwithstanding this, Labuan KRI is to note that if the appointed auditor is from an entity outside of Malaysia, written authorization for disclosure of STR and related information is to be obtained from FIED, BNM. Whereas section 14A(3)(c) of the AMLA allows such disclosure if it is made as part of performing his/her duty as a director, officer or employee of a Labuan KRI to the supervisory authority of the Labuan KRI. Labuan KRI should have in place appropriate controls in order to safeguard the confidentiality of the STRs in any of the permitted circumstances for disclosure.

## **F. RECORD KEEPING**

**12. Where documents are kept in multiple forms (e.g. physical copies or in electronic format), what is the expectation on the requirements?**

Labuan KRI must ensure that all the retained forms of record keeping remain relevant and are kept up-to-date.

## **G. TARGETED FINANCIAL SANCTIONS ON TERRORISM FINANCING, PROLIFERATION FINANCING AND UNDER OTHER UN-SANCTIONS REGIMES**

**13. Labuan KRI must ensure that the information contained in the sanctions database is updated and effected without delay. What is the definition of “without delay”?**

“Without delay”, in respect of maintenance of sanctions list and freezing, blocking and rejecting is ideally within a matter of hours of designation by the United Nations Security Council (UNSC) or its relevant Sanctions Committee. The aim is to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist activities, financing of terrorism or financing of proliferation of weapons of mass destruction.

Labuan KRI is expected to be updated on any changes in the UNSC or its relevant Sanctions Committee sanctions list and are accountable to ensure their sanction database is up-to-date and comprehensive.

**14. For customers that are legal persons, is Labuan KRI required to screen every director, shareholder, nominee and also company name against the United Nations Security Council Resolutions (UNSCR) Lists and Domestic List?**

Labuan KRI is required to conduct sanctions screening on existing, potential or new customers against the UNSCR Lists and Domestic List which state the names and particulars of specified / designated entities as declared by the UNSC or Minister of Home Affairs, as part of the customer due diligence process and on-going due diligence.

For customers which are legal persons, Labuan KRI is required to screen the name of the customer, i.e. among others but not limited to, companies, bodies corporate, foundations, partnerships, or associations and other similar entities, as well as the beneficial owners, i.e. directors, shareholders including nominees, against the sanctions lists.