

FREQUENTLY ASKED QUESTIONS

GUIDELINES FOR THE ESTABLISHMENT OF LABUAN TRUST COMPANIES

1. What factors may be considered in assessing the requirement to “possess expertise and have good track records” under paragraph 5.1(i) of the Guidelines for the Establishment of Labuan Trust Companies (Guidelines)?

The requirement to “possess expertise and have good track records” forms an integral part of the fit and proper assessment conducted by Labuan FSA, in accordance with the Guidelines on Fit and Proper Person Requirements which include but not limited to the following:

- (i) Expertise may be demonstrated through:
 - (a) **Professional qualifications:** The shareholders, directors and key management personnel shall have relevant academic and/or professional qualifications in trust, fiduciary, corporate secretarial or financial services.
 - (b) **Relevant experiences:** Have experience in managing or overseeing trust, corporate secretarial or related business operations for a minimum of three (3) years.
 - (c) **Knowledge of regulatory compliance:** Familiar with relevant Labuan legislations, anti-money laundering obligations, tax compliance and corporate governance principles.
- (ii) Good track record may be assessed based on:
 - (a) **Financial soundness:** Positive audited financial statements for the past three (3) years or a net worth statement evidencing sufficient financial capacity. Where profitability is not consistent, the applicant may demonstrate financial stability through:
 - Strong capital position, including the quality and liquidity of assets, as well as the level and nature of liabilities, taking into account whether such liabilities are proportionate and manageable relative to the applicant’s financial resources and its ability to meet obligations as they fall due. The applicant is also

required to demonstrate a solvent financial position, evidenced by positive total shareholders' equity; or

- Financial support from its holding company, supported by evidence of financial capacity and, where applicable, formal commitments to provide financial resources as and when required.

(b) **Regulatory compliance history:** Demonstrates a consistent record of compliance with applicable legal and regulatory requirements in prior business or professional engagements. No report on misconduct etc.

(c) **Absence of adverse findings:** Has no adverse findings, including any criminal convictions, regulatory sanctions including misconduct, misuse of licence, bankruptcy or serious disciplinary actions in prior professional or corporate roles.

In addition, Labuan FSA may also consider references, professional reputation in the market and prior experience with Labuan IBFC or other jurisdictions, as part of its holistic assessment of the applicant's fitness and propriety. This is to ensure that the applicant not only possesses the technical knowledge and operational experience but also demonstrates ethical conduct, financial stability and the ability to comply with regulatory requirements in the trust company business.

2. Please clarify how Labuan FSA will evaluate group structures under paragraph 5.1(iii) of the Guidelines?

Labuan FSA expects applicants to demonstrate that their group structure is transparent, well-governed and does not pose risks to the trust company's independence or financial stability which may include the following:

(i) Disclose ownership and control:

Clearly identify all ultimate and intermediate owners up to and including the Ultimate Beneficial Owner (UBO), their brief profile and how control is exercised within the group.

(ii) Provide transparency:

Present a clear and complete organisational chart and explain relationships between subsidiaries, affiliates and parent entities.

3. Can a Labuan trust company undertakes digital asset trustee and custodian?

- (i) A Labuan trust company may act as a trustee for any property, including digital assets, in accordance with the Labuan Trusts Act 1996.

- (ii) Section 45(2) of the Labuan Financial Services and Securities Act 2010 (LFSSA) specified that no person shall carry on business as a custodian of a public fund unless it is a bank licensee or a Labuan trust company.
- (iii) In relation to money paid to a Labuan trust company to be held in trust, the Labuan trust company shall comply with the following requirements pursuant to Section 83(1) of the LFSSA:

*Any **money, property or other valuable consideration** paid or given to or held by a Labuan trust company **in a fiduciary capacity** shall always be kept separate from those of the Labuan trust company, and shall be so marked in the books of the Labuan trust company **relating to each particular trust** as always to be distinguished from any other in the registers and other books of account kept by the Labuan trust company, so that at no time shall such monies, property or other valuable consideration form part of or be mixed with the general assets of the Labuan trust company, and all investments made by the company as trustee shall be so designated that the trusts to which the investments belong can be readily identified at any time.*

Based on the above, any money, property or other valuable consideration may include digital assets. Accordingly, any safekeeping or custody of digital assets by a Labuan trust company shall be undertaken in its fiduciary capacity and shall be subject to proper segregation, identification and record keeping in relation to each particular trust or fiduciary arrangement administered by the Labuan trust company. Such activities shall also be subject to compliance with all applicable guidelines, policies and regulatory requirements on digital assets as may be issued by the Labuan FSA from time to time.

4. Can a Labuan trust company submit the notification under paragraph 8.11 of the Guidelines to Labuan FSA via soft copy?

Yes.