

LABUAN PUBLIC FUND

Fact Sheet

Labuan Financial Business > Financial Service

Introduction

Public Funds are securities that are offered to any member of the public.

When lawfully registered under the laws of any jurisdiction, who is a member of IOSCO, it does not need to be registered as a public fund as long as the public fund is administered or managed in Labuan by a fund administrator, custodian, trustee or a fund manager, whom are licensed, registered or eligible to do so under LFSSA and/or LIFSSA.

However, Labuan FSA will be notified of its operations in the Labuan IBFC and lodge a prospectus of the public fund which shall include the minimum information.

Fund managers and fund administrators who carry out these functions relating to Public Funds are required to be licensed.

What are the requirements to operate?

- Apoint a fund manager, trustee, administrator and custodian (service provider) approved by Labuan FSA.
- Ensure that the duties of the fund manager and custodian or trustee of the Labuan public fund are independent from each other.
- Maintain a registered office in Labuan as a non-Labuan licensed fund manager is permitted to manage it, but at least one of the service providers must be approved by Labuan FSA.
- Ensure that all subscriptions are repaid immediately if the minimum level of subscription required is not met within the stipulated time.
- Conduct its business with due diligence and sound principles.
- Ensure that the shareholder and every member of the Board of Public Fund including any relevant person are fit and proper as in accordance with the guidelines in Fit and Proper Person Requirements issued by Labuan FSA.
- Maintain adequate and proper accounting and other records in line with the Directive on Accounts and Record-Keeping Requirement for Labuan Entities issued by Labuan FSA that will sufficiently explain its transaction and financial position as well as indicate clearly its names and registration number on its letterhead, stationery and other documents.
- Appoint an approved auditor to carry out an annual audit of the accounts in respect of the business operations and submit the audit report to the investors and Labuan FSA, pursuant to Section 174 of the LFSSA and Section 135 of the LIFSSA within six months after the close of each financial year.
- Provide a half yearly report to the investors, which includes, but not limited to, the following:
 - ✓ Portfolio valuation report, showing actual portfolio mix of the fund,
 - ✓ The net asset value of the nvestment,
 - ✓ Independent verification/ confirmation of existence of the fund's assets and
 - ✓ Other pertinent information to the investor with regard to the fund's performance.
- Notify Labuan FSA of any amendments or alterations to any of its constituent document within 30 days of the changes being effected including its business plan.
- Obtain approval from Labuan FSA for any changes to the members of the Board of the Public Fund.
- Ensure fair and orderly winding down of the matured fund including having an auditor to ensure that all assests have been properly returned to investors.
- Comply with the relevant laws and regulations of the jurisdictions, where it intends to operate including obtaining the necessary approval.

What is the application requirement?

The following needs to be submitted,

- ❑ The applicant must submit a duly completed application form and all the relevant supporting documents as stipulated in the Form LSCM.
- ❑ The submission of the memorandum and articles of association/ partnership agreement/ trust deed/ charter/ other constituent document as the case may be.
- ❑ Names, addresses, profiles and relevant experience of the director/ general partner/ designated partner/ trustee/ council member of the fund (Board of the public fund), whichever applicable. The appointment of any members of the Board of the public fund requires prior written approval from Labuan FSA.
- ❑ Profile of the promoter/ custodian/ trustee/ fund manager, whichever applicable.
- ❑ Audited annual account of the promoter and fund manager, where applicable, for the three preceding years along with the application.
- ❑ The profile of the qualified person as its Shariah adviser in the case of Labuan Islamic public fund.
- ❑ A signed declaration by the Board of the public fund on confidentiality and secrecy in regards to the operations and administration of the fund.
- ❑ A certificate from an expert as required that includes a statement certifying that the Labuan the Guidelines.
- ❑ A copy of the prospectus of the Labuan public fund which should comply with the guidelines, either in draft or in final form.

Dealings with Resident

Security offerings (including Labuan Funds) to residents directly and not via a Labuan Entity are subjected to the provisions of the Capital Markets and Services Act 2007.

Hence, before any security offerings are made to any residents, it's advisable to seek approval and recognition from the Securities Commissions of Malaysia.

ADVANTAGES

- ✓ Flexible structure
- ✓ Support multiclass fund
- ✓ Hassle free to set-up
- ✓ Simple tax structure
- ✓ No withholding tax on payments
- ✓ No foreign exchange controls
- ✓ No capital gain tax
- ✓ No inheritance tax

Annual Fee

All Labuan Public Funds are required to pay to Labuan FSA annual licence fees on or before 15 January of each year.

- ✓ Annual Fee - USD600

Substance Requirement under LBATA

- ❑ Pursuant to section 2B(1)(b) of LBATA, the Labuan entities shall, for the purpose of the Labuan business activity, have:
 - ✓ An adequate number of full-time employees in Labuan, and
 - ✓ An adequate amount of annual operating expenditure in Labuan, as prescribed by the Minister by regulations made under this act.
- ❑ Section 2B(1A) of LBATA provides that a Labuan entity carrying on a Labuan business activity which fails to comply with the substance requirement for a basis period for a year of assessment shall be charged to tax at the rate of 24% upon its chargeable profits for that year of assessment.

As the business activity of a Fund is generally involved in either Pure Equity Holding or Non-Pure Equity Holding, the Substance Requirements are as follows,

- ✓ **Pure Equity Holding**

To comply with management and control requirement in Labuan, the entity is to hold at least a minimum of one board meeting in Labuan for each calendar year and incur a minimum annual operating expenditure of RM 20,000 per annum in Labuan.

- ✓ **Non-Pure Equity Holding**

To comply with minimum of ONE full time employee in Labuan and a minimum annual operating expenditure of RM 20,000 per annum in Labuan.

Labuan IBFC Tax System

Labuan Business Activity Tax Act 1990 (LBATA) governs the imposition, assessment and collection of tax on a Labuan business activity carried on by a Labuan entity in, from or through Labuan.

Labuan entities that carry on a Non-Labuan business activity are subjected to the provisions of the Malaysian Income Tax Act 1967 (ITA).

'Labuan Business Activity' is,

- ❑ A Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan
- ❑ Excluding any activity which is an offence under written law

Pursuant to the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 which took effect on 1st January 2019:

- ❑ Labuan trading activity has been restricted to licensed business activities only.
- ❑ Labuan non-trading activity has been restricted to holding company, namely Pure Equity Holding and Non-Pure Equity Holding.

HOW TO APPLY?

BBS Trust Int'l Limited can assist you for the application of Labuan Public Fund to Labuan FSA.

Contact us now for a non-obligational consultation!

Email: info@bbstrust.com or Call: +603-4815 6718