

Unlocking Regional Opportunities with Labuan IBFC: Cross-Border Investment Structuring and Business Expansion

24 April 2024, Hong Kong



Exploring various Succession and Business Planning Structures available In Labuan IBFC for Global Families

#### **Supporting Partner**







#### **Datuk Chin Chee Kee** Board of Directors Labuan IBFC Inc., Chairman, Association of Labuan Trust Companies (ALTC)



#### Exploring Various Sucession and Business Planning Structures available in Labuan



#### ASSOCIATION OF LABUAN TRUST COMPANIES

The **objectives** for which the Association is established are:

- a) To promote the Federal Territory of Labuan as an International Business and Financial Centre;
- b) To obtain and represent the views of members and to represent those views which are of common concern to the LFSA;
- c) To promote and represent the interests of members by means and methods consistent with the laws of the Territory;

#### ASSOCIATION OF LABUAN TRUST COMPANIES

- d) To disseminate to members information pertaining to events, statements and expressions of opinion affecting their interests and to represent the interests of members by the expression of views on their behalf;
- e) To communicate and/or liaise with relevant authorities and bodies on all matters affecting the interests of members;
- f) To raise Funds from members for all the purposes and objects of the Association in such amounts and in such manner as is provided for in these Rules;



#### ASSOCIATION OF LABUAN TRUST COMPANIES

**All** Labuan trust companies must be a member of ALTC.

#### ALTC now has **70 members** and associate members.

Associate members are managed trust companies.



#### What is a Foundation?

- 1. A foundation is an independent entity which carries many of the <u>characteristics</u> of both a company limited by <u>guarantee and a trust.</u>
- 2. A foundation is likened to that of <u>a trust within a</u> <u>corporate shell</u>.
- 3. Once a foundation comes into existence it becomes <u>a</u> <u>unique legal entity and takes on its own legal personality.</u>



4. This means that the foundation is not owned by any one person and it operates under its own name, thus <u>allowing for</u> it to enter into agreements, sue or be sued, open bank <u>accounts and own multiple other corporations.</u>

5. The main reason an individual would set up a foundation is for asset protection purposes and protection against force heirship rules.



- Labuan Foundations are a less familiar concept than trusts.
- A Labuan Foundation is <u>governed by a council</u> in accordance with its <u>charter and regulations</u> (its constitutional documents) in much the same way that a company is managed by its board of directors in accordance with its constitutional documents.



- A Labuan Foundation <u>shares similarities with a trust</u>.
- It has a founder who provides property to be held by the foundation in the same way that a trust has a settlor who provides property to be held subject to the terms of a trust.
- Also like a trust, a Labuan Foundation <u>may be a purpose</u> (charitable or non-charitable) and/or be <u>for the benefit of</u> one or more beneficiaries.
- Labuan Foundations <u>have no beneficial owners</u> and are therefore 'ownerless' structures (even where the foundation property is held for the benefit of beneficiaries).



#### **Uses of Labuan foundations**

- A foundation is often <u>used as an alternative to a trust</u> in structuring for <u>succession planning</u> and other purposes.
- As with a trust, <u>beneficiaries can have a fixed entitlement</u> (to, say, income from the assets, as they would in a life interest trust) or <u>receive benefits at the discretion of the</u> <u>foundation</u> (as they would in a discretionary trust).



- Foundations may have a particular appeal to founders who wish to retain some control, as they or parties of their choice, can sit on the council of the foundation.
- Alternatively, the founder may have a supervisory role, overseeing the actions of the council. This could be achieved by requiring the council to obtain the guardian's consent before exercising a particular power.
- It is also possible to create a corporate guardian, with several family members on the board.



- Founders of family businesses often recognise the need to establish a long-term holding structure for that business, to help ensure the business is not fragmented on the passing of the founder.
- A Labuan foundation is established for the purpose of holding the company for the benefit of the family (and perhaps other beneficiaries or purposes). The council's duty will be to retain the company for the benefit of family (and other beneficiaries or purposes, if relevant).



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### LABUAN FOUNDATIONS

In commercial situations, it is not uncommon for a special purpose vehicle company to be established where its ownership needs to be separate from the rest of the structure. A foundation is an 'ownerless' incorporated vehicle which can be established for a specific business purpose, and is ideally suited to this type of planning.



**Establishment of a Labuan Foundation** 

• Any person may, by subscribing his name to a charter of a Labuan foundation as the founder and complying with the requirements of LAFA, establish a Labuan foundation.



#### **Founder of Labuan Foundation**

- A founder is the person who <u>subscribes his name to the charter establishing a Labuan foundation</u> acting either for himself or on behalf of another person and who, <u>by transfer of title, endows that Labuan foundation with its initial assets.</u>
- The founder of a Labuan foundation may be <u>a resident or a</u> <u>non-resident.</u>
- The property of the Labuan foundation shall not include any Malaysian property unless the prior approval of the Authority is obtained or the Labuan foundation is a foundation for charitable purposes.



**Beneficiaries under Labuan Foundation.** 

- The beneficiaries of a Labuan foundation may be a resident or a non-resident.
- Where the property of a Labuan foundation include Malaysian property, the Income Tax Act 1967 ("ITA") shall be applicable to any income derived therefrom.
- The income derived from any property which is not Malaysian property is subject to the Labuan Business Activity Tax Act 1990 ("LABATA").



**Charter of Labuan Foundation.** 

Every Labuan foundation shall have a charter, which shall be duly signed by each founder. The charter sets out the rights, powers and terms of the foundation



#### **Articles of Labuan Foundation.**

Where the charter of a Labuan foundation provides that articles shall or may be made, such articles may provide for, but not limited to, the following matters:

(a) Distribution of property to beneficiaries;

(b) Identification of any initial beneficiaries or any beneficiaries to be designated at a later date;

(c) The minimum value of the property of the Labuan foundation in the absence of which no distribution to any beneficiary may be made; and

(d) Identification of the remaining beneficiary upon the dissolution of the Labuan foundation.



**Property of Labuan Foundation.** 

Any property endowed to a Labuan foundation shall be the property of that Labuan foundation with full legal and beneficial title and shall cease to be the property of the founder and

shall not become the property of a beneficiary unless the property is distributed in accordance with the provisions of the constituent document and the provisions of LAFA.



Name of Labuan Foundations.

The name of a Labuan foundation shall end with the words <u>"Labuan Foundation" or "(L) Foundation"</u> in romanised characters, any word or words in the national language of any country which connote a foundation, or any abbreviation, as part of its name

The name of a Labuan foundation <u>may be in foreign</u> <u>characters</u>, alphabet or language provided that an accurate and certified rendition of the name in the English language is <u>employed</u>



**Redomicilation in Labuan and Another Country.** 

A foundation established under the laws of another country or jurisdiction may redomicile in Labuan and be registered as if it had been established under LAFA.

A Labuan foundation may, subject to any limitations in its constituent document, redomicile and register under the laws of another country in the manner provided under those laws.



Secretary.

### LABUAN FOUNDATIONS

- Before the registration of a Labuan foundation, the founder shall appoint a Labuan trust company to be the secretary of the proposed Labuan foundation.
- Every document or instrument required or permitted to be filed or lodged with the Authority shall be filed or lodged through a Labuan trust company.



**Registered Office.** 

The registered office of a Labuan foundation <u>shall be the</u> <u>registered office of the trust company</u> which serves as the secretary and to which all communications, correspondences and notices may be addressed.



Secrecy.

#### LABUAN FOUNDATIONS

No person who for any reason has access to any record, book, register, correspondence or other document, material or information whatsoever relating to the business and affairs of the Labuan foundation, shall give, divulge, reveal, publish or otherwise disclose to any other person such record, book, register, correspondence or other document, material or information.



**Taxation of Labuan Foundations** 

• A Labuan Foundation which holds both Malaysian Property and non-Malaysian Property (*holding of investments in securities, stock, shares, loans, deposits*) will be subject to tax under ITA and LBATA.



**Taxation of Labuan Foundations** 

Income of a Labuan Foundation from the holding of  $\bullet$ investments in securities, stock, shares, loans, deposits outside of Malaysia shall be considered as Labuan nontrading activity under LBATA, and exempt from tax if it complies with 'Substance Regulations' OR at 24% of its audited net profits if it fails to comply with Substance Regulations. [Section 6(b)(3) of LAFA and Section 9 of LBATA]



**Taxation of Labuan Foundations** 

 Income of a Labuan Foundation from holding of <u>non-Malaysian immovable properties like land and buildings</u> and movable properties like plant, machinery and equipment will be subject to ITA (out of the scope of Labuan business activity and not situated in Labuan) and is exempt from tax under Clause 28 of Schedule 6 of ITA.



**Taxation of Labuan Foundations** 

 If the Labuan Foundation receives income from its investment in Malaysian shares, securities, bonds, fixed deposits and property whether movable and immovable, tangible or intangible situated in Malaysian soils and seas, the income derived therefrom would be subject to ITA. [Section 6(b)(2) of LAFA] ASSOCIATION OF TRUST COMPANIES M A L A Y S I A

### LABUAN FOUNDATIONS

#### **Tax regime for Labuan Foundations**

Assets	Situated In Malaysia	Situated Outside Malaysia	Situated In Labuan	Applicable tax regime
Securities, stock, shares, loans, deposits	YES	-	-	ITA
	-	YES	-	LBATA (SR)
Any Other Property (Land & Building, Plant	YES	-	-	ITA
and Machinery and Equipment)	-	-	YES	LBATA (SR)
	-	YES	-	ITA

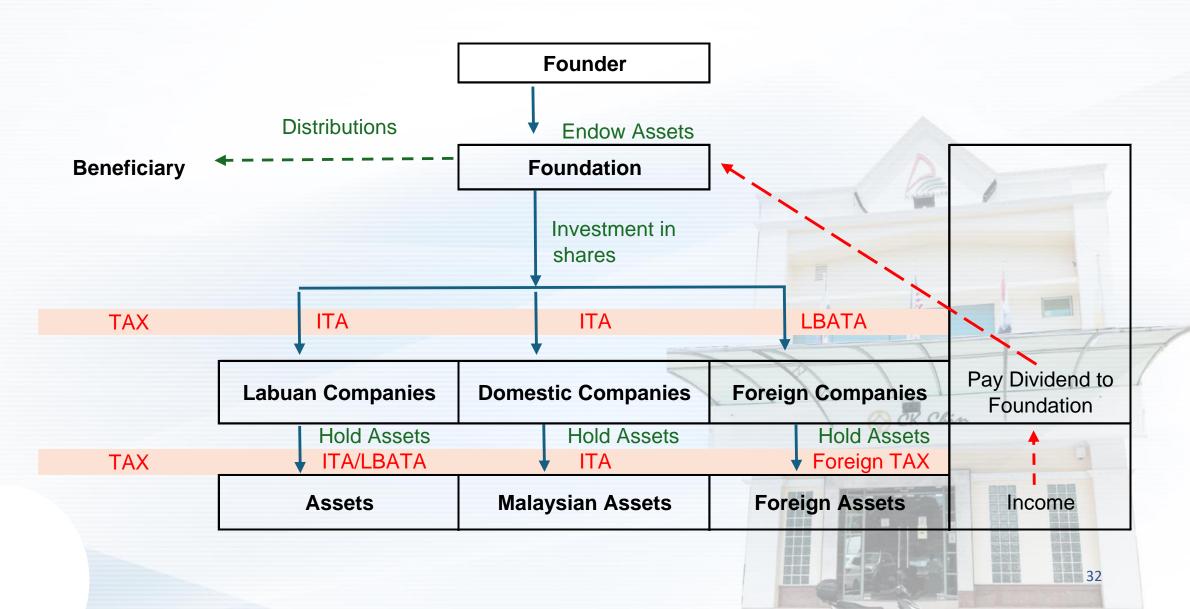
\* SR = Comply Substance Regulations - Nil or 3% of audited net profits. Non-compliance with SR – 24% of audited net profits.



**Distribution of Labuan Foundation to its Beneficiaries.** 

 Irrespective of whether a Labuan Foundation is taxed under LBATA or ITA on its income from investments in securities, stock, shares, loans, deposits or any other properties, the distribution to its beneficiaries by the Labuan Foundation shall not be subject to further tax in the hands of the beneficiaries.

#### **PROPOSED STRUCTURE**



ASSOCIATION OF ILABUAN TRUST COMPANIES MALAYSIA

#### COMPARISON

Subject	Labuan Trust	Labuan Foundation
Applicable laws	Labuan Trusts Act, 1996	Labuan Foundations Act, 2010
Creation/Formation	Trust Deed/Unilateral Declaration of Trust	Registration with LFSA with Foundation Charter
Registration with LFSA	Optional	Compulsory
Creator	Settlor, can be natural person or corporate	Founder, can be natural person or corporate
Legal entity	No legal entity	Own legal entity
Governing Body	Trustee	<b>Council member/officers</b>





Subject	Labuan Trust	Labuan Foundation
Property Ownership	Under the name of the Trustee	Under the name of the foundation
Bank Account	Under the name of the Trustee	Under the name of the foundation
Shareholder	None	None
Beneficiary	Yes	Yes
Purpose	Charitable and non charitable	Charitable and non charitable



#### COMPARISON

Subject	Labuan Trust	Labuan Foundation	
Appeal by Creditors	Creditors can appeal against the transfer within the first two years of registration of the foundation. If the transfer takes place later, no appeal is possible.	Creditors can appeal against the transfer within the first two years of registration of the foundation. If the transfer takes place later, no appeal is possible.	
Shariah Compliance	Possible	Possible	
<b>Re-domicialtion</b>	Possible	Possible	
Duration	Can be fixed or variable	Perpectual	



#### COMPARISON

Subject	Labuan Trust	Labuan Foundation
Appeal Against Inheritance Provisions	No appeal is possible because of foreign laws.	No appeal is possible because of foreign laws.
Overseer	Protector	Supervisory person
Reserve power	Settlor has reserve power in non discretionary trust or by using Letter of Wishes in discretionary trusts	Founder can have reserve power on the manage of the foundation if he is a council members
Public disclosure	Not allowed	Not allowed
Governance	Settlor not allowed to be involved in the running of the trust	Founder can participate in the running of the foundation by appointing council member



### COMPARISON

Subject	Labuan Trust	Labuan Foundation
Ability to act on its own	Have to be via trustee	Can act on their own and can enter contracts with third parties independently, and sue (and be sued) in their own right.
Termination	By terminating the trust after final distribution of assets or upon the end of the trust period.	Liquidation by liquidator.
Legal or beneficiary ownership over assets by beneficiary	A beneficiary may, by instrument in writing, sell, charge, transfer or otherwise deal with his interest in any manner	None



### **THANK YOU**



#### **REGISTERED OFFICE**

Noblehouse International Trust Ltd.

#### ADDRESS

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2. DEPUTY CHAIRMAN	Kensington Trust Labuan Limited	Dato Raymond Wong
3. SECRETARY	AMS Trust Labuan Limited	Ms. Rita Mohd Sharif

### Understanding the Advantages that Make Labuan IBFC an Ideal Jurisdiction For Cross-Border Activities

**Supporting Partner** 







#### Mr. Nor Rashidi Mohamad Board of Directors Labuan IBFC Inc., Chairman, Association of Labuan Banks (ALB)



#### ASSOCIATION OF LABUAN BANKS MALAYSIA

# Labuan IBFC - an Ideal Jurisdiction for Cross Border activities APRIL 2024



# Background and Objective of Association of Labuan Bank Jurisdiction that tick all the boxes Onshore Banks vs Labuan Banks Labuan Banking Products & Services



ASSOCIATION OF LABUAN BANKS, MALAYSIA (PERSATUAN BANK-BANK LABUAN, MALAYSIA)



#### Background

The Association was incorporated on 26th April 1994 under the Societies Act, 1966 under the initiative of its founding Chairman, Maybank International (L) Ltd and Secretary, Public Bank (L) Ltd.

#### **Main Objectives**

- Promote Labuan International Business and Financial Centre (IBFC).
- Deal with common issues, disseminates information, communicate and/or liaise with relevant authorities and bodies on all matters affecting the interests of members.
- Protect the mutual interests of members and perform all such other lawful acts as are incidental and conducive to the attainment association objectives.

# Labuan IBFC

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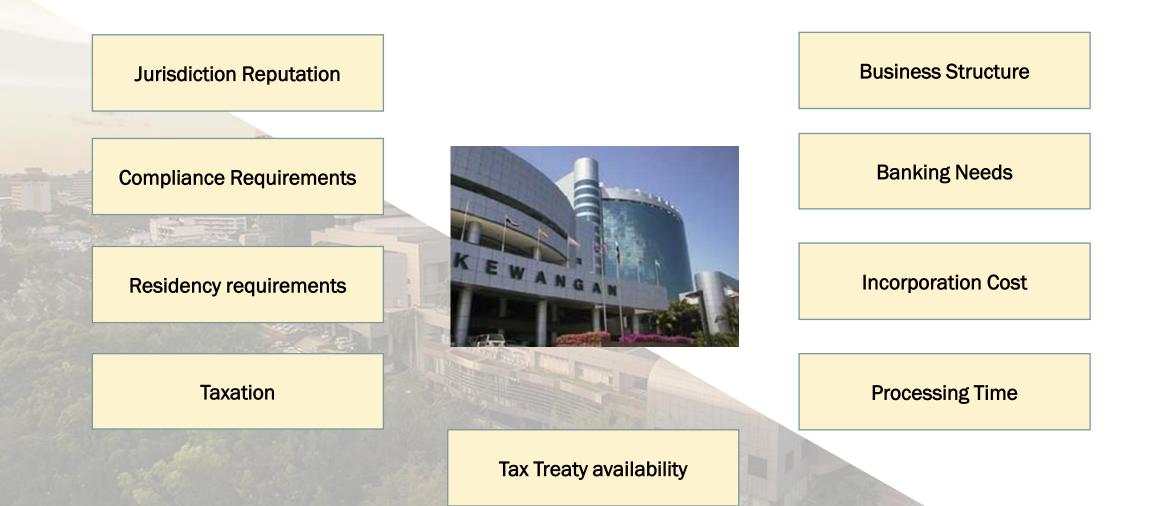
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ASSOCIATION OF LABUAN BANK MALAYSIA

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### **Jurisdiction - Factors to consider**



# Comparison



Feature	LABUAN	HONG KONG	BVI
EU LIST	Cleared	Cleared	Greylist
OECD member	Yes	Νο	Νο
Foreign Ownership allowed	100%	100%	100%
Corporate Director	Allow	Allow	Not Allow
Local Resident	Not Required	Not Required	Not Required
Nominee Director	Allow	Allow	Allow
Nominee Shareholder	Allow	Not Allow	Allow
Redomiciliation	Allow	Not Allow	Allow
Banking			
Corporate Banking	Yes	Yes	Limited to BVI only
Reputable/ Strong Regulatory Controls	Yes	Yes	Moderate
Islamic Banking	Yes	Yes	None
Others			
Double Taxation Agreement	Yes (70 countries)	Yes (5 countries)	None
Corporate Tax	3%	16.5%	0%



#### **STRIKING A BALANCE**

#### CONFIDENTIALITY

- VS
- Separate and independent legal framework to Malaysia's "onshore" environment
- No disclosure of beneficiaries or register of beneficiaries
- Registration of trusts are not mandatory
- No "fishing expeditions" entertained, Labuan FSA only deals with correspondent competent authorities
- Arbitration and/or alternate dispute resolution options allowed
- Choice of legal system honoured

#### COMPLIANCE WITH INTERNATIONAL STANDARDS

- Adheres to the OECD's Automatic Exchange of Information Protocol and BEPS action points
- An extensive Double Taxation Agreement network, more than 70 Agreements
- A Common Law jurisdiction
- Member of multilateral international agencies
- Anti-Money Laundering provisions entrenched
- Know Your Client Rules in place
- Substance-enabling jurisdiction
- Labuan companies accepted for listing on National Stock Exchange of Australia, Hong Kong Stock Exchange, Singapore Exchange and NASDAQ Dubai



#### **Domestic Bank vs Labuan Bank**

	DOMESTIC BANK	LABUAN BANK	
Jurisdiction	Financial Service Act 2013	– Labuan Financial Services and Securities Act 2010	
Junsalotion	Islamic Financial Service Act 2013		
Supervision	Bank Negara Malaysia	Labuan FSA	
Currency	MYR and Foreign Currency	MYR and Foreign Currency (w.e.f-01/01/2019)	
	Income Tax Act 1967 ("ITA")	Labuan Business Activity Tax Act 1990	
Taxation	(a) Withholding tax	(a) Exempted	
	(b) Corporate tax 24%	(b) Profit tax – 3% audited net profit ( <b>w.e.f</b> - 01/1/2019)	



#### **Domestic Bank vs Labuan Bank**

		DOMESTIC BANK	LABUAN BANK
	Stamp Duty	Stamp Act 1949 Applied	Exempted
		Provide physical cash/cheque/bills of exchange handling	All transactions via electronic (No cheque/ OTC – Cash)
101	Operations		(a) Telegraphic transfer
311			(b) SWIFT (to comply with ISO20022 prior Nov 2025)
1. U.N. 1.2. 1. 1.2.	Substance Requirement	N/Appl	w.e.f-01/1/2019 Employees: Minimum 3 employee in Labuan Minimum Annual local Business Spending for banking: RM180,000. Payment of fees and other Chargeable activities to Labuan FSA will be denominated in USD w.e.f 01/01/2020.



#### **Domestic Bank vs Labuan Bank**

	DOMESTIC BANK	LABUAN BANK
Foreign Exchange Policy (FEP) rules	Status as <b>RESIDENT</b> ("R")- Subject to FEP rules.	<ul> <li>Status as NON-RESIDENT ("NR") – Not Subject to FEP rules.</li> <li>However, any dealing with R in FCY/RM will triggered FEP rules for the R counterparty.</li> </ul>
Expense Deductibility	<ul> <li>Resident Counterparty Pay to :-</li> <li>1. Interest Payment : 100%</li> <li>2. Lease rentals: 100%</li> <li>3. General reinsurance premium: 100%</li> <li>4. Other type of expenses: 100%</li> </ul>	<ul> <li>Resident Counterparty Pay to Labuan Entity:-</li> <li>Interest Payment: 75%</li> <li>Lease rentals: 75%</li> <li>General reinsurance premium: 100%</li> <li>Other Type of Expenses : 3%</li> </ul>

# Labuan Business Activities

ASSOCIATION OF LABUAN BANKS MALAYSIA



### What is LABUAN BUSINESS ACTIVITIES?

- Labuan business activities are defined as trading or non-trading activities carried out in, from, or through Labuan, excluding any activities that constitute an offense under written law.
- Definition of Labuan of trading and non-trading activities:-
  - Labuan trading activity includes banking, insurance, trading, management, licensing, shipping operations, or any other activity that is not classified as a Labuan non-trading activity.
  - Labuan non-trading activity refers to activities related to the holding of investments in securities, stocks, shares, loans, deposits or any other properties situated in Labuan by a Labuan entity on its own behalf.

# **Comparison and Benefit between LABUAN TRADING ENTITY Vs. Malaysian Domestic Entity:**



Fea	ture	LABUAN TRADING ENTITY	DOMESTIC ENTITY
Regulato Registra	•	Labuan FSA	Companies Commission of Malaysia (CCM)
Shares		Foreign Currency	MYR
Min nun	nber of		2 (individual)
Shareho	olders	1 (Individual/Corporate)	1 (Corporate)
Min. Nu Director		1 (Individual/Corporate)	2 (Individual only)
Secreta	ry	Labuan Trust Company ( <b>Mandatory</b> )	1(Individual Only)
Restricti Dealing Residen	with	Allow to deal with Resident ( <b>w.e.f</b> - <b>01/01/2019</b> )	No restriction dealing with Resident/ Non-Resident

# **Comparison and Benefit between LABUAN TRADING ENTITY Vs. Malaysian Domestic Entity:**



Feature	LABUAN TRADING ENTITY	DOMESTIC ENTITY
Name	Ltd., plc, (L), Bhd, PT etc.	Sdn. Bhd., Bhd
Location	In, from or through Labuan. Can be in Malaysia where permitted	No Restriction
Capital Requirement	Low capital requirement with only a minimum of 1 shares is required.	Issues Ordinary shares (paid-up capital) at min. RM1 or up to max RM2,500.
Auditor	Compulsory ( <b>w.e.f-01/01/2019</b> ) for computation of tax purposes.	Compulsory
Exchange Control (FEP)	Status as Non-Resident ("NR")- Not subjected to Foreign Exchange Policy (FEP).	Status as Resident ("R") – Subjected to FEP

### **Comparison and Benefit between LABUAN TRADING ENTITY Vs. Malaysian Domestic Entity:**



Feature	LABUAN TRADING ENTITY	DOMESTIC ENTITY
Tax	Labuan Business Activity Act ("LBATA")1990 (Act 445) a)No withholding Tax b)Corporate Tax: 3% of Net Profit (audited) w.e.f-01/01/2019 <u>Tax exemption:-</u> a)Non-Citizen Director fee; b)Dividend paid and received is non- taxable. c)Avoid double taxation d)Perpetual tax exemption if no revision to be made by regulators.	Income Tax Act ("ITA")1967 a)Subject to Withholding tax; and b)Corporate Tax of 24%

### **Comparison and Benefit between LABUAN TRADING ENTITY Vs. Malaysian Domestic Entity:**



Feature	LABUAN TRADING ENTITY	DOMESTIC ENTITY
Pogulatory Pody	Only 1 single Regulator- LFSA. Less tax filing	Multiple Regulatory Authority –
Regulatory Body	obligation.	Red Tape.
		Subjected to Stamp Act 1949
	No stamp duty on MOA, Constituent	Applied:
Stamp Duty	documents and on transfer of shares. Nominal	Ad-valorem stamping/RM500
	stamping of RM10.	Stamping for Foreign Currency
		Loan obtained onshore.
		Has to deal with physical
Banking Transactions	All transaction via electronic (No cheque/ OTC	cash/cheque/bills of exchange
Daliking Italisactions	-Cash) - TT and SWIFT authentication.	handling with domestic banks –
		Higher Risk
	100% ownership and control by Foreigner	
Ownership and	allowed with minimum requirement of 1	100% ownership by foreigner is
minimum requirement	Director/ Shareholder which both can be the	not allowed
	same.	

# Labuan Banking Product & Services

ASSOCIATION OF LABUAN BANKS MALAYSIA

# **BANK PRODUCTS & SERVICES**



Loans/Financing	CONVENTIONAL	ISLAMIC BANKING
For Asset Acquisition, Business Expansion, Project, Debt		
Restructuring and Working Capital requirement:-		
Term Loan/ Term Financing	$\checkmark$	$\checkmark$
Project Financing	$\checkmark$	$\checkmark$
Syndicated Loans/ Club-Deal/ Syndicated Financing	$\checkmark$	$\checkmark$
Short-Term Revolving Credit ("STRC")/ STRC-i	$\checkmark$	$\checkmark$

Deposits	CONVENTIONAL	ISLAMIC BANKING
<ul> <li>Current Accounts/ Demand Call Account-i</li> <li>Time Deposit/Fixed Deposit-i</li> </ul>	<ul> <li>✓</li> <li>✓</li> </ul>	✓ ✓

# **BANK PRODUCTS & SERVICES**



Transactional Banking/Trade Finance	CONVENTIONAL	ISLAMIC BANKING
Trade Services (Purchase/import, Sales/Export), Collection of Trade Bills including SBLC, BG and SG.	✓	$\checkmark$
Global Transaction Banking/ Cash Management	✓	$\checkmark$

Investment/Treasury	CONVENTIONAL	ISLAMIC BANKING
Treasury Services	✓	$\checkmark$
Capital Market	$\checkmark$	
Investment in Gold/Securities Services	$\checkmark$	
Derivatives : (FOREX Spot/forward), Interest Rate Swap ("IRS")	$\checkmark$	$\checkmark$
and Cross-Currency Swap ("CCS") / FOREX Spot, IRS-i, CCS-i		

# **BANK PRODUCTS & SERVICES**



Others, Inclusive of Wealth Management	CONVENTIONAL	ISLAMIC BANKING
Internet Banking	$\checkmark$	$\checkmark$
Remittance/Funds Transfer ("TT")	$\checkmark$	$\checkmark$
Advisory & Market Partner Services	$\checkmark$	
<ul> <li>Custodian services and Agency role/Trustee</li> </ul>	$\checkmark$	
Wealth Management	$\checkmark$	$\checkmark$
Structured Financing Products	CONVENTIONAL	ISLAMIC BANKING
Equity & Commodity Derivative Solutions : Shares as underlying assets	$\checkmark$	
Structured Treasury Products	CONVENTIONAL	ISLAMIC BANKING
Dual-Currency Investment ("DCI) – combination of money market deposit (IAM) and currency (FX) option	$\checkmark$	

# Thank You

ASSOCIATION OF LABUAN BANKS, MALAYSIA For any inquiry please contact us at:- SOCIATION OF LABUAN MALAYSIA

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# Why Labuan IBFC is an Ideal Domicile for Your Risk Mitigating Needs

**Supporting Partner** 





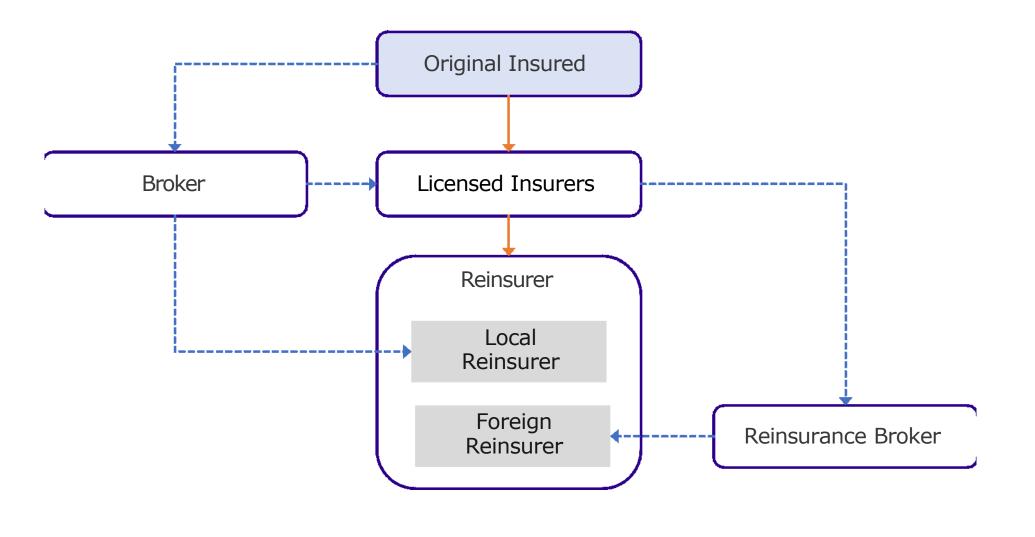
#### Mr. Roy Sharma

Board of Directors Labuan IBFC Inc., Chairman, Labuan International Insurance Association (LIIA)

# **Guide to captive insurance in Labuan IBFC**



#### **Traditional Insurance without Captive**



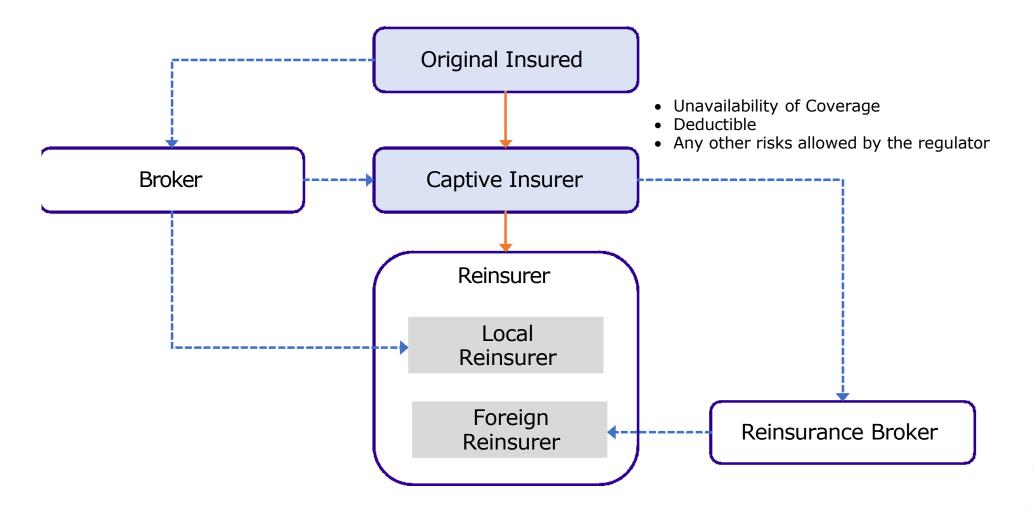


#### What is Labuan Captive Insurance Business?

Captive insurance company is an insurance entity that acts as a risk management vehicle to insure its owner's or its related parties' risks. The captive insurance company may be owned, either directly or indirectly, by one or more industrial, commercial or financial entities.

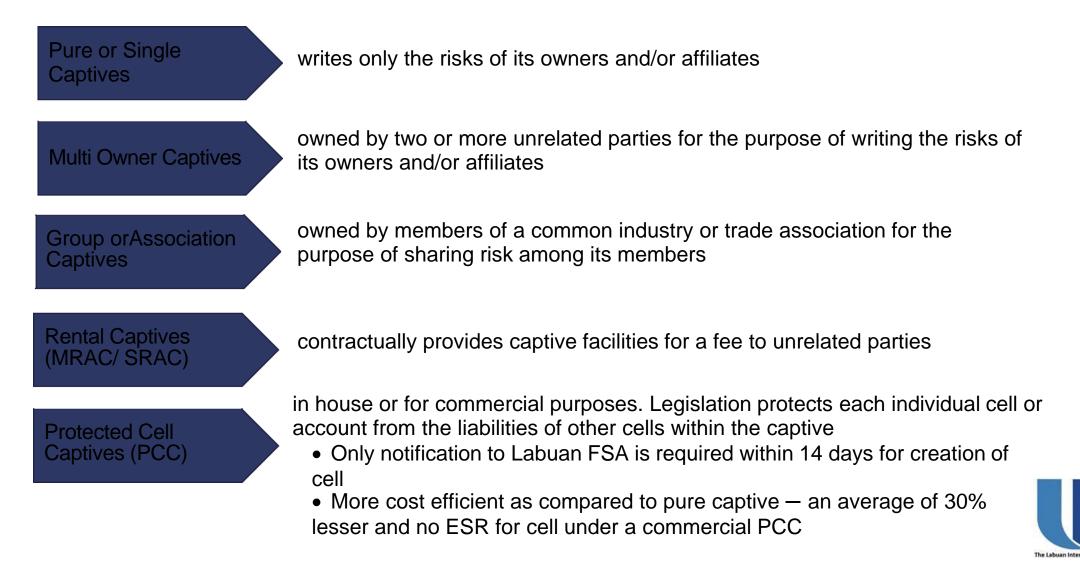


#### **Insurance with Captive**





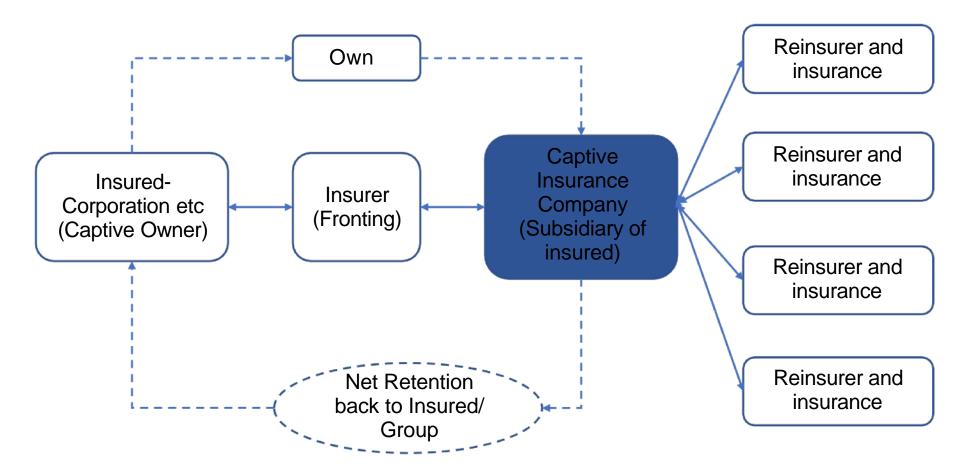
#### **Labuan Self Insurance Structures**



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#### • Pure / Single Captive

wholly owned subsidiary of its parent company and insures primarily the risk of the parent and its affiliates.

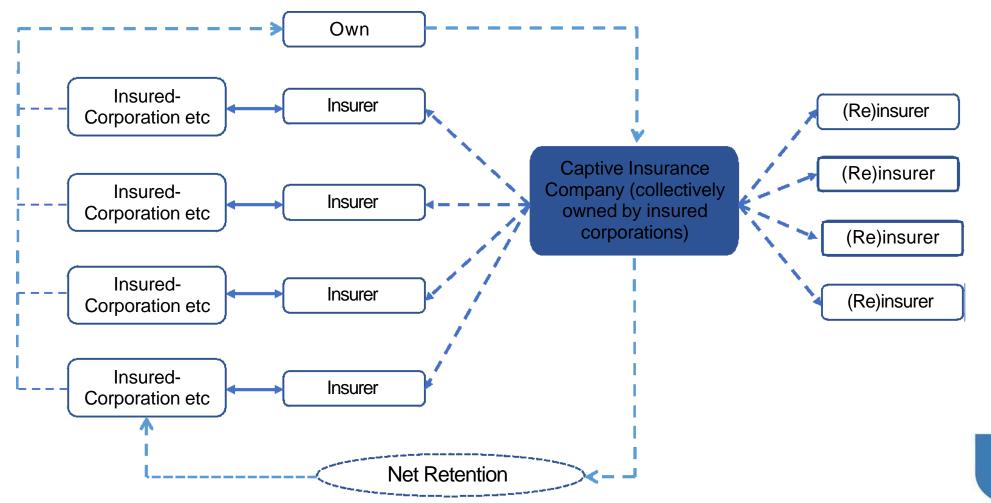




#### • Multi Owner / Group Captive

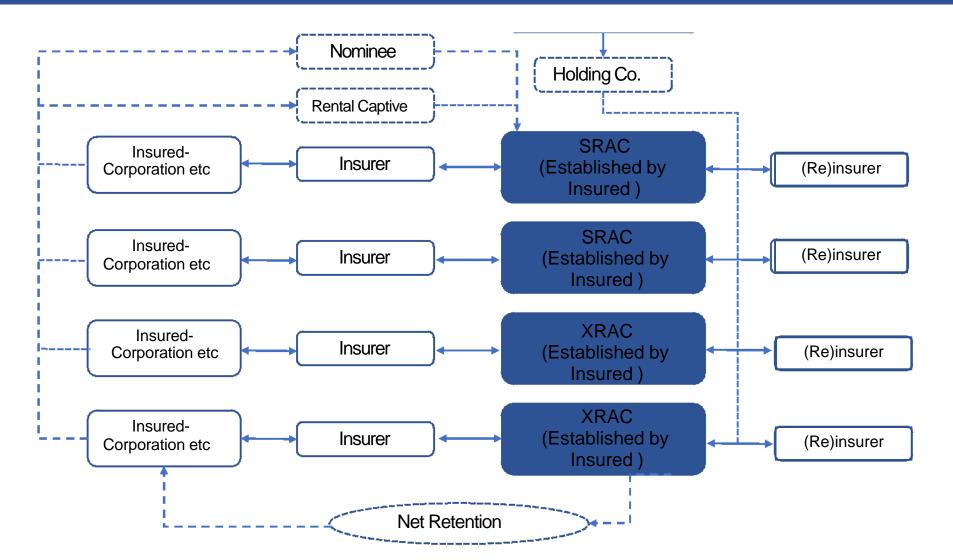
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has many owners and will insure the risks of these owners, and usually cannot extend to third parties. These enable similar or diverse businesses to band together to share the risks, cost and benefits of providing commercial insurance to their owners / members.



#### Master-Rent-A-Captive (MRAC)

usually set up by a sponsoring organization like a broker, which provides the capital for the facility and then rents this capital to participants who seek to establish their captive program as individual subsidiary companies within the MRAC Holding Company.

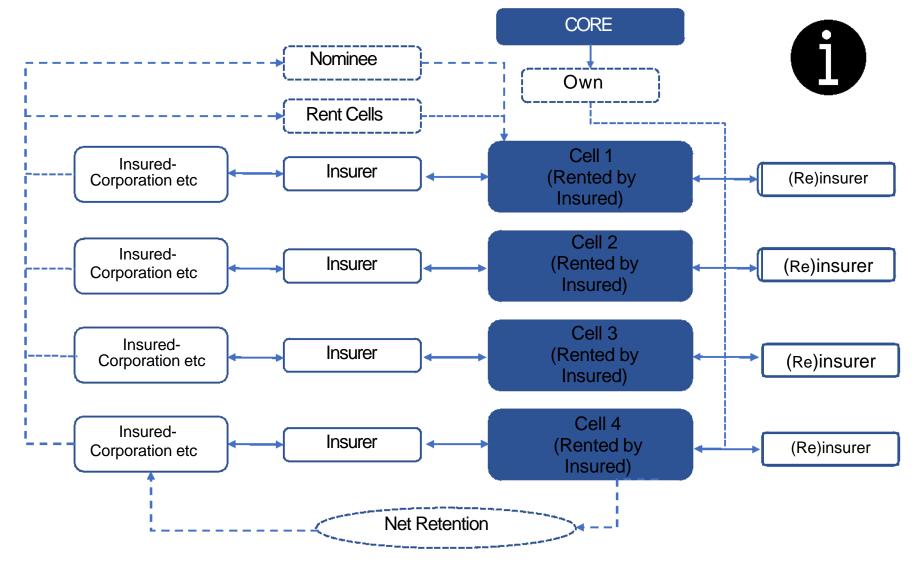






Protected Cell Company (PCC)

usually set up by a sponsoring organization like a broker, which provides the capital for the facility and then rents this capital to participants who seek to establish their captive program as individual 'cells' within the Master PCC.



#### **Insurance classes for Self-Insurance (Captive)**

Class of insurance that can be catered for, and not limited to:

- Aviation & Aerospace;
- Marine Hull & Vessels;
- Energy & Power;
- Property;
- Engineering & Construction;
- Liability;

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- Employee Benefit;
- Medical & Health;

- Agriculture & Livestock;
- Extended Warranty;
- Terrorism & Sabotage;
- Contingency & Business Interruption;
- Cyber Risks;
- Miscellaneous.



### Why Captive?

Self-Insurance: All risks related to the assets of the risk owner can be insured under the Labuan captive



- Financial flexibility Captive's investments can complement parent's investment strategies and build up surplus.
- This may be done via intercompany loans or dividend declaration that are quicker and easier to arrange compared to bank credit facilities.
- Captives can design customized insurance coverages for specialized business lines or risks that are not commercially available.
- The risk owner/company can underwrite policies that tailored to its exposures or otherwise left uninsured.
- The sectors with low claim history are most suitable to be insured under the Labuan captive
- Control over the insurance program with the ability to access to the reinsurance market.
- Purchasing of reinsurance cover behind a captive reduce risk exposures.



### Who Should Consider Setting Up a Captive?

Companies that in the main want to control their own destiny with regard to their insurance program and have a strong commitment to loss control.

1

1. Be willing to invest time and money to create a captive i.e., have the financials to pay captive premium and provide initial capitalization.

2. Have premium large enough to justify the annual operating costs.

3. Have a claims history that is better than other companies in their class of business or have improved risk management processes that are expected to improve its risk profile.



#### **ADVANTAGES OF CAPTIVE**

- Cover for risks that are unavailable or expensive in the commercial market.
- Ability to set aside separate fund for risks in a more tax efficient vehicle
- Smooth insurance prices over time
- Premium based on own experience
- Incentive for loss control

3

- Increases management's awareness of cost of risk and control
- Can be a negotiation tool during renewal with the commercial market
- Direct access to the reinsurance market
- Underwriting profits and investment income retained

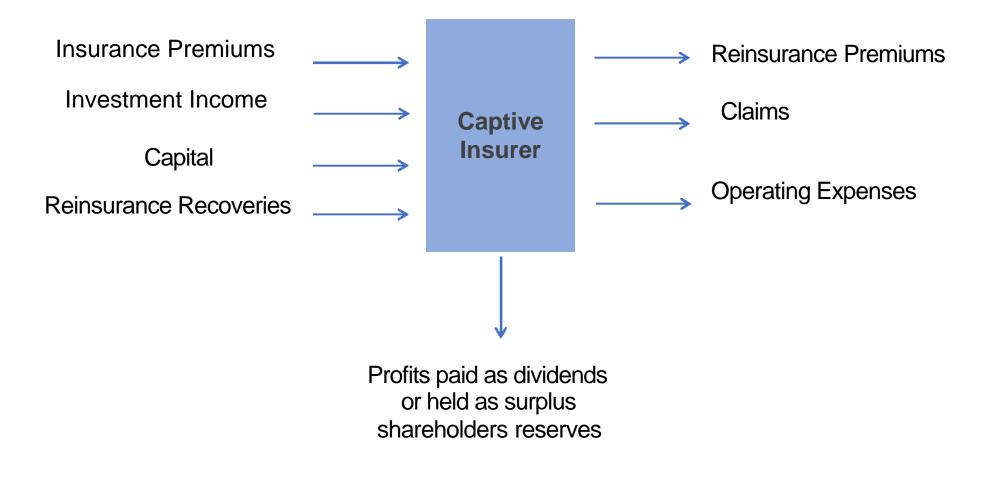
#### **DISADVANTAGES OF CAPTIVE**

- Capitalization is required creating an opportunity cost for business
- Ongoing expenses incurred for operation of the captive i.e. regulatory fees, administrative fees, accounting fees etc.
- Increased management involvement required.
   Captive is not for the short term, there will be an ongoing time commitment from the management of the owner
- Exposure to underwriting loss



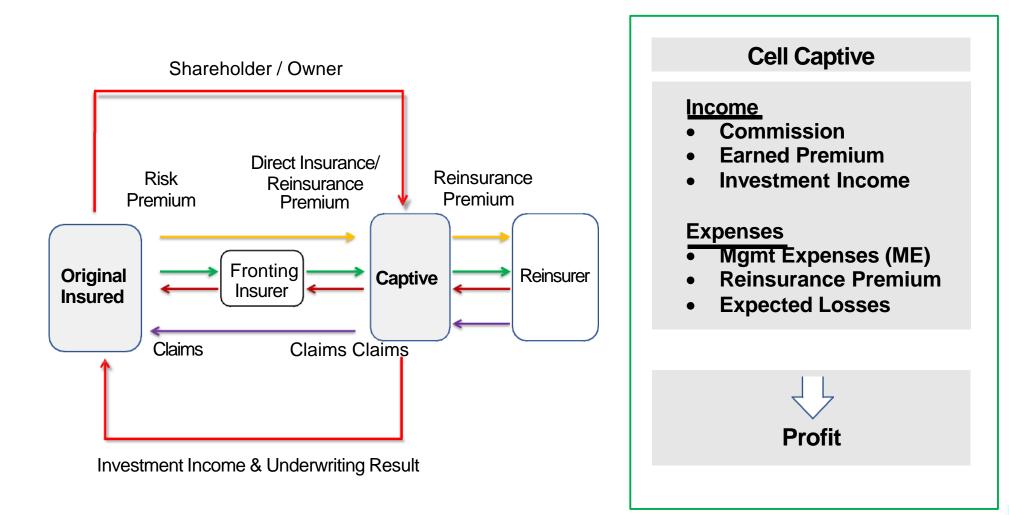
### **Typical Cash Flows for A Captive**

1





### **Typical Captive Experience Account**





### **Key Regulatory Requirements**

#### **KEY GUIDANCE**

- Guidelines on Captive Insurance Business In Labuan IBFC
- Guidelines on Shariah Compliant Pure Captive In Labuan IBFC

#### Qualified Applicants

- A Labuan company incorporated or registered under the Labuan Companies Act 1990 including Protected Cell Companies
- Special Purpose Vehicle ("SPV") set up to undertake captive insurance business in Labuan
- Any other person as may be approved by the Labuan FSA

#### Permitted Business Activities

Underwrite direct insurance or reinsurance (general or life) business risks: v' Of their own group; or v' Third party risks subject to Labuan FSA's approval

#### Reinsurance Coverage

- May obtain reinsurance coverage from any reinsurance company in or outside Labuan irrespective of whether it is a Labuan licensee
  - For retakaful, in case there is a need to obtain conventional reinsurance coverage, the Labuan captive is encouraged to first obtain retakaful cover before considering reinsurance option as well as obtaining necessary guidance from its Shariah advisor on the arrangement

### **Key Regulatory Requirements**

Paid-up Capital or Working Fund requirements	<ul> <li>Pure/Single Captive, Multi owner Captive, Group/Association Captive</li> <li>A paid-up capital unimpaired by losses of RM300,000 (about USD75,000) equivalent in any foreign currency</li> </ul>		
	Rental Captive, PCC		
	• A paid-up capital unimpaired by losses of RM500,000 (about USD120,000) equivalent in any foreign currency		
Margin of Solvency	• A Labuan Captive Insurer is required to always maintain a surplus of assets over liabilities, which is equivalent to, or more than the amount of its' working fund; or 10% of the net premium income for the preceding year in respect of the general insurance business or 10% of the provision for outstanding claims for the preceding year (net basis) or 2.5% of the actuarial valuation of the liabilities for life insurance business as at the last valuation date in respect of the life insurance business, whichever is greater		
Annual Licence fee	<ul> <li>Captive</li> <li>MRAC</li> <li>SRAC</li> <li>PCC <ul> <li>v' On general assets of the Labuan PCC (core)</li> <li>v' On each individual cell</li> </ul> </li> </ul>	USD3,000 USD4,000 USD1,000 USD9,500 USD3,000	

## **Key Regulatory Requirements**

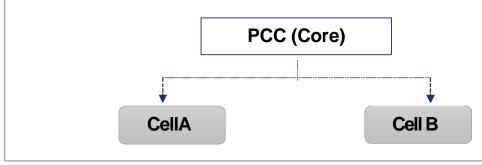
Economic Substance Requirements in Labuan Island

8

- Labuan IBFC provides tax certainty with prescribed economic substance requirements (ESR) via a gazette regulation.
- ESR for captives are:

Labuan captives		Full time employees	Annual business spending (RM)
а.	<sup>1st</sup> party captives	2	100k
b.	<sup>3rd</sup> party captives	3	100k

• ESR on PCC is applicable as a single corporate structure and not to each cell.



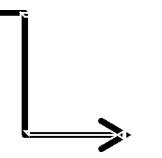
For PCC captive with 2 cells, FTE requirement is 2 and not 6. Similar to business spend requirement, it would be set at RM100k for the PCC as a whole and not RM300k.



## **Setting Up A Captive**

#### CommissionFeasibilityStudy

- Existing Insurance Programme
- ⑦ Risk Details
- Financial Information
- Loss Experience
- Values/Sum Insured



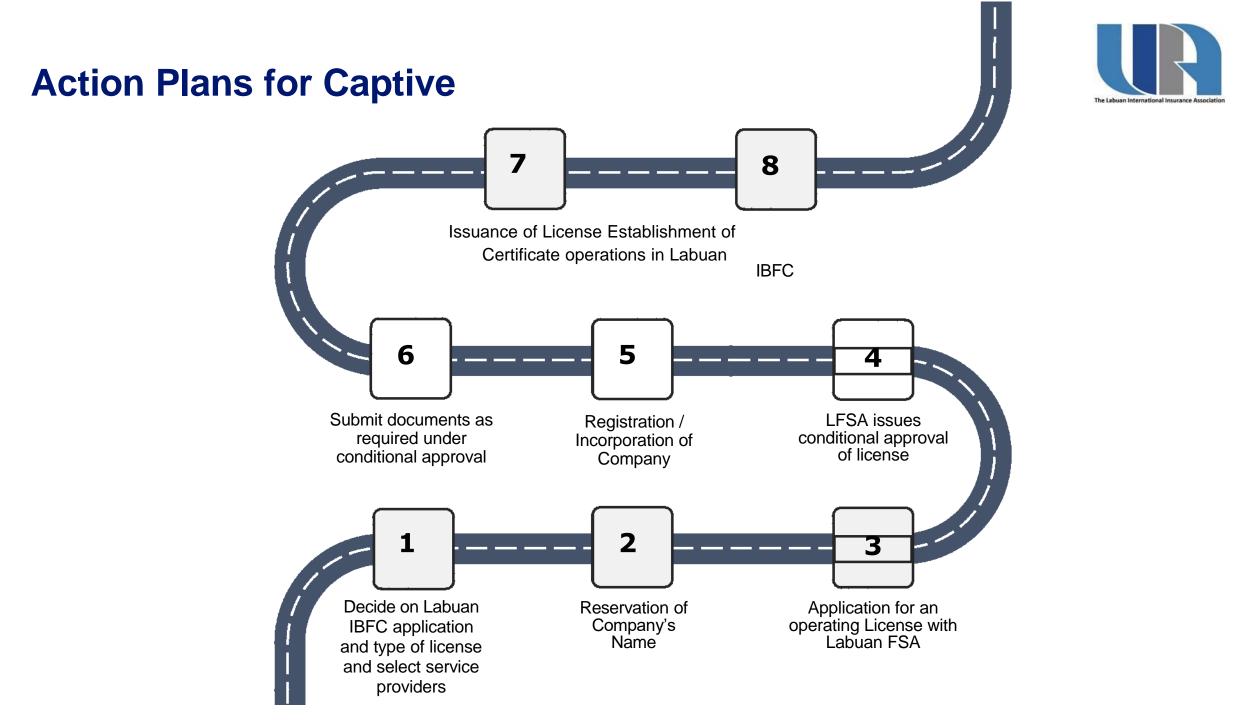
 $(\mathbf{r})$ 

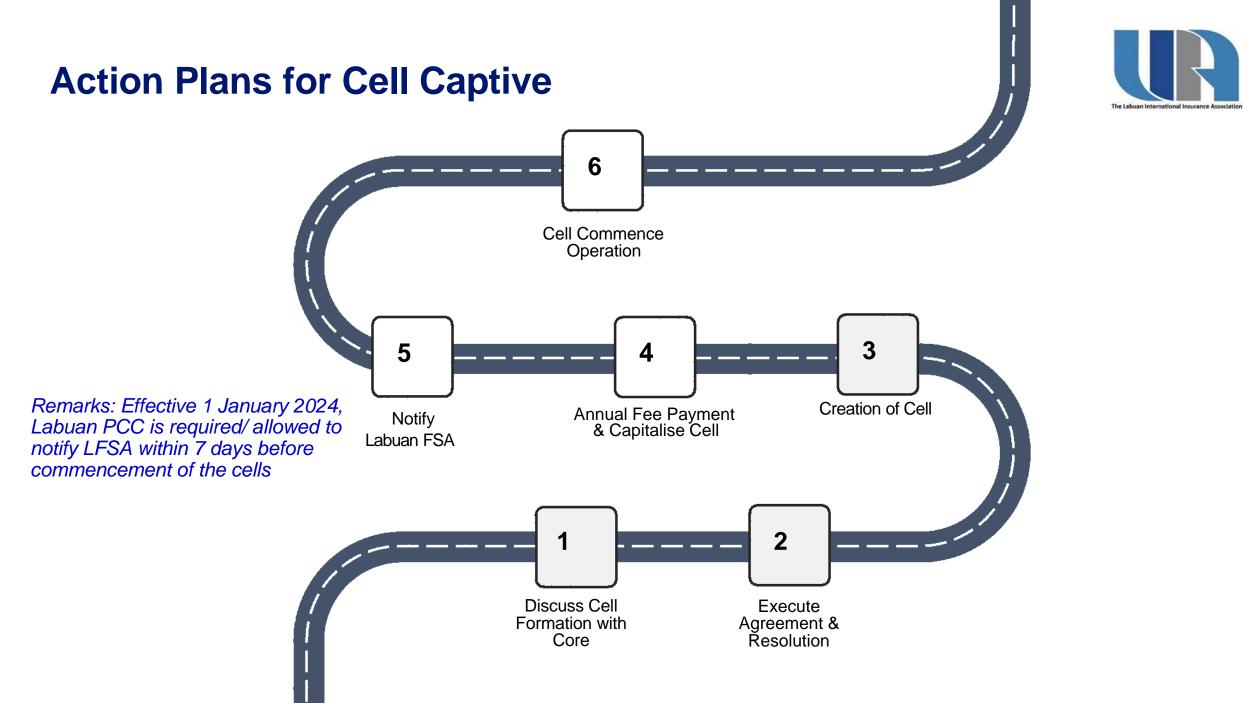
- Problem Identification
- CoverageAssessment
- ② Exposure Identification
- ② Loss Forecast
- ② Alternative Financial Methods
- ② Estimated of Costs
- Financial Modeling

 $(\mathbf{k})$ Design 3 Underwriting Plan  $(\mathbf{k})$ Design Reinsurance plan Obtain advice & opinion  $(\mathbf{k})$ from tax expert









The Labuan International Insurance Association would like to acknowledge the contribution from Brighton and Park Lane for this presentation.



# THANK YOU

Speaker by: G. Roy S. Sharma Chairman of the LIIA



# Thank You

# **Terima Kasih**

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# Thank You

