

JOINT WEBINAR

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# ASIA'S UPCOMING PRIVATE FUND DOMICILE

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Thursday • 7 October 2021 • 4.00PM (GMT +8)



# ASIA'S UPCOMING PRIVATE FUND DOMICILE



## Labuan IBFC as a Private Fund Domicile

**Jennifer Chang**

Tax Partner  
PwC Malaysia

A network diagram with grey nodes and lines, some nodes highlighted in red, spanning the top of the slide.A stylized illustration of a classical building with columns and a pediment, rendered in shades of red and white, positioned on the right side of the slide.

# Asia's Upcoming Private Fund Domicile

## - Fund Structures and Taxation in Labuan

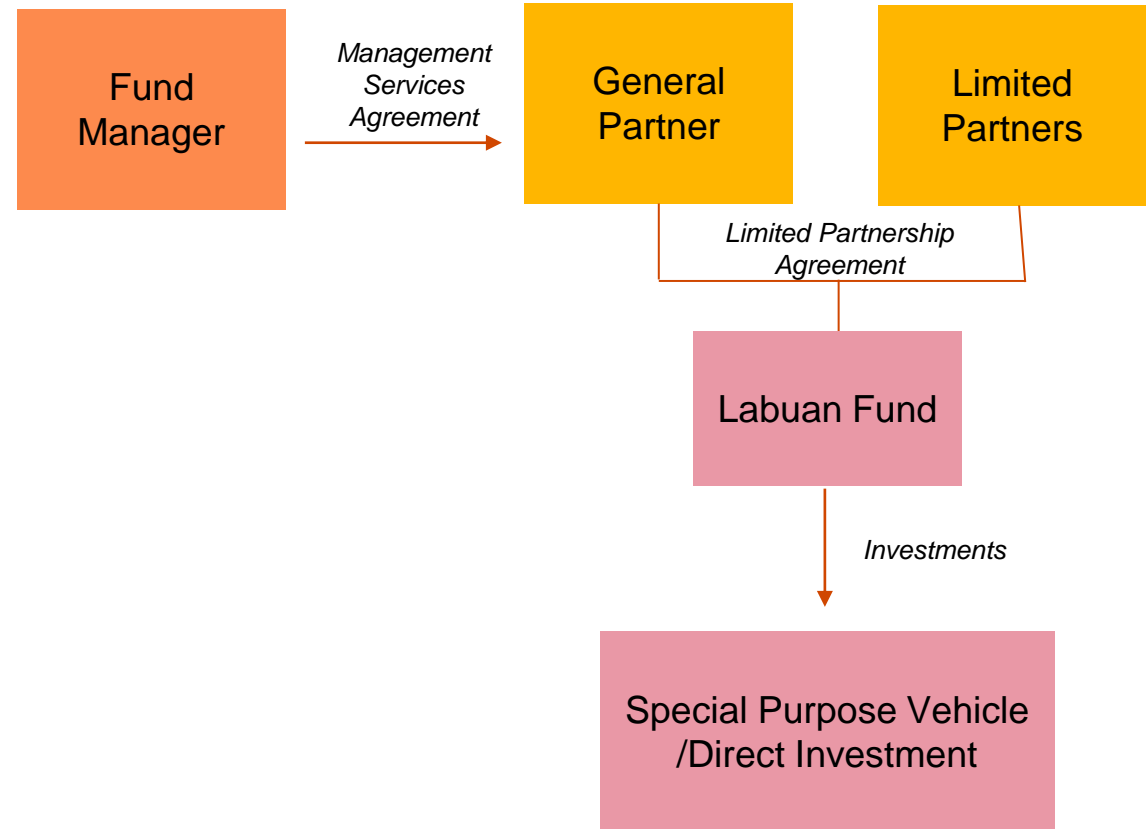
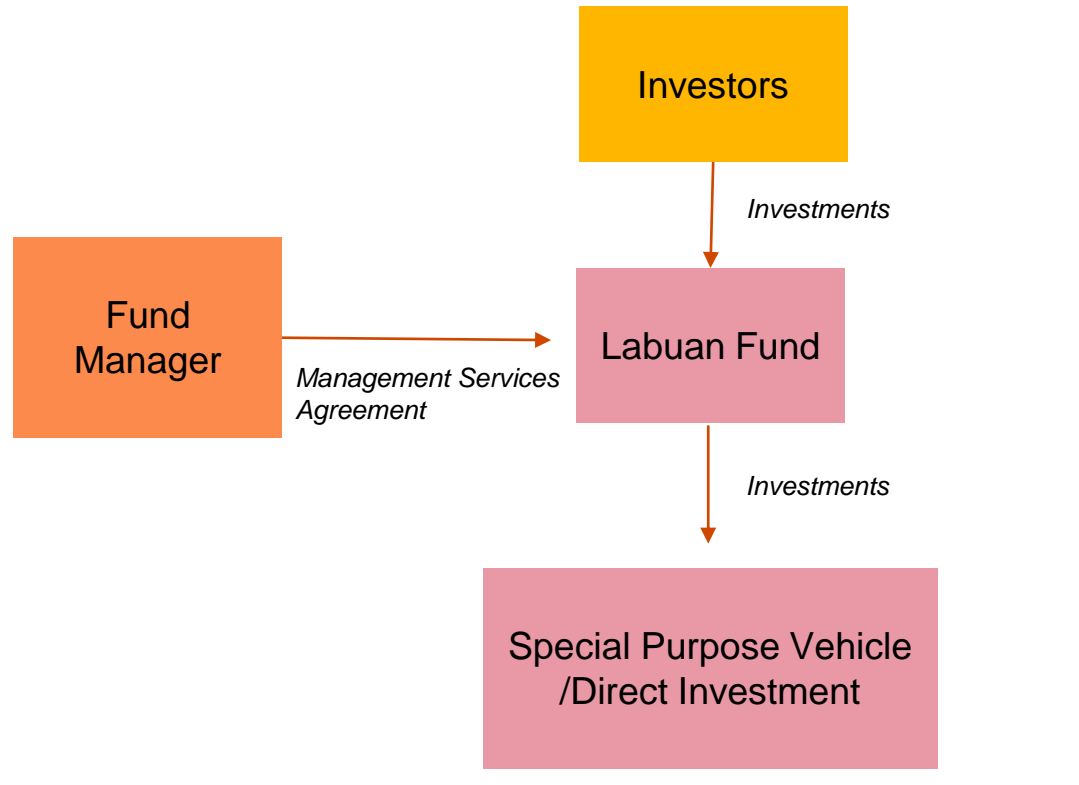


7 October 2021

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# Labuan Funds

## Common Labuan Fund Structures



# Taxation System in Labuan

## General Tax Regime

- Labuan Business Activity Tax Act, 1990 (“LBATA”)
- “Labuan business activities” means
  - *a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan, excluding any activity which is an offence under any written law.*



## Labuan Business Activities

- "Labuan trading activity" includes banking, insurance, trading, management, licensing, shipping operations or any other activity which is not a Labuan non-trading activity.
- "Labuan non-trading activity" means an activity relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties situated in Labuan by a Labuan entity on its own behalf.

# Taxation System in Labuan

Type of business activity	Tax treatment
<b>Labuan Non-Trading</b> Includes holding of investments in securities, stock, shares, loans, deposits and immovable properties by a Labuan entity on its own behalf.	Not subject to tax*
<b>Labuan Trading</b> Leasing, banking, insurance, trading, management, licensing or any other activity which is not a Labuan non-trading activity.	3% of net profits per audited accounts*  OR 24% of net profits per audited accounts
<b>Undertakes both Labuan Trading and Labuan Non-Trading</b> Deemed to be Labuan trading activity	
<b>Non-Labuan business activities</b>	Taxed under domestic tax act at prevailing tax rate (currently at 24%)



\* Subject to substance requirements

# Taxation System in Labuan

## Incentives

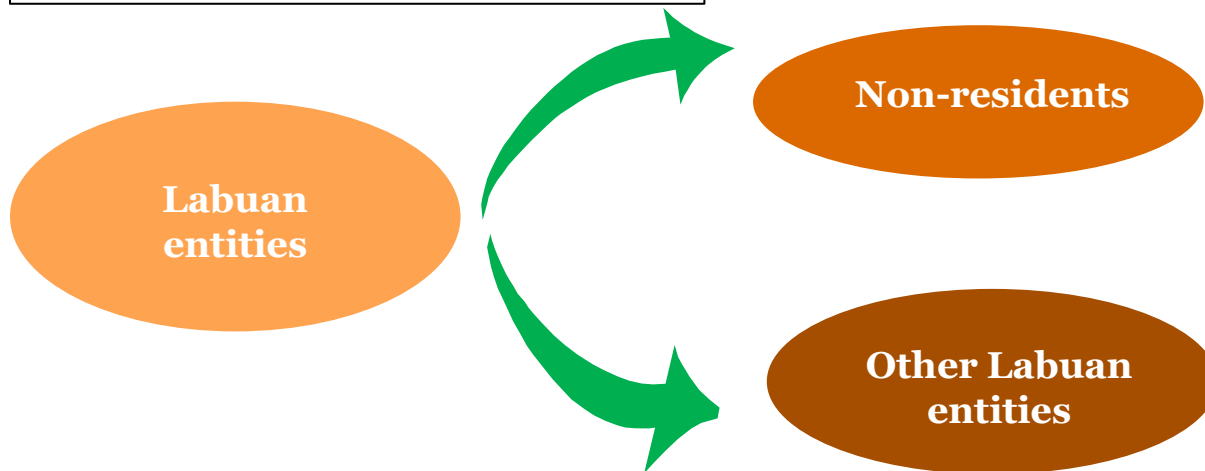
### Stamp duty exemption

- Labuan companies are exempted from stamp duty on all instruments which are made in connection with Labuan business activities.
- The sale of shares in Labuan companies and the Memorandum and Articles of Association of a Labuan company are also exempted from stamp duty.

### Indirect tax exemption

- Labuan has been categorised as Designated Area and is not subject to sales and service tax.
- Services from the designated area to other places in Malaysia (or vice versa) or services imported into the designated area will be subject to service tax.

### Withholding tax exemption



No Withholding tax on the following payments by Labuan entities to non-residents:-

- Dividends, royalties, interest, distribution, and technical or management fees
- Payments for other gains and losses
- A non-resident person's income arising from the use of any moveable property by a Labuan leasing company

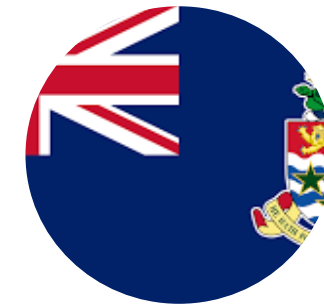
# Taxation System in Labuan

## Countering Harmful Tax Practices

Substance requirements have been widely adopted by a number of financial centres such as Hong Kong, Bermuda, BVI, etc. and are generally in-line with the global requirements.



*Employees*  
*Level of investment*  
*Annual business spend*  
*Core business activity*  
*Decision making*  
*Documentation*  
*Physical office*





# Taxation System in Labuan

## Substance Requirement

### Labuan substance requirements



Adequate number of full time employees in Labuan



Adequate amount of annual operating expenditure in Labuan



# Taxation System in Labuan

## Substance Requirements

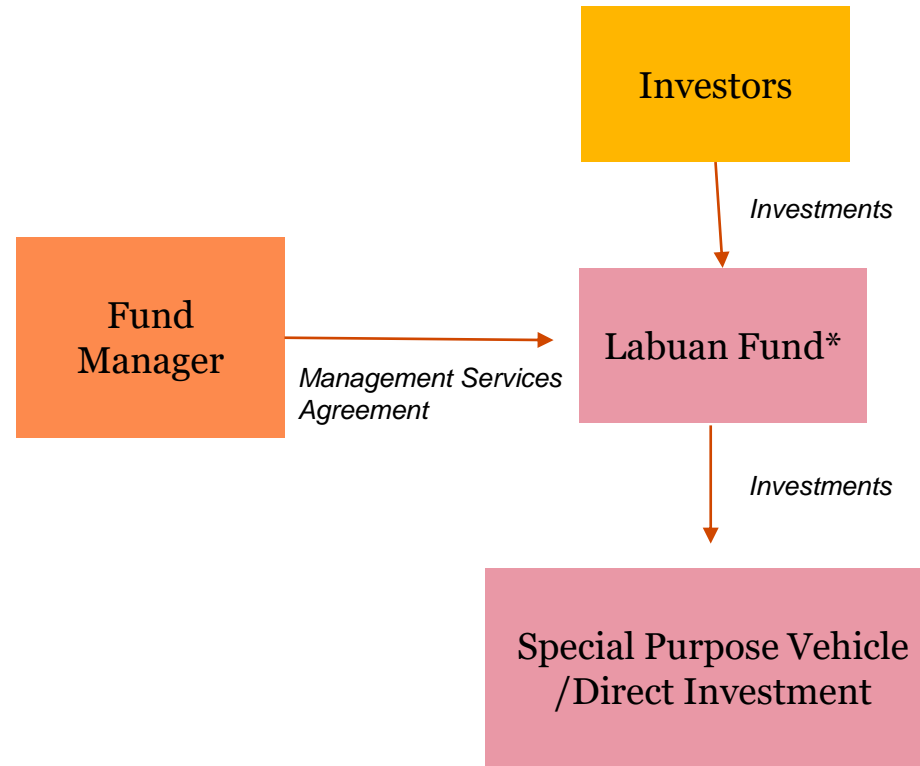
### Labuan Substance Requirements

	Minimum Full Time Employees	Minimum annual expenditure in Labuan
<b>Labuan Fund Manager</b>	2	RM100,000
<b>Labuan Fund – Holding Company</b>	1	RM20,000
<b>Labuan Fund – Pure Equity Holding Company</b>	0 (Control and management in Labuan)	RM20,000
<b>Labuan Fund Administrator</b>	2	RM100,000

# Labuan Funds

## Taxation of Labuan Funds and Fund Managers

Licensed Fund Manager	
- With Substance	3% tax on net profits in audited accounts
- Without Substance	24% tax on net profits in audited accounts
Non-licensed Fund Manager	24% tax based on domestic income tax system



No withholding tax on receipts from investment into Labuan Fund

With Substance	0% if non-trading 3% if trading
Without Substance	24% tax on net profits in audited accounts

**\* Labuan Fund includes company, LLP and Trust structures**



# Thank you



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# ASIA'S UPCOMING PRIVATE FUND DOMICILE



## Fund Structures, Licences and Operational Requirements

### **Caroline Wong**

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TMF Trust Labuan Limited





**TMF**  
GROUP

Global reach  
Local knowledge

**Caroline Wong**  
TMF Trust Labuan  
Limited

7<sup>th</sup> October 2021

# Introduction to Labuan Mutual Funds

# CONTENT

What you will learn from this presentation

**1. What is a Labuan Mutual Fund**

**2. Categories of Mutual Fund in Labuan**

**3. Public Fund vs. Private Fund – Operational Requirements**

**4. Setting up process**

**5. Labuan Mutual Fund Structures**

**6. Key Benefits for Private Funds in Labuan**

# INTRODUCTION TO LABUAN MUTUAL FUNDS

## WHAT IS A LABUAN MUTUAL FUND?

A mutual fund or fund means a Labuan company, a corporation incorporated under the laws of any recognised country or jurisdiction (who is a member of the International Organisation of Securities Commissions - IOSCO), a partnership, a protected cell company, a foundation or a unit trust which:

- collects and pools funds for the purpose of collective investment with the aim of spreading investment risk; and
- issues interests in a mutual fund which entitles the holder to redeem his investments that is agreed upon by the parties and receives an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the aforesaid types of entities, as the case may be,

and includes an umbrella fund whose interests in a mutual fund or units are split into a few different classes of funds or sub funds and whose participants are entitled to exchange rights in one part for rights in another.

Labuan mutual fund is governed under Part III of the Labuan Financial Services and Securities Act 2010 (LFSSA).

Labuan Islamic mutual fund is governed under Part IV of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA) and shall operate in compliance with Shariah principles.



# INTRODUCTION TO LABUAN MUTUAL FUNDS

## CATEGORIES OF MUTUAL FUNDS IN LABUAN

- **Private Fund**

Private funds are mutual funds:

- whose securities are **not offered to the general public** and are owned or held by:
  - not more than **50 investors** where the first-time investment of each of such investors is not less than **RM250,000** (approx. USD62,500) or such other sum as may be prescribed by Labuan FSA or the equivalent in any foreign currency; **or**
  - **any number of investors** where the first-time investment of each of such investors is not less than **RM500,000** (approx. USD125,000) or such other sum as may be prescribed by Labuan FSA or the equivalent in any foreign currency; **or**
- which is designated as a private fund under regulations made under the Labuan Financial Services and Securities Act 2010.

- **Public Fund**

A mutual fund other than a private fund.

# INTRODUCTION TO LABUAN MUTUAL FUNDS

## PUBLIC FUND vs. PRIVATE FUND - OPERATIONAL REQUIREMENTS

PRIVATE FUND	PUBLIC FUND
1. Lodgement of Information Memorandum (IM) with Labuan FSA.	1. Application to be registered as a Labuan Public Fund.
2. Appointment of Board members not subject to Labuan FSA's approval.	2. Appointment of Board members require Labuan FSA's approval.
3. No requirement for Fund Manager or service providers to be licensed	3. Fund Manager, Trustee, Administrator and Custodian must be licensed.
4. Duties of Fund Manager and Custodian or Trustee are recommended to be independent from each other.	4. Duties of Fund Manager and Custodian or Trustee must be independent from each other.

# INTRODUCTION TO LABUAN MUTUAL FUNDS

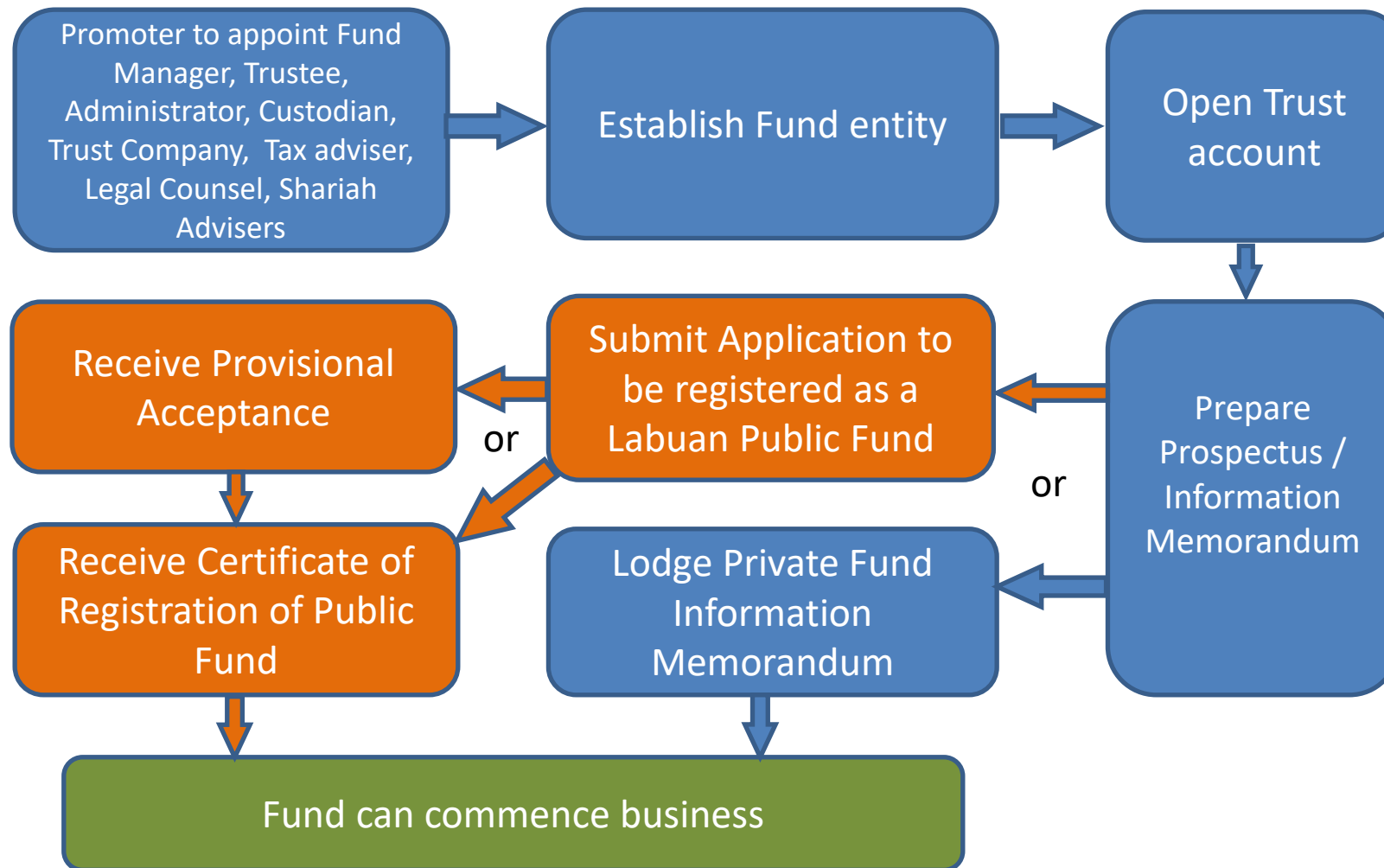
## PUBLIC FUND vs. PRIVATE FUND - OPERATIONAL REQUIREMENTS

PRIVATE FUND	PUBLIC FUND
5. Audit of financial accounts is not compulsory but is nevertheless recommended.*	5. Must have its financial accounts audited.
6. Notify Labuan FSA of any material changes to the IM and on maturity of the fund, within 30 days.	6. Notify Labuan FSA of any amendment in constituent documents and business plan within 30 days of the change.
7. No periodic statistical or performance reporting required.*	7. Submit audited financial statements to Labuan FSA Supervision & Enforcement Department and other statistics and information as required by Labuan FSA from time to time.  Provide half-yearly fund performance reporting to investors.

\* A Protected Cell Company Fund must audit its financial accounts, provide cell financial statements to each of the investors of the respective cells and submit other statistics and information as may be required by Labuan FSA from time to time.

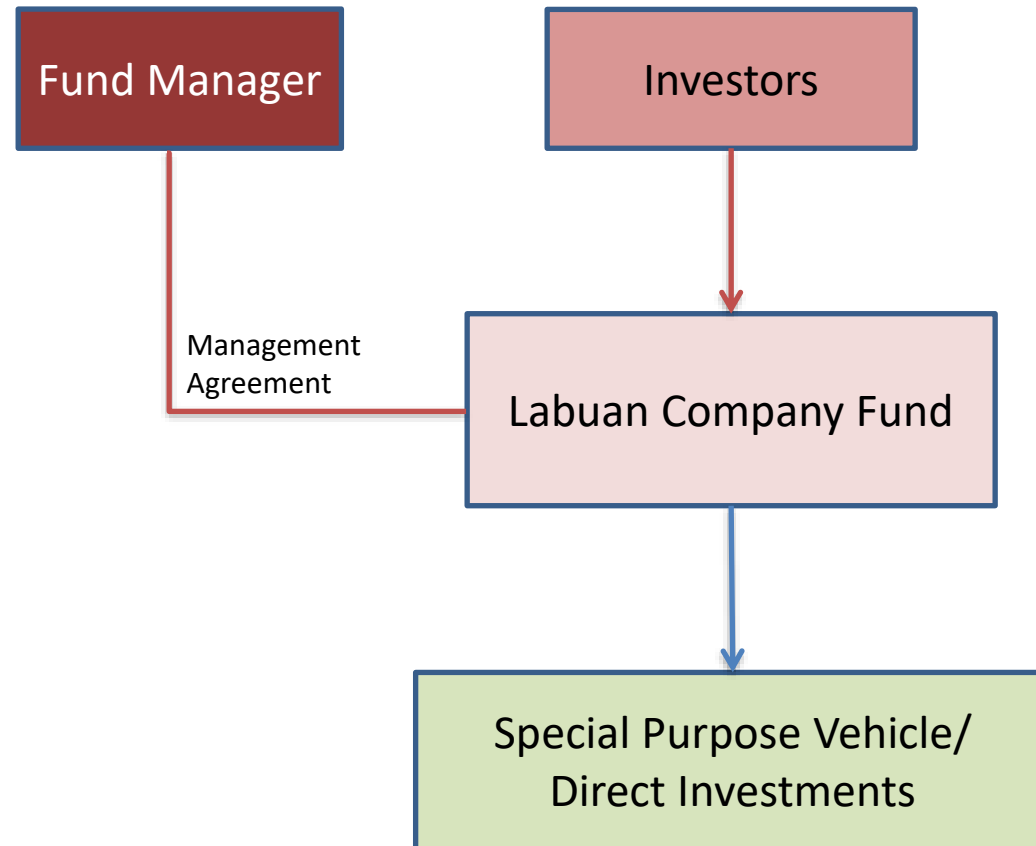
# INTRODUCTION TO LABUAN MUTUAL FUNDS

## PROCESS OF SETTING UP



# INTRODUCTION TO LABUAN MUTUAL FUNDS

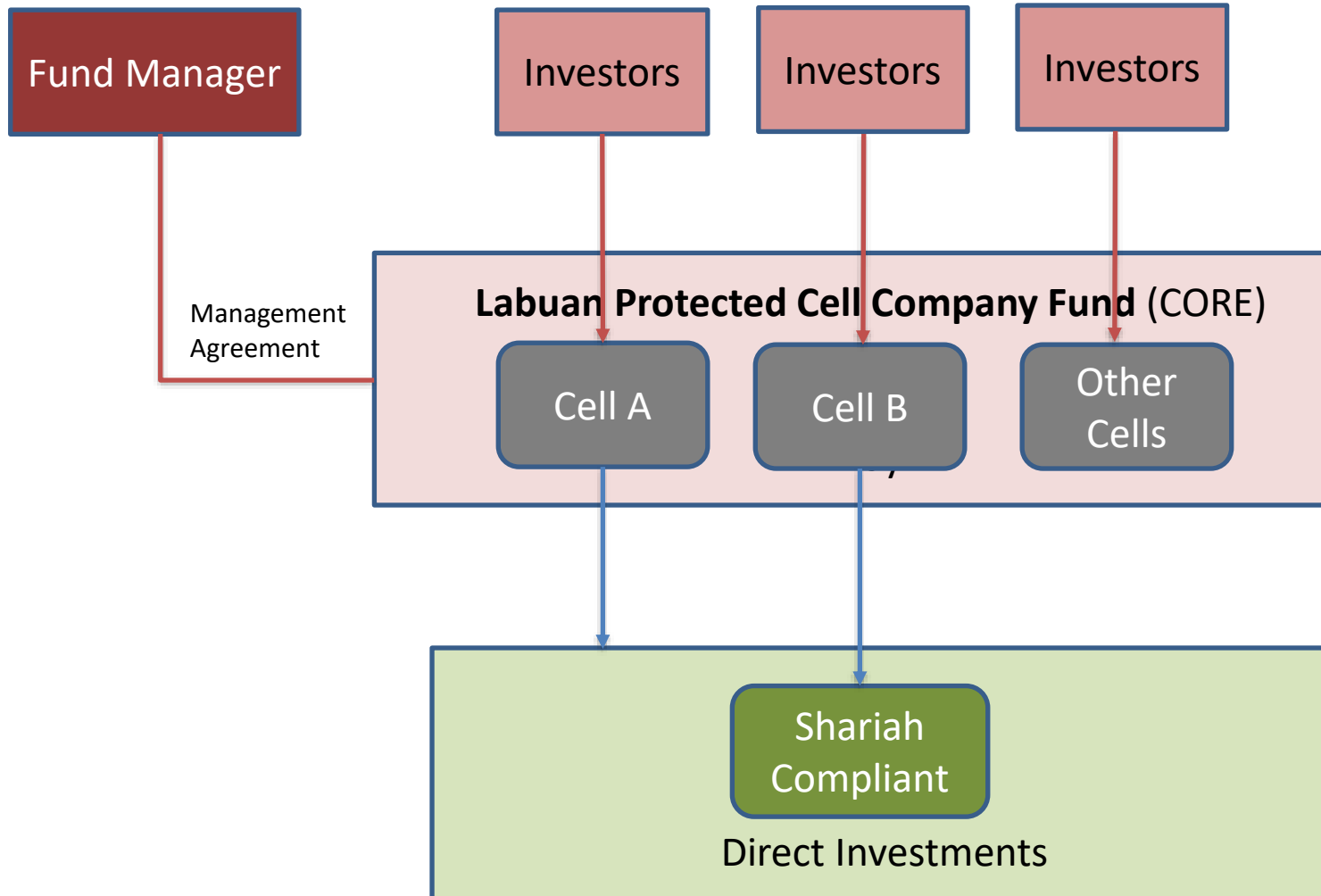
## LABUAN COMPANY STRUCTURE



- Commonly used for open-ended and closed ended funds
- Shares can be redeemed from profits and capital
- Shareholders' liability is limited
- Company is a legal structure
- Governed by Memorandum & Articles of Association
- Fund Manager owns voting, non-participating management class of shares
- Investors obtain non-voting, participating class of shares

# INTRODUCTION TO LABUAN MUTUAL FUNDS

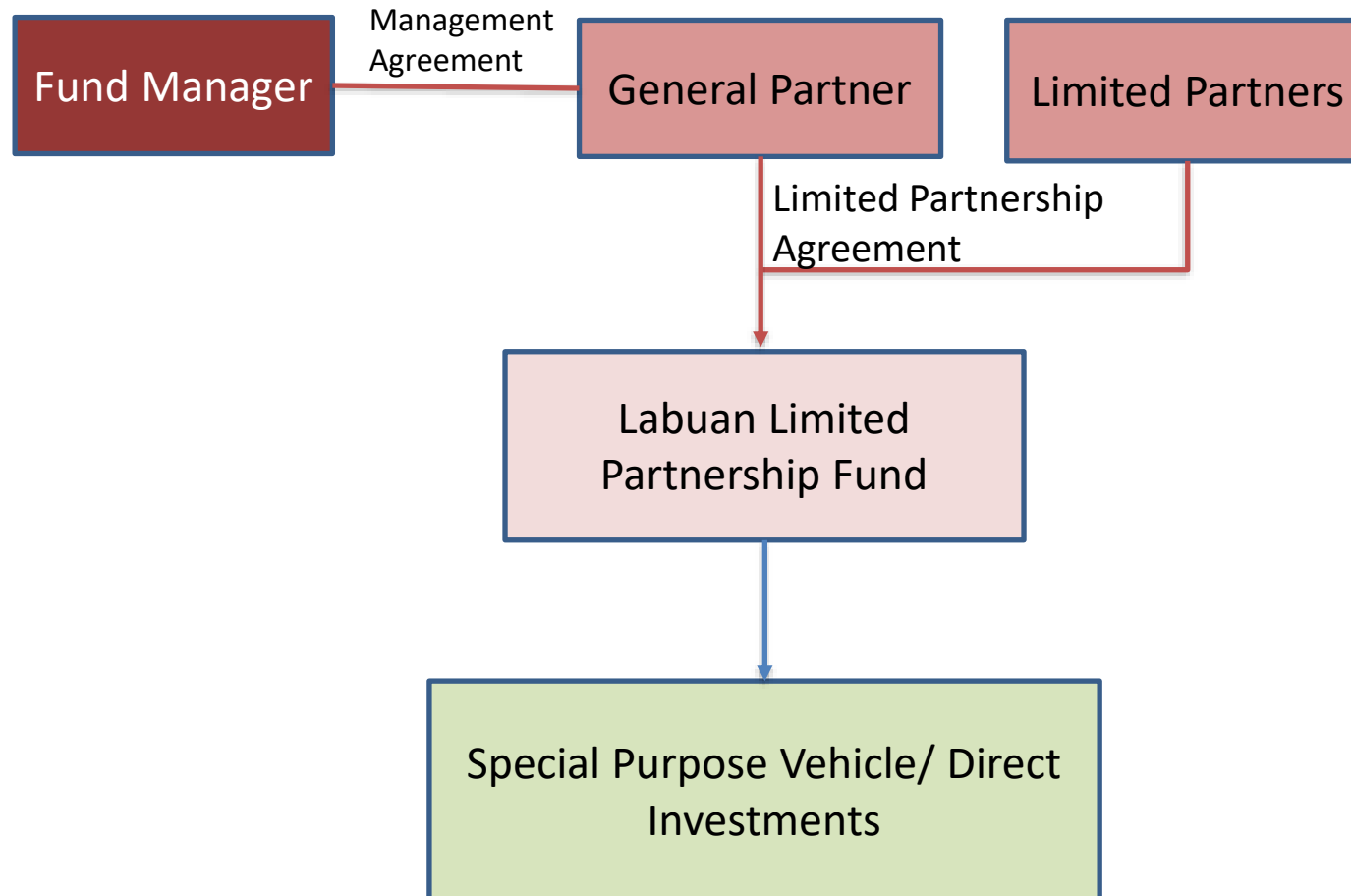
## LABUAN PROTECTED CELL COMPANY STRUCTURE



- Made up of Core and cells with its own distinct name
- The Core is a legal person, the cells are not legal persons
- Contracts are entered for and on behalf of a specific identified cell
- PCC may create and issue cell shares
- PCC may pay cell dividend
- Ring fence from other cell creditors
- All risks to be disclosed to investors

# INTRODUCTION TO LABUAN MUTUAL FUNDS

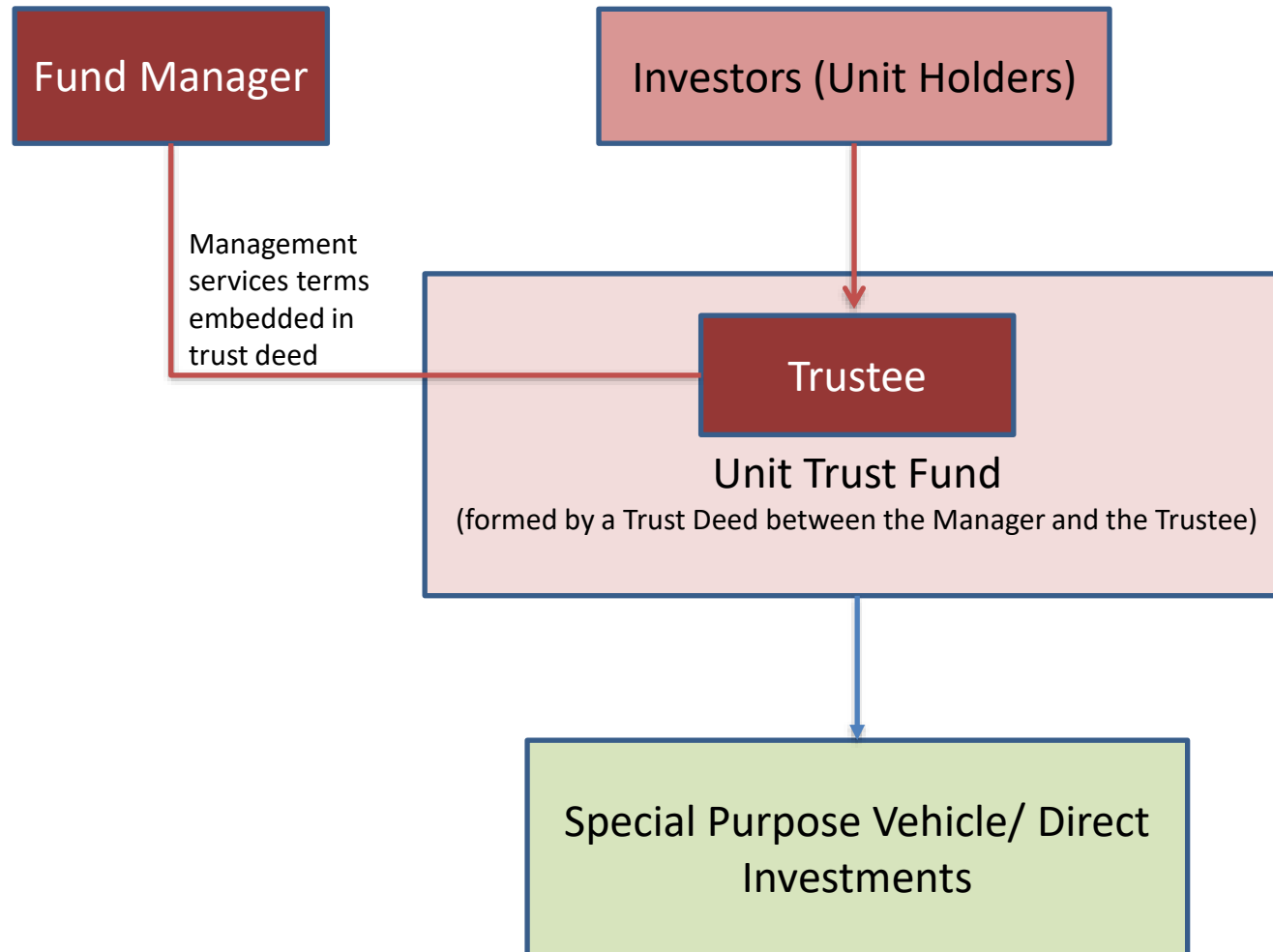
## LABUAN LIMITED PARTNERSHIP (LP) STRUCTURE



- Commonly used for closed-ended funds to hold long-term investments
- LP do not have their own legal personality
- GP manages the LP and enters into contracts on its behalf and has unlimited liability
- Limited Partners have limited liability and rights on profit
- The GP is usually the Fund Manager or and entity formed by the Fund Manager
- Operations and dissolution of LP is governed by Limited Partnership Agreement

# INTRODUCTION TO LABUAN MUTUAL FUNDS

## LABUAN UNIT TRUST STRUCTURE



- Commonly used for open-ended and closed-ended investment
- Established under a Trust Deed
- Trustee holds the legal title of the fund's underlying assets
- Investors are the Unit Trust holders and the beneficiaries of the trust.
- Do not have separate legal personality
- Units issued may be repurchased by the trust at net asset value or a selling price
- Legal title held by a licensed Trustee rather than an entity controlled by the fund manager, gives investors confidence



# INTRODUCTION TO LABUAN MUTUAL FUNDS

## FEES PAYABLE TO LABUAN FSA – INITIAL AND RECURRING

	Labuan company	PCC (Core company)	Limited Partnership	Unit trust
One off reservation of name	USD15 / RM50	USD15 / RM50	Nil	Nil
<b>Public Fund</b> Processing fee for application to be registered as a Public Fund ( <b>Form LSCM</b> )	USD350	Please refer to below	USD350	USD350
<b>Public/Private Fund applicable to PPC only</b> Processing fee for application for establishment of the PCC undertaking Labuan Mutual Fund Business ( <b>Form PCCMF</b> )	Not applicable	USD350 on the core PCC  USD350 on the creation of each cell	Not applicable	Not applicable

# INTRODUCTION TO LABUAN MUTUAL FUNDS

## FEES PAYABLE TO LABUAN FSA – INITIAL AND RECURRING

	Labuan company	PCC (Core company)	Limited Partnership	Unit trust
One off registration  <ul style="list-style-type: none"> <li>• Paid-up share capital &gt; RM50,000 but &lt; RM1,000,000 equivalent</li> <li>• Paid-up share capital &gt; RM1,000,000 equivalent</li> </ul>	<ul style="list-style-type: none"> <li>• USD600 / RM2,000</li> <li>• USD1,500 / RM5,000</li> </ul>	<ul style="list-style-type: none"> <li>• USD600 / RM2,000</li> <li>• USD1,500 / RM5,000</li> </ul>	USD300 / RM1,000	USD200 / RM750
<b>Private / Public Fund</b> One off lodgment fee for each IM / Prospectus lodged with LFSA	USD600 / RM2,000	USD600 / RM2,000	USD600 / RM2,000	USD600 / RM2,000

# INTRODUCTION TO LABUAN MUTUAL FUNDS

## FEES PAYABLE TO LABUAN FSA – INITIAL AND RECURRING

	Labuan company	PCC (Core company)	Limited Partnership	Unit trust
<u>Annual</u> Government Fee	USD800 / RM2,600	USD800 / RM2,600	USD300 / RM1,000	Nil
<b>Public Fund</b> <u>Annual</u> License Fee	USD600 / RM2,000	On general assets of the Core PCC* USD1,500 / RM6,000  On each individual cell* USD600 / RM2,000 (*applicable to private and public PCC fund)	USD600 / RM2,000	USD600 / RM2,000

And other relevant fees payable to respective service providers.

# INTRODUCTION TO LABUAN MUTUAL FUNDS

## KEY BENEFITS FOR PRIVATE FUNDS IN LABUAN

- Various choice of structure – in the form of Labuan company, partnership, protected cell company, foundation or unit trust.
- Support multiclass fund – multi currency / asset class.
- Separate Act to govern Islamic Funds.
- Hassle free private fund set-up – no approval required, fund manager need not be licensed.
- Low minimum capital requirement per investor.
- Secrecy provisions prohibits any person from releasing information of the fund to another person.
- Simple tax system.
- 100% exemption for director's fees received by non-citizen directors of Labuan companies.
- No foreign exchange controls.
- Labuan IBFC has an ecosystem of service providers that support mutual funds.
- Strategically situated in the Asia Pacific region and sharing a common time zone with many large Asian cities.



**THANK YOU for your time and attention!**

**If you need further information, please  
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