

JOINT WEBINAR

HOW MALAYSIAN PLCs CAN BENEFIT FROM LABUAN IBFC

Wednesday • 24 November 2021 • 3.30PM – 4.45PM (GMT +8)

tricolor



Supporting Partners:





LABUAN IBFC UPDATE: 30 YEARS ON!

Farah Jaafar, CEO, Labuan IBFC Inc.



24 November 2021

Labuan IBFC – Gateway to Asia Pacific

More than 30 Years of Intermediating Asia

- An international business and financial centre set up by Malaysia in 1990 to intermediate trade, finance, risk and wealth.
- A tax-efficient substance enabling MIDSHORE jurisdiction to facilitate businesses, trading, investments through financial services and a wide array of legal structures.
- Well-balanced legal and regulatory framework, proportionality in regulatory stance.
- Robust governing legislations passed by the Malaysian Parliament, administered by Labuan Financial Services Authority, a statutory body under the Ministry of Finance, Malaysia.
- Adheres to Malaysia's AMLCFT requirements and international standards and best practices set by multilateral global institutions.





ORGANIZATION CHART MINISTRY OF FINANCE

MINISTER OF FINANCE
YB SENATOR TENGKU DATUK SERI UTAMA ZAFRUL TENGKU ABDUL AZIZ

DEPUTY MINISTER OF FINANCE
YB TUAN MOHD SHAHAR ABDULLAH

DEPUTY MINISTER OF FINANCE
YB TUAN HAJI YAMANI HAFEZ MUSA

DEPARTMENT UNDER MINISTRY OF FINANCE

MALAYSIA TREASURY
SECRETARY GENERAL OF TREASURY
DATO' ASRI BIN HAMIDIN @ HAMIDON

ROYAL MALAYSIAN CUSTOMS DEPARTMENT
DIRECTOR GENERAL
DATO' SRI ABDUL LATIF ABDUL KADIR

ACCOUNTANT GENERAL'S DEPARTMENT OF MALAYSIA
ACCOUNTANT GENERAL
DATUK DR. YACOB MUSTAFA

VALUATION AND PROPERTY SERVICES DEPARTMENT
DIRECTOR GENERAL
DATO' Sr AZMI ABDUL LATIF

LANGKAWI DEVELOPMENT AUTHORITY
CHIEF EXECUTIVE OFFICER
VACANT

AGENCY UNDER MINISTRY OF FINANCE



BANK SIMPANAN NASIONAL
CHIEF EXECUTIVE OFFICER
JAY KHAIRIL JEREMY ABDULLAH



BURSA MALAYSIA BERHAD
CHIEF EXECUTIVE OFFICER
DATUK MUHAMMAD UMAR SWIFT



THE CENTRAL BANK OF MALAYSIA
GOVERNOR
DATUK NOR SHAMSIAH MOHD YUNUS



SECURITIES COMMISSION MALAYSIA
CHAIRMAN
DATUK SYED ZAID ALBAR



TUN RAZAK FOUNDATION
SECRETARY
TENGKU HARITH TENGKU AZIZ



RETIREMENT FUND (INCORPORATED)
CHIEF EXECUTIVE OFFICER
NIK AMLIZAN BINTI MOHAMED



MALAYSIA DEPOSIT INSURANCE CORPORATION
CHIEF EXECUTIVE OFFICER
RAFIZ AZUAN ABDULLAH



INLAND REVENUE BOARD OF MALAYSIA
CHIEF EXECUTIVE OFFICER
DATO' SRI DR. SABIN SAMITAH



EMPLOYEES PROVIDENT FUND
CHIEF EXECUTIVE OFFICER
DATUK SERI AMIR HAMZAH AZIZAN



LABUAN FINANCIAL SERVICES AUTHORITY
CHIEF EXECUTIVE OFFICER
NIK MOHAMED DIN NIK MUSA



MALAYSIA TOTALISATOR BOARD
CHIEF EXECUTIVE OFFICER
DATO' ABDUL RAUF SANI



PUBLIC SECTOR HOME FINANCING BOARD
CHIEF EXECUTIVE OFFICER
MOHD FARID BIN DATO' HAJI NAWAWI



Financial Services Authority,
Malaysia

THE REGULATOR

Labuan Financial Services
Authority

Labuan Financial Services Authority a
statutory body under Ministry of Finance,
Malaysia¹

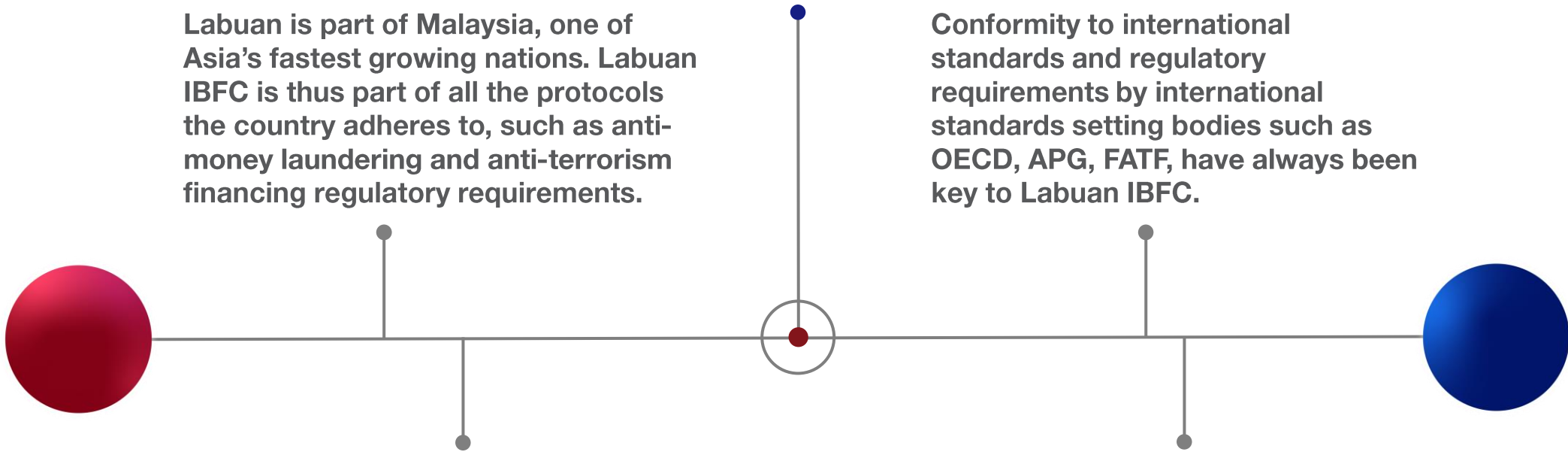
Why the Mid-shore Balance?

Labuan is part of Malaysia, one of Asia's fastest growing nations. Labuan IBFC is thus part of all the protocols the country adheres to, such as anti-money laundering and anti-terrorism financing regulatory requirements.

Conformity to international standards and regulatory requirements by international standards setting bodies such as OECD, APG, FATF, have always been key to Labuan IBFC.

Labuan IBFC has put in place relevant legislation to allow the exchange of information with the tax authorities of Malaysia's double tax treaty partners as well as the tax information exchange agreements signed by Malaysia.

The range of unique and bespoke structures are cost-efficient, tax and currency neutral.



A Comprehensive Suite of Legislation

Adherence to International Standards and Best Practices

2

Inland Revenue Board

- i. Labuan Business Activity Tax Act 1990 (LBATA)
- ii. Income Tax Act 1967 – including relevant gazette orders
- iii. Stamp Act 1949

1

Labuan FSA

- i. Labuan Financial Services Authority Act 1996
- ii. Labuan Companies Act 1990
- iii. Labuan Financial Services and Securities Act 2010
- iv. Labuan Islamic Financial Services and Securities Act 2010
- v. Labuan Trusts Act 1996
- vi. Labuan Limited Partnerships & Limited Act 2010

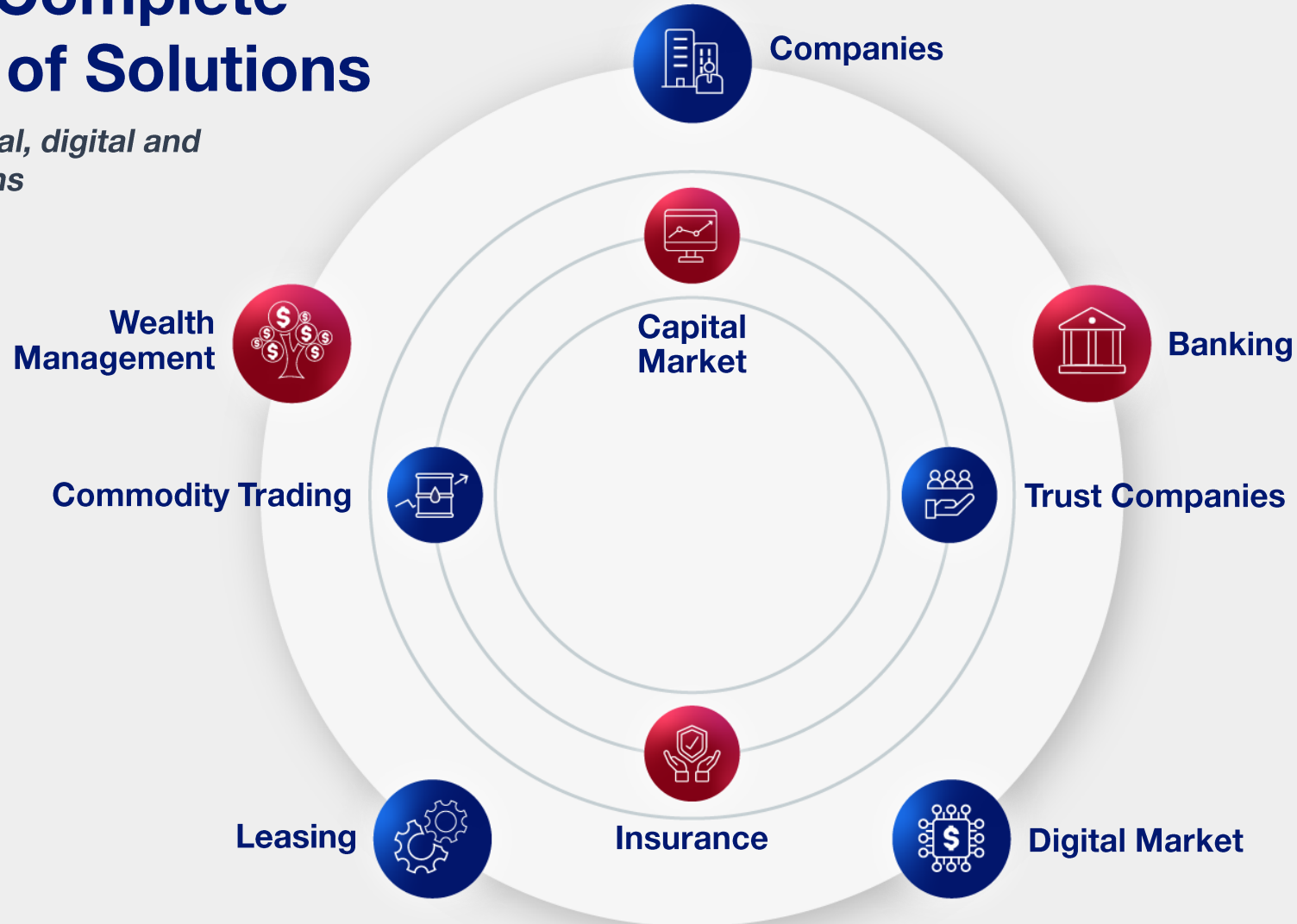
3

Acts of General Applications include

- i. Anti-Money Laundering and Anti Terrorism Financing and Proceeds of Unlawful Activities Act 2001
- ii. Mutual Assistance in Criminal Matters Act 2002
- iii. Malaysia Anti – Corruption Commission Act 2009
- iv. National Anti- Financial Crime Centre Act 2019
- v. BNM's Foreign Exchange Notices

Creating A Complete Ecosystem of Solutions

Available in conventional, digital and Shariah-compliant forms



Fiscal Structure and Corporate Entity Benefits

Tax Structure

- Income from Labuan trading activities (as defined) taxed at 3% of net audited profits
- Non-trading income (e.g. from investment holding activities) attracts no tax
- Clear and prescribed Substance Requirements based on business activities via a Gazette issued by Parliament of Malaysia
- Fiscal Regime is perpetual not time bound

Other Benefits

- Exemption from withholding tax on dividends, interest, royalties, service fees and lease payments to non-residents
- Exemption from stamp duty
- Access to most of Malaysia's 70+ double taxation agreements*
- 100% foreign ownership
- Access to live in Malaysia

** Labuan entities enjoy the benefits of most of Malaysia's tax treaties, but certain treaties have specifically excluded Labuan entities from treaty benefits*

**Business and
Investment
Activities**



Home to International Brands

Banks



Insurance & Captives



Trust Companies



Leasing



Labuan International Trading Companies (LITCs)



Digital Financial Services



Labuan IBFC is NOT a Tax Haven

Typical Tax Haven Characteristics

No or nominal tax rate

Non-compliance to international standards and minimal enforcement

Lack of transparency

No or unwillingness to exchange information

Absence of substance requirements

Labuan IBFC's unique Midshore features

Tax is imposed on Labuan trading activities, provided substance requirements are met in order to enjoy preferential tax rates

Compliant or largely compliant as assessed by International Standard Setting Bodies (i.e. OECD, IMF, FSAP, APG Mutual Evaluation Exercise Assessment & FATF, GIFCS and IOSCO)

- *Labuan (Malaysia) - a member of BEPS Inclusive Framework and signatory of the Multilateral Instrument on BEPS*
- *Complied with FHTP's tax standards on transparency*
- *Wide network of Tax Treaty and Mutual Legal Assistance on Tax Matters*
- *Has 23 MOUs with other jurisdictions' supervisory body – mutual supervisory collaborations*

Prescribed economic substance requirements in Labuan, i.e., local spending and employment

Why Labuan IBFC?



REGIONAL OPPORTUNITIES

Southeast Asia is estimated to be 4th largest economy by 2050, investors and businesses can gain access to a larger marketplace into the region via Labuan IBFC.



EFFICIENT AND FLEXIBLE TAX SYSTEM

Simple and straightforward tax system to carry out a Labuan business activity as defined by the Labuan Business Activity Tax Act 1990.



SUBSTANCE CREATION AND TRANSPARENCY

Complying with the latest global regulatory standards including requirements for transparency and substance creation.



WELL - REGULATED JURISDICTION

A robust regulatory framework to ensure entities remain in compliance with international best standards.



EASE OF DOING BUSINESS

Ease of doing business with cost – effective solutions and structures.

WIDE ARRAY OF SOLUTIONS AND STRUCTURES INCLUDING SHARIAH – COMPLIANT OPTIONS

Banking | Risk Management | Leasing | Wealth Management | Commodity Trading | Protected Cell Companies | International Business Companies

GLOBALLY RECOGNISED INDUSTRY MEMBERSHIPS AND RECOGNITIONS



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<https://twitter.com/LabuanIBFC>

Thank You



Terima Kasih

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INTERNATIONAL TAX DEVELOPMENTS

PRESENTATION BY:
DR VEERINDERJEET
SINGH

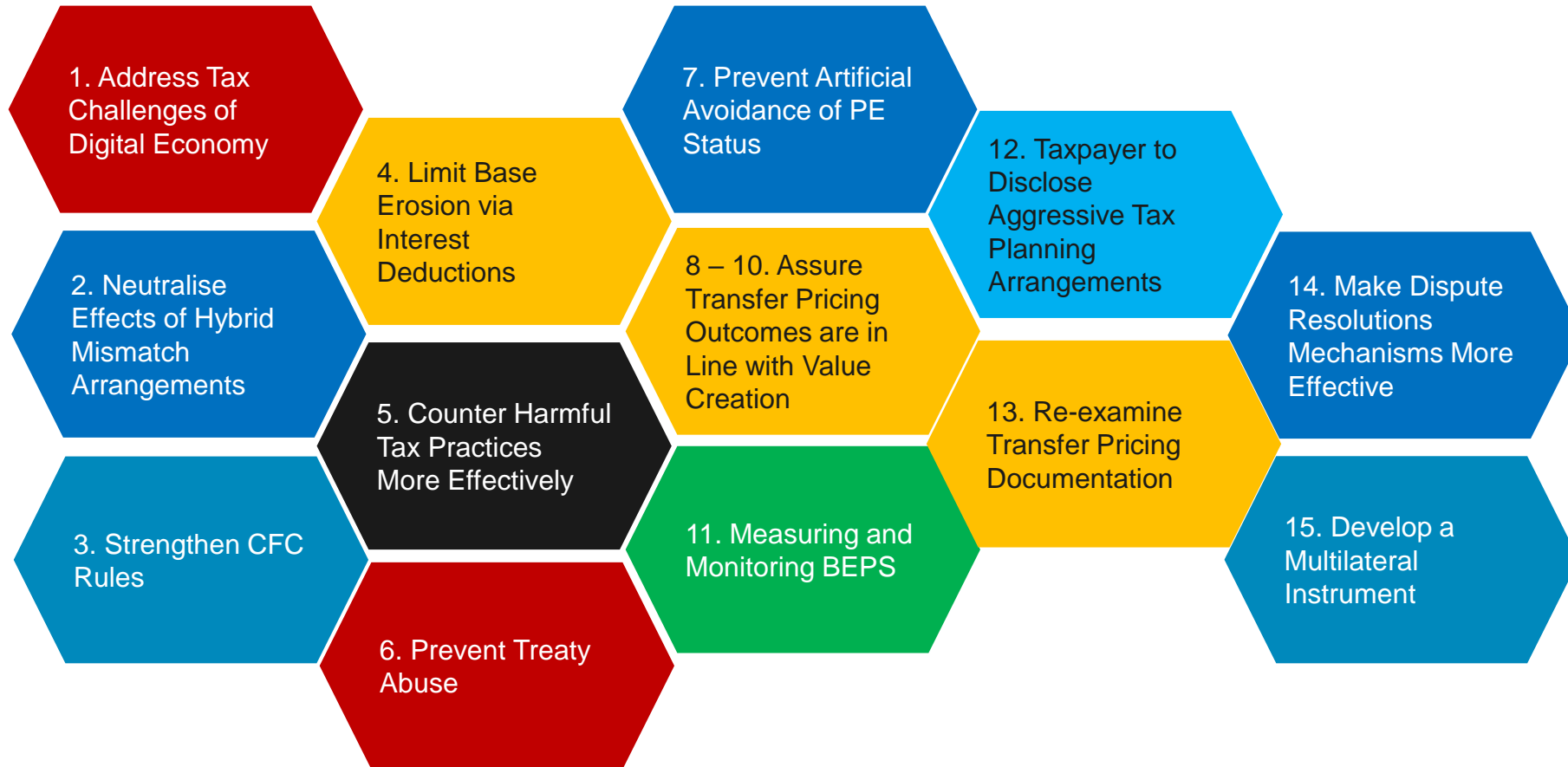
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CHAIRMAN, TRICOR
MALAYSIA



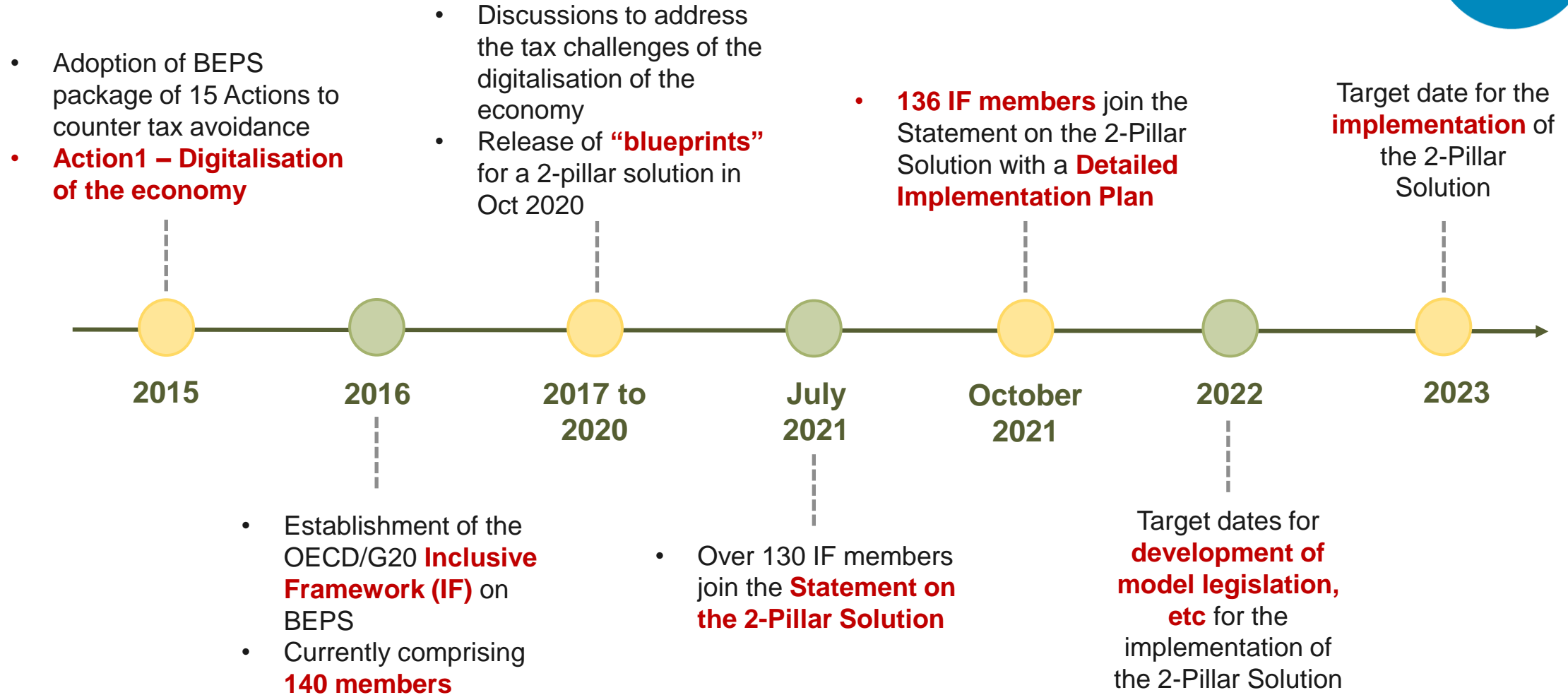
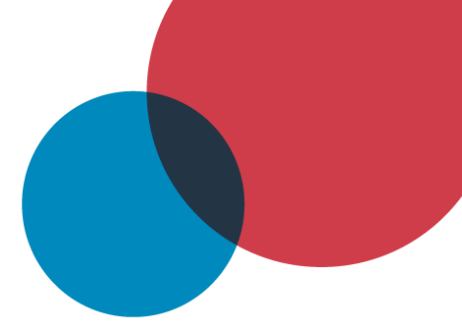
GLOBAL TAX DEVELOPMENTS – OVERVIEW & IMPACT

INTERNATIONAL TAX DEVELOPMENTS

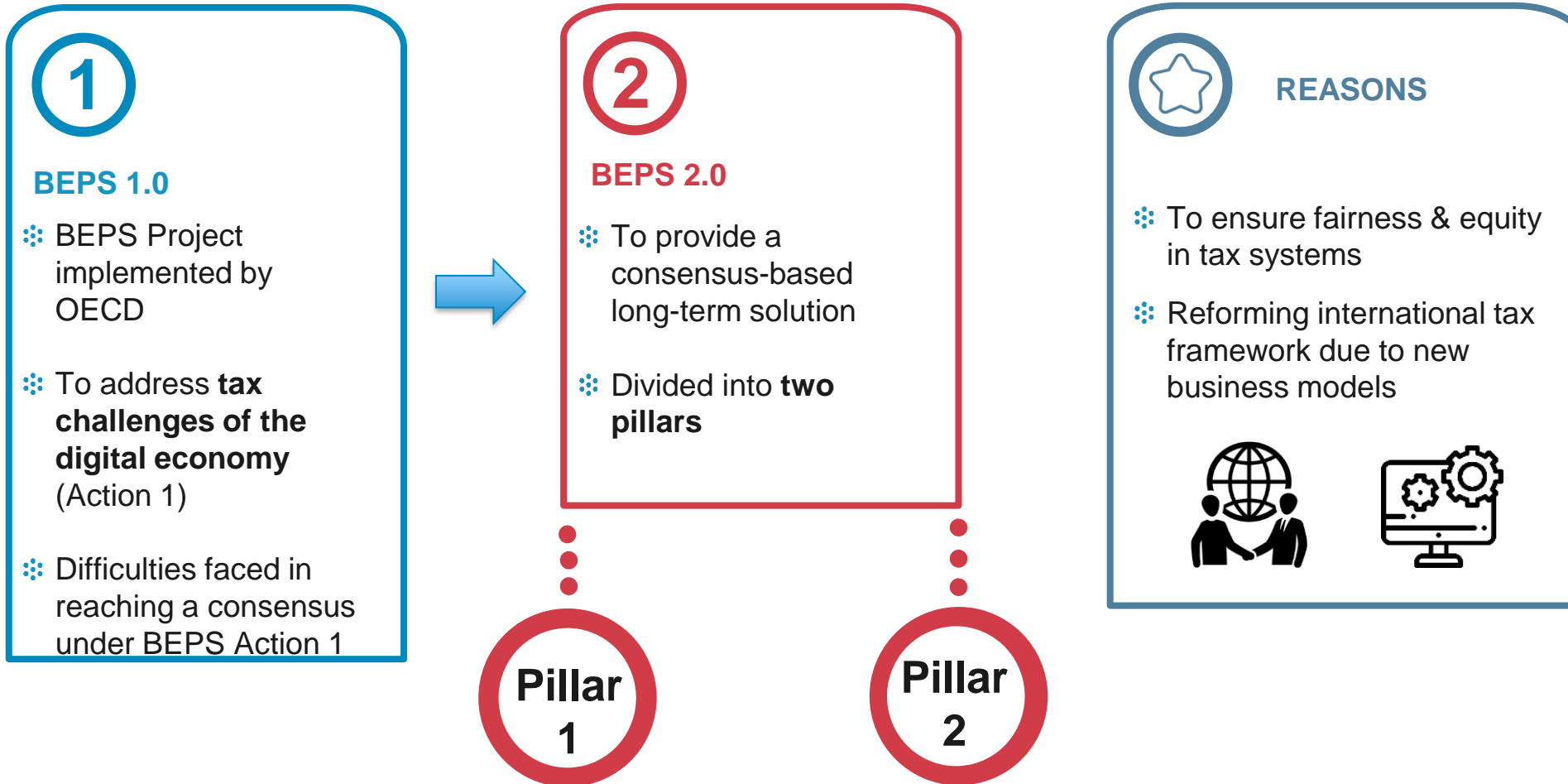
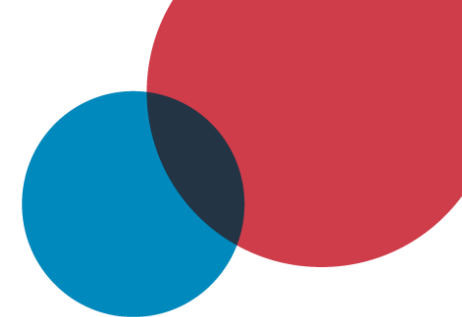
Base Erosion & Profit Shifting (BEPS) Package with 15 Action Plans



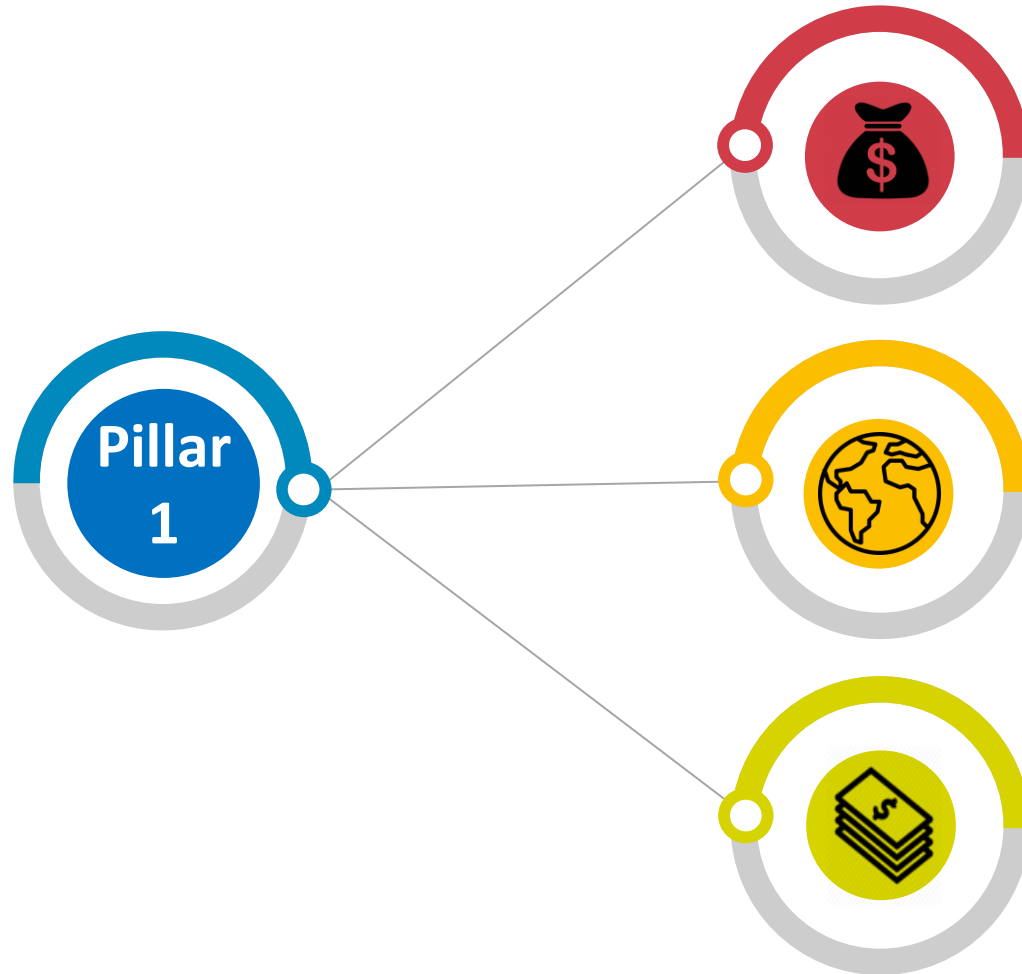
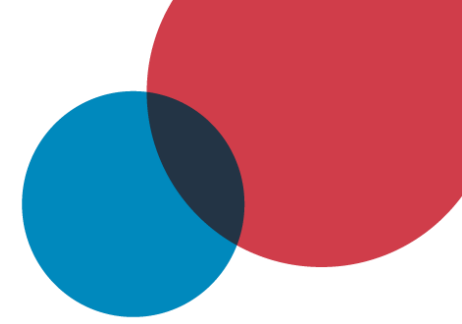
BEPS 2.0: PILLAR 1 & PILLAR 2 – TIMELINE



BASE EROSION AND PROFIT SHIFTING (BEPS)

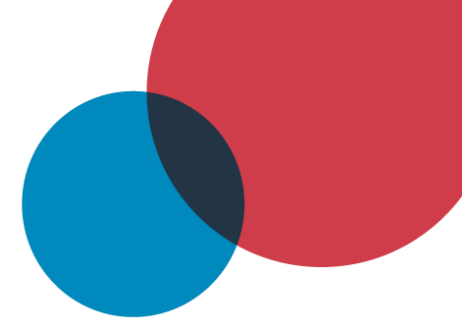


BASE EROSION AND PROFIT SHIFTING (BEPS) – PILLAR 1



- ❖ Focus on **nexus** rules & **profit allocation**
- ❖ Allocate greater share of residual profits to market jurisdictions by using a nexus rule **without reference to physical presence** in a country
- ❖ Who decides? What if there are disputes between countries?
- ❖ Applies to **multinational groups** that have **more than €20bil (RM97bil) in global turnover & profit above 10%** (i.e. PBT / Revenue)
- ❖ Unlikely to impact any Malaysian corporate group

BASE EROSION AND PROFIT SHIFTING (BEPS) – PILLAR 2



Pillar 2



Focuses on other challenges by ensuring large companies pay a **minimum level of tax**



Set a **global minimum tax rate of 15%**



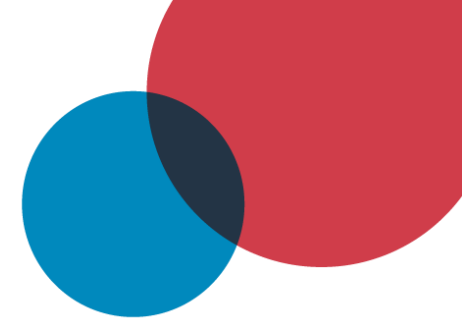
For MNCs which meet or exceeds **annual gross revenue \geq €750mil (RM3.6bil)**



Effective from Year 2023 (Expected)

Future of tax incentives?
May no longer be very effective.....

BASE EROSION AND PROFIT SHIFTING (BEPS) – PILLAR 2 (CONT'D)



Pillar 2



MNCs enjoying tax incentives & low effective tax rate in Malaysia

- Subject to a **“top-up” tax** in their home jurisdiction
- Tax incentive is neutralized at the group level



Malaysia should **re-look at its approach to tax incentives**

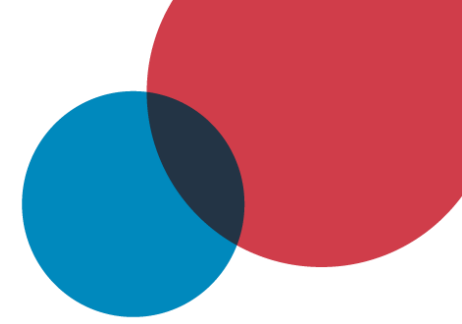


Improve sustainable investment factors & enablers.



To look at **non-tax incentives/ assistance, business friendly policies, etc.**

EU WATCHLIST (“GREY LIST”)



Impacts countries that receive passive foreign-sourced income, such as dividends, interest and royalties

Malaysia proposes to remove its exemption of tax on all foreign income

Required to commit to EU’s request by 31 December 2022

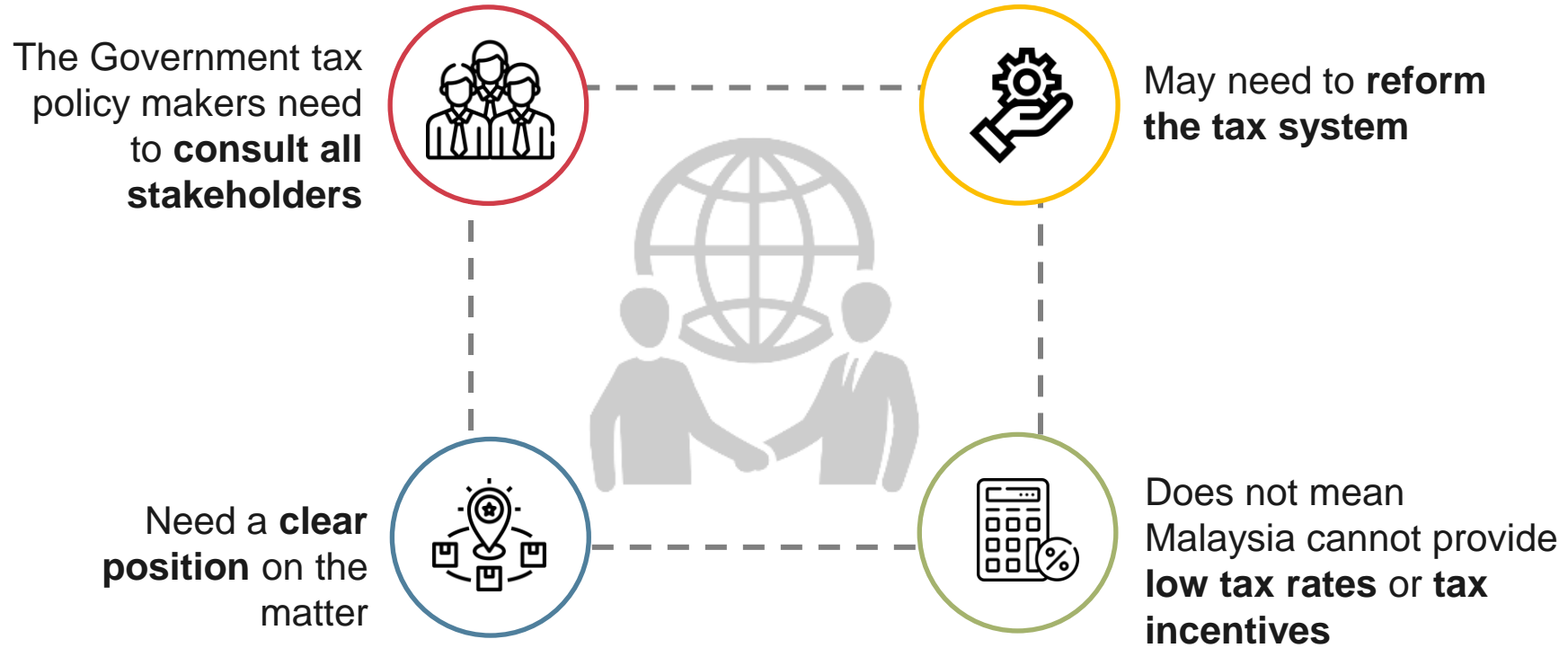
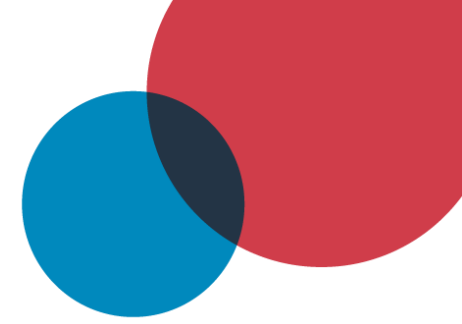


Why not consider the way Hong Kong responded to their inclusion in the “Grey List” by implementing substance requirements

Fundamental change to Malaysia’s tax system – Knee-jerk reaction?

Once the commitment is fulfilled, Malaysia will be removed from the “Grey List”

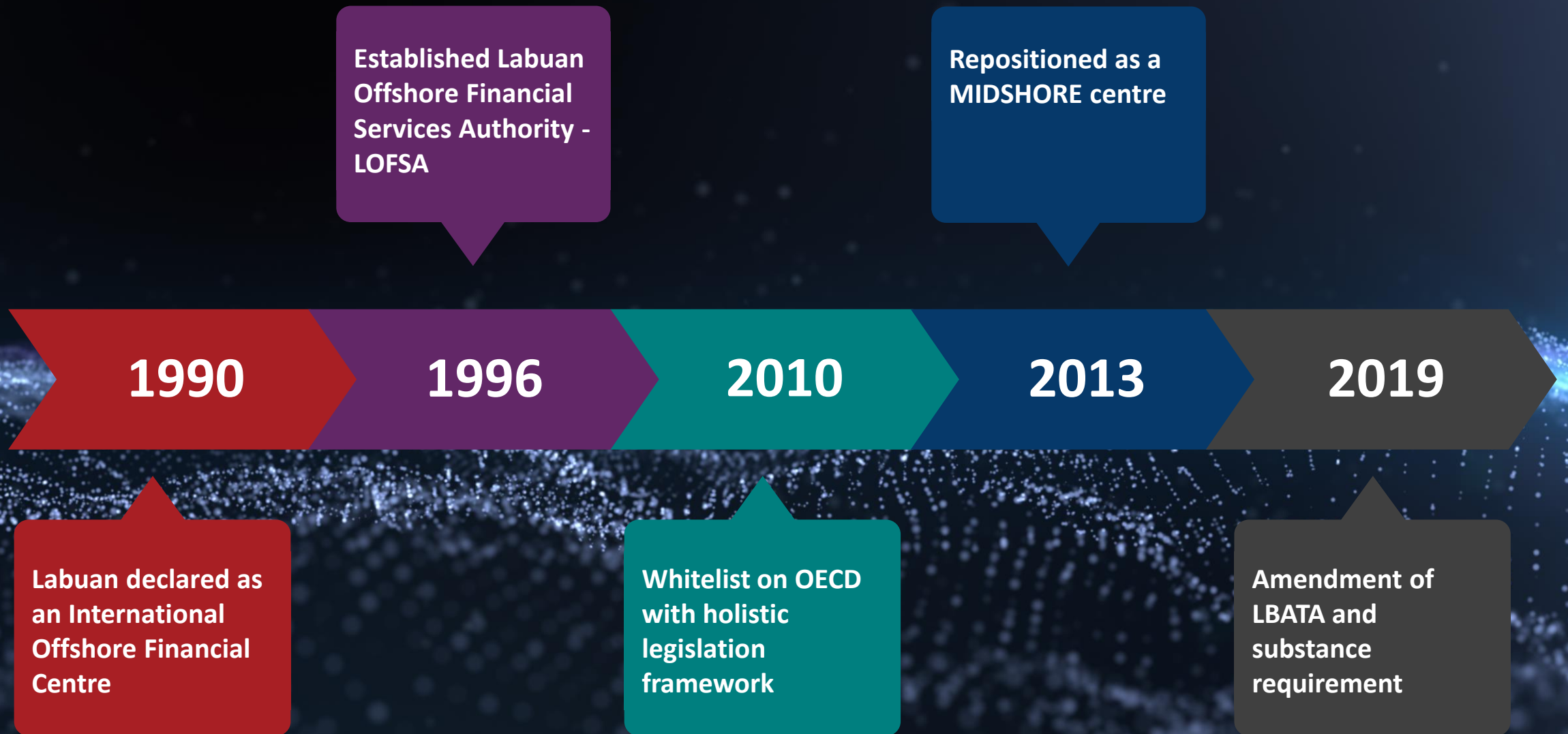
WAY FORWARD



Technical Update: Latest Structures and Solutions for Malaysian PLCs

24 November 2021

By : Catherine YUAN
Tricor Trustco (Labuan) Ltd



- ✓ **Fund Raising – Cash flow**
- ✓ **Captive Insurance - Cost optimization**
- ✓ **Private Foundation - Protection for loved ones**



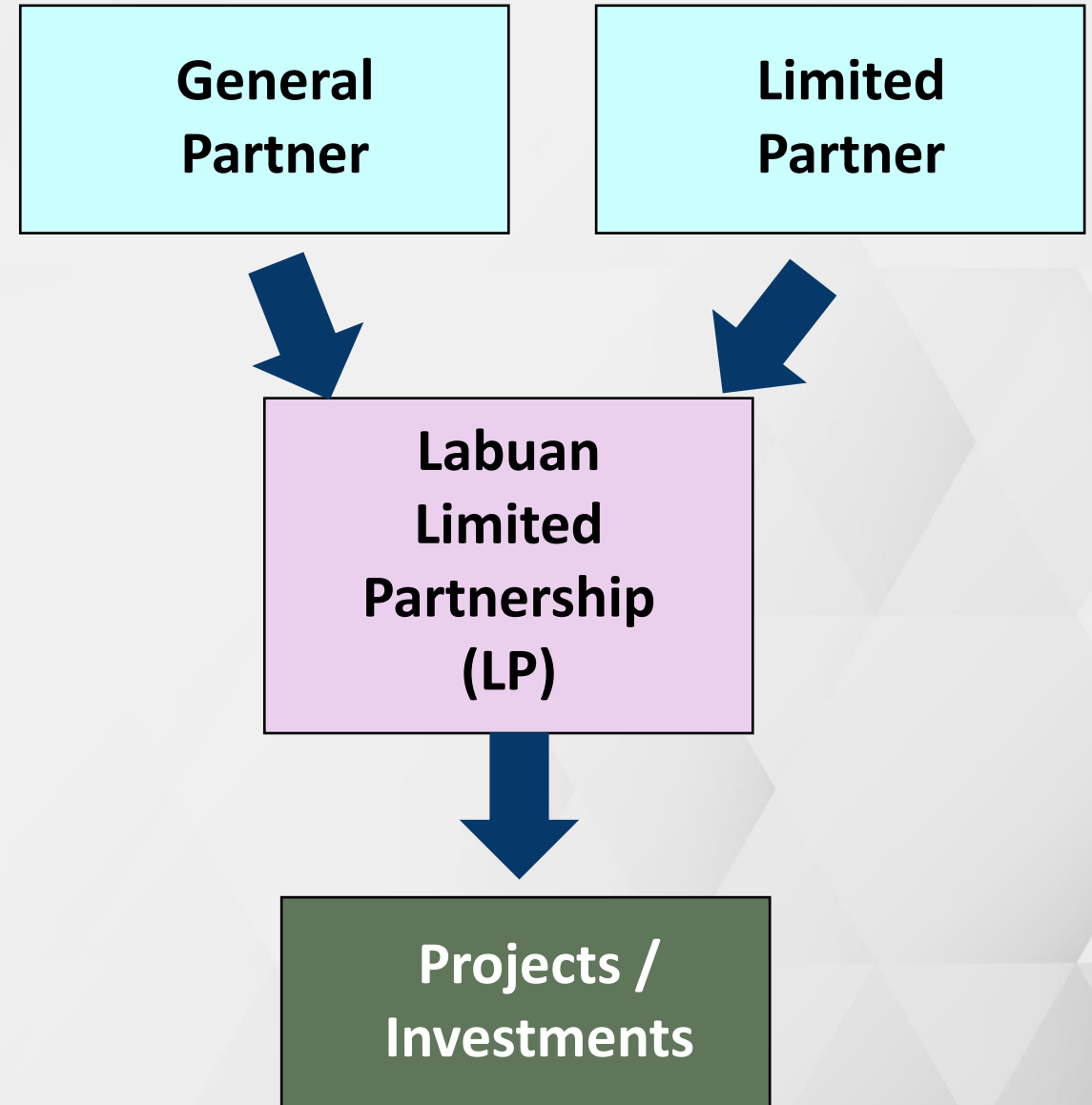


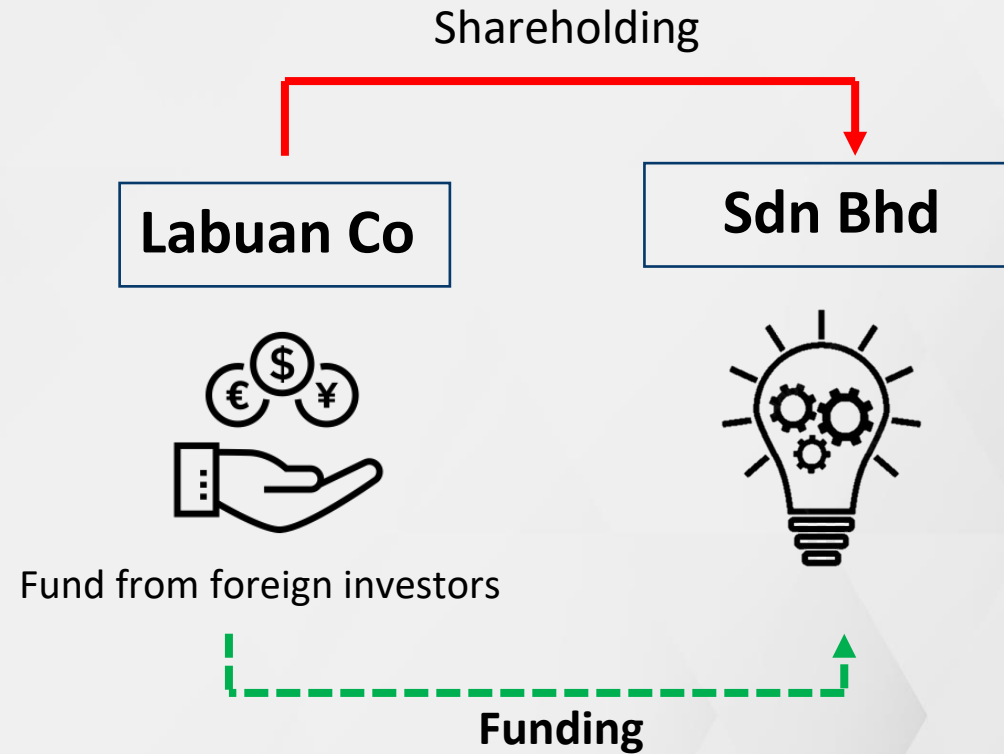
Labuan Limited Partnership (LP)

- General Partner manages the operation, personally responsible for the liabilities
- Limited Partner (Investors) to contribute funds with no voting rights

Labuan Limited Liabilities Partnership (LLP)

- Designated Partner & Limited Partner manages the operation together.
- Joint-Venture business, shielded from liability for partnership obligations
- Mostly used for professional services providers





- ✓ ≥ 50 investors where the initial investment of each is not less than RM500,000 or equivalent in any foreign currency;
- ✓ ≤ 50 investors where the initial investment is not less than RM250,000 or equivalent in any foreign currency;
- ✓ Prospectus or information memorandum lodge to LFSA

* Key digital offerings



Digital Banks



Insurtech

DIGITAL FINANCIAL INSTITUTIONS



Digital Tokens



Digital Securities Dealer



Digital Currency Trading Platform



Digital Custody



Digital Asset Management

DIGITAL SERVICE PROVIDERS



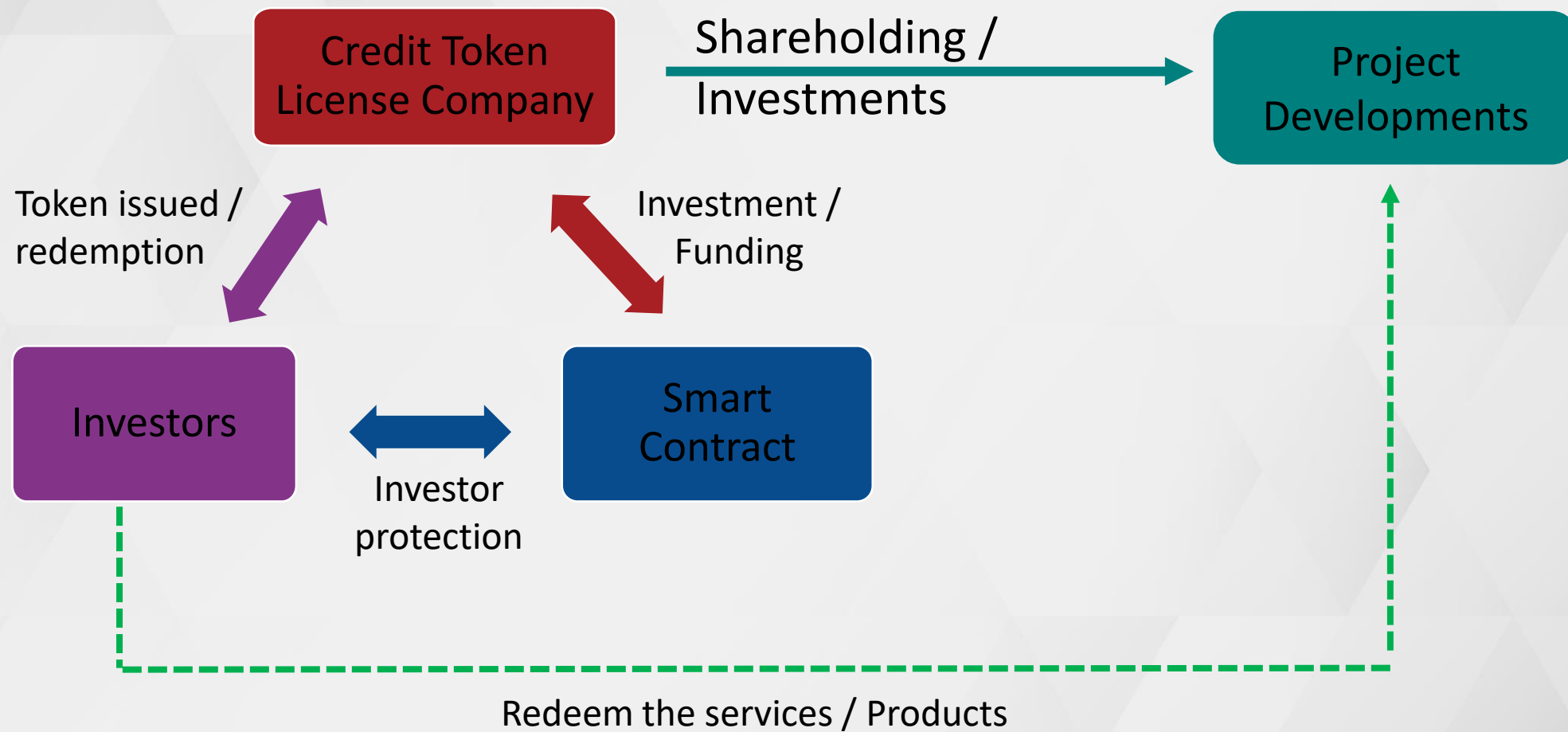
Payment Portal



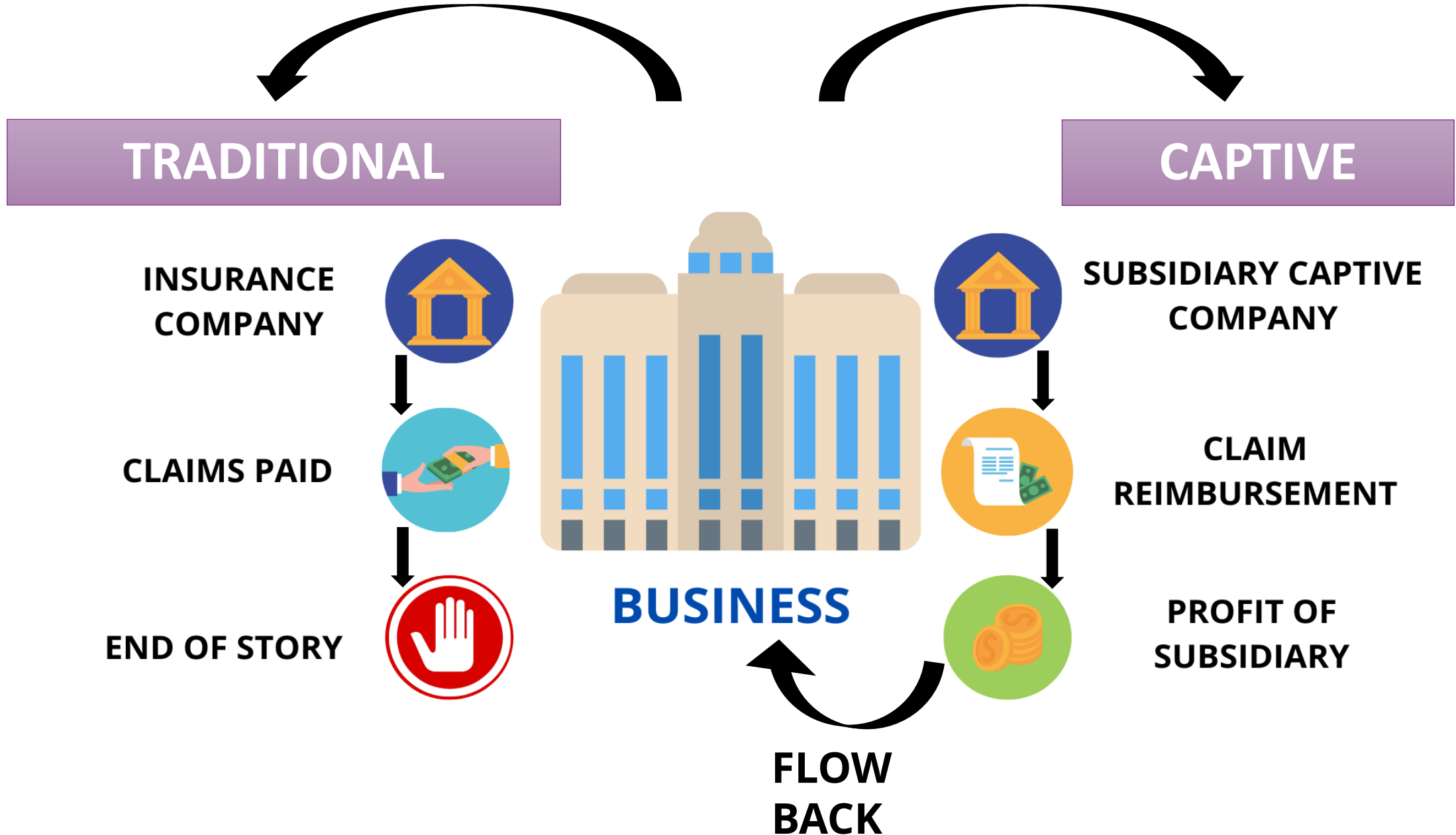
Digital Securities Exchange

DIGITAL PLATFORMS

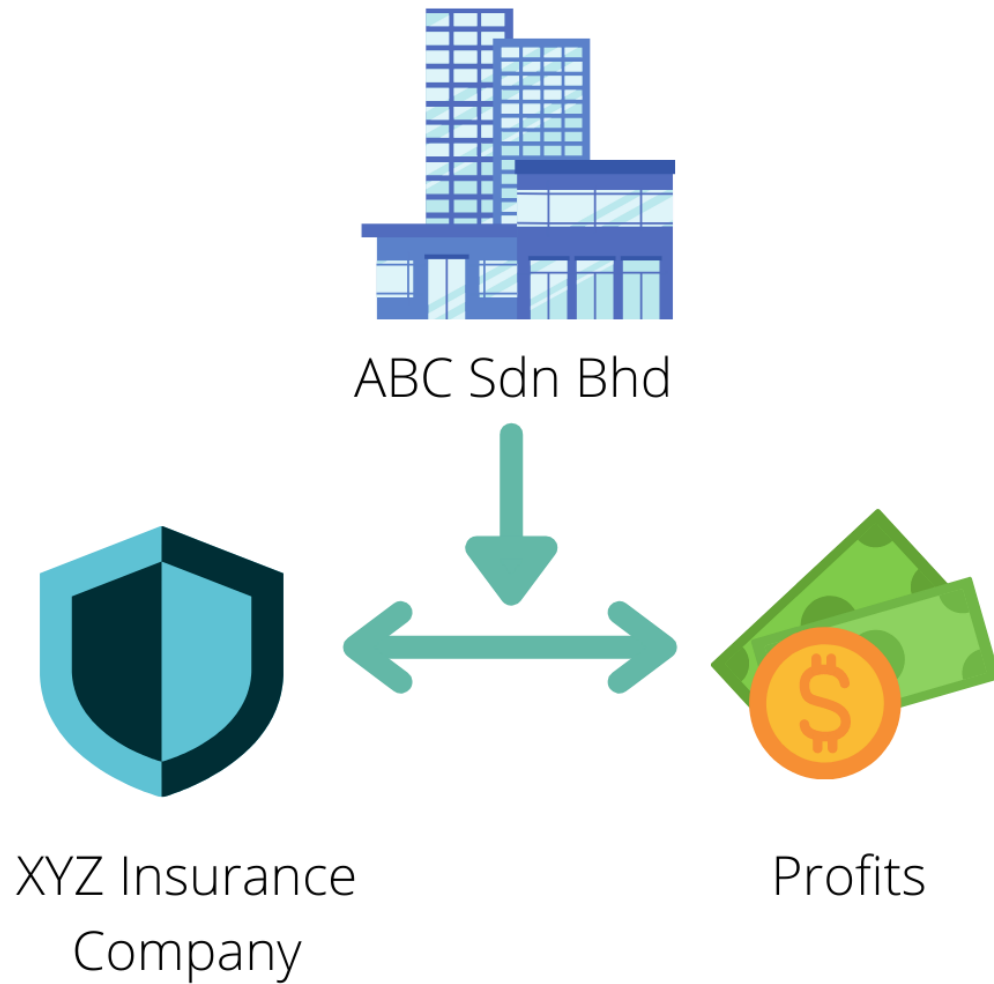
* All can be in Shariah compliant form







TRADITIONAL INSURANCE



CAPTIVE INSURANCE





Labuan IBFC won the 'Asian Domicile' category at APAC Captive Review Awards 2021



Labuan IBFC won the 'International Captive Domicile' Award at the European Captive Review Awards 2021

A close-up photograph of two hands, one from the left and one from the right, holding two interlocking wooden puzzle pieces. The hands are positioned as if they are about to fit the pieces together. The background is a bright, out-of-focus window with greenery visible outside. The text 'Labuan Private Foundation' is overlaid on the left side of the image in a white semi-transparent box.

**Labuan Private
Foundation**



Protection & Privacy



Management & Operation

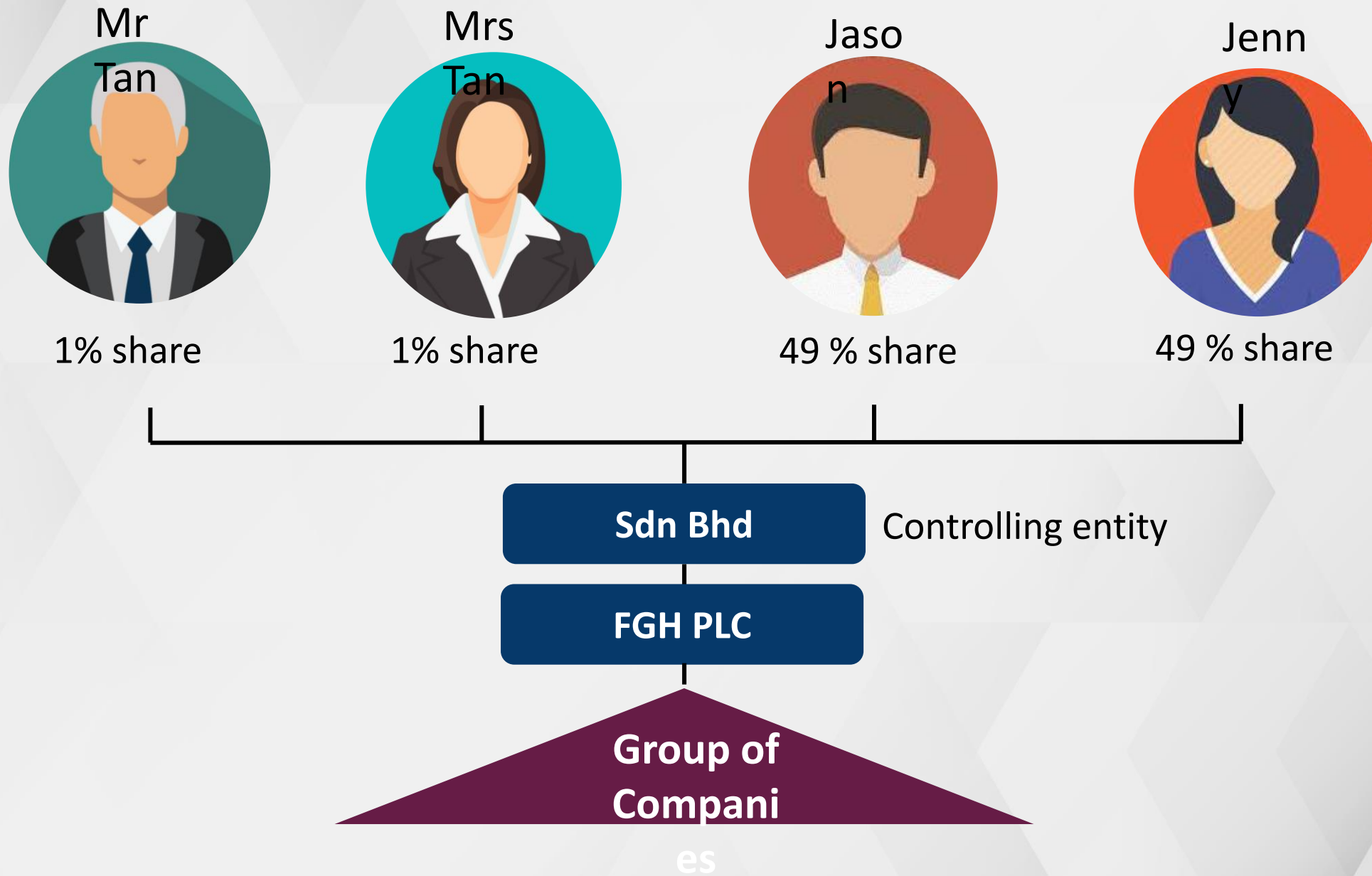


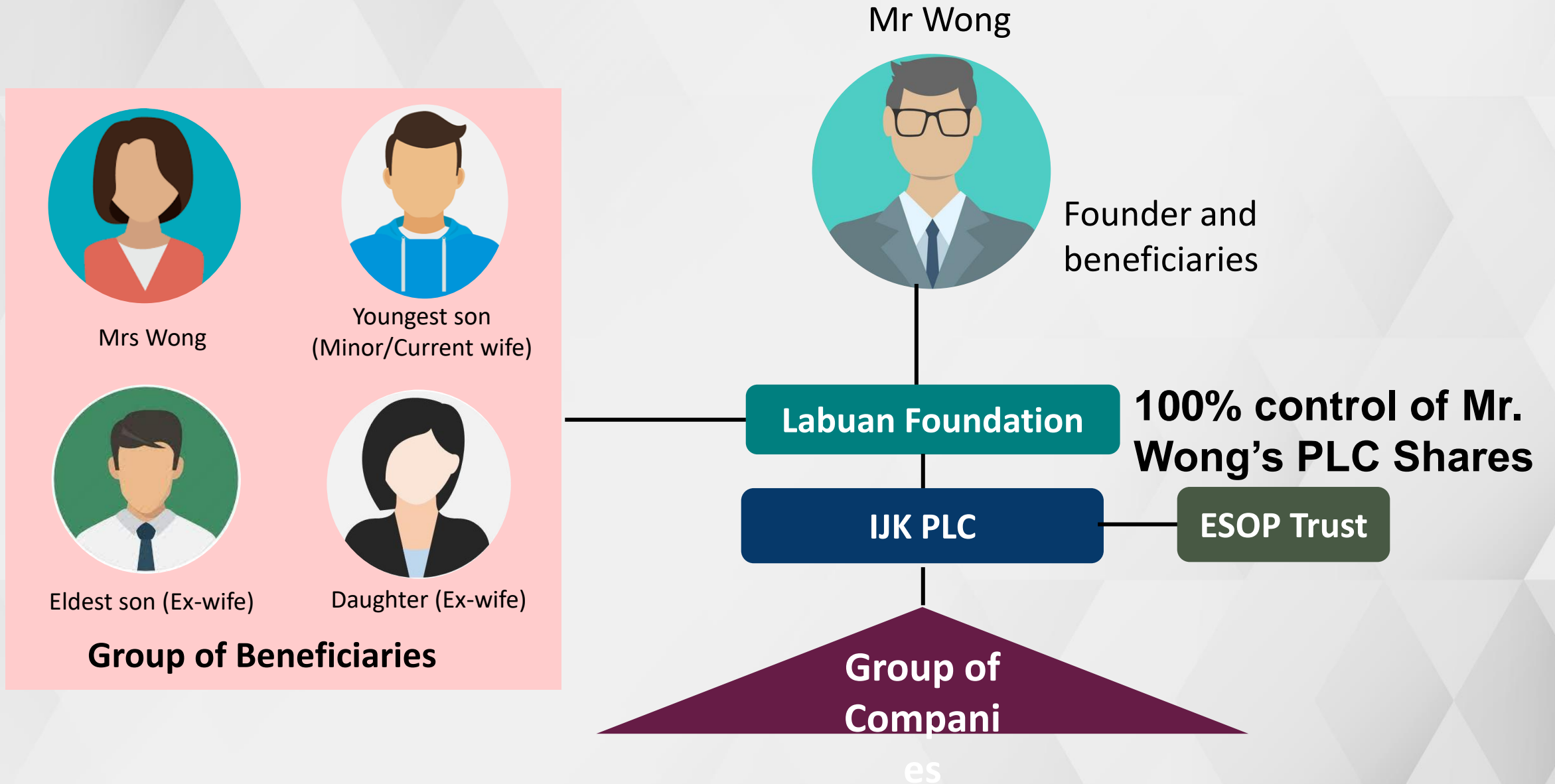
Labuan Private
Foundation

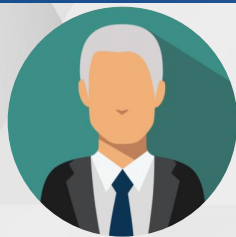
Flexible

Cost Effective

100% Control







Sdn Bhd

FGH PLC

**Group of
Companies**

✓ Risk of Dilution Vs Control

✓ Claims Vs Protection

✓ Family Tussle Vs Family Governance



Labuan Foundation

IJK PLC

**Group of
Companies**

Thank you

Please direct any enquiries to:

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**TRANSFER
PRICING UPDATE
– IMPORTANCE
OF COMPLIANCE**

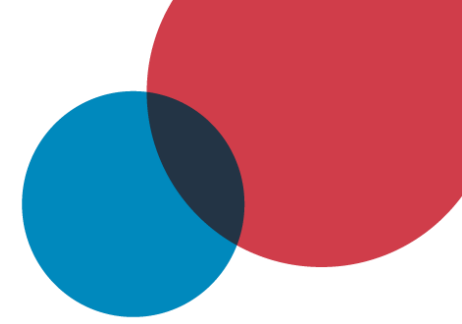
PRESENTATION BY:

LEOW MUI LEE

**SENIOR EXECUTIVE
DIRECTOR, TRICOR
TAXAND**

24 November 2021

TRANSFER PRICING LEGISLATION



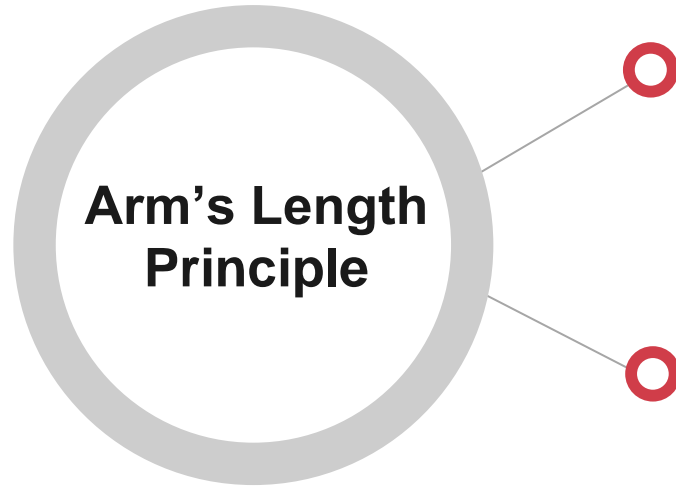
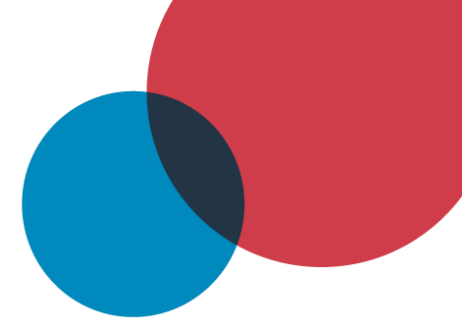
Section 17D
LBATA 1990

w.e.f YA2020

Where a person **enters** into a transaction with an **associated person** for the acquisition or supply of property or services, that person shall determine and apply the **arm's length price**

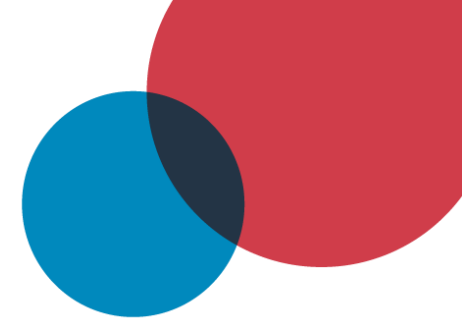
Where the DG has reason to believe that the transacted price is **either less than or greater than the price** in a transaction between independent persons, he may in the **determination of the chargeable profit of the person substitute the price** in respect of the transaction **to reflect an arm's length price**

ARM'S LENGTH PRICE



The **transfer price** should not differ from the **prevailing market price** for a **comparable** transaction

TRANSFER PRICING LEGISLATION



Associated Person

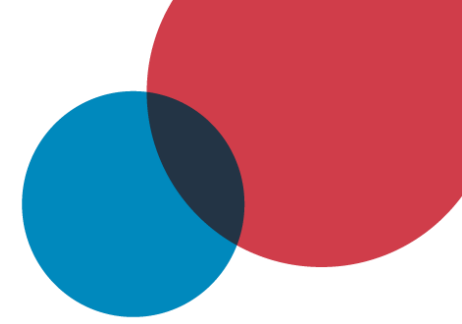
- ❖ Persons one of whom has **control** over the other; or
- ❖ Persons both of whom are **controlled** by some other person

Control

Section 17C(6)(a) definition of “control”

- *A person shall be taken to have control over the other if he exercises or is able to exercise or is entitled to acquire control (whether direct or indirect) over the company’s affairs and in particular,..if he possesses or is entitled to acquire the greater part of share capital or voting*

TRANSFER PRICING LEGISLATION



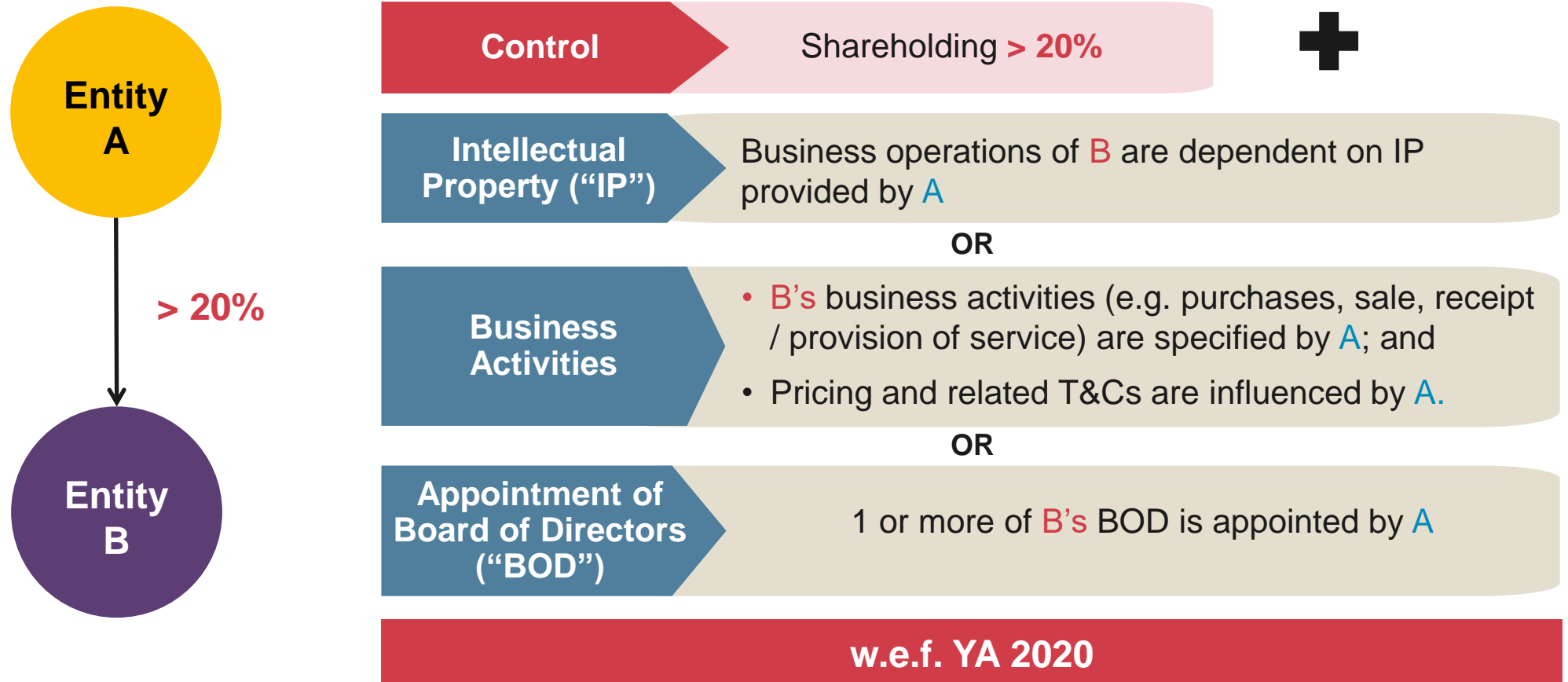
❖ What is 'control'?

❖ Section 17D(5) definition of “control” – w.e.f. YA 2020

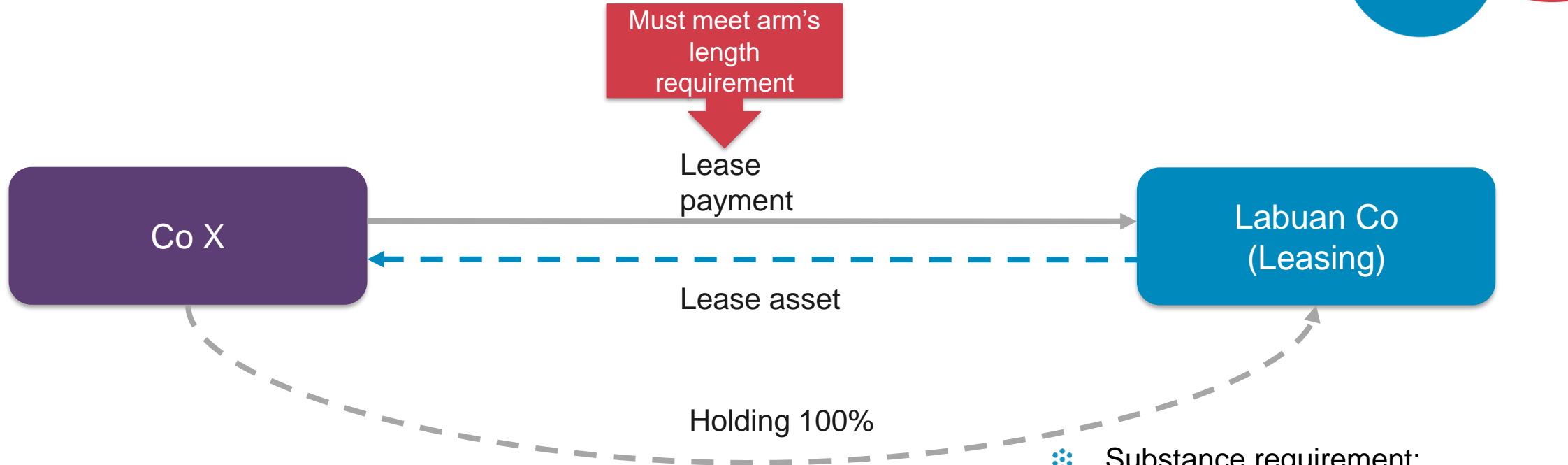
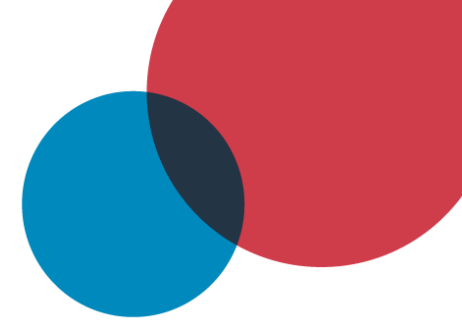
- Refers to persons one of whom own shares of the other person, or a third person who owns shares of both persons, where the percentage of the share capital held in either situation is *twenty per cent* or more and –
 - a. The business operations of that person *depends on the proprietary rights*, such as patents, non-patented technological know-how, trademarks, or copyrights, provided by the other person or a third person;
 - b. The *business activities*, such as purchases, sales, receipt of services, provision of services, of that person *are specified* by the other person, and the *prices* and other conditions relating to the supply are *influenced* by such other person or a third person; or
 - c. Where one or more of the *directors or members* of the board of directors of a person are *appointed* by the other person or a third person.

TRANSFER PRICING LEGISLATION

❖ Section 17D(5) definition of “control”



CONTROLLED TRANSACTION - EXAMPLE



- ❖ Substance requirement:
 - 2 FTE
 - RM100,000 annual operating expenditure in Labuan
- ❖ Substance requirement met:
Chargeable profits @ 3%
- ❖ Substance requirements not met:
Chargeable profits @ 24%

TPD – BASIS FOR ARM'S LENGTH POSITION

Other documents

- Intercompany agreements, basis to support transfer pricing analysis

Benchmarking

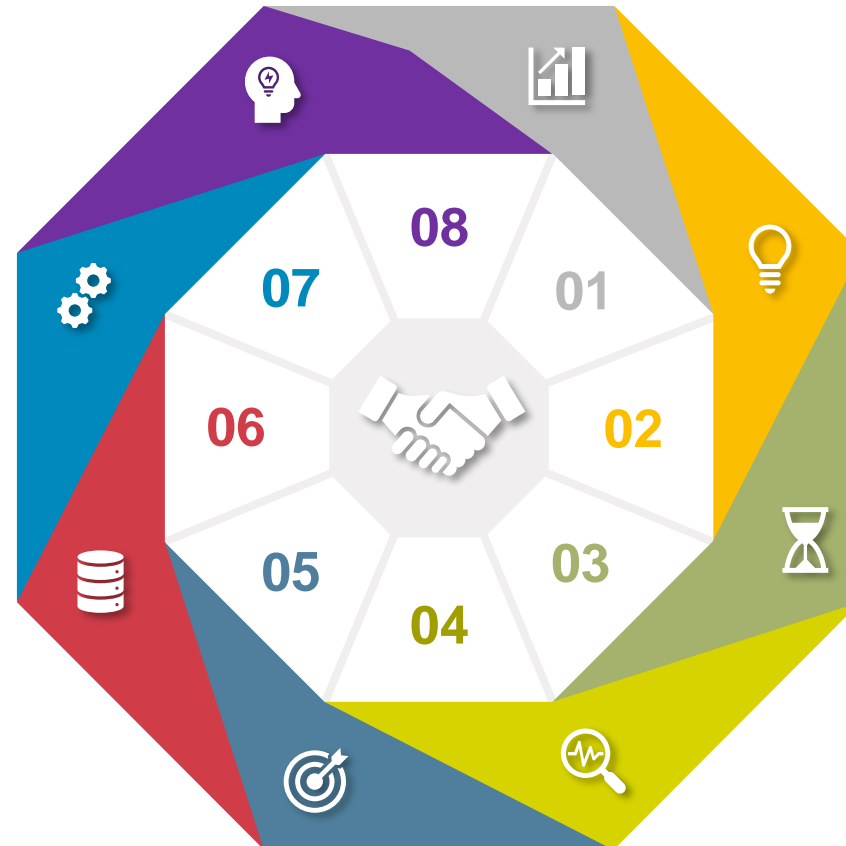
- Where TNMM is selected, external benchmarking required in determining arm's length price

Selection of TP method

- Which of the 5 methods are applied?
- Basis for selection

FAR analysis

- Comparability, functions, assets & risks analysis



Organisational structure

- Includes organization chart

Business description

- Details of business activity, industry and market conditions

Controlled transactions

- Who is Labuan Co transacting with?
- Where are related companies located?

Business strategies & pricing policy

- Factors that influence the setting of prices
- Strategies and related assumptions

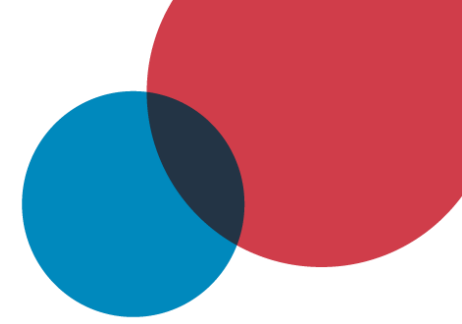
PENALTY FOR FALSE DECLARATION



❖ Section 25 –

- ❖ Where any person willfully or negligently makes an **incorrect** or false statutory declaration under section 5, or 10, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding **one million ringgit** or to **imprisonment** for a term **not exceeding three years** or to both

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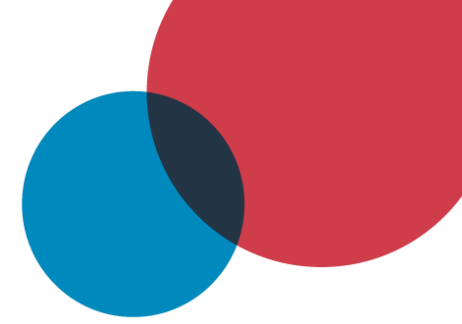
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