Labuan IBFC
International Business and Financial Centre, Malaysia

A GUIDE TO CAPTIVE INSURANCE

WHAT IS A CAPTIVE?

Establishing a captive is not merely about incorporating a company, instead it is about forming a new insurance company. While for many, the decision to obtain commercial insurance cover may be appropriate, for others, formal self-insurance through the creation of a captive insurane company may be more effective to meet a company's strategic goals.

For businesses with unique or hard-to-place risks, or with risks that are priced too high by the traditional market, captives can be used to provide a bespoke insurance solution that can form a major component of an organisation's risk management programme and can support the parent company's overall risk management strategy.

A captive is an insurance or reinsurance company established by a non-insurance parent company. A captive insurance business offers to insure the risks of its parent or related/associated corporations. Such risks include any legal risk that may be underwritten by a commercial insurer.

Over 75% of the world's Fortune 500 companies are parent owners of captive insurance companies, with the total captive premium income exceeding USD100 billion via the approximate 7,000 captives established worldwide.

In Asia, the captive insurance sector has the potential for significant growth, as businesses in the region increasingly consider self-insurance vehicles as part of their risk management strategies.

WHY FORM A CAPTIVE?

Key benefits of setting up a captive include:
- To insure an otherwise 'uninsurable' risk
- Control an entity's own insurance programme, that in turn will stabilise the premiums paid
- Create a direct access to the reinsurance market thus, reducing the premiums payable
- Consolidate the deductibles across the entity's group of companies
- Reduce the dependency on commercial insurers/reinsurers
- Insulate the entity's group of companies from insurance market cycles.

WHAT ARE THE TYPES OF CAPTIVES AVAILABLE IN LABUAN IBFC?

A captive insurance entity in Labuan IBFC may include, but is not limited to, the following forms:

- pure/single captive
- group/association captive
- multi-owner captive
- master rent-a-captive (MRAC)
- subsidiary rent-a-captive (SRAC)
- captive using protected cell company (PCC)

A captive insurer in Labuan IBFC may:

- act as either a direct insurer or a reinsurer
- underwrite property and casualty businesses as well as contingency coverage. A separate company must be established for a captive insurer wishes to underwrite life insurance
- access to the reinsurance market at wholesale rates.

With the different types of captive, in addition to owning a captive insurance company, the risk owner can also choose to "rent" a captive from an already established captive structure providers via a MRAC or PCC.

A MRAC provides captive facilities and services to one or more SRAC. MRAC and SRAC are entities with separate licences, assets and accounts. A SRAC may leverage on the working capital of its MRAC by meeting the minimum regulatory capital requirement. This is contractually based and not a statutory protection like the PCC captive.

A PCC is a single legal entity that has the ability to create multiple cells and provides these segregated cells the ability to take on differentiated assets and liabilities, while allowing each cell to operate independently of each other. Each respective cell is ring-fenced, protected from the debts and liabilities of the other cells.

WHY CONSIDER A CAPTIVE IN LABUAN IBFC?

- Labuan IBFC is a substance-enabling jurisdiction*:
  - With the global implementation of Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Co-operation and Development (OECD), it is essential that all companies including captive insurance entities are able to demonstrate that it is able to create or has substance in the jurisdiction the captive is domiciled in
  - Labuan IBFC offers a cost-efficient way to develop substance in the region as it provides:
    - an internationally-recognised regulatory framework
    - a facilitative and business-friendly legislation
    - a wide choice of risk management entities
    - lower operation costs
    - flexibility through co-location in Kuala Lumpur, Malaysia, and
    - a similar time zone with major Asian cities.
- Shariah-compliant captives are available as an option
- Captives in Labuan IBFC may obtain reinsurance cover from any reinsurance company
- The captive insurance entities may also write third party risks provided it is approved by the regulator, Labuan Financial Services Authority (Labuan FSA)
- The capitalisation and surplus requirements for captives are competitive compared to other jurisdictions in the region
- Access to an insurance and reinsurance ecosystem.

*WHAT IS A SUBSTANCE-ENABLING JURISDICTION?

In light of the worldwide adoption of OECD's BEPS framework, captive owners will need to demonstrate that they have economic substance in the domiciles they have chosen to set-up their captives in. Examples of what may constitute substance include:

- Annual General Shareholders' and Board of Directors' meetings held in the captive's domicile
- Directors' duties are performed in the domicile
- Accounting books and records are prepared and maintained in the domicile
- There is an operational bank account in the domicile
- Key personnel are located in the domicile
- Key decisions regarding the captive are made in the domicile.

WHAT ARE THE TAX ADVANTAGES OF ESTABLISHING A CAPTIVE IN LABUAN IBFC?

- Tax efficiency under the Labuan Business Activity Tax Act 1990 provides captives a tax rate of 3% of net audited profits
- An irrevocable election to be taxed under the Malaysia Income Tax Act 1967
- No withholding tax on dividends/interest/royalty payments
- No stamp duty
- Liberal exchange control environment and currency neutral
- Access to over 70 double taxation agreements via Malaysia's wide treaty network.

HOW TO FORM A CAPTIVE?

Submit application for a captive licence to Labuan FSA via a licensed underwriting manager/captive manager

Approval, underwrite business and pay annual captive licence fee

FEES

A Labuan captive insurance company is required to pay the following annual fees to Labuan Financial Services Authority on or before 15 January each year:

Captive	USD3,000
MRAC	USD4,000
SRAC	USD1,000
PCC	
• On general assets of the Labuan PCC (core)	USD9,500
• On each individual cell	USD3,000

The fees above exclude the cost of engaging a Labuan service provider

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