

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.

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 total captive premium income exceeding USD100 billion, via the approximately close to 7,000 captives established worldwide.

In Asia Pacific, many large conglomerates are beginning to recognise captives as a key element in facilitating business efficiency. According to Aon's Asia Market Review 2017, the region is experiencing "an unprecedented level of sophistication in captive owners" and the increase in the take-up rate of captives shows that Asian corporations are using captives as a risk management and mitigation tool.

WHY FORM A CAPTIVE?

Key benefits of setting up a captive include:

- To insure otherwise 'uninsurable' risk
- Control an entity's own insurance programme, which in turn will stabilise the premiums paid
- Create direct access to the reinsurance markets, thus reducing premiums payable
- Enjoy potential tax benefits
- Consolidate deductibles across the entity's group of companies
- Reduce 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
- Master rent-a-captive
- Subsidiary rent-a-captive
- Captive using Protected Cell Company (PCC)*
- Multi-owner captive.

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.

*LABUAN PROTECTED CELL COMPANY (PCC)

A Labuan protected cell company (PCC) may be incorporated as a Labuan company or converted from an existing Labuan company. It is a limited liability company with a legal entity that has the ability to form 'cells'. A Labuan PCC may comprise:

- a core for holding non-cell assets or general assets; and
- any number of cells with the intention of segregating and protecting the assets of each respective cell.

The core and the individual cells created are not separate legal entities. However, each cell is legally separated from other cell and each has sufficient attributes to carry out business independently under the 'umbrella' of the Labuan PCC.

WHY CONSIDER A CAPTIVE IN LABUAN IBFC?

- Labuan IBFC is a substance-enabling jurisdiction**:
 - With the global implementation of the Action Plan on 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:
 - internationally-recognised regulatory framework
 - facilitative and business-friendly legislation
 - 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.
- It provides access to the region and Malaysia's strong direct insurance market
- 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 captive are competitive compared to other jurisdictions in the region
- Access to readily available insurance and reinsurance ecosystem with the presence of many insurance/reinsurance players.

****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
- There is participation in the management of the captive from the domicile
- Key personnel are located in the domicile
- Key decisions regarding the captive are made in the domicile.

To facilitate these requirements, midshore jurisdictions such as Labuan IBFC allows captive owners to build/create substance in a cost-efficient manner. As it stands, all captives in Labuan has the option to establish an operational management office in Labuan or appoint an underwriting manager. The captives set-up in the midshore jurisdiction are also required to submit yearly audited financial statements.

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 chargeable profits
- An irrevocable election to be taxed under the Malaysia Income Tax Act 1967 can also be made providing a headline tax rate of 24%
- No withholding tax on dividends/interest/royalty payments
- No stamp duties
- Liberal exchange control environment and currency neutral
- Access to over 80 double taxation agreements via Malaysia's wide treaty network.

HOW TO FORM A CAPTIVE?

Conduct a feasibility study



Analyse loss profile of the company



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



Register a company in Labuan IBFC through a Labuan trust company/company secretary



Appoint a captive insurance management company/licensed underwriting manager



Appoint a director and a company secretary



Upon licence approval, underwrite business and pay annual captive licence fee

WHAT ARE THE KEY REQUIREMENTS FOR ESTABLISHING A CAPTIVE IN LABUAN IBFC?

1. Applicants must maintain a minimum paid-up capital or working fund as specified amount below in any foreign currency with a bank in Labuan IBFC, based on the type of captive license held:

PAID-UP CAPITAL / WORKING FUNDS	AMOUNT
<ul style="list-style-type: none">• Pure/Single captive• Group/Association captive• Multi-owner captive	MYR300,000
<ul style="list-style-type: none">• Master rent-a-captive• Captive using PCC	MYR500,000

2. Applicants must also:
 - establish an operational management office in Labuan, managed by a management team that has adequate knowledge and expertise in the insurance business; or alternatively
 - appoint a licensed Labuan underwriting manager/captive manager.
3. The person in control, for example the director or principal officer of a captive insurer must be fit and proper, with the appointment receiving prior approval from Labuan FSA.
4. Applicants must be a member of the Labuan International Insurance Association, the Association representing the entire insurance fraternity in Labuan IBFC.

FOR MORE INFORMATION, LOG ON TO WWW.LABUANIBFC.COM

LABUAN IBFC INCORPORATED SDN BHD (817593D)

SUITE 3A-2, LEVEL 2 BLOCK 3A
PLAZA SENTRAL, JALAN STESEN SENTRAL
KL SENTRAL, 50470 KUALA LUMPUR
MALAYSIA

TEL +6 03 2773 8977
FAX +6 03 2780 2077
EMAIL info@ibfc.com

Labuan IBFC Incorporated Sdn Bhd, the official promotion and marketing agency for Labuan International Business and Financial Centre, Malaysia

Disclaimer:
This document provides general information on Labuan IBFC and should not be relied upon when formulating business decisions, nor should it be treated as a substitute for professional advice pertaining to particular business circumstances. While all information herein has been prepared in good faith, no representation or warranty, expressed or implied, is made and no responsibility or liability will be accepted by Labuan IBFC Incorporated Sdn Bhd or Labuan Financial Services Authority as to the accuracy or completeness of this document. Further, this document does not include any statement or opinion with regard to the laws governing Labuan IBFC or Malaysia and specific legal advice should always be sought from qualified lawyers and/or professional advisors. In addition, this document is not directed to any person in any jurisdiction where (by reason of that person's nationality, residence or otherwise) this publication or availability of any services offered within it, is prohibited and deemed unlawful. Please note that information contained herein is subject to change without prior notice.