



# LABUAN PROTECTED CELL COMPANIES (FOR CAPTIVE INSURANCE/TAKAFUL BUSINESS)

Protected Cell Companies (PCC) provide an alternative solution to standard corporate structures. As one of the innovative business structures on offer in Labuan IBFC, PCC may be structured to further enhance the insurance industry (captive insurance/takaful), particularly in optimising for maximum protection and benefit and also, flexibility in managing risk portfolios. They can also be used as an efficient tax planning tool, besides serving as an effective asset protection tool.

## Key Benefits of PCC

- > **Regulatory Recognition:** Operates under a robust, internationally recognised legal and regulatory framework
- > **Tax Efficiency:** A tax-efficient jurisdiction to facilitate international businesses
- > **Comprehensive Solutions:** Offers a full suite of solutions for business and investment structures to support cross border transactions, business dealings and wealth management needs.
- > **Treaty Benefits:** Provides access to Malaysia's double taxation treaty network with more than 70 countries.
- > **Tax Advantages:** No withholding tax on income distributions and no stamp duty on instruments related to Labuan business activities, constitutional documents, or share transfers in a Labuan entity; subject to compliance with Economic Substance Requirements and approval from the Inland Revenue Board

## Structure and requirements of PCC

- > A Labuan PCC is a limited liability company that can form one or more cells segregate and protect the assets of each cell.
- > Neither the core nor the individual cells constitute separate legal entities, however, each cell is legally segregated from the others and possesses sufficient attributes to operate independently under the "umbrella" of the Labuan PCC.
- > A Labuan PCC may comprise of:
  - > 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 name of a Labuan PCC shall include the expressions "Protected Cell Company" or "PCC" and in accordance to the Labuan Companies Act 1990.
- > Each cell of a Labuan PCC shall have its own distinct name or designation.

## > Labuan PCC shall:-

- > Maintain its registered office in Labuan and appoint at least one (1) resident secretary in Labuan.
- > Appoint an approved auditor in Labuan.
- > maintain separate records for each of its cell;
- > keep the cell assets held for each cell separate from cell assets held for other cells and from general assets;
- > arrange proper protection of cell assets, both as between cells and in respect of general assets by way of segregation, firewalls and clear identification

## Uses of Labuan PCC

A Labuan PCC has the ability to hold assets or investments divided into a number of classes to cater to the different objectives of different individual investors, while at the same time preserving the independence of each cell.

For insurance related activities, a Labuan PCC shall only conduct:

- > Labuan captive insurance business, on such terms as provided under Part VII of the Labuan Financial Services and Securities Act 2010 (LFSSA); or
- > Labuan captive takaful business, on such terms as provided under Part VII of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

## Application to set up Labuan PCC

- > An applicant may establish a Labuan PCC by incorporating a Labuan company or converting an existing Labuan company into a Labuan PCC.

Kensington Trust Labuan Limited is a licensed trust company in Labuan and may assist you with establishment and administration of your Labuan PCC.

- > A Labuan PCC must seek prior approval of Labuan FSA for establishment of its cell(s).



**Capital requirements**

- > Capital requirement unimpaired by losses of RM500,000 applies to the Labuan PCC as a whole.
- > Cells are required to remain solvent at all times as specified in the Guidelines on the Establishment of Labuan Protected Cell Companies issued by Labuan FSA.
- > The establishment of working funds for cells may be achieved through the issuance of cell shares by the Labuan PCC.

**Corporate Governance and Compliance with Labuan laws**

A Labuan PCC and its cell(s) shall observe all statutory requirements under any relevant laws, policies and/or guidelines issued by Labuan FSA or the jurisdictions in which it has operations, including corporate governance and market conduct as a minimum requirement and commensurate with the nature and complexity of its operations from time to time.

The board and senior management of a Labuan PCC shall:

- > be responsible to ensure compliance with the regulatory and corporate governance requirements at all times;
- > keep the funds for cell assets separate from the general assets; and
- > keep the cell assets and liabilities attributable to each cell separate from other cells.

**Reporting requirements of Labuan PCC**

- > Submit an audited consolidated financial statement of the Labuan PCC and its cell(s) within six (6) months after the close of each financial year;
- > Prepare separate set of financial statements for each cell and shall be made available for inspection or examination by Labuan FSA; and
- > Submit other statistics and information as may be required by Labuan FSA from time to time.

**Taxation of Labuan PCC**

- > Labuan Business Activity Tax Act 1990 (“**LBATA**”) governs the imposition, assessment and collection of tax on a Labuan business activity carried on in, from or through Labuan.
- > Labuan entities that carry on a **non-Labuan business activity** are subject to the provisions of the Malaysian Income Tax Act, 1967 (ITA).
- > “Labuan business activity” 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 PCC is taxed under LBATA as a taxable Labuan entity. This means that the taxable person in a PCC is NOT each cell established under the PCC but the PCC itself. This translates to a 3% or 24% tax on audited net profits of the whole PCC entity regardless of the number of cells or their profits in the cells within the said PCC.

**Substance Requirement under LBATA**

- > Pursuant to section 2B(1) (b) of LBATA, the Labuan entities shall, for the purpose of the Labuan business activity, have :-
  - (i) an adequate number of fit and proper full-time employees in Labuan; and
  - (ii) an adequate amount of annual operating expenditure in Labuan, as prescribed by the Minister by regulations made under this Act.
- > Section 2B (1A) of LBATA provides that a Labuan entity carrying on a Labuan business activity which fails to comply with the substance requirement for a basis period for a year of assessment shall be charged to tax at the rate of twenty four per cent (24%) upon its chargeable profits for that year of assessment.
- > To benefit under LBATA, a Labuan PCC Captive will need to comply with the substance requirements of minimum number of three (3) fit and proper full-time employees in Labuan and minimum annual operating expenditure of RM100,000 in Labuan.

**Labuan FSA fees**

A Labuan PCC is required to pay the following annual fees with Labuan FSA upon approval and thereafter, on an annual basis on or before 15 January each year

- > On general assets of the Labuan PCC (Core): USD9,500
- > On each individual cell: USD3,000

**Dealings with resident**

All Labuan entities may conduct transactions with Residents of Malaysia in Ringgit Malaysia except for:

- > Issuing or offering to any Residents of Malaysia for subscription or purchase; or
- > Invite any resident to subscribe or purchase

any interest pursuant to the relevant provisions of the Interest Schemes Act 2016 where such issue or offer or invitation is made in Malaysia, other than Labuan, unless the provisions of the Interest Schemes Act 2016 are complied.

“Resident” here means:

- > in relation to a natural person, a citizen or permanent resident of Malaysia; or
- > in relation to any other person, a person who has established a place of business, and is operating in Malaysia.
- > and includes person who is declared to be a resident pursuant to paragraph 214(6)(a) of the Financial Services Act 2013 and paragraph 225(6)(a) of the Islamic Financial Services Act 2013.

The amount of deductions allowed in respect of payments made by Residents to Labuan entities are as follows:-

> Interest expense	75% deductible
> Lease rental	75% deductible
> General reinsurance premiums	100% deductible
> Other type of payments	3% deductible



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