



LABUAN CAPTIVES

A Captive is simply an insurance company that is owned and controlled by its insured. Captives are normally being domiciled in an offshore jurisdiction because the regulatory environment onshore may not be conducive to the creation and operation of a captive insurance company.

This document provides a general overview of Captives with particular information regarding Labuan International and Business Financial Centre (Labuan IBFC).

Permitted activities

- (a) A Labuan Captive Insurer may underwrite direct insurance / reinsurance (general or life) business risks -
 - > of their own Group; or
 - > third party risks subject to Labuan FSA's approval
- (b) A Labuan Captive Insurer may obtain reinsurance coverage from any insurance company in or outside Labuan irrespective of whether it is licensed under the Labuan Financial Services and Securities Act 2010 ("LFSSA").
- (c) Labuan Captive Insurer may deal with direct Malaysian risks for activities as prescribed by law.

Application for license

Kensington Trust Labuan Limited is a licensed trust company in Labuan and may assist you with license application, establishment and administration of your Labuan Company or branch.

Applicability

The following applicant (but not limited to) may apply to undertake a captive insurance business in Labuan:

- > Labuan company incorporated or registered under the Labuan Companies Act 1990 including Protected Cell Company (PCC); and
- > Special Purpose Vehicle (SPV) set up to undertake captive insurance business in Labuan IBFC.

Types of Captive

- > Pure / Single Captive - owned and controlled by one owner, typically the parent organization, and is formed as a subsidiary company. The captive subsidiary underwrites policies for the parent, and solely bears the risks of the parent.
- > Group Captives / Association captives - owned and controlled by multiple insured. They may or may not be related entities or a part of a homogeneous group like industry or trade groups.
- > Master rent-a-captive – acts as a master captive, which provides captive facilities and services to subsidiary rent-a-captive.
- > Subsidiary rent-a-captive – an entity with separate licenses, assets and accounts but at the same time using the working capital of master captive.
- > Cell captives - Protected Cell Companies ("PCC") where legislation protects each individual cell or account from the liabilities of other cells within the captive.
- > Multi owner captive - owned by two or more unrelated persons or organisations and writing the risks of its owner and/or affiliates and is designed to insure the risks of these different entities.

Reasons for forming a captive insurance company in Labuan

- > Lower insurance costs
- > Cash flow
- > Risk retention
- > Unavailability of coverage elsewhere
- > Risk management
- > Access to the reinsurance market
- > Writing unrelated risks for profit
- > Tax minimization and deferral



Operational Requirements

- > Every Labuan Captive Insurer must –
 - (a) Have an operational management office in Labuan managed by a management team that has an adequate knowledge and expertise in insurance business including captive; or
 - (b) Appoint a licensed Labuan underwriting manager.
- > Appointment of any person in control, director or Principal Officer of the Labuan Captive Insurer must obtain prior approval from Labuan FSA. They must be of fit and proper persons and shall not be subject of any adverse report from any reliable sources. The Board shall comprise of at least two directors (preferably a natural person) with insurance or insurance related experience. There is no residency requirement with respect to the directors.
- > Paid-up Capital / Working Funds
 - (a) **Pure/Single captive / Group, Association & Multi-owner captives**
Unimpaired by losses of RM300,000 or its equivalent in any foreign currency
 - (b) **Rent-a-captive / Master-rent-a-captive / Cell captive / Other similar vehicles**
Unimpaired by losses of RM500,000 or its equivalent in any foreign currency
- > Margin of solvency
 - (a) A Labuan Captive Insurer is required to maintain at all times a surplus of assets over liabilities, which is equivalent to, or more than the amount of its working fund; or
 - (b) 20% of the net premium income for the preceding year in respect of the general insurance business, or 3% of the actuarial valuation of the liabilities for life insurance business as at the last valuation date

whichever is greater.

Labuan IBFC taxation system

- > 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.
- > Pursuant to the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021 that took effect on 1st January 2019:
 - > Labuan trading activity has been restricted to license business activities and selected type of trading activities only. Please refer to the above Regulations 2021.
 - > Labuan non-trading activity has been restricted to holding company, namely Pure Equity Holding and Non-Pure Equity Holding.

Substance Requirements under LBATA (with effect from 1st January 2020)

- > 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 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 further 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 captive (single) will need to comply with the substance requirements with minimum number of two (2) full time employees for 1st party captive and minimum number of three (3) full time employees in Labuan for 3rd party captive and a minimum annual operating expenditure of RM100,000 in Labuan.

Election to pay tax under Income Tax Act 1967

A Labuan captive may make an irrevocable election for its profits for any basis period for a year of assessment and subsequent basis period, to be subject to tax under the provisions of the Income Tax Act 1967, in respect of that Labuan business activity.

This election shall be made and furnished to the Director General of Inland Revenue Board within three months after the beginning of the basis period for a year of assessment.



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

Labuan Captive licensee fee

- > **Processing fee (once-off)**
USD350
- > **Annual Fee**
 USD3,000 – Labuan Captive
 USD4,000 – Master Rent A Captive
 USD1,000 – Subsidiary Rent A Captive
 USD9,000 – Core of captive using PCC structure
 USD3,000 – Each cell of captive using PCC structure

The annual license fee is payable when the license is approved by Labuan FSA and remains valid until 31 December of the year of approval. All licensees are required to pay to Labuan FSA subsequently the annual license fees on or before 15 January of each calendar year.



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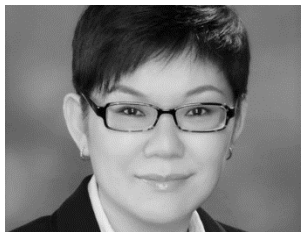
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JTC is a publicly listed, global professional services business with deep expertise in fund, corporate and private client services.

Every JTC person is an owner of the business and this fundamental part of our culture aligns us with the best interests of all of our stakeholders.

Our purpose is to maximise potential and our success is built on service excellence, long-term relationships and technology capabilities that drive efficiency and add value.

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