GUIDELINES ON SHARIAH COMPLIANT PURE CAPTIVE IN LABUAN INTERNATIONAL BUSINESS AND FINANCIAL CENTRE

1.0 Preamble

1.1 This guidelines is issued pursuant to Section 4A the Labuan Financial Services Authority Act 1996 to facilitate an application to obtain a Shariah compliant captive licence in Labuan under the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

1.2 The guidelines aims to provide guidance to Shariah compliant pure captive business that are conducted based on a 'Pure Captive' model or also known as Single Parent Captive Model. It is to also ensure that the Shariah compliant pure captives created in Labuan International Business and Financial Centre (IBFC) are managed based on prudent practices and Shariah requirements at all times.

1.3 A Shariah compliant pure captive business shall be licensed under the LIFSSA and form part of the Labuan captive business as set out under Section 77 of the LIFSSA.

2.0 Definition and Operational Structures

2.1 A captive business is a form of a risk management technique by which a business forms its own insurance company subsidiary to finance its retained losses in a formal structure. The structure is economically beneficial and commercially advantageous to the parent company in terms of the risk management and risk financing strategy.

2.2 In a conventional structure, the Pure Captive (PC) is the most prevalent structure in the global market. The PC is owned and controlled by one company that only reinsurers affiliated risks and usually insures the risk of non-insurance owner of the owner's subsidiary operations. There is also no third party risks involved. The main purpose is to provide some risk transfer or financing for a corporation on a specific line of coverage. The parent company would be able to gain greater control over its risk exposures, since the captive is managed for the sole purpose to reduce corporate exposure to loss.

2.3 A Labuan Shariah compliant pure captive company (Labuan SPC) is a Labuan company that undertakes Shariah compliant pure captive activities in Labuan IBFC operated based on a PC structure and conducted in a Shariah compliant manner in its entire operations including the contract between the parent and the captive company as well as the investment undertakings.

2.4 Similar to the conventional captive structure, the establishment of a captive company is a corporate entity's strategy as a risk owner to manage the risk and curb the loss of the company. A Shariah compliant captive would adopt similar strategy namely to use the formation as its contemporary risk management tool to manage the risk and curb the loss in Shariah compliant manner. In an SPC structure, the operational model shall involve the parent company transfers its risks to the Labuan SPC for a fee or without a fee by complying to the following key operational requirements:

2.4.1 The parent company appoints the Labuan SPC to be their agent to manage the parent company's risks and risk financing strategy in accordance to the Shariah principles. The strategies include underwriting of contributions, risk assessments and claim management among others;

2.4.2 The investment activities undertaken by the Labuan SPC must be in accordance to the Shariah principles as approved by the company's appointed Shariah adviser or Labuan FSA's Shariah Supervisory Council upon reference; and

2.4.3 All other operational requirements applicable to insurance and insurance-related companies such as the Guidelines on Market Conduct for Labuan Insurance and Insurance-related Companies or relevant guidelines issued by Labuan FSA shall be adhered to at all time so long the requirements do not contradict with Shariah principles.

2.5 The contract between the parent company and Labuan SPC may be based on the agency (wakalah) that involves risk transfer for a fee or without a fee. It is not purely risk transfer as the captive owner is still bearing the investment and operational risk. Ultimately, the formation of a Labuan SPC is fundamentally similar to a conventional captive's risk management tool except that the operations of a Labuan SPC shall be managed in a Shariah compliant manner in its entirety.

2.6 Notwithstanding the above, the operational model shall be based on contracts preferred by the Labuan SPC and approved by its Shariah adviser. In setting out the policies and procedures, the Labuan SPC must ensure that the principles outlined in the contracts are appropriately operationalised. The operational model of the activities shall define the relationship and fiduciary duties between the contracting parties.

3.0 Who Qualifies?

3.1 The following applicant (but not limited to) may apply to undertake a Shariah compliant pure captive business under this Guidelines:

3.1.1 A Labuan company incorporated or registered under the Labuan Companies Act 1990 including Protected Cell Companies; and

3.1.2 Special Purpose Vehicle (SPV) set up to undertake Shariah compliant captive business in Labuan IBFC; or

3.1.3 Any other person as may be approved by Labuan FSA.

4.0 Permitted Business Activities

4.1 Direct Labuan Takaful business: The Labuan SPC may underwrite direct general and family takaful business risks of their own Group.

4.2 Labuan Retakaful business: The Labuan SPC may obtain retakaful coverage from any takaful or retakaful operators in or outside Labuan irrespective of whether they are licensed under the LIFSSA. In case there is a need to obtain conventional reinsurance coverage from any insurance company in or outside Labuan, the Labuan SPC is encouraged to first obtain retakaful coverage before considering reinsurance option. The consideration and decision on obtaining the retakaful or reinsurance coverage shall comply with the provisions outlined under the Guidelines on Takaful and Retakaful Business in Labuan IBFC dated 15 June 2007 or any other guidelines relating to Takaful or Retakaful businesses issued by Labuan FSA and enforced upon the licensed entities from time to time.

4.3 A Labuan SPC may deal with reinsurance of Malaysian risks and direct Malaysian risks for activities approved by Labuan FSA and/or Bank Negara Malaysia.

5.0 How to Apply?

5.1 The applicant is required to submit an application under this Guidelines in a prescribed From LIB (Application for Licence to Carry On Labuan insurance and Insurance Related Business) downloadable from Labuan FSA's website. The submission should include but not restricted to the following:

5.1.1 An authenticated copy of the proposed Memorandum and Article of Association (M&A) of the applicant company that stipulates its operations to be carried out on a Shariah compliant manner. The M&A should have provisions for the establishment of an internal Shariah advisory board to advice applicant on the operations of its business to ensure compliance with Shariah principles.

5.1.2 Copy of approval of relevant authorities (where required), certified extracts of board resolutions and minutes of general meeting as appropriate in respect of applying a licence and carrying on business as a Labuan SPC in Labuan.

5.1.3 A business plan for the first three years of operations.

5.1.4 Where applicable, audited annual accounts for the three years immediately preceding application if the business in licensed and authorized to conduct insurance business outside of Labuan.

5.1.5 Applicant's corporate profile, which includes the name, place and date of establishment of applicant. The names, addresses, qualifications and experience of the director and officers responsible for the overall management of the affairs of the applicant.

5.1.6 Shareholding structure of the applicant.

5.1.7 Declaration by the applicant on the probity of its directors and officers who are responsible for the management of the Labuan SPC.

5.2 The application under the guidelines can submitted to:

Director General
Labuan Financial Services Authority (Labuan FSA)
17th Floor, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Federal Territory of Labuan
Malaysia.

5.3 Any request for additional information or clarification pertaining to the guidelines may be directed to the following contact details:

Telephone no. : 087 591 200
Facsimile no. : 087 453 442/413 328
E-mail : business_operations@labuanfsa.gov.my

6.0 Operational Requirements

6.1 Every Labuan SPC:

6.1.1 Must have an operational management office in Labuan managed by a management team that has adequate knowledge and expertise in insurance or takaful business including captive; or

6.1.2 Appoint a licensed Labuan underwriting manager or a Labuan Takaful underwriting manager.

6.2 Appointment of any person in control, director, or Principle Officer (PO) of a Labuan SPC must obtain prior approval from Labuan FSA.

6.3 The person in control, shareholder, director, PO and the management team of the Labuan SPC must be fit and proper persons and shall have no adversed report from any reliable sources.

6.4 Paid-up Capital/Working Funds

Labuan Company	Foreign Labuan Company
A paid-up capital unimpaired by losses of RM300,000 or its equivalent in any foreign currency.	A surplus of asset over liabilities of at least RM300,000 or its equivalent in any foreign currency, to be maintained in the book of its office in Labuan.

6.5 Margin of Solvency Requirement

6.5.1 A Labuan SPC is required to maintain at all times a surplus of asset over liabilities, which is equivalent to, or more than the amount of its working fund; or

6.5.2 20% of the net contribution income for the preceding year in respect of the general takaful business, or 3% of the actuarial valuation of the liabilities for family takaful business as at the last valuation date in respect of the family takaful business.

6.6 Reporting Requirement

To submit to Labuan FSA:

6.6.1 Within 6 months after the close of each financial year, two copies of its audited annual balance sheet and profit and loss account as approved in accordance with its constituent documents; and

6.6.2 Statistics and information required in relation to prudential regulation and business operation to the Labuan FSA from time to time.

6.7 Annual Fee

6.7.1 The applicant company must pay on or before every 15^{th} day of January an annual licence fee of RM10,000.

6.7.2 The subsequent payment of annual fee is payable not later than 15 January of each year during which the licence is valid.

7.0 Shariah Compliance

7.1 The Labuan SPC shall ensure that its business operations are in accordance with the Shariah principles, including ensuring the followings are being observed:

7.1.1 The types of risks to be transferred into the Labuan SPC should be related to Shariah compliant businesses. Entities that are not categorized as investable equities by any prevailing Islamic benchmark or indices, may also transfer their risks into a Labuan SPC, provided the risks are related to activities which are Shariah compliant; and

7.1.2 The guiding criteria on the type of risks to be transferred into the Labuan SPC shall be determined by the appointed Shariah adviser of the Labuan SPC or any other recognized Shariah advisory bodies.

7.2 The Labuan SPC must ensure that any investment activities are channeled to Shariah approved business, and the distribution of dividends, profits, etc are in line with Shariah principles.

8.0 Implementation Date

8.1 The Guidelines shall take effect from 1 July 2010 and would remain to be effective and applicable unless amended or revoke.

Labuan Financial Services Authority
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