

GUIDELINES ON THE ESTABLISHMENT OF LABUAN PROTECTED CELL COMPANIES

1.0 Introduction

- 1.1 The Guidelines is issued to clarify the procedures and regulatory requirements for the establishment of Labuan protected cell companies (Labuan PCC) in Labuan International Business and Financial Centre (Labuan IBFC).
- 1.2 A Labuan PCC is a Labuan company incorporated as, or converted into, a protected cell company under the Labuan Companies Act 1990.

2.0 Applicability

- 2.1 The Guidelines is applicable to Labuan company incorporated or converted as a Labuan PCC under Part VIIIB of the Labuan Companies Act 1990 (LCA).
- 2.2 The Guidelines shall be read together with the Guidelines on Captive Insurance Business in Labuan International Business and Financial Centre, Guidelines on the Establishment of Labuan Mutual Funds including Islamic Mutual Funds and other related guidelines issued by Labuan FSA from time to time.

3.0 Legal Provision

- 3.1 The Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) to clarify the provisions Part VIIIB of the LCA.
- 3.2 Any person who fails to comply with the Guidelines is guilty of an offence and may be punishable under Section 36B and 36G of the LFSAA.

4.0 Effective Date

- 4.1 The Guidelines shall come into effect on 1 January 2014 and would remain effective and applicable unless amended or revoked.
- 4.2 All approvals granted by Labuan FSA relating to Labuan PCC prior to this Guidelines shall remain valid unless revoked.

5.0 Scope of Activities

5.1 A Labuan PCC shall only conduct-

- 5.1.1 Labuan captive insurance business, on such terms as provided under Part VII of the Labuan Financial Services and Securities Act 2010 (LFSSA); **and**
- 5.1.2 Labuan captive takaful business, on such terms as provided under Part VII of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA); **or**
- 5.1.3 Business as a mutual fund as defined under Part III of the LFSSA; **and**
- 5.1.4 Business as an Islamic mutual fund as defined under Part IV of the LIFSSA.

6.0 Structure of Labuan PCC

6.1 General Structure and Name

- 6.1.1 A Labuan PCC shall be a single legal person and may establish one or more cells for the purpose of segregating and protecting cell assets.
- 6.1.2 The creation of a cell by a Labuan PCC does not create a legal person separate from the Labuan PCC.
- 6.1.3 The name of a Labuan PCC shall include the expressions “Protected Cell Company” or “PCC” and in accordance with section 21 of LCA.
- 6.1.4 Each cell of a Labuan PCC shall have its own distinct name or designation.

6.2 Cell and General Assets

- 6.2.1 The assets of a Labuan PCC shall be either-
 - (a) cell assets which comprise the assets the Labuan PCC held within or on behalf of the protected cells; or
 - (b) general assets which comprise the assets of the Labuan PCC which are not cell assets.
- 6.2.2 Labuan PCC shall-
 - (a) maintain separate records for each of its cell;
 - (b) keep the cell assets held for each cell separate from cell assets held for other cells and from general assets; and
 - (c) arrange proper protection of cell assets, both as between cells and in respect of general assets by way of segregation, firewalls and clear identification.

6.3 Cell Shares and Cell Share Capital

- 6.3.1 A Labuan PCC may create and issue cell shares and the cell capital which shall be referenced to the cell assets attributable to the cell in respect of which the shares were issued in accordance with subsection 130T of LCA.
- 6.3.2 A Labuan PCC may pay cell dividend in respect of cell shares by reference only to the cell assets and liabilities attributable to the issued cell shares.

- 6.3.3 The proceeds from issuance of shares other than cell shares created and issued by a Labuan PCC shall be comprised in the general assets.

6.4 Rights of Creditors and Liabilities

- 6.4.1 The rights of creditors are only limited to the assets of the cell incurring the liability and would not be able to attach their rights to the other cells or general assets of the Labuan PCC.
- 6.4.2 The assets allocated to the cell are only liable to satisfy liabilities incurred by such cell and thus should not be attached by liabilities of the other cell.
- 6.4.3 Where a liability is not attributable to a particular cell of the Labuan PCC, it shall be satisfied solely from the general assets.
- 6.4.4 In the case of receivership and winding up of Labuan PCC or any of its cells, the approved liquidator shall be bound to deal with the general assets of the Labuan PCC or the cell assets of each individual cell of the Labuan PCC respectively, in accordance with the requirements set out under paragraph 130ZB of LCA.

6.5 Transfer of Cell Assets and Consolidation of Cells

- 6.5.1 A Labuan PCC may with prior written approval of Labuan FSA -
- (a) transfer a cell asset attributable to a cell to another cell of the Labuan PCC; or
 - (b) amalgamate or consolidate a cell with, or into, one or more other cells of the Labuan PCC.
- 6.5.2 In addition, Labuan PCC may transfer cell assets attributable to any cell of the Labuan PCC to other person whether resident or incorporated, and whether or not a Labuan PCC if it is authorized by a special resolution of the shareholders made on the recommendation of a director's resolution with prior written approval of Labuan FSA as provided under paragraph 130ZA of the LCA.
- 6.5.3 No prior approval of Labuan FSA is required to the transfer of cell assets attributable to any cell of a Labuan PCC in the ordinary course of business of the Labuan PCC through payments, investments or otherwise as provided under paragraph 130ZA(6) of the LCA.

6.6 Disclosure Requirement

- 6.6.1 Labuan PCC must inform through written communication to any person that enters into business transactions with Labuan PCC that-
- (a) they are dealing with a Labuan PCC;
 - (b) the particular cell that the person is entering into transaction is identified and specified unless that the transaction is not in respect of a particular cell; and
 - (c) only the assets of that particular cell are available to meet the cell's obligations and liabilities.
- 6.6.2 For a Labuan PCC operating as mutual fund/Islamic mutual fund, all risks associated with the fund must be clearly disclosed to the investors.

- 6.6.3 The Labuan PCC shall also disclose the following as part of the main promotional document to customers/investors:

“ABC PCC Limited (“name of the Labuan PCC”) is established as a protected cell company, under Part VIIIB of the Labuan Companies Act 1990 (LCA). This means that under Labuan laws, and provided the conditions of the LCA have been complied with, the assets attributable to each cell of the Company will only be available to creditors of that cell.

Prospective investors should bear in mind that the segregation of assets and liabilities as provided for in this manner, whilst recognised and protected under the Labuan laws, may not be recognised in certain other jurisdictions in which the company’s assets may be located.”

7.0 Regulatory Requirement

7.1 Capital Requirement

- 7.1.1 Labuan captive insurance/takaful business-
- a) Capital requirement unimpaired by losses of RM500,000 apply to the Labuan PCC as a whole.
 - b) Cells are required to remain solvent at all times as specified under paragraph 8.1 of the Guidelines.
 - c) The establishment of working funds for cells may be achieved through the issuance of cell shares by the Labuan PCC.
- 7.1.2 Labuan PCC undertaking mutual funds/Islamic mutual funds must have sufficient capital/working funds to commensurate or in accordance with its operations and activities.

7.2 Corporate Governance & Compliance to Labuan Laws

- 7.2.1 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 to the nature and complexity of its operations from time to time.
- 7.2.2 The Board and senior management of the Labuan PCC shall-
- a) be responsible to ensure compliance with the regulatory and corporate governance requirements at all times;
 - b) keep the funds for cell assets separately from the general assets; and
 - c) keep the cell assets and liabilities attributable to each cell separate from other cells.

7.3 Reporting Requirement

- 7.3.1 A Labuan PCC is required to-
- a) submit an audited consolidated financial statement of the Labuan PCC and its cell(s) within 6 months after the close of each financial year;

- b) prepare separate set of financial statements for each cell and shall be made available for inspection or examination by Labuan FSA; and
 - c) submit other statistics and information as may be required by Labuan FSA from time to time.
- 7.3.2 Notwithstanding the above, for Labuan PCC undertaking mutual funds or Islamic mutual funds activities, a copy of the cell's financial statements should also be extended to each of the investor of the respective cell.

7.4 Auditor

- 7.4.1 Labuan PCC shall appoint an approved auditor who shall be responsible for auditing its financial statements.

8.0 Specific Requirement for Labuan Captive Insurance and Takaful Business

8.1 Margin of Solvency

- 8.1.1 Minimum margin of solvency for Labuan PCC must be calculated on a cell by cell basis in order to determine whether the PCC as a whole meets its solvency requirement as specified under the Guidelines on Captive Insurance Business in Labuan International Business and Financial Centre issued by Labuan FSA.
- 8.1.2 Any solvency deficits arising in the individual cells must be covered either by cell-specific financial instruments, such as letters of credit etc. Where any such solvency deficits are not covered in full by the above, the Labuan PCC will not be deemed to have met its solvency requirements as specified by Labuan FSA.

8.2 Management Office

- 8.2.1 Labuan PCC conducting captive insurance/takaful business is required to-
- a) establish its management office in Labuan; or
 - b) appoint a licensed Labuan insurance/takaful manager or underwriting/takaful underwriting manager.
- 8.2.2 Labuan PCC may also establish an office or offices in any part of Malaysia subject to the requirements stipulated under the Guideline on Co-Location of Labuan Insurance and Takaful Licensee issued by Labuan FSA.

9.0 Annual Fee

- 9.1 The annual licence fee payable is as specified under the *Labuan Financial Services and Securities (Amendment) Regulations 2022*.
- 9.2 The subsequent payment of annual licence fee is payable on or before 15 January of each year.

10.0 Application for Approval

10.1 An applicant may establish a Labuan PCC by incorporating a Labuan PCC or converting an existing Labuan company into a Labuan PCC to conduct business activities as specified under paragraph 5.0 of the Guidelines together with a processing fee of USD350.

10.2 A Labuan PCC must seek prior approval of Labuan FSA for establishment of its cell(s). An application to create a cell shall be made to Labuan FSA accompanied by the following information together with a processing fee of USD350.

10.2.1 Name of the cell;

10.2.2 Profile of the cell owner;

10.2.3 Principal activity that the cell will be undertaking; and

10.2.4 Expected date of commencement of business operation.

10.3 Approval to Conduct Labuan Captive Insurance/Takaful Business

The application for approval on the Labuan PCC structure to conduct Labuan captive insurance or captive takaful business shall be accompanied by Form LIB downloadable from Labuan FSA's website together with the following information-

10.3.1 Application for new incorporation of or conversion into a Labuan PCC.

10.3.2 Type of business activities.

10.3.3 Proposed PCC structure including number of cells.

10.3.4 Other document/information as required under LFSSA/LIFSSA and relevant guidelines issued by Labuan FSA.

10.4 Approval to Conduct Labuan Mutual Funds/Islamic Mutual Funds Business

The application for approval as a Labuan PCC to undertake mutual fund/Islamic mutual fund business, shall be accompanied by Form LSCM (for public fund and Islamic public fund only) downloadable from Labuan FSA's website together with the following information-

10.4.1 The name, or proposed name, of the Labuan PCC.

10.4.2 Details of the person who is, or will be appointed as the fund manager/administrator of the Labuan PCC.

10.4.3 A list of the initial cell(s) to be created including the name, identification or designation of each of the cell(s), if available.

10.4.4 Details of the fund manager/ fund administrator/ investment advisor/ custodian/ any other as Labuan FSA may require, who will be appointed by the company in respect of each cell.

10.4.5 A copy of the information memorandum or prospectus for each cell.

10.4.6 Other document/information as required under LFSSA/LIFSSA and relevant guidelines issued by Labuan FSA.

10.5 For Labuan PCC that is registered as a private fund, only the information as listed in paragraph 10.4.1 until paragraph 10.4.6 must be submitted to Labuan FSA for approval.

10.6 Labuan FSA may be notified on the creation of the cell(s) of Labuan private fund, if the cell(s) is managed by the same fund manager and/or fund administrator as per paragraph 10.4.2.

11.0 Submission for Application and Enquiries

11.1 The submission of completed application or enquiries on the Labuan PCC may be forwarded to the following contact details-

Head of Authorisation and Licensing Unit
Labuan Financial Services Authority
17th Floor, Main Office Tower
Financial Park Complex, Jalan Merdeka
87000 Federal Territory of Labuan, Malaysia

Telephone no. : 03 8873 2000
Facsimile no. : 03 8873 2209
E-mail : bplicensing@labuanfsa.gov.my

Labuan Financial Services Authority

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