

# LABUAN

## 1. GUIDELINES ON OFFSHORE CAPTIVE INSURANCE COMPANIES

The Labuan Offshore Financial Services Authority ("LOFSA") had on 10<sup>th</sup> December, 2001 issued a comprehensive set of guidelines for the licensing of captive insurance business in Labuan. Below is a comparison of the previous and the current guidelines.

PREVIOUS GUIDELINES	NEW GUIDELINES
Previously, captive insurance was included as part of the general insurance guidelines, that includes direct insurance / offshore reinsurance / insurance manager / underwriting manager and insurance broker.	A separate guideline has been issued specifically for captive insurance.
<p>The general insurance guidelines only referred to this insurance product as captive insurance without providing any specific definition.</p> <p>Broader Meaning - none</p>	<p>Offshore captive insurance business is defined as an insurance business whereby the insured is a related company or an associated corporation of the offshore insurer or where the insured is any other person in respect of whom the offshore insurer is authorised by LOFSA.</p> <p>The above definition is intended to include but not necessarily limited to the following:-</p> <ul style="list-style-type: none"> <li>• Pure Captive;</li> <li>• Group Captive;</li> <li>• Association Captive;</li> <li>• Rent-a-captive;</li> <li>• Cell Captive;</li> </ul>
<p><b>Conditions</b></p> <p>Fees</p> <ul style="list-style-type: none"> <li>- Captive Insurer - RM10,000</li> </ul>	<p><b>Conditions</b></p> <p>The applicant company must pay an annual licence fee of RM10,000. However the relevant fees for the following rent-a-captive operator are :-</p> <ul style="list-style-type: none"> <li>- Master rent-a-captive - RM13,000</li> <li>- Subsidiary rent-a-captive - RM3,000</li> </ul>
<b>Capital Structure</b>	<b>Capital Structure</b>

<p>- paid-up capital or working fund of RM300,000 or its equivalent in foreign currency</p> <p>The applicant must submit a banker's certificate as evidence that the working funds are maintained in the account of the applicant with a bank in Labuan.</p> <p><b>Margin of Solvency</b></p> <p>Captive Insurer - to maintain a surplus of assets over liabilities in a sum of RM300,000 or its equivalent.</p>	<p>Single Owner / Multiple Owner</p> <ul style="list-style-type: none"> <li>- For an Offshore Company - paid-up capital unimpaired by losses of RM300,000 or its equivalent in foreign currency;</li> <li>- For a Foreign Offshore Company - surplus of asset over liabilities of at least RM300,000 or its equivalent in foreign currency;</li> </ul> <p>Rent-a-Captive, Cell Captive or Similar Vehicle</p> <ul style="list-style-type: none"> <li>- For a Offshore Company - paid-up capital unimpaired by losses of RM500,000 or its equivalent in foreign currency;</li> <li>- For a Foreign Offshore Company - surplus of asset over liabilities of at least RM500,000 or its equivalent in foreign currency;</li> </ul> <p>The above funds must be maintained in an account with a bank in Labuan.</p> <p><b>Margin of Solvency</b></p> <p>Captive Insurer - to maintain at all times a surplus of assets over liabilities which is equivalent to or more than the amount of its working funds.</p> <p>Rent-a-captive - to maintain the above or 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 in respect of the life insurance business, whichever is the greater.</p>
<p><b>Other Conditions</b></p> <p><b>Approved Activities</b> None (not mentioned)</p>	<p><b>Other Conditions</b></p> <p><b>Approved Activities</b></p> <p>Direct Insurance Business - a captive insurer may underwrite direct general and life insurance risks of the Group and third party risks subject to approval of LOFSA.</p> <p>Reinsurance Business - a captive insurer may obtain reinsurance covers from any insurance company</p>

<p><b>Restriction of Business</b> None</p> <p><b>Undertakings</b> None</p>	<p>irrespective of whether it is licensed under the Offshore Insurance Act, 1990.</p> <p><b>Restriction of Business</b> Captive Insurer - prohibited from dealing with direct Malaysian risks other than reinsurance of Malaysian risks or from those for which approval has been obtained from LOFSA.</p> <p>Rent-a-captive - must have a person based in Labuan who is responsible to LOFSA at all times.</p> <p><b>Undertakings</b></p> <ol style="list-style-type: none"> <li>a. to conduct business with due diligence;</li> <li>b. to obtain approval from LOFSA if there is a change in business plans or change in the company's management / address / shareholders;</li> <li>c. to observe the Labuan legislation;</li> <li>d. rent-a-captive - to furnish list of clients to LOFSA as at 31 December every year;</li> <li>e. rent-a-captive - to obtain prior approval from LOFSA before it rents its facility to any client.</li> </ol>
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## 2. OTHERS

### a. COMPANIES LIMITED BY GUARANTEE

Under Section 14(3) of the *Offshore Companies Act, 1990* (“the OCA”), it is stated that every offshore company shall be limited by shares.

On 15<sup>th</sup> July, 2001, LOFSA informed that the Minister of Finance had exercised its powers of exemption under Section 150 of the OCA to exempt offshore companies from the above section and allow offshore companies to be incorporated as a company limited by guarantee.

### b. LABUAN OFFSHORE COMPANIES ALLOWED TO USE “SDN. BHD.” AS PART OF ITS NAME IN LIMITED CIRCUMSTANCES

The LOFSA has clarified via its letter dated 15<sup>th</sup> October, 2001 to the Association of Labuan Trust Companies that the dispensation to use the words “Sendirian Berhad” or the abbreviation “Sdn. Bhd.” is given only to companies in Brunei or if applicable, in other countries that wish to register their companies in Labuan. This dispensation is not given to individuals or to companies that wish to incorporate in Labuan.

### c. ANTI-MONEY LAUNDERING ACT 2001 (AMLA) - Invocation of Sections 14(b), 20 and 24 of AMLA on Offshore Entities

LOFSA has vide its letter dated 12<sup>th</sup> April, 2002 informed that the Ministry of Finance has decided to invoke the above sections on offshore banks, insurance and insurance-related companies and trust companies with effect from 15<sup>th</sup> April, 2002.

In this regard, any offshore institutions that have encountered any suspicious transaction is required to make necessary reporting to LOFSA as soon as practicable using the prescribed form. LOFSA would be implementing a system enabling the form to be submitted electronically via internet. Pending the implementation of the system, the suspicious report could be submitted in hard copy or by diskette.

A reminder on the compliance of the AMLA was sent by LOFSA on 2<sup>nd</sup> August, 2002 citing that failure to report suspicious transactions to LOFSA is an offence under Sections 86 and 87 of the AMLA.