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# **Briefing Session on Labuan Protected Cell Companies Carrying Captive Insurance Business**

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**5 October 2023**

# OBJECTIVE

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- ① To impart understanding of:
  - **Regulatory requirements & supervisory oversight** on Labuan PCCs
  - Labuan PCC's typical **business activities & operations**
  - **Banks' general expectations** for opening of bank accounts for Labuan PCCs
- ② To **discuss on issues & concerns raised** by LB-CONG & LIIA on bank account opening

# Agenda

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- 1. Overview of Labuan PCC Captives**
  - a) Briefing on the Licensing, Regulations and Supervisory Approach of Labuan PCC**  
*(by Labuan FSA)*
  - b) Briefing on the Operations of Labuan PCC**  
*[by Labuan International Insurance Association (LIIA)]*
  
- 2. Dialogue Session with LB-CONG & LIIA**



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# **Briefing on the Licensing, Regulations and Supervisory Approach of Labuan PCC**

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*Presenters: Representatives from Labuan FSA*

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**OVERVIEW OF  
CAPTIVE INSURANCE BUSINESS IN LABUAN IBFC**

# What is captive insurance business?

Labuan captive insurance business means Labuan insurance business where the insured is:

- (i) **a related corporation** which refers to related companies as defined under section 4 of Labuan Companies Act 1990;
- (ii) **an associate corporation** refers to “associate” definition under the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB); or
- (iii) **any other person in respect of whom the Labuan captive insurer is authorised by the Authority** to provide insurance or reinsurance means any other person as approved by Labuan FSA.

*... includes Protected cell company (PCC), where legislation protects each individual cell from the liabilities of other cells within the PCC ...*

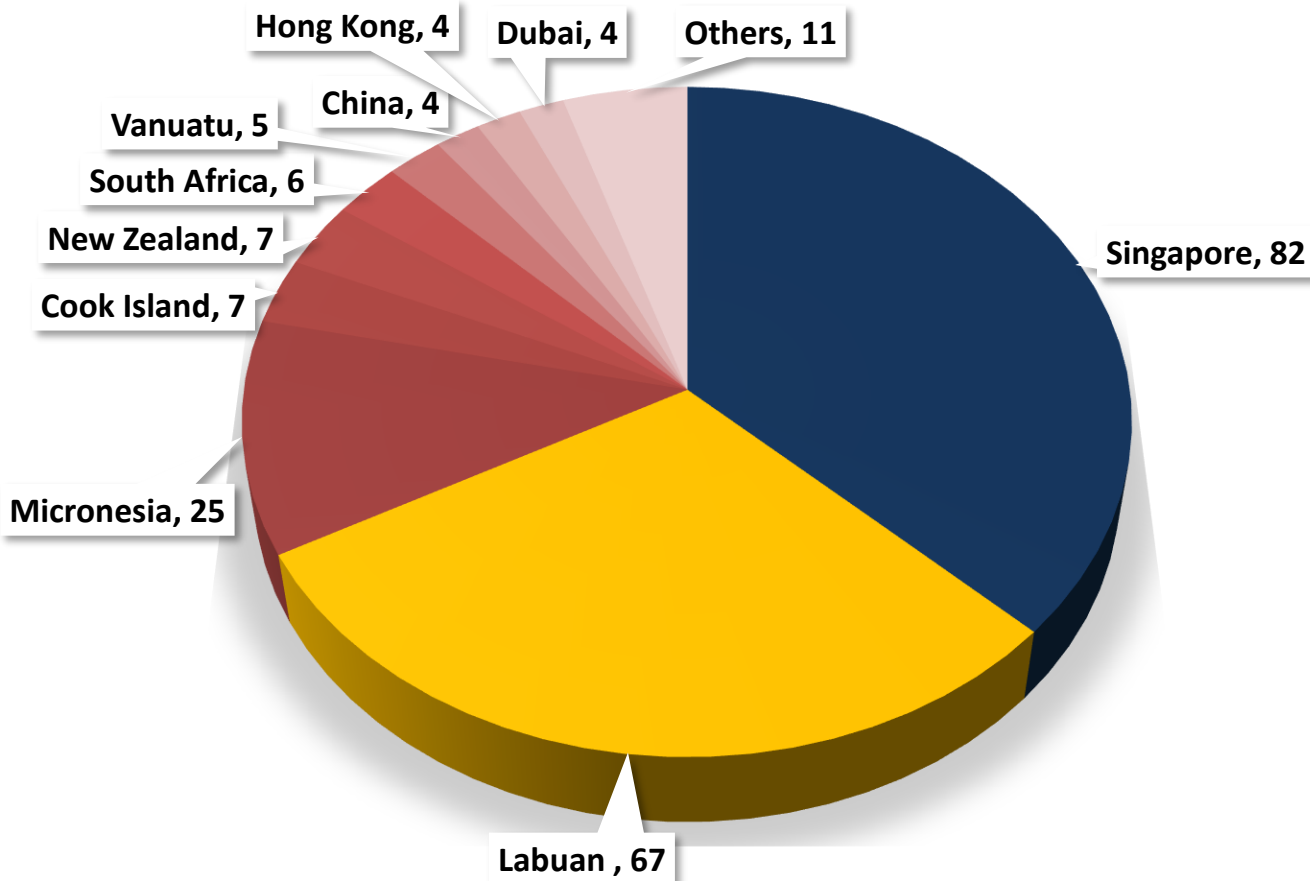
*(S101 of LFSSA and Para 5.2 of Guidelines on Captive Insurance Business in Labuan IBFC)*

# Types of Labuan Captive Structures

- 1) **Pure/single captives** may include single parent companies writing only the risks of their owner and/or affiliates.
- 2) **Group captives/association captives** may include multi-owned insurance companies writing only the risks of their owners and/or affiliates, usually within a specific trade or activity or a captive formed or owned by members of a common industry or trade association to share risks of that industry among its members
- 3) **Master rent-a-captive (MRAC)** acts as a master captive, which provides captive facilities and services to subsidiary rent-a-captive and external rent-a-captive.
  - a) **Subsidiary rent-a-captive (SRAC)** is an entity with separate licenses, assets and accounts but at the same time using the working capital of MRAC, with no less than 50% shareholding by MRAC.
  - b) **External rent-a-captive (XRAC)** is an entity with separate licenses, assets and accounts but at the same time using the working capital of MRAC with less than 50% shareholding by MRAC.
- 4) **Protected cell company (PCC)** may include protected cell captive, where legislation protects each individual cell from the liabilities of other cells within the PCC.
- 5) **Multi owner captive** is 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.
- 6) **Agency/Intermediary-owned captive** is owned by one or more independent insurance intermediaries e.g. insurance managers, underwriting managers or insurance brokers to write high-quality risks that the agents control so the agents can participate in the profits generated by the business.

# Labuan IBFC vis-à-vis Asia-Pacific (APAC) and Middle-East and Africa (MEA)

## NO. OF CAPTIVES AS AT 2022

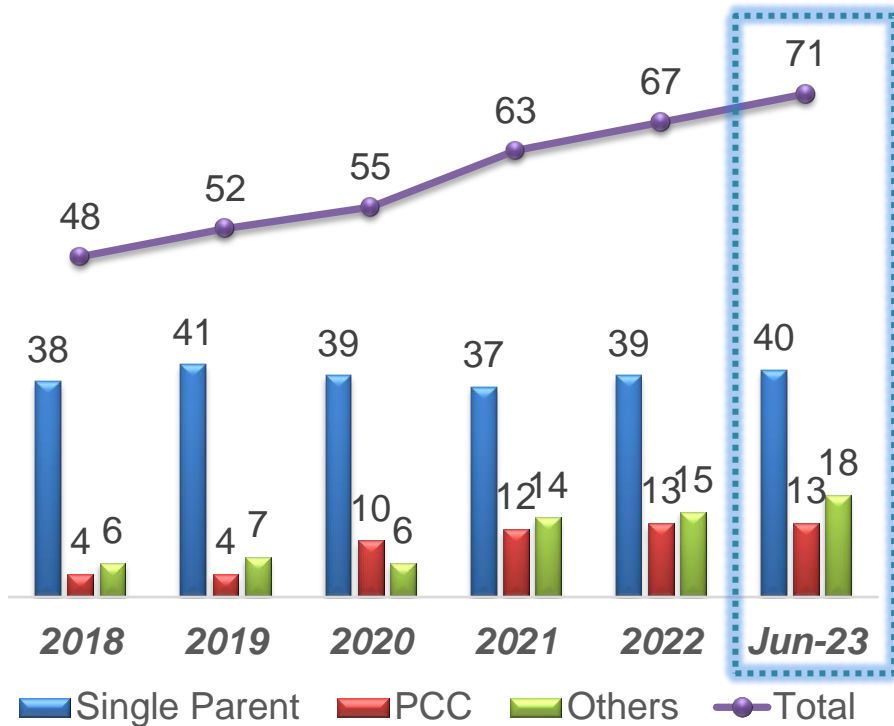


*... Labuan is progressively catching up, remains the domicile of choice after Singapore ...*



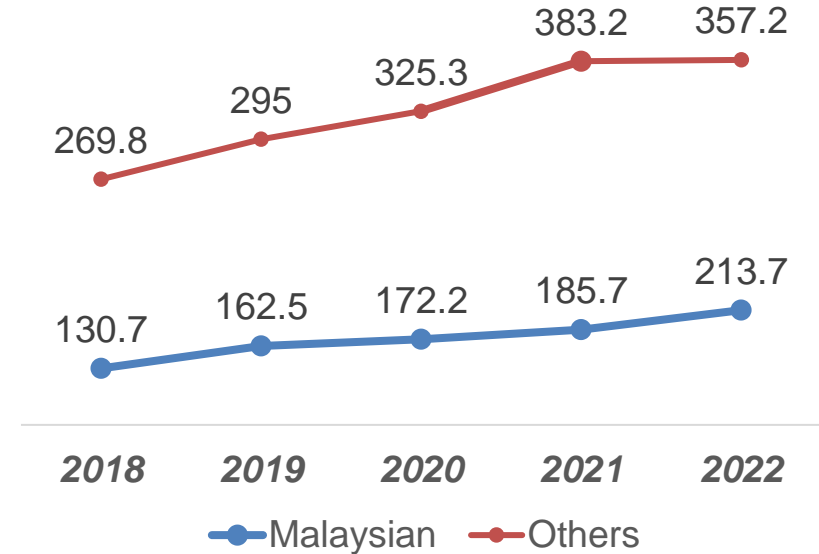
# Labuan Captive Insurance Market Landscape

**NO. OF CAPTIVES**



... Progressively showing upward trend in new captive formation over the past five years ...

**TOTAL GROSS PREMIUM (USD mill)**



.. Majority of the total gross premiums for captive insurance business were derived from international markets ...

... In 2022, captive's gross premium (USD570million) represents 30% of the whole Labuan insurance industry (USD1.7billion)

# What is a Protected Cell Company (PCC)?

## Labuan PCC was introduced in Labuan IBFC since 2010

### Governing Legislations

#### Structure

- a) Labuan Companies Act 1990
- b) Guidelines on the Establishment of Labuan Protected Cell Companies

No. of PCC as at August 2023

⇒ 7 Core; 24 Cell

#### Licensing

- a) Labuan Financial Services and Securities Act 2010
  - b) Labuan Islamic Financial Services and Securities Act 2010
- 
- a) Insurance/Captive Insurance and Takaful/Captive Takaful
  - b) Mutual Fund/Islamic Mutual Fund

**Scope of Activities**  
(S130o(4) of LCA)

### Who can set up a PCC

Person who qualifies under the following Guidelines

- a) Guidelines on Captive Insurance Business in Labuan IBFC
- b) Guidelines on the Establishment of Mutual Funds including Islamic Mutual Funds

### PCC available worldwide

**PCC** → Protected Cell Company ⇒ Guernsey\* & Isle of Man\*

**SPC** → Segregated Portfolio Company ⇒ Cayman\* & BVI

**SAC** → Segregated Account Company ⇒ Bermuda\*

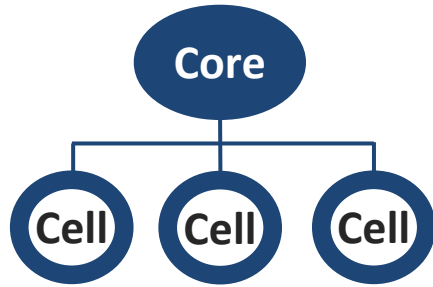
**VCC** → Variable Capital Company ⇒ Singapore

\* MOU partners  
of Labuan



# What is a Protected Cell Company (PCC)?

## SINGLE LEGAL ENTITY



- ▶ A Labuan company may be incorporated as a Labuan PCC and existing Labuan company may be converted into a Labuan PCC. [S1300(1) of LCA]
- ▶ A Labuan PCC may establish one or more cells for the purpose of segregating and protecting cell assets [S1300(2) of LCA]
- ▶ The core and the cell (PCC) are one legal entity [S1300(3) of LCA]
- ▶ A Labuan PCC shall keep an index of the names of its shareholders (S130U of LCA)

## Cell and general assets

The assets of a Labuan PCC shall be either:

- cell assets which comprise the assets of the Labuan PCC held within or on behalf of the protected cells; or
- general assets which comprise the assets of the Labuan PCC which are not cell assets.

(S130S of LCA)

## Cell shares and cell capital

A Labuan PCC may create and issue cell shares and the cell capital in respect of any of its cells.

(S130T of LCA)

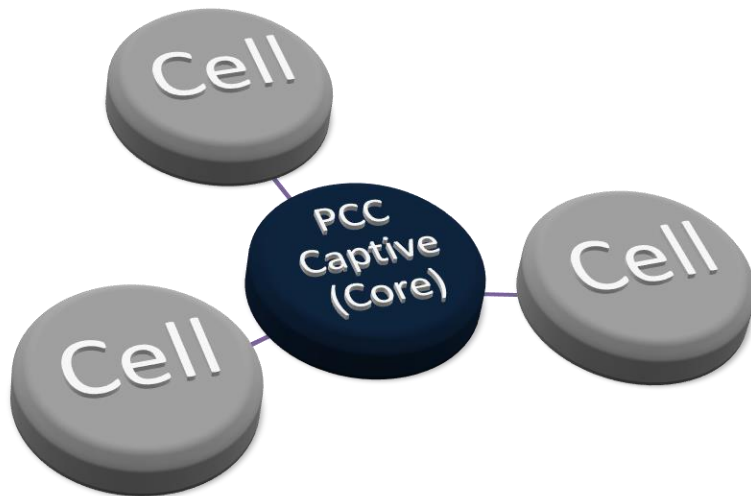
## Rights of Creditors and Liabilities

- 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.
- The cell assets attributable to a cell shall be used to satisfy the liability attributable to a particular cell only.

(S130w & S130x of LCA)

# Uniqueness of PCC

PCC structure is an evolution refinement of the *rent-a-captive* structure to cater for diverse captive needs... *ideal structure for managing various kind of business risks*



## PCC

- ✓ **Bankruptcy remote** structure from one cell to the other
- ✓ Assets/liabilities **ring-fenced** between cell and core
- ✓ **Statutory/legal protection** i.e. PCC legislation

## Cells

- ✓ **Combined advantages** of a wholly owned captive and cost advantages of a rental captive
- ✓ Cell can operate **different business lines** or **rented/owned by different risk owner**

# Roles and Responsibility of PCC

## Roles and responsibilities of Board and the Senior Management

- ✓ Provide and maintain the minimum paid-up capital for PCC;
- ✓ Ensure cell of the PCC comply with solvency requirement and any other applicable requirements;
- ✓ Ensure cell of the PCC underwrites its own group or related parties' insurable risks; and
- ✓ Conduct appropriate assessment on the cell owner & ensure the risks underwritten under the cell are within its own group

## Cell establishments

To establish a cell, a PCC must:

- (i) notify Labuan FSA for establishment of a cell by submitting a duly completed notification form with the relevant supporting documents, to be submitted within seven (7) days before commencement of the cell together with a payment of the cell's annual fee;
- (ii) have a set of proper internal policies and procedures with regard to criteria and processes for on boarding of a cell which include but not limited to requirements under paragraph 4.1 above;
- (iii) conduct due diligence on the cell's applicant;
- (iv) ensure the cell underwrites its own group or related parties' insurable risks; and
- (v) notify Labuan FSA within seven (7) days after the change of cell owner together with a revised notification form. The change of cell owner is limited to changes within the group structure and does not affect the current insurable risks.

*Nevertheless, Labuan FSA has the right to suspend the operations of the cell or the PCC should there be any breach of any requirements in the Guidelines.*

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# **AUTHORISATION & LICENSING APPROACH**

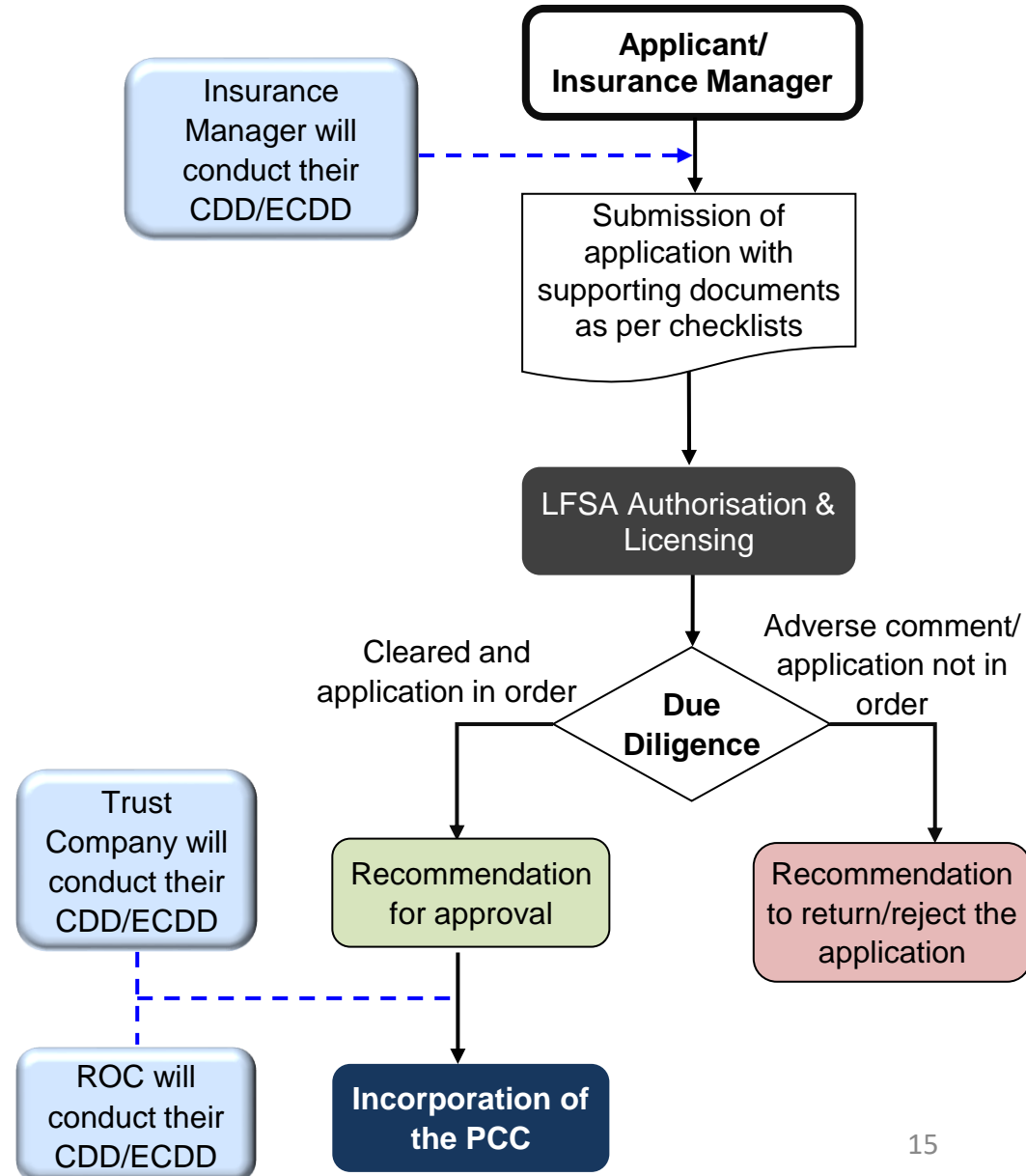
# Application Process for Licence by Labuan PCC (Core)

Upon receipt of application, LFSA will conduct the following CDD process but not limited to:

- (i) Conduct financial vetting, i.e. bankruptcy checking with Malaysian Department of Insolvency and security vetting with the Royal Malaysia Police Department on the proposed director(s) and principal officer.
- (ii) Conduct World-Check and KYC360 screening on the individuals (proposed shareholder(s)/director(s)/principal officer), corporate shareholders as well as the related entities within the group of companies.
- (iii) Write to Home Supervisory Authority where necessary for:
  - a) individual shareholder(s)/ director(s) /principal officer holds key positions in any licensed institutions at the home country
  - b) corporate shareholder(s) holds any licence(s) at the home country

## Application from high-risk jurisdictions or Politically Exposed Person (PEP)

- ✓ Conduct ECDD checking



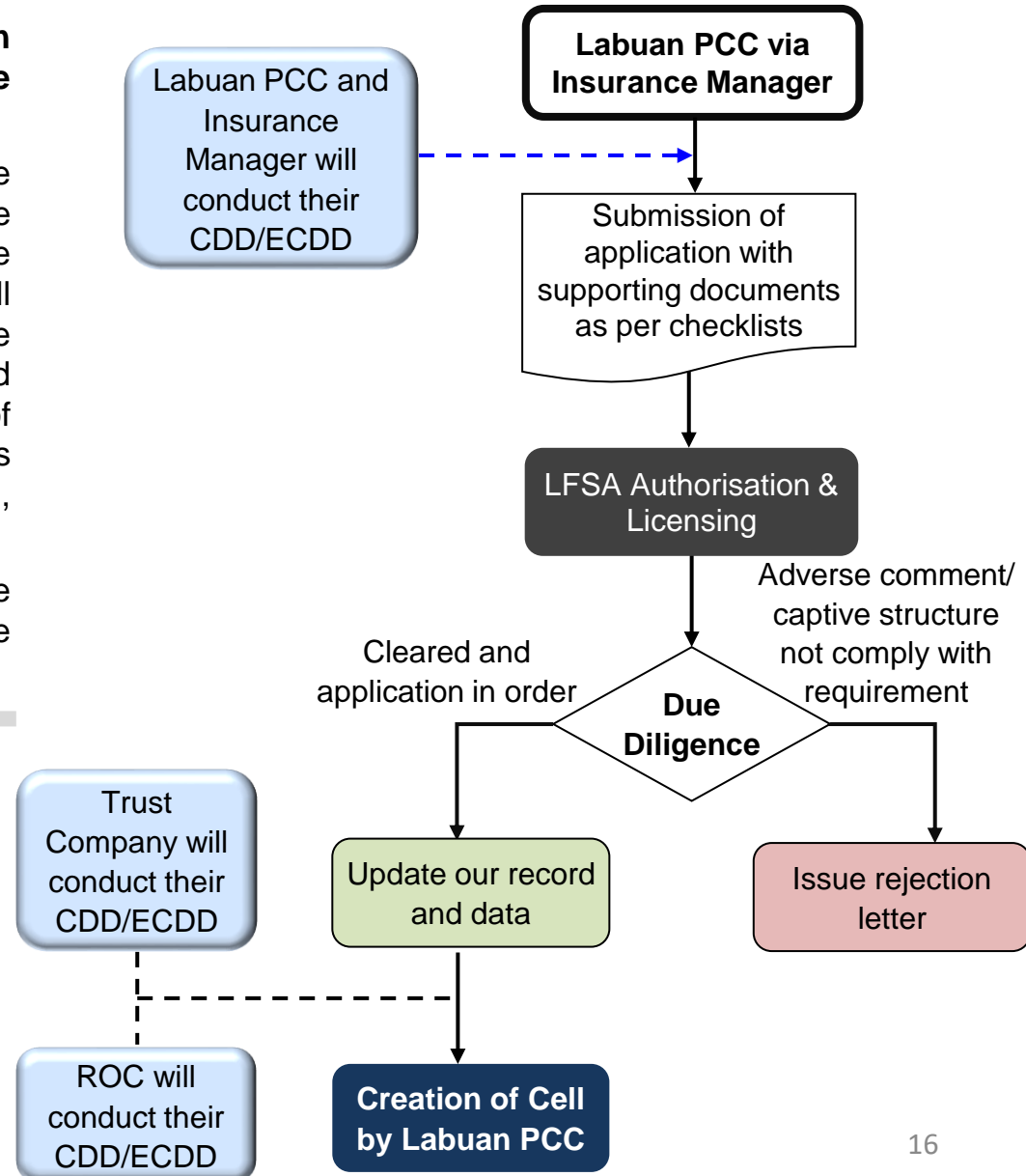
# Application Process for Licence by Labuan PCC (Cell)

Labuan PCC is required to submit a notification form to Labuan FSA within 7 days before commencement of the cell

- ✓ Submission of a Statutory Declaration to declare that the Labuan PCC has conducted its due diligence on the cell owner including the director(s) and shareholder(s) of the cell as well as any other persons or companies that are involved in and related to the cell and satisfied that there is no adverse report against any of them related to legitimacy of the business structure, fitness and properness of the person, and money laundering or terrorism financing.
- ✓ The insurance manager is required to provide similar declaration on the due diligence conducted by them on the cell owner.

Upon receipt of the notification, LFSA shall conduct CDD process on the cell owner including the shareholder(s) & any other related entity(s)

- ✓ Conduct World-Check and KYC360 screening; and
- ✓ Check for any adverse comments against Labuan FSA's investor alert list and internal alert list.





# Prudential Regulatory Requirements for PCC...*regulatory approach is consistent with other licensees*



## Financial regulations

### Solvency Requirements

**PCC (overall)** ⇒ at least the higher of:

- min. paid-up capital (RM500k)
- 10% of the Cells' net premium income (NPI)
- 10% of the Cells' provision for outstanding claims

**PCC (cell)** ⇒ at least the higher of:

- 10% of the Cell's NPI
- 10% of the Cell's provision for outstanding claims

### Accounting Standards Permitted

International financial reporting standards:

- IFRS
- MFRS
- UK GAAP
- US GAAP
- MPERS



## Governance and conduct regulations



### Corporate Governance Requirements

- **Sound corporate governance standards and practices** (including cyber governance)
- **Fitness and propriety** of key persons
- Internal control requirements through **internal audit** function
- Robust risk management expectations:
  - ✓ Investment management
  - ✓ Reinsurance management
  - ✓ Business continuity management

### Market Conduct Requirements

To ensure business is conducted with due diligence and care in accordance with sound insurance principles

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**AML POLICY, RISK MONITORING &  
SURVEILLANCE FOR LABUAN ENTITIES**

# Philosophy Behind AML/CFT Regulatory Framework



## AML Philosophy

Ensure adequate measure to safeguard the Country from ML/TF/PF risks and vulnerabilities

To be aligned with national AML/CFT initiatives

Benchmark with FATF international standard & practices

### Approach

- Adherence to international standards for all Labuan Reporting Institutions
- Principles comparable with peer registrars

### LFSA Regulatory Framework

- Market consultation
- Consistent with Malaysia financial supervisors
- Padded up based on AML/CFT risk assessments

### FATF 40 Recommendations

Framework for countries to combat money laundering, terrorist financing, and the financing of weapons of mass destruction.

## International Standards



Financial Action Task Force



Asia/Pacific Group on Money Laundering

## National AML/CFT Initiatives



National Coordination Committee to Counter Money Laundering (NCC)

# Labuan AML/CFT Laws & Regulations

## Law

### Anti-Money Laundering and Anti-Terrorism Financing Act 2001





## Policy Documents

- Guidelines on AML/CFT and Targeted Financial Sanctions for Labuan Key Reporting Institutions
- Guidelines on Beneficial Ownership for Labuan Legal Persons and Legal Arrangements
- Guidelines on Fit and Proper Person Requirements
- Guidelines on Compliance Function for Labuan Licensed Entities
- Circular on e-KYC for Digital Financial Services
- Circular on Submission of Compliance Report and AML/CFT Independent Audit Report to Labuan FSA

# Labuan ML/TF Risk Ratings

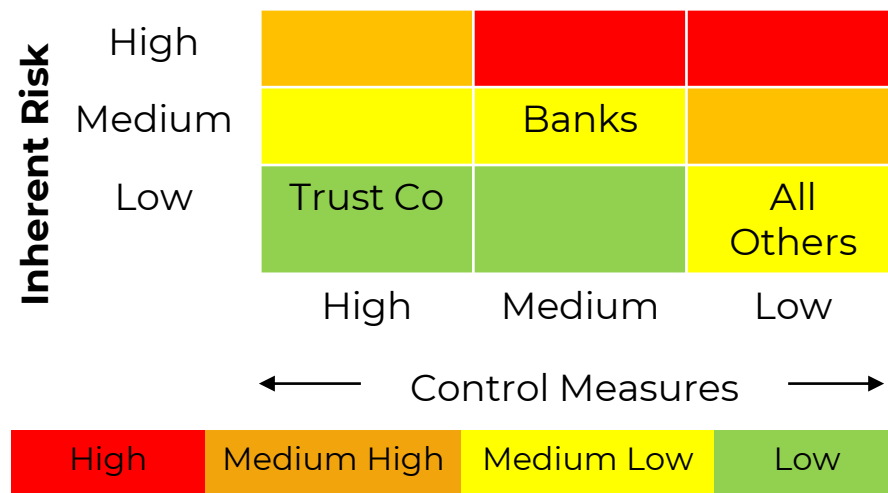
## Sectoral Risk Assessment 2020

The net risk ratings of all Labuan sectors showed improvements from 2017.

Labuan Key Sectors	Risk	2017	2020
Net Risk			
 Banks	ML	M	L ▼
	TF	M	L ▼
 Insurers	ML	M	L ▼
	TF	M	L ▼
 Fund Managers	ML	MH	M ▼
	TF	MH	M ▼
 Money Brokers	ML	H	M ▼
	TF	MH	M ▼
 Trust Company	ML	MH	M ▼
	TF	M	L ▼
 Factoring	ML	H	M ▼
	TF	H	M ▼

## Labuan IBFC Risk Assessment 2020

A dedicated risk review of the Centre, covering all Labuan companies, partnerships, foundations and trusts.



Overall Labuan market  
ML/TF risk trend ▼

Both risk assessments had  
classified Labuan IBFC as  
**LOW RISK**

# Beneficial Ownership Disclosure Requirement for PCC

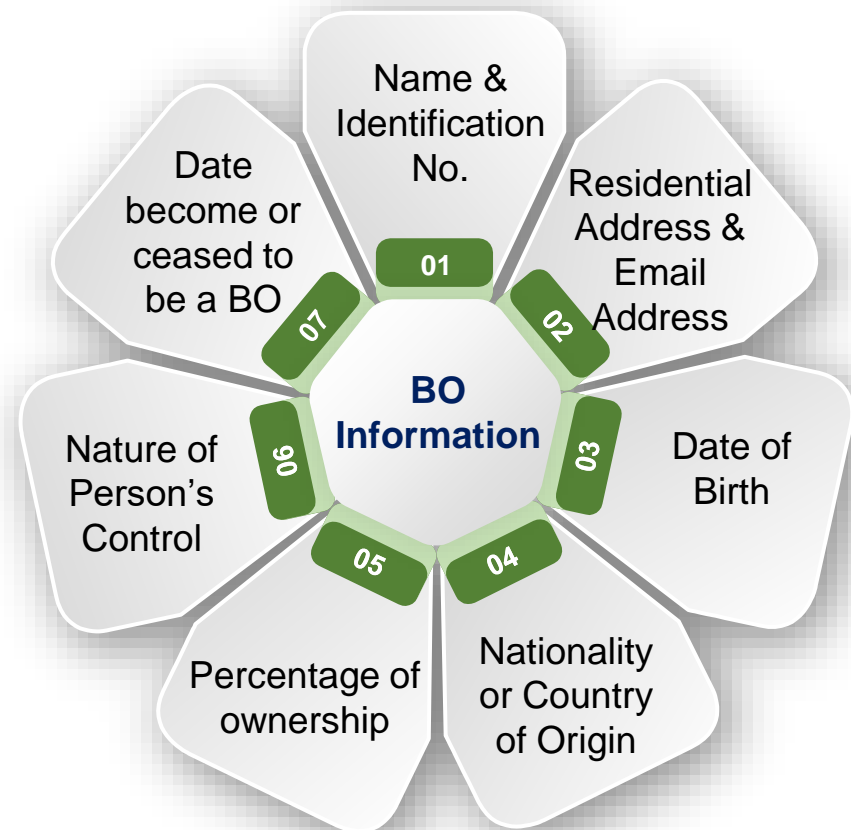
**Duties of a Labuan PCC to obtain and provide adequate, accurate and up-to-date BO and nominee information to the authorised agent\*.**

**Labuan PCC has to:**

- ✓ **provide BO information with supporting documents upon incorporation to the authorised agent.**
- ✓ **update the authorised agent when there is a change of BO information.**

\*Authorised agent refers to company secretary of the entity.

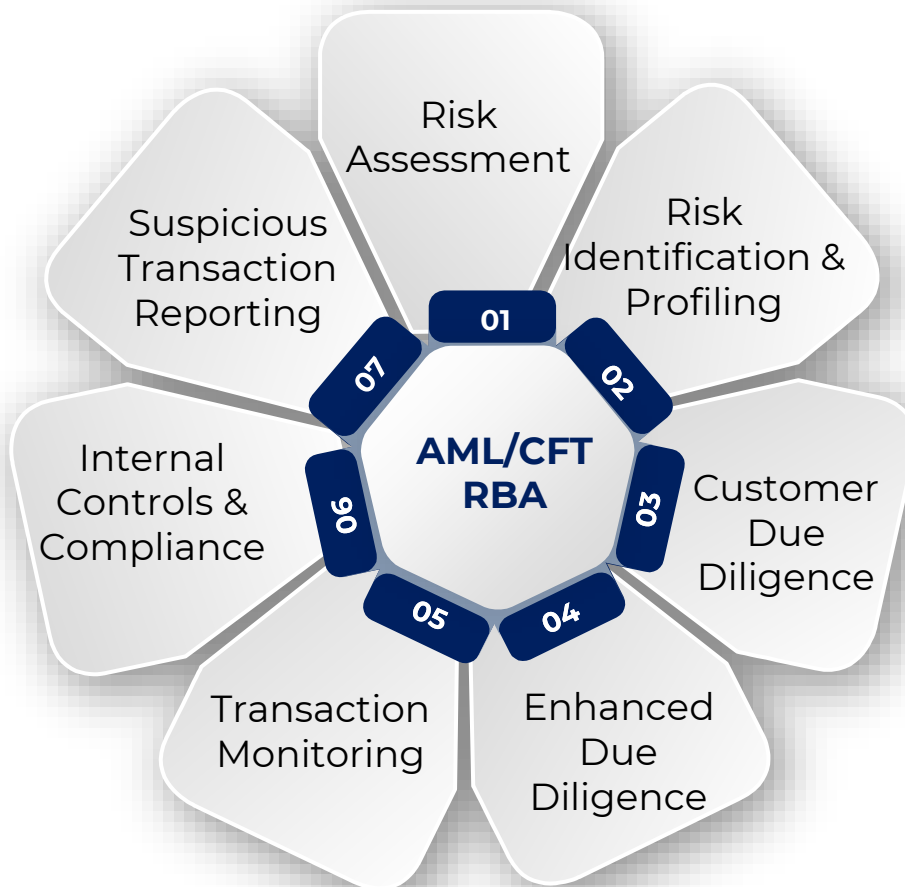
**The Labuan PCC would need to acquire at least the following information for BO**






# AML/CFT Control Measures for PCC

## AML/CFT Risk-Based Approach: Proactively assessing and mitigating ML/TF risks




### Labuan PCC AML/CFT Measures



### Risk Based

-  Focus resources on high-risk areas
-  Tailored and proportionate measures
-  Enhanced effectiveness and efficiency

### AML/CFT Process:

-  Fundamental framework for Labuan RIs
-  Identify, assess, mitigate and manage ML/TF risks
-  Continuous monitoring and periodic risk assessments

# Supervisory Approach on PCC Captive

## Risk Based Supervisory Framework

- ✓ Focus on higher risk entities
- ✓ Onsite examination and supervisory engagements based on Supervisory Plan or on ad-hoc basis
- ✓ Desktop review on all licensed entity



### 1 LE Analysis

- Institutional Overview
- Supervisory Strategy

### 2 Supervisory Annual Planning

- Monitoring and review
- Desktop Review
  - Engagement
  - Onsite examination

### 3 Risk Assessment

- Composite Risk Rating
- Risk Profiling / sectoral profiling

### 4 Reporting and intervention

- Advisory for improvements
- Administrative penalty
- Restriction of business
- Revocation of license

## PCC Captive focus assessment (In-house Risk)

- ✓ AMLCFT Measures
- ✓ Adequacy of Capital



### Desktop or Offsite Monitoring

- ✓ Statistical Returns e.g., Statement of Solvency, half-yearly basis
- ✓ Ad-hoc request e.g., self-assessment questionnaires
- ✓ Submission of Audited Financial Statements, Letter of Compliance etc.
- ✓ Complaints received



### Engagement or Onsite Examination

- ✓ Virtual/ physical engagement and Onsite examination
- ✓ Interview Management, Compliance Officer, Internal/ external auditor.
- ✓ Review of Documents, validation of information submitted



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**LABUAN FSA PRESENTATION END**

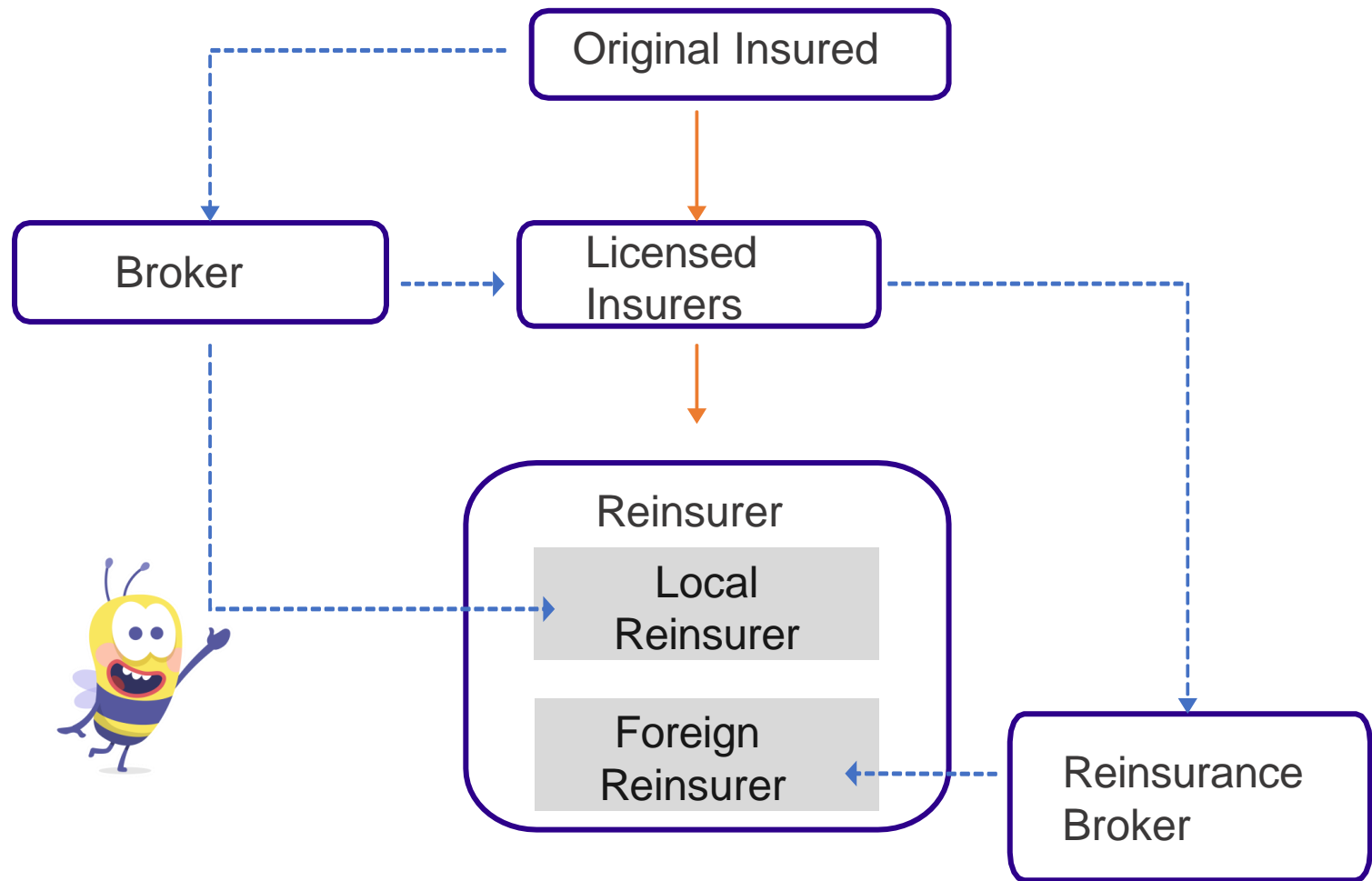
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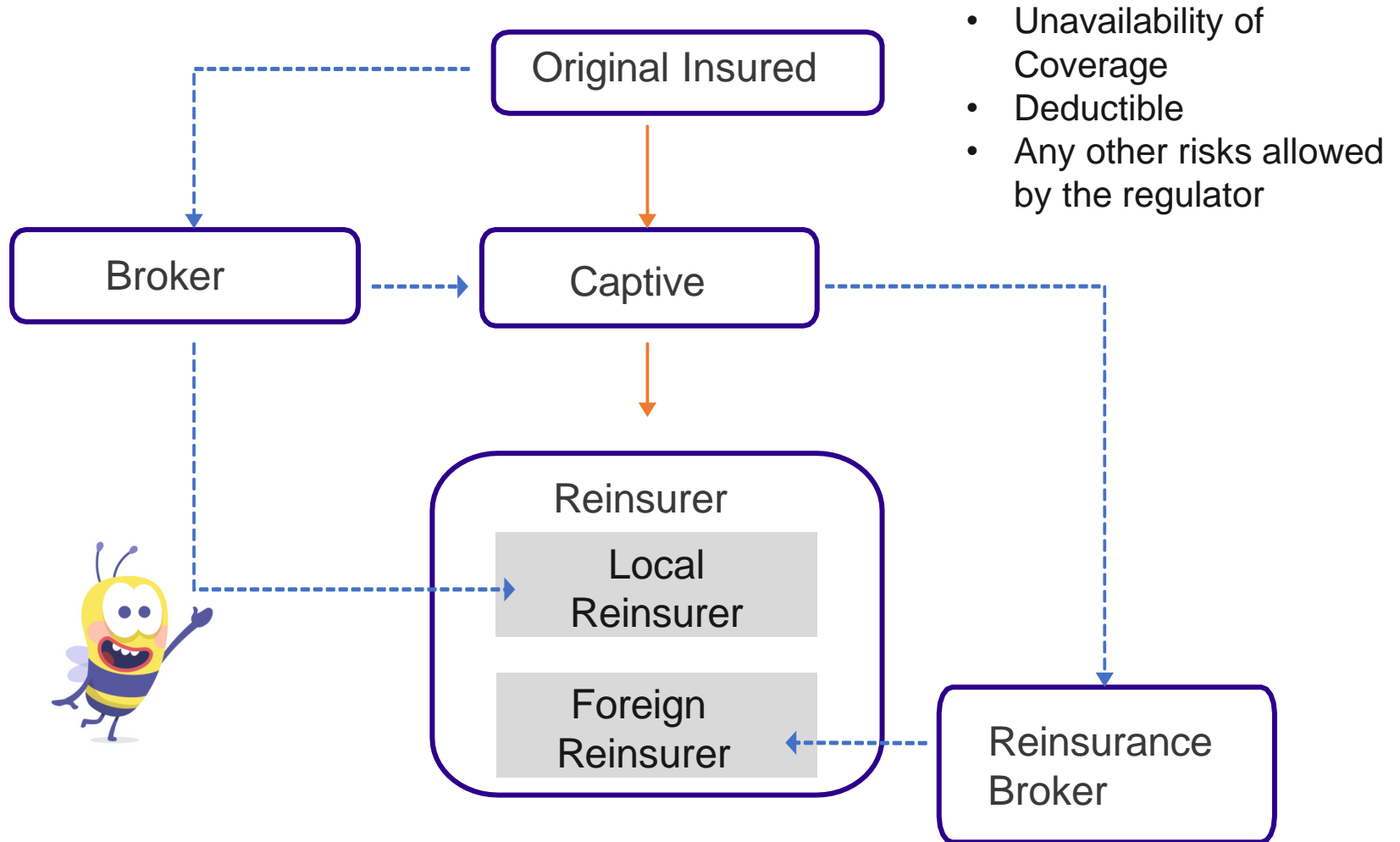
**Next Session:  
Briefing on the Operational of PCC  
by LIA Representative**

*Presenters: Representatives from LIA*

# Introduction : Traditional Insurance without Captive



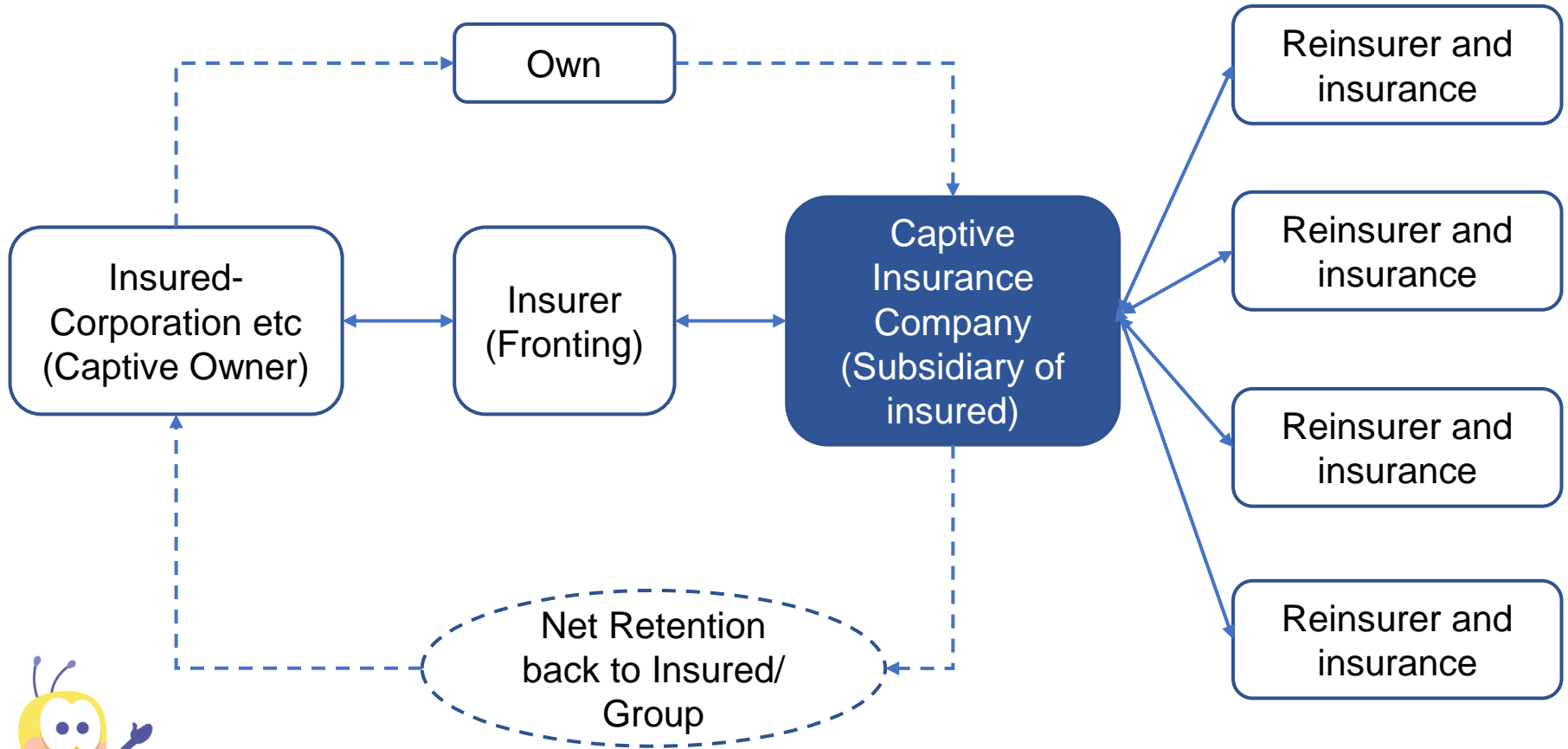
# Introduction : Insurance with Captive



# Captive Structures in the Labuan IBFC

- Pure / Single Captive

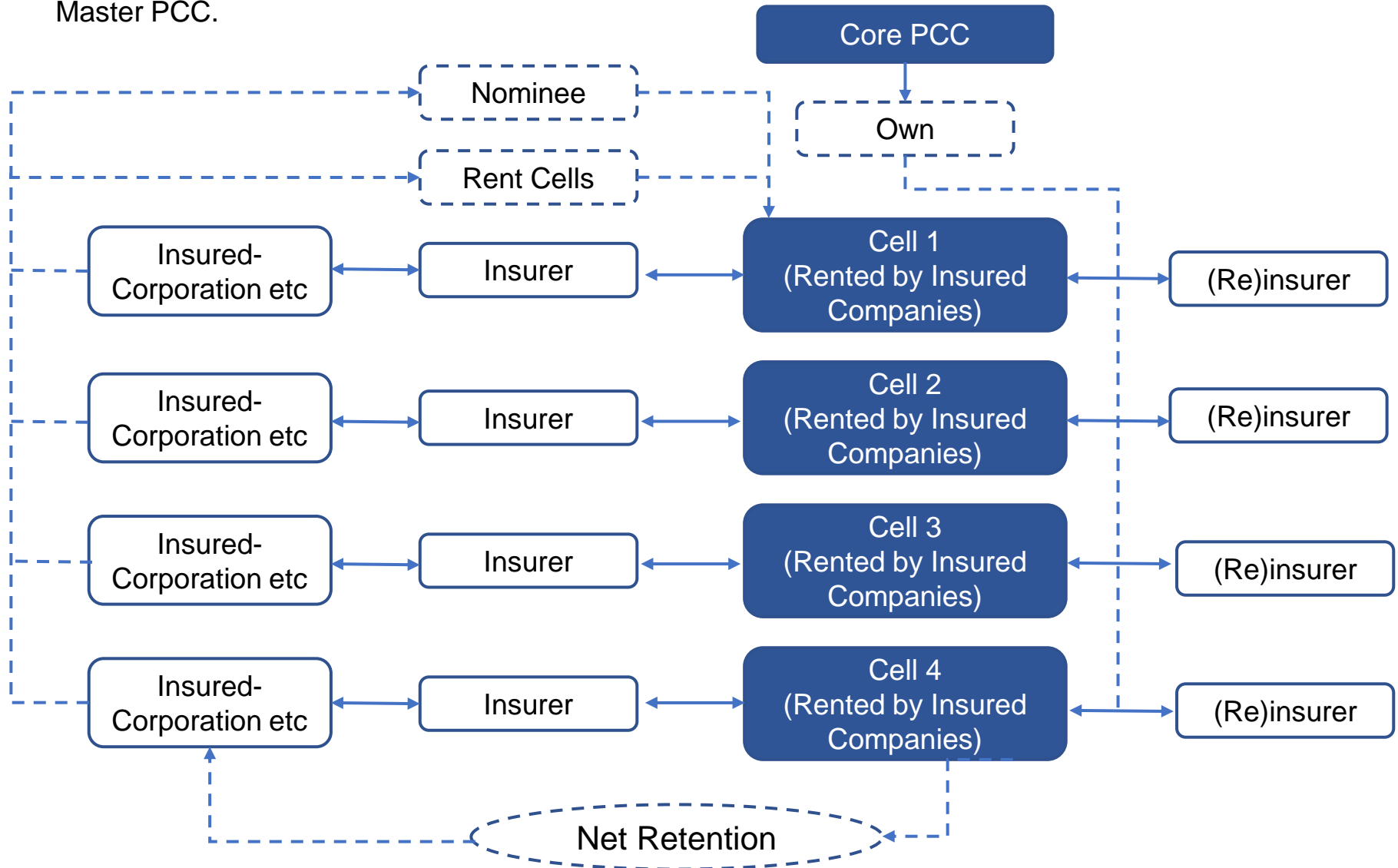
wholly owned subsidiary of its parent company and insures primarily the risk of the parent and its affiliates.



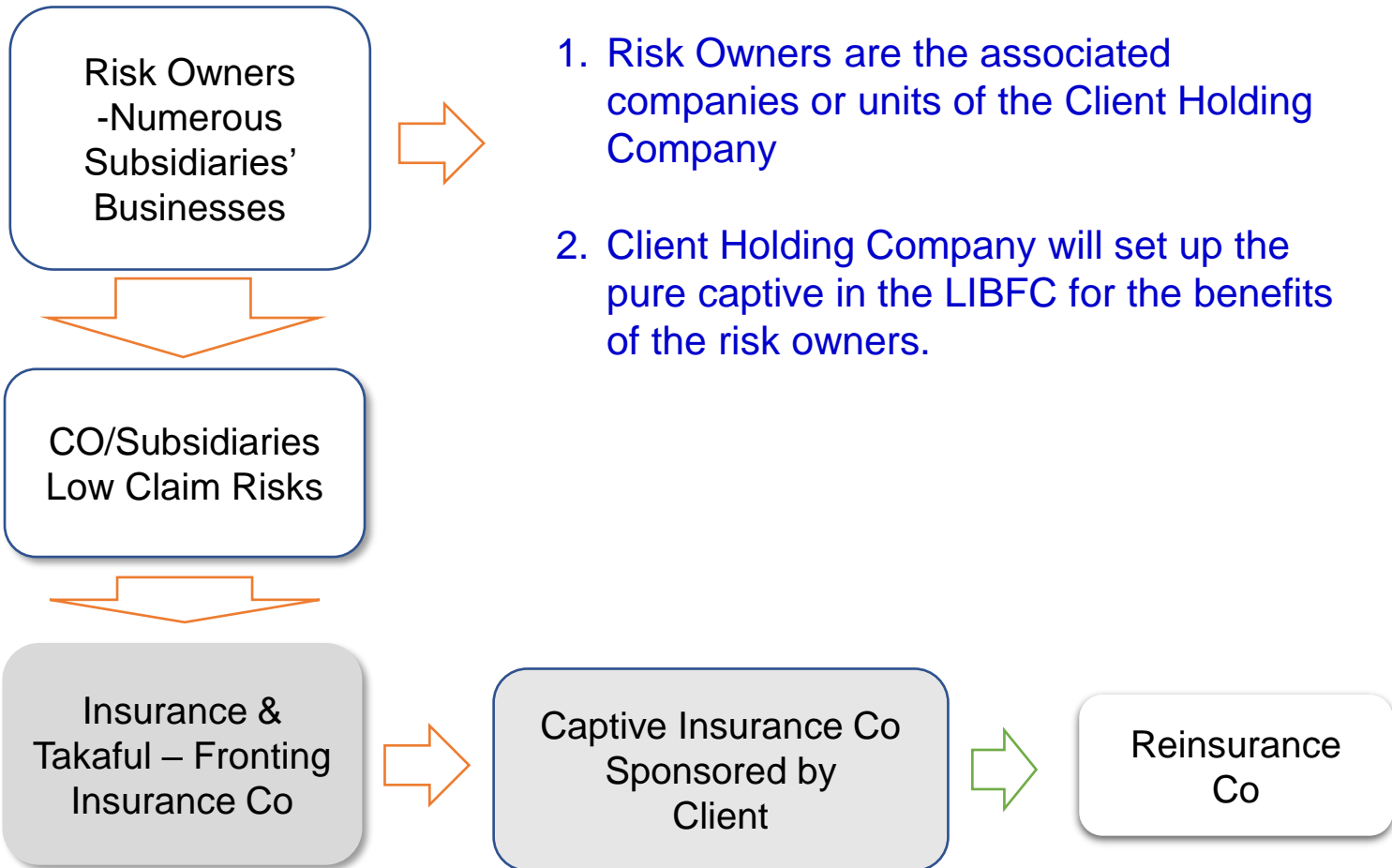
# Captive Structures in the Labuan IBFC

- Protected Cell Company (PCC)

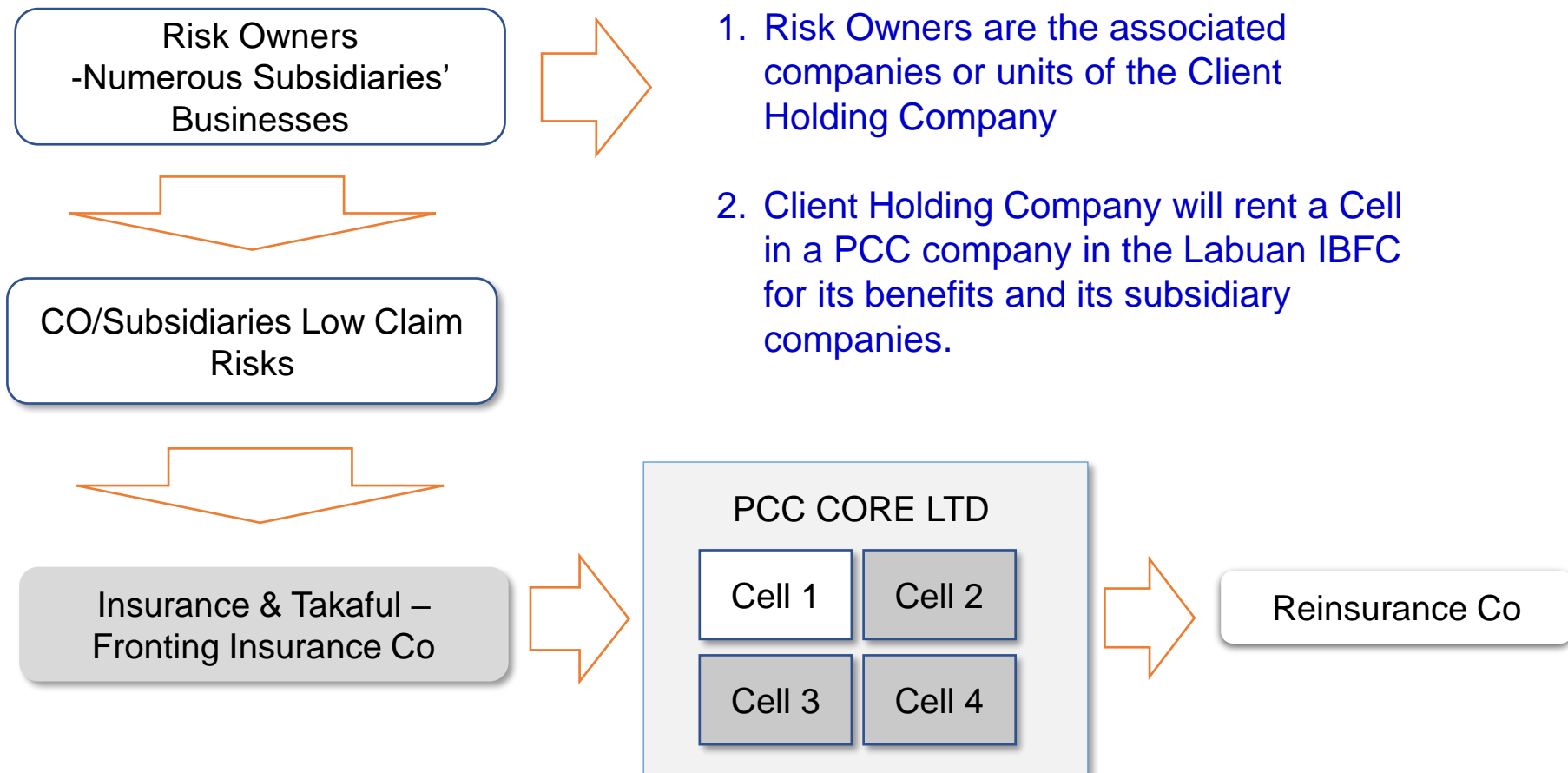
usually set up by a sponsoring organization like a broker, which provides the capital for the facility and then rents this capital to participants who seek to establish their captive program as individual 'cells' within the Master PCC.



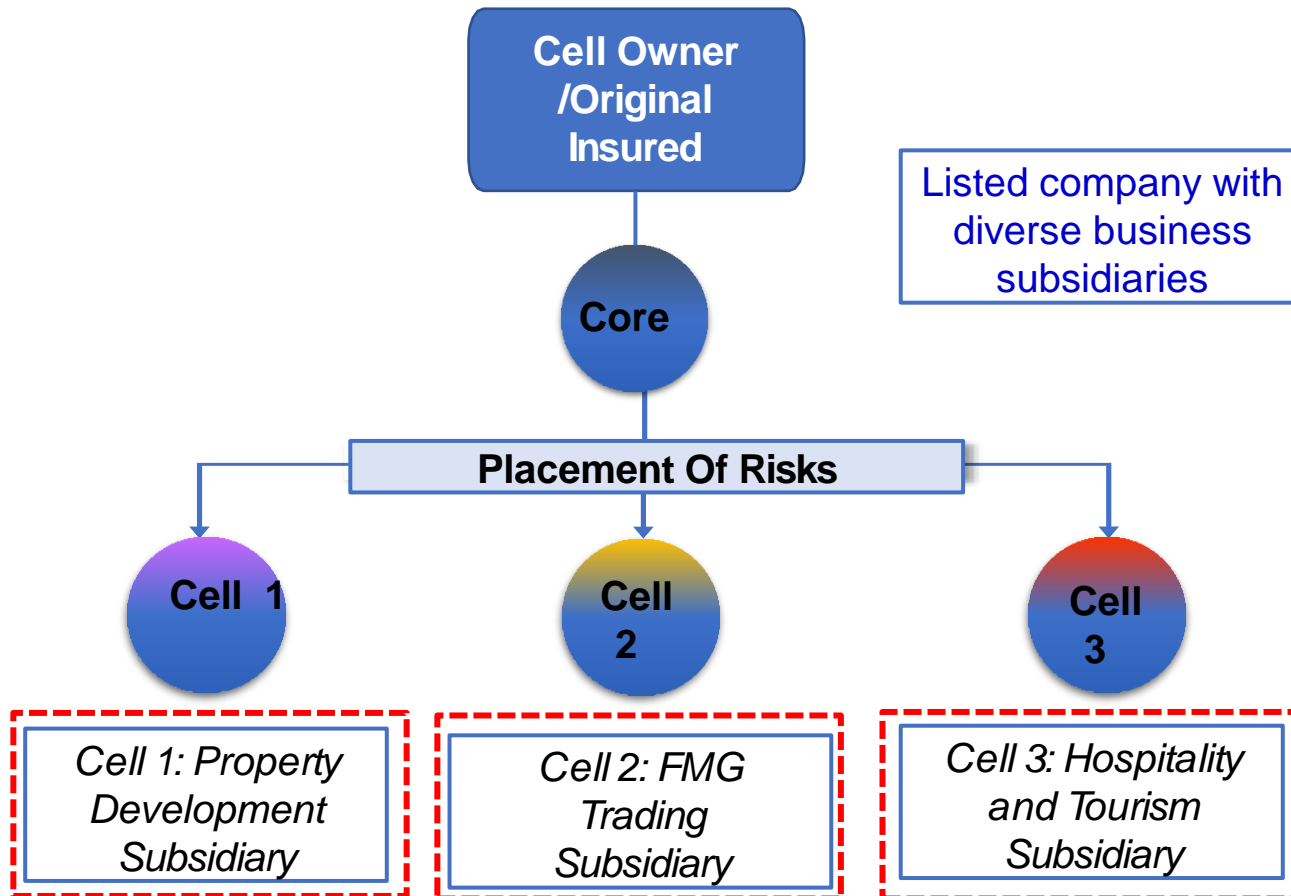
# Another View : Pure Captive



# Another View : PCC Captive



# Cells Representing Different Business Segments



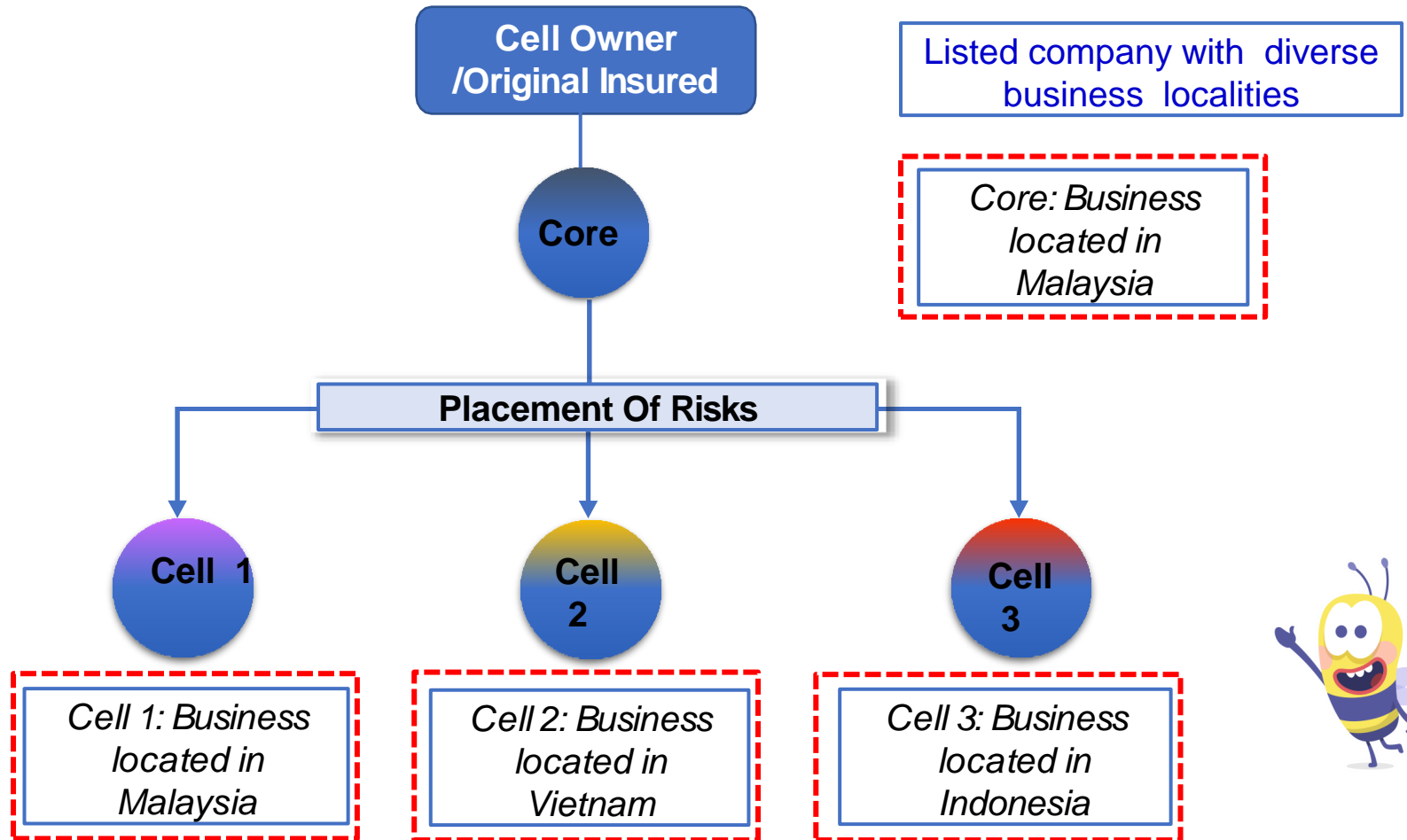
## NOTE:

PCC legislations provide for the legal brick wall.





# Cells Representing Different Localities



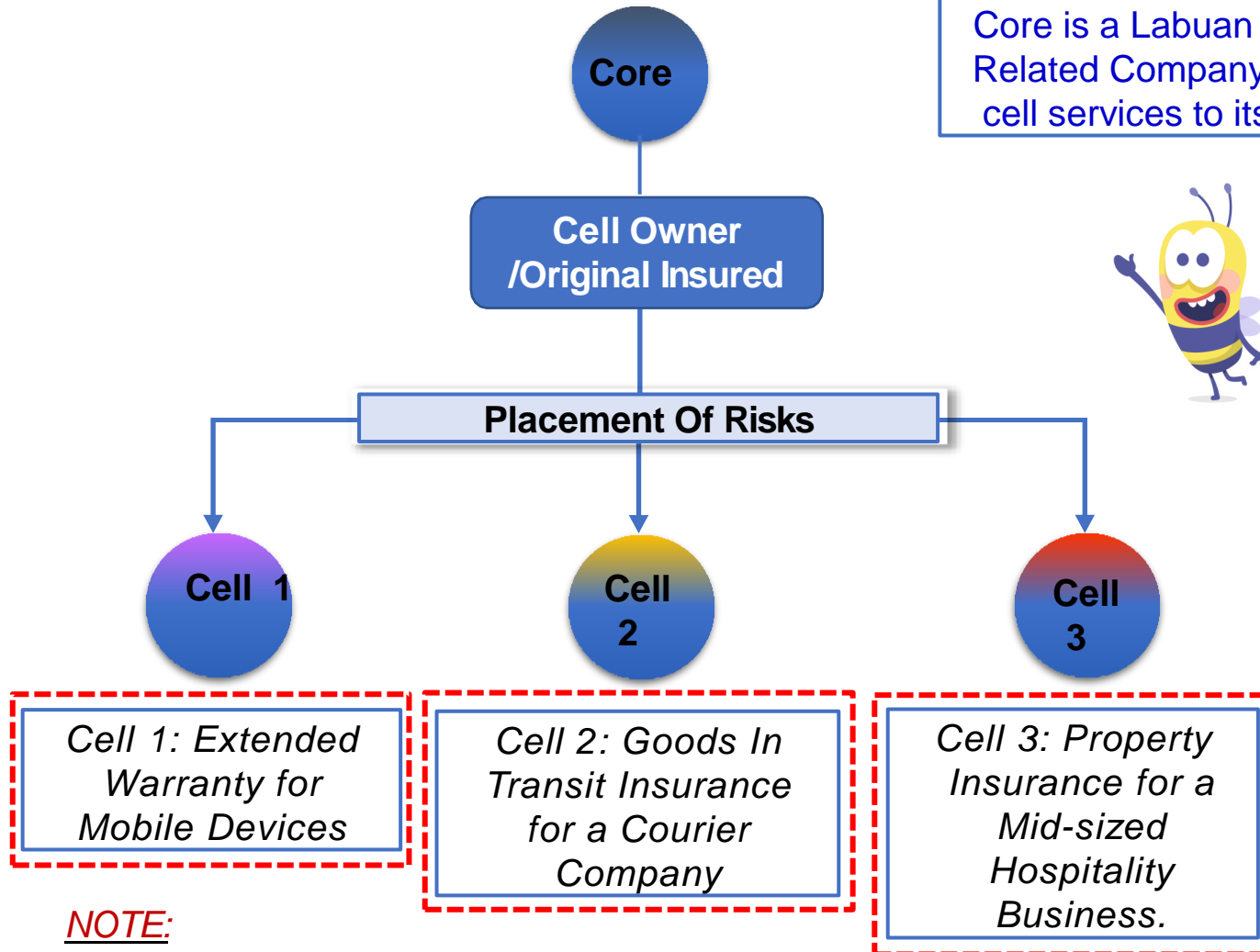
**NOTE:**

PCC legislations provide for the legal brick wall.



# Cells Representing Different Business Owners

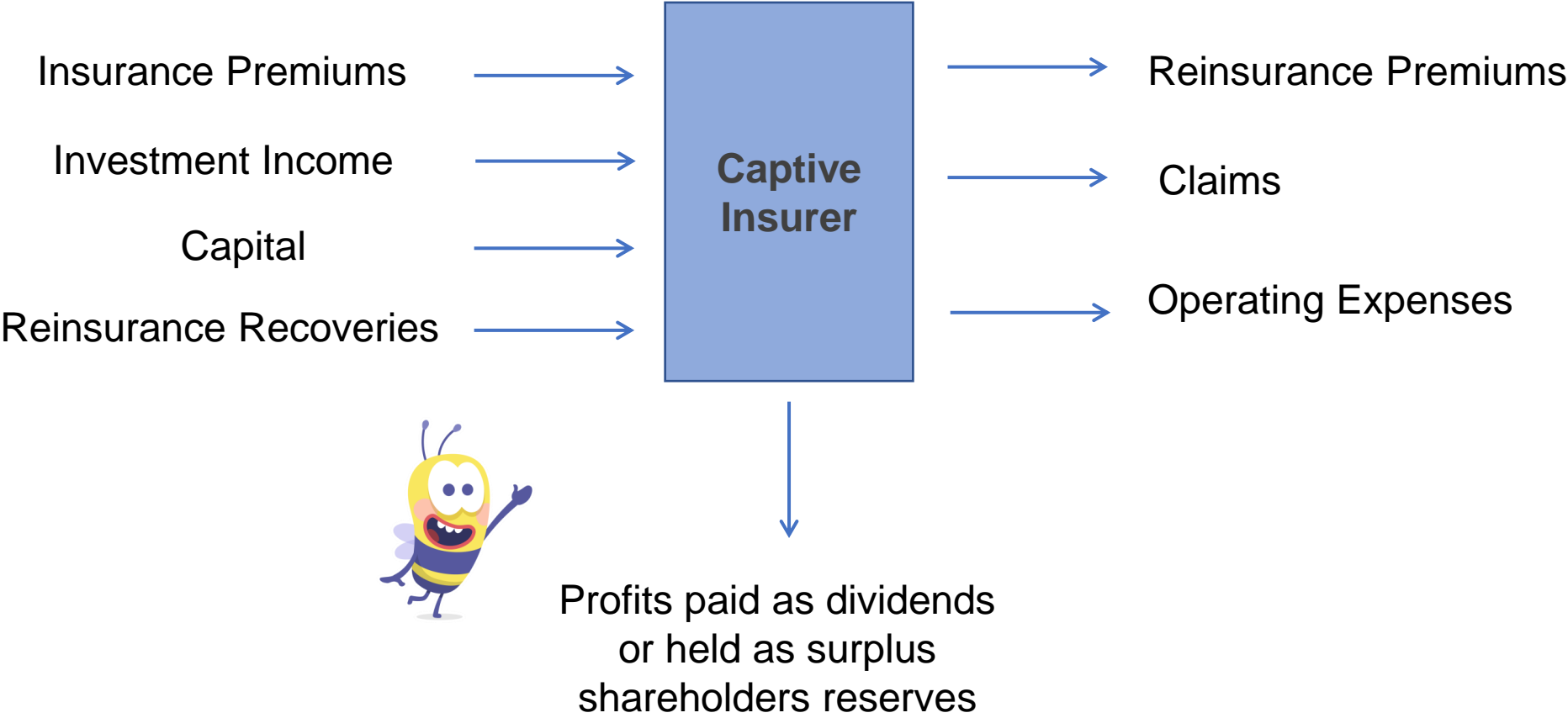
Core is a Labuan Insurance Related Company providing cell services to its clientele



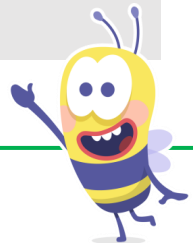
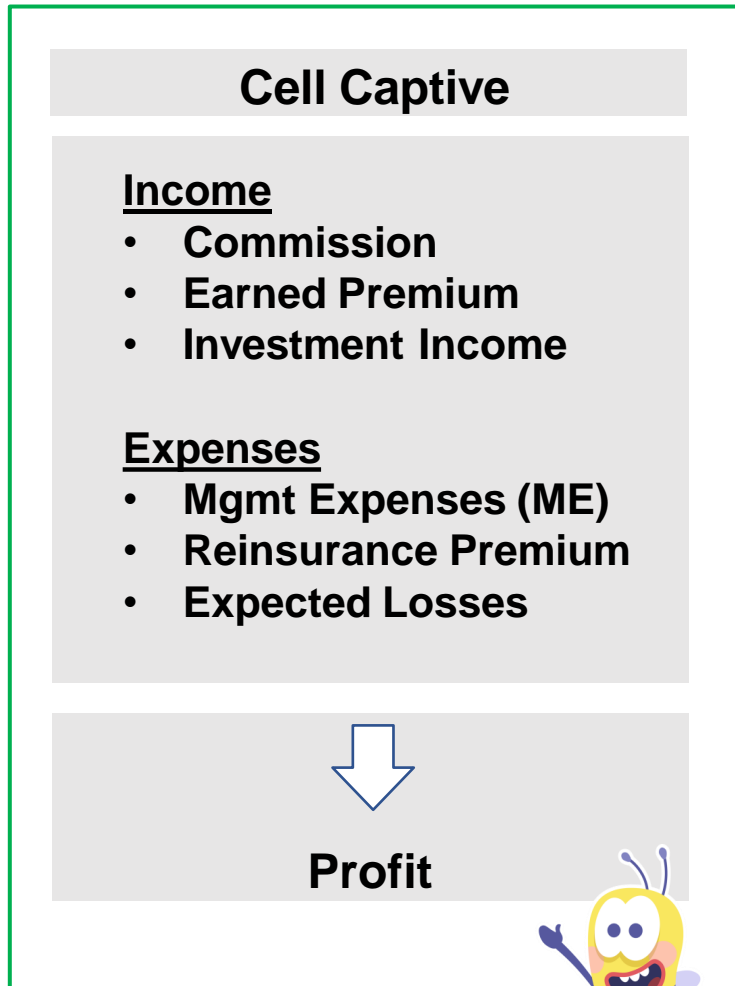
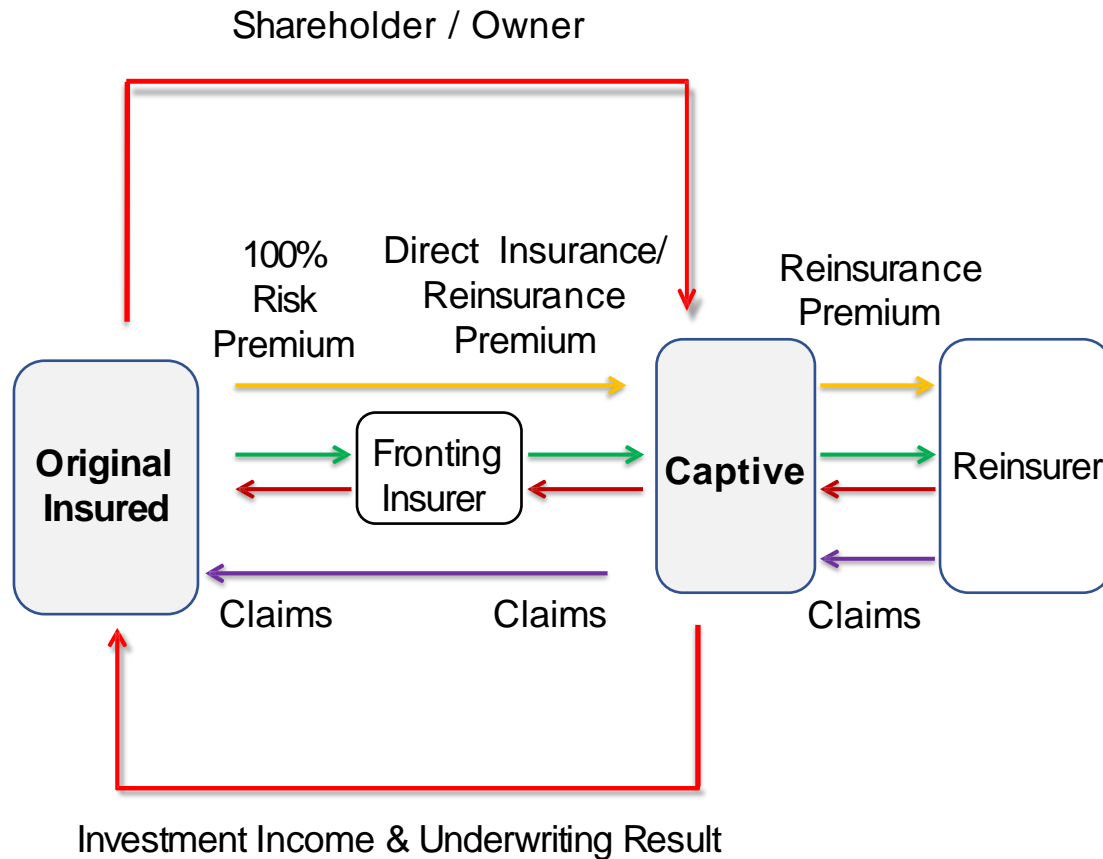
**NOTE:**

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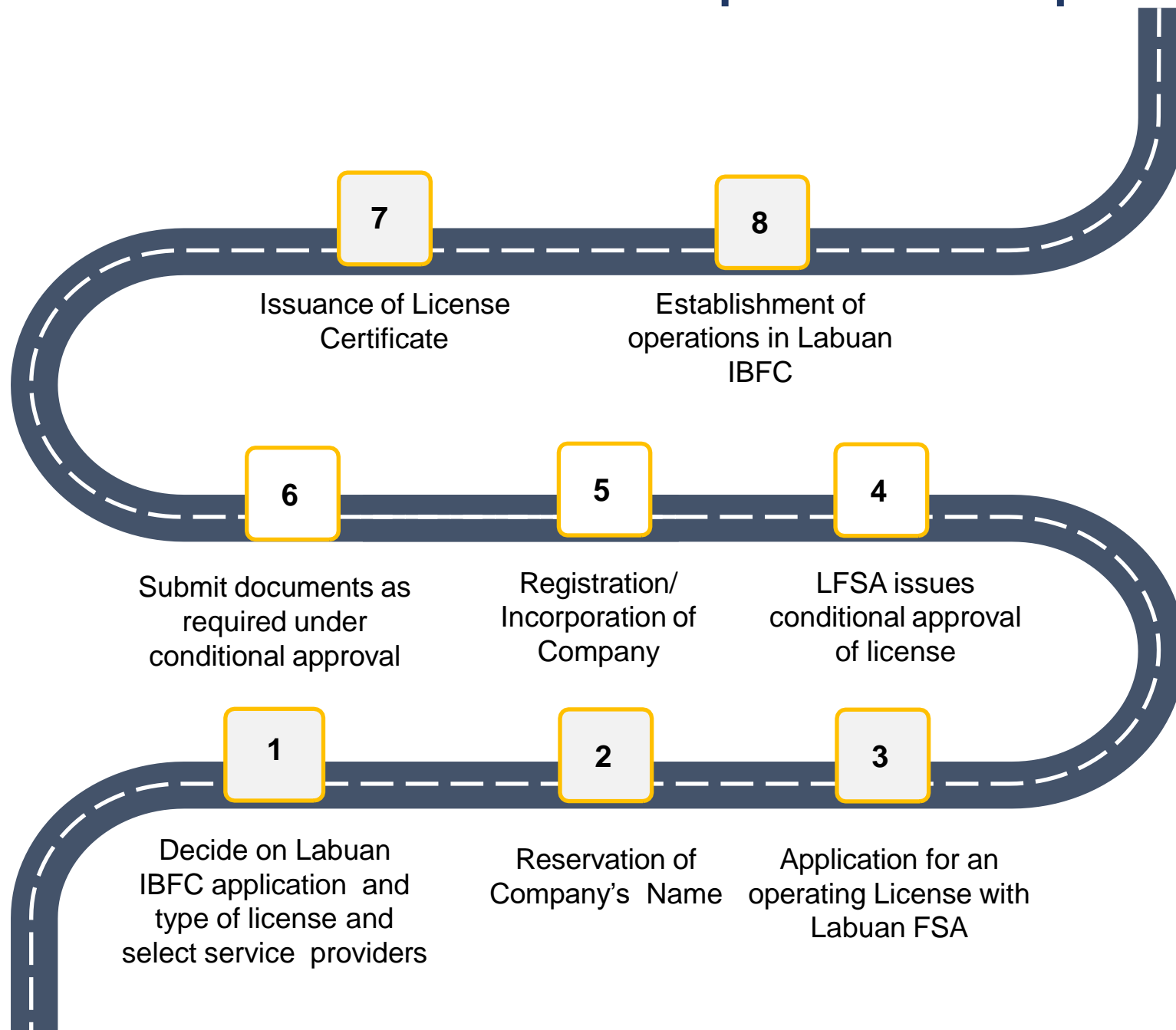
# Typical Cash Flows for A Captive



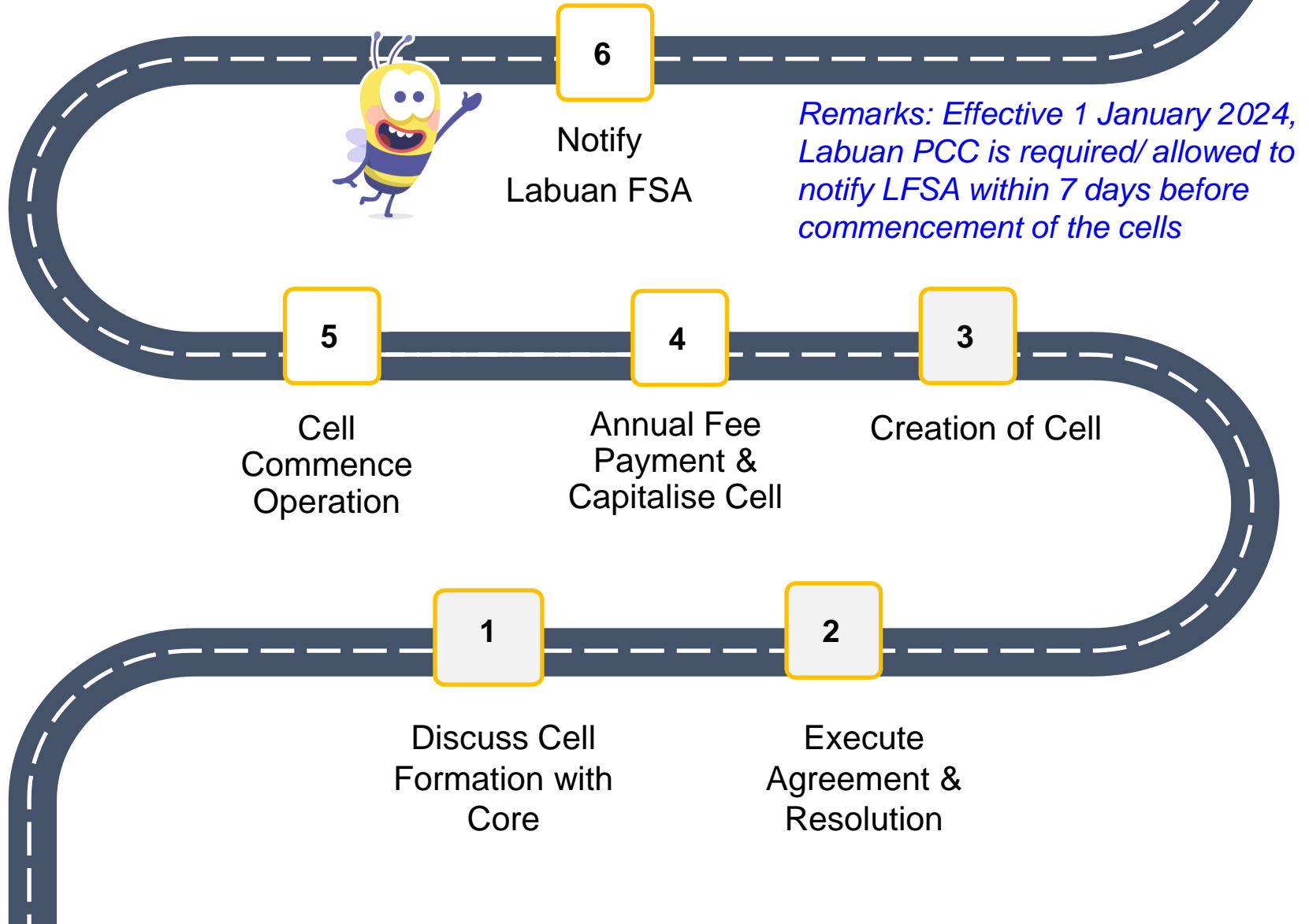
# Typical Captive Experience Account



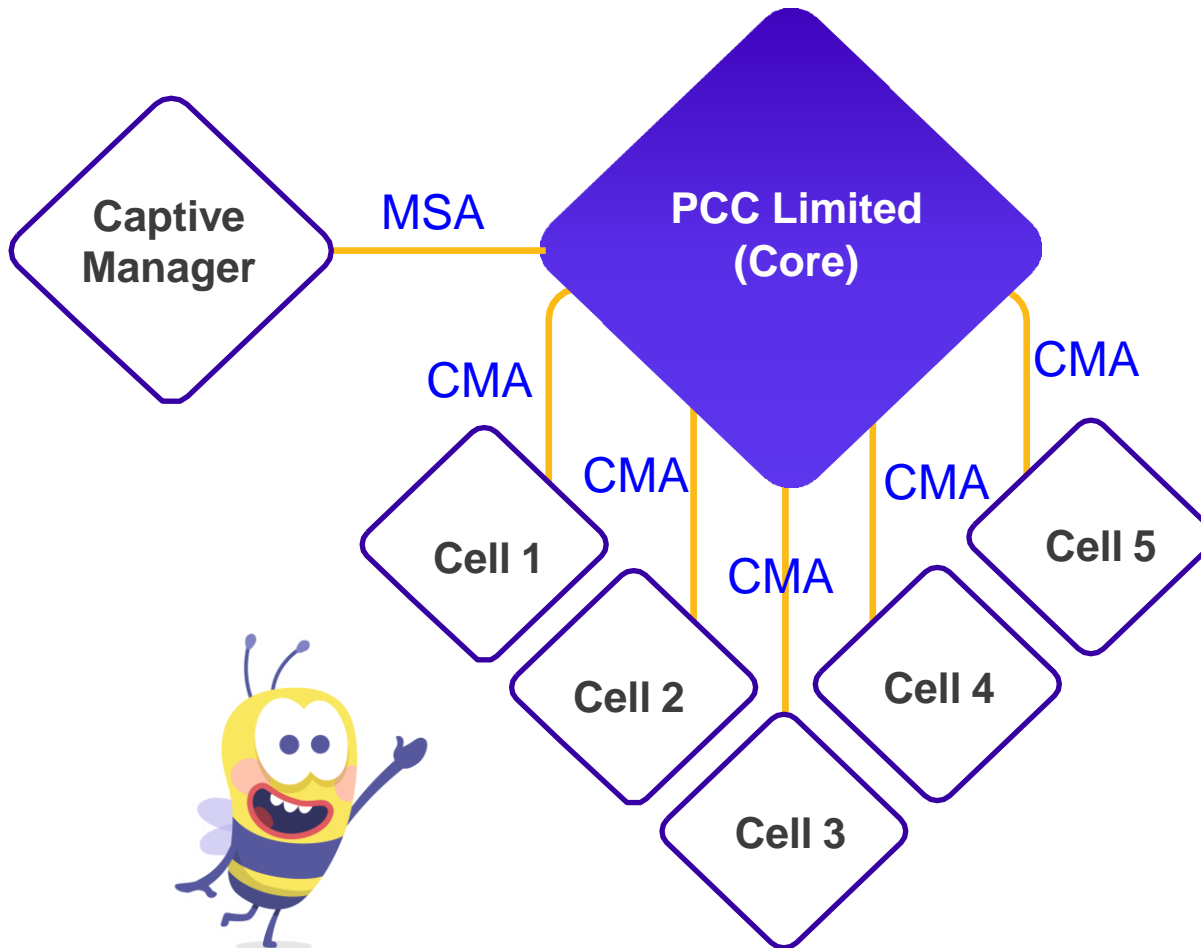
# Establishment Plans for Pure Captive / PCC Captive



# Establishment Plans for Cell Captive



# Example of Contractual Parties the in the PCC



**MSA** : Management Service Agreement signed between PCC Limited with the Captive Manager stipulating the provision of captive management services provided by the Captive Manager to PCC Limited.

**CMA** : Cell Management Agreement signed between PCC Limited and the various cells stipulating the provision of cell management services provided by PCC Limited to the cells.

The cell management services provided by PCC Limited to the cells would not appear to be provided by the Captive Manager as the contractual relationship is between the cells and PCC Limited only.

# CMA Scope of Services (1)

## Office

1. Provision of a home office and principal place of business in Labuan International Business and Financial Centre (IBFC).
2. Acting as principal representative and monitoring the Cell's compliance with the Financial Services & Securities Act 2010 (LFSSA) and related regulations and guidelines.

## Administration

1. Maintain liaison with the trust company representing the Cell in Labuan, the auditors and the government authorities to facilitate the Cell's compliance with laws and regulations for the time being.
2. Advise the Cell from time to time about changes in laws, regulations, government requirements in so far as they relate to the Cell Management Services provided for the Business of the Cell.
3. Liaison with the LFSA if rulings are required on the Cell's behalf.
4. Maintenance of files of minutes and incorporation document.



# CMA Scope of Services (2)

## Record-keeping

1. Record-keeping of the books of accounts and correspondences relating to the business of the Cell.
2. Maintenance of inward and outward correspondence records and forwarding documents.
3. Maintenance of policy contracts, commission statements, statement of accounts, debit notes, credit notes and correspondences.
4. Maintenance of all financial records.

## Accounting

1. Book all transactions relating to the Cell's business and compile accounts in conformity with internationally accepted accounting standards and the Cell's accounting principles.
2. Preparation for annual audit and liaison with external auditors to meet audit reporting deadlines.
3. Submission of the Statutory Financial Return to LFSA.
4. Preparation and submission of Statistical Return to LFSA on a quarterly, semi-annually and yearly basis.

# CMA Scope of Services (3)

## Underwriting

1. Risk acceptances in accordance with the underwriting guidelines established by the Cell.
2. Maintaining files of underwriting data and documents

## Reports

1. Preparation and submission of monthly report to the Cell in the format prescribed by the company
2. Report on developments or alterations in laws or regulations relating to the business of the Cell.

# CMA Scope of Services (4)

## Returns to Authorities

Preparation and submission of quarterly, semi-annually and annual accounts returns to the government authorities, facilitate audit of such accounts, and answer queries relating to the accounts by the authorities in consultation with the Cell.

The followings report to be submitted :-

1. Quarterly Statistical Returns within 15 days after the end of the quarter.
2. Quarterly Survey on External Financial Assets and Liabilities of Offshore Entities in Labuan (EAL Survey) within 15 days after the end of the quarter.
3. Annual Audited Accounts together with audited Statistical Returns within 6 months of the financial year end.
4. Provide guidance on completing any other returns as requested by LFSA from time to time.
5. Provide guidance on completing any other returns as requested by any government department such as statistic department from time to time.

# Key Takeaways

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- I. Labuan PCC are **regulated, and supervised on an on-going basis** similar to other Labuan entities
- II. Labuan insurance sector (including Labuan captives) was **rated LOW RISK by NCC:**
  - a) *National Risk Assessment 2020*
  - b) *Labuan Risk Assessment 2020.*
- III. Labuan PCC is a **Reporting institution** under AMLA & Labuan laws:
  - a) *CDD obligations including on its cells rented/owned by 3<sup>rd</sup> parties*
  - b) *STR obligations on any suspicious transactions including of its cell's activities*
- IV. Labuan Captives is one of **niche focus sectors under Labuan IBFC Strategic Roadmap 2022-2026:**
  - a) *Requiring financial infrastructural support i.e. banking facilities from the Labuan & Malaysian banks*
  - b) *Promoting intra-Labuan business symbiosis between Labuan captive and Labuan banking businesses.*

# ***THANK YOU***

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## **DISCLAIMER**

This presentation should not be regarded as offering a complete explanation of the Labuan IBFC and is subject to changes. Labuan FSA does not accept any responsibility for loss occasional to any person acting or refraining from action as a result of any material in this presentation.