

FATF



Anti-money laundering and counter-terrorist financing measures

Malaysia

Mutual Evaluation Report

September 2015





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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Executive Summary

1. This report provides a summary of the anti-money laundering (AML) / counter-terrorist financing (CFT) measures in place in Malaysia as at 25 November 2014. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Malaysia's AML/CFT system, and provides recommendations on how the system could be strengthened.

A. Key Findings

- Malaysia's robust policy framework for AML/CFT reflects strong political commitment and well-functioning coordination structures for AML/CFT and combating proliferation financing. Significant resources have been allocated to achieve the policy objectives. Coordination arrangements effectively support the implementation of activities to meet these policy objectives.
- Malaysia has largely up-to-date AML/CFT statutory instruments, generally well-developed policies, institutional arrangements and implementation mechanisms. These elements provide the building blocks for overall good levels of compliance with the FATF Recommendations and a number of real strengths with effectiveness in AML/CFT measures.
- Malaysia's understanding of risk is sound, although improvements are needed in the assessment of TF risk to include more details for the private sector, and to deepen the assessment of ML risks from foreign sourced threats. Malaysia's well-structured inter-agency cooperation framework has supported the assessment of ML/TF risk through two iterations of a national risk assessment (NRA) and other assessments, which have involved the private sector to some extent. Malaysia has integrated the outcomes of risk assessments into its policies and priorities and has reached out to reporting institutions with findings on risk, although the processes for disseminating risk findings should continue to be strengthened.
- Malaysia develops and disseminates good quality financial intelligence to a range of LEAs. The well-resourced FIU produces high quality intelligence; however, the take-up of their products by LEAs is mixed, but improving. Improvements are needed to ensure financial intelligence is used to target investigations for at least all of the high-risk crime types. Financial intelligence has added to TF and CT investigations, CT preventive measures and the assessment of ML/TF risk.
- Malaysia's frameworks for ML investigations and prosecutions are generally sound but have produced minimal outcomes. Malaysia is not effectively targeting its high-risk offences (other than fraud) or foreign sourced threats in its prosecution of ML. While there are a

number of high value cases, most cases relate to low-medium level offending. The sanctions imposed for ML have been low, and have not been demonstrated to be effective. Malaysia has had a preference for pursuing other criminal justice measures rather than ML prosecutions, particularly confiscation.

- Confiscation to combat tax and goods smuggling has been very successful through administrative recoveries by the Special Taskforce relating to strategically significant elements of the economy. The Taskforce has achieved excellent results, including an evident reduction in these types of offences. However, confiscation levels have been low in other high-risk areas (fraud, drugs and corruption) and in international matters, and the cross-border cash declaration regime is producing minimal results, which reduces effectiveness.
- Despite the risk and context of TF in Malaysia, to date Malaysia has not prosecuted any TF cases. Malaysia has commenced 40 TF investigations with 22 still ongoing and LEAs make increasingly good use of financial intelligence to focus on terror groups and acts. Malaysia takes a security intelligence approach to terrorism prevention, rather than criminal justice action against the financiers. In a number of cases, Malaysia has demonstrated successes using other criminal justice and administrative measures to disrupt TF and terrorist activities arising from financial investigations and other strategies.
- Malaysia's legal and institutional framework to implement targeted financial sanctions (TFS) against terrorism is compliant and is being implemented with notable successes, including designating domestic and foreign entities under 1373, co-sponsoring UN designations and freezing assets of 1267 and 1373 entities. Reporting institutions (RI) are aware of their freezing obligations and freezing actions with respect to a wide range of assets and persons indirectly controlled by designees have recently occurred. Supervision of the implementation of TFS is taking place across most sectors, with the exception of certain DNFBPs.
- Prevention of abuse of non-profit organisations (NPOs) for TF has been achieved through the implementation of a targeted approach to educate and oversee NPOs that are at risk. Assessment of risk, outreach, targeted controls on high risk activities (charitable collection), centralised controls on Zakat and targeted compliance monitoring and enforcement of regulatory controls add to the effectiveness of CFT for the NPO sector.
- The legal framework for TFS against proliferation of WMD contains a significant legal gap in the delay of transposing UN designations into domestic law, which undermines effectiveness. Despite this, freezing results have occurred, supervision is taking place and vigilance measures are in place.
- Malaysia's legal framework for supervision is sound and all regulators apply a risk-based approach to supervision. Market entry controls are generally working well. BNM supervises the majority of RIs which carry the bulk of the ML/TF risk, and is an effective, well-resourced supervisor. SC's approach is comparably sound and LFSA's supervisory capabilities are improving. Supervisors have adequate resources, tools and well trained staff to assess and use risks to target supervision and remedial measures. There is a gap in BNM FIED's available resources necessary for supervising Malaysia's large DNFBP population. Supervisory interventions have further to go to ensure RIs deepen their risk-based approach to AML/CFT implementation.
- The regulatory framework for preventative measures is highly compliant, which sets a good starting point for RIs, however many sectors are taking longer to transition from a rules-based to risk-based approach, despite their long-standing obligations. Supervisory findings show that key sectors have a mixed understanding of risk, and RIs do not always adequately implement CDD requirements on a risk-sensitive basis.

- Malaysia's controls on legal persons and arrangements to ensure that the 'corporate veil' cannot undermine AML/CFT preventative measures and investigations are still developing, but there are some notable strengths, such as the public availability of Malaysia's legal persons ownership registers and the requirement for trustees to declare their trustee status to banks. Malaysia is not a major centre for the establishment of legal persons or legal arrangements.
- Malaysia's international cooperation has been aligned to its risk profile to some extent, but more needs to be done to increase the focus on the risks Malaysia faces from transnational crime. Supervisors, regulators and the FIU cooperate well with their counterparts, making and responding to a reasonable range of requests largely in keeping with the risks, which supports effectiveness. Criminal justice agencies generally respond well to LEA cooperation, MLA and extradition requests, but Malaysia receives far more MLA and LEA cooperation requests than it makes, which may be a product of Malaysia's lack of focus on foreign threats. Malaysia has made very few MLA and extradition requests in the past five years.

B. Risks and General Situation

2. Malaysia faces a range of significant ML and TF risks. Malaysia's geographic position, the size and nature of its open economy, relatively porous borders and domestic and regional crime threats contribute to the ML and TF risks facing Malaysia. Authorities assess fraud, tax crimes, drugs, corruption and smuggling of goods as high risk for ML and the assessment team notes a range of other crime types adding to the risks. Authorities identify a number of ML techniques being used, including inter alia, placing criminal proceeds into the banking system, using nominees or family members, use of front companies, use of real property (in particular vehicles and real estate), high value goods, to the use of gatekeepers, money service businesses (MSBs) and the informal sector. Outwards proceeds flows are directed mainly to major financial hubs in Asia, with tax proceeds also flowing to these centres.

3. Malaysian authorities have highlighted risks from terrorist groups and TF, including domestic and regional threats. While authorities have had marked successes against terrorist groups over the last 10 years, regional threats persist and recent emerging threats include the financing of the movement of foreign fighters from or through Malaysia to Iraq and Syria to join ISIL. Authorities have identified that TF in Malaysia is predominantly carried out using cash and relatively small amounts largely outside of formal systems.

4. Malaysia's coordinated strategies to implement an effective AML/CFT system is a part of integrated efforts to attain developed nation status by 2020, including through addressing corruption, good governance, business ethics and AML/CFT. Malaysia has sought to build a shared culture of AML/CFT compliance amongst government and private sector stakeholders.

C. Overall Level of Compliance and Effectiveness

5. Malaysia has a strong legal and regulatory framework for preventative measures, which demonstrated a high degree of technical compliance with the FATF standards. Interagency coordination and policy frameworks, BNM's supervision, the FIU (FIED) and the Special Taskforce achieve significant outcomes and are the key strengths within Malaysia's AML/CFT system. Greatest improvements are required in Malaysia's legal framework for TFS against proliferation of WMD and the investigation and prosecution of ML and TF.

C.1 Assessment of risk, coordination and policy setting

6. Malaysia has a generally good understanding of its ML and TF risks, having conducted two iterations of an NRA, in 2012 and 2013, and other sectoral and targeted risk assessments of ML and TF. While the results of the assessments are generally sound and accepted by the assessment team, the NRAs did not sufficiently take account of foreign sourced threats, the interconnectedness of specific crimes and financial sectors, and TF. In addition to its diverse onshore economy, Malaysia has a small offshore financial centre in Labuan which was assessed as medium risk in the NRA. Many of the FIs that have been established in Labuan are owned or controlled by onshore banks, and a large proportion of business in Labuan caters to Malaysian customers.

7. While terrorism and TF were not considered high risk in the 2013 NRA, the White Paper on ISIL published in November 2014 and the very high priority placed on CT and CFT by government agencies suggest that terrorism and TF are present and increasing threats that are starting to be addressed by authorities. Malaysia plans to update its NRA to include further assessment of TF risks, which are well understood by LEAs. Changing risks, including TF, have been communicated to the private sector through the compliance officers network group (CONG) and other channels.

8. Malaysia's domestic AML/CFT cooperation is very well developed and effective at both the strategic and operational levels, with the framework for coordination and cooperation centring on the National Coordination Committee to Counter Money Laundering (NCC). Malaysia's national AML/CFT policy framework is robust.

9. RIs' awareness of the NRA findings is mixed, with FI's displaying a greater awareness and understanding of the risks than DNFBPs. Further work is required for RIs to integrate the NRA and other assessment findings into their internal risk-based approaches, in particular in relation to TF.

C.2 Money laundering, confiscation and the use of financial intelligence

10. The FIU functions well and effectively develops good quality financial intelligence, but the take up of FIU intelligence products by LEAs is mixed, with some agencies needing to do more to utilise financial intelligence and target ML. Financial intelligence products are generally utilised well by LEAs for targeting and conducting predicate investigations and related asset tracing.

11. Malaysia's frameworks for ML investigation and prosecution are generally sound, but they are yet to produce substantial outcomes. ML conviction numbers are low. Malaysia is not adequately targeting high-risk offences or foreign sourced threats. Other than a handful of cases, most cases related to low-medium level offending. The sanctions imposed for ML have been low and they have not been demonstrated to have been effective. Malaysia has had a preference for pursuing other criminal justice measures rather than ML prosecutions, particularly confiscation.

12. Confiscation to combat tax and smuggling has been very successful through administrative recoveries by the Special Taskforce relating to strategically significant elements of the economy. The Taskforce has achieved significant results, including an evident reduction in the relevant offences. However, weaknesses in Malaysia's AML/CFT system relate to low levels of confiscation in other high-risk areas (fraud, drugs and corruption) and in international matters, and minimal results produced by the cross border regime.

C.3 Terrorism financing and proliferation financing

13. Malaysia's significant TF threats and the context of those threats appear to be well understood by the authorities. TF investigation and prosecutions are incorporated in Malaysia's broader CT strategies. Despite this TF prosecutions have not yet occurred.

14. The Royal Malaysian Police (RMP) has commenced 40 TF investigations in parallel with CT investigations and 22 TF investigations are ongoing. Despite this, no TF charges have been laid due to prosecutors being dissuaded by the characteristics of the cases. In addition to a preference for security intelligence approaches to prevention rather than TF charges, the resources for TF investigations needs to be increased.

15. Malaysia achieves outcomes by employing other criminal justice, administrative and other measures to disrupt TF activities where it is not practicable to secure a TF conviction, including in those cases where TF investigations were terminated. Malaysia has prosecuted and convicted a significant number of terrorism cases and taken preventative actions against a number of individuals and organisations in relation to terrorism and financial aspects of terrorism.

16. Malaysia has a compliant legal framework for TFS against terrorism, which provides strong tools to identify terrorist networks and take steps to freeze terrorist assets. The TFS regime against terrorism is administered robustly and is well implemented to a large extent for both 1267 and 1373. Malaysia's 1373 designations in 2014 represent a range of terrorist groups in the region including local radical Islamic group, regional groups and the LTTE. The authorities make a concerted effort to sensitize the public to Malaysian sanctions obligations and to assist potential asset holders in the implementation of their obligations. Malaysia demonstrated its reinforcement of awareness of the TFS obligations with the RIs and the general public and is supervising implementation across FIs, casinos and TCSPs, but only a limited number of other DNFBP sectors. Supervisory outcomes, asset freezing and feedback on implementation demonstrate improving outcomes in keeping with the TF risks.

17. The TFS against terrorism are being used with increasing success and implementation is being steadily deepened. Terrorists and terrorist organisations are being identified in an effort to deprive them of the resources and means to finance terrorist activities. In absolute terms the amounts frozen under 1267 and 1373 are small, reflecting to some extent the cash economy nature of TF in SE Asia and the detention of a number of Malaysian designees. Malaysia considers that the amounts reflect the TF profile, i.e. self-funding and funding by family members, coupled with dismantling of terrorist groups capable of large scale and systematic TF activities over the last decade, with only a recent upswing from ISIL threats. Assessors maintain that this may not explain the whole picture of TF risks facing Malaysia.

18. Recently more freezing actions have taken place outside of the banking sector, including insurance companies, the pilgrims fund, securities firms and motor vehicles. These freezing actions reflect better implementation of checks on property indirectly owned or controlled by designated entities.

19. Malaysia's approach to oversight and outreach of the NPO sector has improved significantly in recent years has helped Malaysia prevent terrorist abuse of the NPO sector. Malaysia has taken a targeted approach to educate and oversee NPOs that are at risk from the threat of terrorist abuse. Assessment of risk, outreach, targeted controls on high risk activities (charitable collection), centralised controls on Zakat and targeted compliance monitoring and enforcement of regulatory controls have added to effectiveness for CFT. Continuing targeted risk information from RMP Special Branch (SB) and further resources at the Registrar of Societies (RoS) are needed to further mitigate risks of terrorist abuse of NPOs.

20. Malaysia's technical gaps in relation to TFS against the financing of proliferation are significant and major improvements are required to make the process more effective. The long delays in transposing new designations made by the UN into Malaysian law undermine effectiveness. RIs have increasingly good awareness of obligations, particularly in Labuan and major FIs with relevant risk exposure. Vigilance measures adopted by Malaysia add to effectiveness. Supervision of obligations is taking place. Two Malaysian banks and the LFSA have together frozen over USD 29 million of assets related to one Labuan domiciled Iranian bank designated under UNSCR 1737 and successor resolutions. In the absence of matches, no assets related to UNSCR 1718 have been frozen.

C.4 Preventive measures and supervision

21. Malaysia's legal and regulatory framework demonstrates a high degree of technical compliance with the FATF standards, and this establishes a good foundation for Malaysia to implement measures towards understanding and mitigating risks. However, more needs to be done for RIs to transition from a rules-based to a risk-based approach. While a risk-based approach has been part of the AML/CFT system in Malaysia for a number of years, most sectors have generally been taking a rule-based approach until relatively recently.

22. Regulators and supervisors have cooperated with the well-organised cross-sectoral compliance officers' network to support compliance through a combination of outreach and supervisory work (including thematic inspections and applying sanctions). At the same time, the completion of the NRA and vulnerability assessments has provided key information to better support effective risk-based approaches by RIs. More needs to be done to ensure RIs apply mitigating measures commensurate with their risks with a particular focus on CDD beneficial ownership requirements, including PEPs. RIs' understanding of the RBA is sometimes inadequate, and as a result, preventative measures may not be well targeted to mitigate ML/TF risks.

23. Malaysia has a well-developed supervisory framework for the financial sector and generally demonstrated that supervisory actions have made a positive impact on market entry and compliance with the targeted implementation of AML/CFT controls. The mechanism of licensing and preventing the market entry of criminals is largely sound and the regulators are mindful of ML/TF risks.

24. All regulators apply a risk-based approach to supervision and assessors note that BNM's approach is the most developed, reflecting the bulk of risks in the banking sector. Both SC and LFSA have moved to a model of risk-based approaches, although LFSA has needs to make further progress in the application of its approach.

25. The skills, experience and expertise of supervisory staff and the number of staff and tools available to supervisors to conduct surveillance and supervision are strong and support a deepening risk-based approach to supervision. This is reflected in the intensity and frequency of supervisory interventions across the key sectors.

26. The relicensing exercise for MSBs (which include both remitters and money changers) and their focused supervision serve to mitigate many of the risks in that sector. MSBs inherent high-risk status in Malaysia's NRA has prompted the supervisor to engage the sector on a continuous basis, which is work in progress; however, it is clear that mitigation of ML/TF risk in the MSB sector has improved significantly over

the last two years. Future results of offsite/ onsite supervisory reviews will determine the effectiveness of these measures.

27. While the Labuan financial sector makes up 6.6% of Malaysian financial sector assets, supervisory activity is relatively low. This is reflected in relatively lower numbers of offsite/ onsite reviews of Labuan FIs and in the associated applications of sanctions.

28. The DNFBP sectors, with the exception of the casino are under-supervised for AML/CFT compliance due mainly to a shortage of AML/ CFT supervisory staff in FIED, although risk-based approaches and cooperation with SRBs is allowing for steps to mitigate risks in the high-risk DNFBP sectors. The onsite supervision of Labuan TCSPs in 2014 is a positive development. The fit and proper controls for casino management have visible gaps, which could be a potential ML/TF risk, but FIED's increasingly risk-sensitive supervision is supporting risk mitigation.

C.5 Transparency and beneficial ownership

29. Malaysia has assessed elements of ML/TF risk and vulnerabilities involving legal persons through the NRA and other processes but assessments of risk need to be deepened. No detailed risk assessment of legal arrangements has been undertaken. Non-professional trustees may operate in Malaysia with very few obligations. Authorities assume that this is not a large sector in Malaysia, and supervisory authorities and LEAs did not report cases involving trusts, but this has not been closely examined through the NRA process.

30. Basic information held by companies is accessible to the public; registered information is publically accessible from the two registrars. While there are some gaps in the information held by companies, regulators are enhancing and enforcing compliance with the collection and availability of basic ownership information.

31. The mechanism Malaysia uses to ensure that information on beneficial ownership of legal persons and arrangements can be obtained in a timely manner is through the use of CDD and related information obtained by RIs. While the obligations are generally compliant, the awareness and implementation of CDD is mixed and the supervision and enforcement across all sectors, including onshore TCSPs is not assured. Challenges for RIs include that beneficial ownership information may not be available at the company or from other RIs to support CDD.

32. The number of trust both onshore and offshore is relatively small. Malaysia is enforcing the obligation on all trustees of domestic and foreign trusts opening or operating an account with a bank to declare their trustee status to the bank. The bank is then obliged to identify the parties to the trust under AMLA. Customers of other FIs face no such obligations.

33. Malaysia makes regular use of mechanisms for quickly ensuring that BO information held by RIs can be obtained in an investigation of TF, ML or related predicates. The authorities are cooperating constructively and in a timely manner with their foreign counterparts, including providing beneficial ownership information.

C.6 International Cooperation

34. Malaysia demonstrates a generally effective system for international cooperation, however some improvements are required, primarily to increase the use of international cooperation to support Malaysia's investigation and prosecution activities. Authorities have generally demonstrated they are cooperating constructively and in a timely manner with their foreign counterparts, and some diagonal cooperation is occurring.

35. While there are some minor technical deficiencies, Malaysia's mechanisms for international cooperation, including MLA and extradition are sound and working well in practice. Malaysia's international cooperation has been aligned to its risk profile to some extent, but more needs to be done to increase the focus on the risks Malaysia faces from transnational crime.

36. Malaysia is providing constructive and timely MLA and extradition assistance and has a good framework in place. Criminal justice agencies generally respond well to LEA cooperation, MLA and extradition

requests. Shortcomings in the system include delays in RMP executing requests and the longer time frames for providing assistance to non-prescribed countries due to the additional approval required.

37. Supervisors, regulators and the FIU cooperate well with their counterparts and are utilising international cooperation to enhance their functions and results.

38. Malaysia receives far more LEA cooperation requests than it makes. Notably, Malaysia has sought limited MLA and extradition between 2009 and 2013, which may be a product of Malaysia's lack of focus on foreign threats. The RMP needs to enhance its approach to international cooperation to ensure that it reflects the priority ML risks faced by Malaysia including organised crime and environmental crime, and to ensure international cooperation is coordinated within the agency.

D. Priority Actions

39. The priority recommended actions for Malaysia, based on these findings, are:

- Conduct further assessments of risk to include more detailed consideration of foreign sourced threats, TF, institutional vulnerabilities, interconnectedness of organised crime and other categories of crime. Also enhance the distribution of the findings to raise RIs' awareness of the ML/TF risks.
- Place greater focus on obtaining ML convictions and confiscation, in particular relating to high-risk offences and foreign sourced threats and profit taking levels of crime. The successes of the Special Taskforce should inform improvements to strategically target investigations to 'follow the money'.
- Ensure the cross-border cash reporting regime is effectively implemented and the outputs are used to support AML/CFT outcomes in relation to ML and TF investigations, asset tracing and international cooperation.
- Strengthen and broaden LEAs use of financial intelligence (especially RMP and RMC) at targeting and investigation stages, particularly in relation to TF, narcotics and other crime types beyond fraud and covering professional third party launderers and cross border threats . International cooperation will be an essential part of this.
- Enhance criminal justice approaches to combat TF and seek to prosecute TF in parallel with terrorism offences and preventive actions. This should include strengthening the TF investigative function within RMP. Malaysia should further enhance outreach to the NPO sector to raise awareness of specific TF risks and mitigation strategies.
- Deepen implementation of TFS against terrorism to ensure the outcomes reflect the risk profile.
- Amend the legal framework for TFS against WMD proliferation to ensure the UN designations apply without delay. Implementation should be strengthened.
- Target outreach and supervision by supervisors and SROs to expedite the transition to implementing a comprehensive risk-based approach, with a particular emphasis on risk-based CDD, including beneficial ownership and TF-related STRs. Enhance the resources dedicated to the supervision of DNFBPs to ensure adequate risk-based coverage of the large DNFBP population.
- Issue enhanced guidance on risk, including identification and mitigation of risks relevant to each sector and regulators expectations of RI's practice with identified high-risk areas and TF (this should include additional red flags indicators to complement the various sector Guidelines).

- Reflecting policy decisions taken by Malaysia, follow through with the planned amendments to the legal framework to require legal persons to keep and register BO information and extend similar obligations to trustees.
- Strengthen international cooperation to more closely align with Malaysia's risk profile, focusing in particular on requesting formal legal cooperation to address the risks from transnational crime.

Table 1. Effective Implementation of Immediate Outcomes

| Effectiveness | |
|--|--------------------|
| 1. Risk, Policy and Coordination | Substantial |
| <p>Malaysia is achieving the immediate outcome to a large extent. Malaysia has a robust policy framework for AML/CFT with very significant political commitment and resource allocation evident to achieve the policy objectives.</p> <p>The conduct of two NRAs and other assessments of ML/TF threats and vulnerabilities has enabled Malaysia to undertake targeted responses to its risks. Malaysia's assessment of risk is reasonable, but its assessment of ML risks is stronger than TF, and both need to focus more on foreign threats. The level of detail in the TF assessments does not sufficiently guide the private sector on risk. Only moderate improvements are required.</p> <p>AML/CFT policies, government priorities and resource allocation have been adjusted in response to assessments of risk to a large extent, and the moderate improvements required are being pursued. In addition, private sector stakeholders have commenced work to recalibrate their risk-based responses, but there is further to go in many sectors, in particular DNFBPs.</p> <p>Malaysia has well-functioning AML/CFT national coordination processes at both the policy and operational levels, which serve to drive improvements to Malaysia's AML/CFT system. National coordination in relation to PF is strong and is providing a basis for ongoing reforms.</p> | |
| 2. International Cooperation | Moderate |
| <p>Malaysia is achieving the immediate outcome to some extent. Major improvements are needed to ensure Malaysia's international cooperation is better aligned with its risk profile, in particular requesting legal cooperation to address the risks it faces from transnational crime.</p> <p>The minor technical deficiencies in relation to MLA have not, to date, affected Malaysia's ability to cooperate. Mechanisms are generally in place to allow for the timely exchange of information and assistance.</p> <p>Statistics and cases show that Malaysia provides a range of international cooperation, including extradition, MLA, financial intelligence and beneficial ownership information. However, for MLA, extradition and LEA cooperation the experience is that Malaysia receives far more requests than it makes, which the assessors judge as reflecting a need for a greater focus on foreign threats and property/people moved offshore.</p> <p>The FIU and supervisors have generally demonstrated well-functioning cooperation with foreign counterparts in keeping with the risk and context. This is producing strong outcomes which benefit Malaysia's investigative and supervisory efforts as well as its efforts to assess foreign sourced risks.</p> <p>Some authorities, particularly the RMP, should enhance their focus on international cooperation to better support their investigation functions to cooperatively respond to trans-national risks.</p> | |

Effectiveness

3. Supervision**Substantial**

Malaysia is achieving the immediate outcome to a large extent. Malaysia has a sound legal framework for supervision and supervisors have the required powers to regulate the RI population. Malaysia has well implemented market entry fit and proper controls across FIs, though some gaps exist with market entry for certain DNFBPs, including casino management. Supervision of TFS is undertaken by all supervisors.

All regulators apply a risk-based approach to supervision. The substance of supervision has transitioned from a rules-based approach to risk-based approaches incorporating comprehensive risk assessment inputs.

BNM is well resourced and is applying supervisory tools in a risk-sensitive manner. BNM's supervision of banking, MSB (MVTs and money changers) and casino sectors, which carry the bulk of the ML/TF risks, is targeted to address risks in those sectors. SC takes a comparably sound approach in the supervision and mitigation of ML/TF risks in the securities sector. The LFSA's outputs are improving in relation to the relatively small offshore sector, in part through its joint supervision with BNM and a focus on TCSPs.

Major improvements in supervision are required for DNFBP sectors beyond the casino and Labuan TCSPs, reflecting Malaysia's graduated approach, as these are not the highest risk areas.

An increasingly effective range of sanctions have been imposed for violations of AML/CFT requirements which has been shown to improving compliance, although this needs to be deepened across a range of sectors to ensure wholly risk-based approaches. The re-licensing and consolidation of the entire MSB sector and related crackdowns on illegal MSBs demonstrate key risk mitigation results.

4. Preventive Measures**Moderate**

Malaysia is achieving the immediate outcome to some extent. The bulk of Malaysia's preventive measures and internal controls across essentially all FIs and DNFBPs meet the FATF standards.

Many sectors are still transitioning from a rules-based to risk-based approach, despite Malaysia formally having a risk-based approach for a number of years. Supervisory findings demonstrate that RIs have a mixed understanding of risk and in some sectors do not always adequately implement CDD requirements, including on beneficial owners, on a risk sensitive basis, but rather in a prescriptive formal manner.

There has been strong regulatory engagement across the FIs, the casino and offshore TCSPs, which reflects the higher risk areas to raise awareness of obligations and risk. Other DNFBPs have received less outreach and supervisory attention.

5. Legal Persons and Arrangements**Moderate**

Malaysia is achieving the immediate outcome to some extent. Malaysia has assessed elements of ML/TF risk and vulnerabilities involving legal persons to some degree and trusts to a lesser extent.

Effectiveness

Malaysia has a system of registering the ownership of legal persons. While there are some gaps with timeliness and accuracy of returns, it is clear that its significance is diminishing due to increasingly active monitoring.

Malaysia relies on obligations on RIs, including TCSPs, to identify the beneficial owners of legal persons and parties to a trust. The quality of implementation of the obligations on TCSPs is mixed and the greatest challenge for RIs is that beneficial ownership information may not be available at the company level to support the RIs CDD obligations. Trustees which are not RIs have very few obligations.

The extent of implementation of obligations on all trustees operating bank account to declare their trustee status to the bank has been generally supervised, but does not extend beyond banks.

6. Financial Intelligence

Substantial

Malaysia is achieving the immediate outcome to a large extent. The very well-functioning FIU (FIED) produces a wide range of high quality strategic and operational intelligence products that directly support and lead LEA's response to priority and emerging risk areas. FIED's integrated role as FIU, LEA and supervisor and its focus on international cooperation with foreign FIUs gives it the broadest perspectives to develop well-targeted financial intelligence reflecting both domestic and international risks. Its strategic products are helping to drive AML/CFT policy development, assessment of risk and inter-agency coordination, for example on the issue of threats from 'mule' accounts.

Moderate improvements are needed to ensure that the FIU receives an increased quality and quantity of TF-related STRs and cross-border reports to support financial intelligence development.

The uptake of financial intelligence is mixed amongst Malaysia's nine LEAs. MACC and IRB show the most regular and highest use of FIU intelligence products. The AGC-led Special Taskforce on tax fraud is the best example of joint-agency intelligence-led targeting for financial investigations. Financial intelligence products are generally utilised well by LEAs for targeting and conducting predicate investigations.

RMP and RMC demonstrate a shift towards greater use of FIU data and developing other financial intelligence in support of its predicate investigations, but ML is not being adequately targeted and improvements are needed. There are increasing disclosures to the Special Branch and RMP AMLA Unit in support of TF and CT investigations. FIU data is being utilised as part of the ongoing TF and CT investigations.

7. ML Investigation and Prosecution

Moderate

Malaysia is achieving the immediate outcome to some extent. Malaysia's legal and institutional frameworks are generally sound, but are not yet producing substantial outputs for ML. While investigations are increasing, the overall number of ML prosecutions and convictions is low and, other than for fraud, Malaysia is not adequately targeting high-risk offences. In particular, there have been no ML prosecutions relating to drugs or tax offences, and only nine ML prosecutions relating to corruption and goods smuggling since 2009. Other than a small number of high value

Effectiveness

cases, most cases are low-medium level fraud cases; not higher levels of offending. Malaysia has not prosecuted ML in relation to a foreign predicate offence and could take a more proactive approach to pursuing such cases.

Strengthened AGC capabilities, and improved cooperation, coordination and capacity within the RMP are needed to ensure effective targeting, investigation and prosecution of ML.

The sanctions imposed for ML have been low in absolute terms and it is not clear that they have been effective. Authorities have adopted alternative measures, such as confiscation and pursuing predicate offences, with good results, however in many cases these have diminished the importance of, and been a substitute for, ML investigations and prosecutions.

Malaysia has recently increased the penalties for ML and demonstrated an increased commitment to prosecuting ML, which holds promise for enhanced effectiveness in the future.

8. Confiscation

Moderate

Malaysia is achieving the immediate outcome to some extent. Malaysia has a largely compliant, broad and flexible legal regime and a strong focus on recovery of property which is generating some successes, particularly through administrative recovery. Tax and goods smuggling confiscations through the Special Taskforce are achieving excellent results and reducing these types of offending, as demonstrated by increased voluntary compliance with tax laws. However results in remaining high risk areas (drugs, fraud and corruption) are low, particularly in drugs and fraud, and there has been a substantial decline in AMLA forfeitures. Malaysia has confiscated property from immediate targets but not the profit-taking levels of crime; LEAs have difficulties linking property to offences and targeting more complex cases.

The scope of confiscation cases has been limited: Malaysia has not confiscated property of corresponding value or property in terrorism and TF matters; Malaysia has not prioritised targeting foreign predicate offences or following the proceeds of Malaysian offences moved offshore; and IRB does not target all property types; only bank accounts and land titles in the name of the taxpayer.

The implementation of the cross border regime has not produced substantial outcomes to date, which is significant in light of the risks Malaysia faces regarding cash smuggling at the border. More coordination and information sharing is needed, especially between RMC, RMP and BNM and RMC need to ensure the regime is being effectively used in practice.

9. TF Investigation and Prosecution

Moderate

Malaysia is achieving the immediate outcome to some extent. Malaysia faces significant TF risks, which are judged to be well understood by LEAs. There have been no prosecutions for TF in Malaysia, although 40 TF investigations have been opened since 2010 and 22 of these are ongoing. The reasons for an absence of TF prosecutions appear to be the characteristics of TF cases (self-funding, small scale, use of cash etc), which has dissuaded prosecutors. A further reason is Malaysia's focus on terror groups and acts and a security intelligence approach to prevention, rather than prosecuting financiers for TF. TF investigations have been used to support security intelligence and preventive interventions.

Effectiveness

Outputs from financial investigations of terrorism and TF have contributed to proposals to the UN for designations under 1267 and domestic designations under 1373.

Given the context of terrorism risks in Malaysia and the security and LEA roles of the RMP Special Branch, a number of the objectives of IO 9 are being achieved, in part, by employing other security and criminal justice measures to disrupt TF activities where it is not practicable to lay TF charges and secure a TF conviction.

10. TF Preventive measures & financial sanctions

Substantial

Malaysia is achieving the immediate outcome to a large extent. Malaysia has a compliant legal framework and good institutional arrangements for implementing targeted financial sanctions against terrorism. Malaysia has taken action to designate domestic and foreign terrorists under 1373 at its own instigation. These measures are resulting in increasing success with asset freezing in keeping with the risk profile.

Malaysian financial institutions are aware of the freezing obligations and TFS implement screening for TF. Very recently, more freezing actions have occurred outside the banking sector, including insurance companies, pilgrims' fund, securities firms and the seizure of motor vehicles, though further improvements are required in the non-bank sectors.

Implementation of NPO preventive measures, oversight and outreach to the NPO sector has improved significantly in recent years to largely reflect the risk profile. Outputs, including coordinated efforts by RoS and other NPOs regulators with the RMP reflect targeted approaches to TF risk mitigation.

11. PF Financial sanctions

Moderate

Malaysia is achieving the immediate outcome to some extent. Malaysia has recognised the threats and vulnerabilities it faces for proliferation financing and has expanded its strong AML/CFT coordination mechanisms to include PF. Malaysia has used the coordination mechanisms to take steps to implement a legal framework for TFS against proliferation of WMD, but a significant technical gap relates to the inbuilt delays for transposing new UN designations into Malaysian law, which undermine effectiveness.

Malaysian financial institutions are aware of the freezing obligations and TFS implement screening and freezing actions for PF. Supervision of PF sanctions screening is conducted by the relevant supervisors.

Malaysia has had a number of successes freezing property for a designated entity in the case of a Labuan domiciled Iran bank, however major improvements are required to make the process more effective. RIs generally need to focus further on detecting and freezing assets of person and entities acting on behalf or at the direction of a designated person or entity.

Table 2: Compliance with FATF Recommendations

| Compliance with FATF Recommendations | | |
|--|--------|--|
| Recommendation | Rating | Factor(s) underlying the rating |
| 1. Assessing risks & applying a risk-based approach | LC | <ul style="list-style-type: none"> There is insufficient detail available to non-government stakeholders in the assessment of TF risk. There are gaps with requirements on FIs and DNFBPs to take enhanced measures to manage and mitigate risks identified in the NRA. |
| 2. National cooperation and coordination | C | The Recommendation is fully met. |
| 3. Money laundering offence | LC | <ul style="list-style-type: none"> Predicates of environmental crime (illegal fishing), and counterfeiting and piracy of products (industrial designs) are not adequately covered. |
| 4. Confiscation and provisional measures | LC | <ul style="list-style-type: none"> Property of corresponding value to instrumentalities for predicate offences can only be confiscated with an ML or TF prosecution. Instrumentalities intended to be used in the commission of an offence are not comprehensively covered. Mechanisms for managing and, when necessary, disposing of property frozen, seized or confiscated have gaps. |
| 5. Terrorist financing offence | LC | <ul style="list-style-type: none"> It is not clear that in every case the TF offence would extend to the conduct set out in the treaties annexed to the TF Convention. |
| 6. Targeted financial sanctions related to terrorism & TF | C | The Recommendation is fully met. |
| 7. Targeted financial sanctions related to proliferation | PC | <ul style="list-style-type: none"> There is a significant delay in transposing UN designations to domestic freezing obligations and prohibitions. Freezing and prohibitions are only enforceable in respect of the citizens of Malaysia and bodies incorporated in Malaysia. Further implementation guidance is needed. |

Compliance with FATF Recommendations

| Recommendation | | Rating | Factor(s) underlying the rating |
|----------------|--|--------|---|
| 8. | Non-profit organisations | LC | <ul style="list-style-type: none"> There are gaps in administrative sanctions for compliance failures with obligations on NPOs. There are gaps in explicit record keeping requirements. |
| 9. | Financial institution secrecy laws | LC | <ul style="list-style-type: none"> There are gaps in a narrow range of circumstances with LFSA's ability to share all necessary information. |
| 10. | Customer due diligence | C | The Recommendation is fully met. |
| 11. | Record keeping | LC | <ul style="list-style-type: none"> A threshold to be applied to certain record keeping requirements results in a minor gap. |
| 12. | Politically exposed persons | LC | <ul style="list-style-type: none"> Directions to treat foreign PEPs as 'high risk' are only implicit, which results in a minor gap. |
| 13. | Correspondent banking | LC | <ul style="list-style-type: none"> Obligations only apply to correspondent banks rather than 'respondent institutions'. |
| 14. | Money or value transfer services | C | The Recommendation is fully met. |
| 15. | New technologies | C | The Recommendation is fully met. |
| 16. | Wire transfers | C | The Recommendation is fully met. |
| 17. | Reliance on third parties | LC | <ul style="list-style-type: none"> RIs relying on third parties are not required to immediately obtain the necessary CDD information. |
| 18. | Internal controls and foreign branches and subsidiaries | C | The Recommendation is fully met. |
| 19. | Higher-risk countries | C | The Recommendation is fully met. |
| 20. | Reporting of suspicious transaction | C | The Recommendation is fully met. |
| 21. | Tipping-off and confidentiality | C | The Recommendation is fully met. |
| 22. | DNFBPs: Customer due diligence | LC | <ul style="list-style-type: none"> Scope issue: sole trader jewellers in East Malaysia are not covered. Gaps with record keeping and with reliance on 3rd parties. |

Compliance with FATF Recommendations

| Recommendation | | Rating | Factor(s) underlying the rating |
|----------------|--|--------|---|
| 23. | DNFBPs: Other measures | LC | <ul style="list-style-type: none"> Scope issue: sole trader jewellers in East Malaysia are not covered. |
| 24. | Transparency and beneficial ownership of legal persons | PC | <ul style="list-style-type: none"> Weaknesses with the assessment of risk with legal persons. Some weaknesses in measures to ensure basic ownership information is accurate and up to date. Reliance on CDD by RIs may mean that beneficial ownership information is not always available when foreign ownership is involved. Share warrants are not suitably controlled for Labuan companies. Available fines for breaches of various obligations on legal persons are not proportionate or dissuasive. |
| 25. | Transparency and beneficial ownership of legal arrangements | PC | <ul style="list-style-type: none"> Reliance on CDD by RIs may mean that beneficial ownership information is not always available when foreign ownership is involved. AMLA obligations to identify and verify parties to the trust or other legal arrangements do not apply to trustees who do not otherwise meet the definition of FI or DNFBP. The obligations on trustees to disclose their status when forming a business relationship or carrying out an occasional transaction above the threshold only applies in the case of banks. Available fines for breaches of various obligations on legal arrangements are not proportionate or dissuasive. |
| 26. | Regulation and supervision of financial institutions | C | The Recommendation is fully met. |
| 27. | Powers of supervisors | C | The Recommendation is fully met. |
| 28. | Regulation and supervision of DNFBPs | LC | <ul style="list-style-type: none"> Scope issue: sole trader jewellers in East Malaysia are not covered. Gaps with the scope of market entry fit and proper controls over some DNFBPs. |
| 29. | Financial intelligence units | C | The Recommendation is fully met. |

Compliance with FATF Recommendations

| Recommendation | | Rating | Factor(s) underlying the rating |
|----------------|--|--------|---|
| 30. | Responsibilities of law enforcement and investigative authorities | C | The Recommendation is fully met. |
| 31. | Powers of law enforcement and investigative authorities | C | The Recommendation is fully met. |
| 32. | Cash couriers | LC | <ul style="list-style-type: none"> Minor deficiency with the extent of cooperation between RMP and RMC to support implementation. |
| 33. | Statistics | C | The Recommendation is fully met. |
| 34. | Guidance and feedback | LC | <ul style="list-style-type: none"> Gaps in detailed guidance and 'red flags' to support implementation of preventative measures and STR reporting. |
| 35. | Sanctions | LC | <ul style="list-style-type: none"> Gaps in relation to sanctions for NPOs. Some administrative fines may not be dissuasive for certain preventive measures and registration of legal persons. |
| 36. | International instruments | LC | <ul style="list-style-type: none"> Gaps in relevant recommendations prevent full compliance with R.36 (including R.3, R.4, R.11, R.28, R.37, R.39). |
| 37. | Mutual legal assistance | LC | <ul style="list-style-type: none"> Dual criminality is a mandatory ground for refusal in non-coercive actions and mandatory dual criminality requirements may affect Malaysia providing assistance in ML cases where the predicate offence is illegal fishing or piracy of products (industrial designs). The ground for refusal regarding 'insufficient importance' is unreasonable or unduly restrictive. MACMA does not authorise the search of a person. |

Compliance with FATF Recommendations

| | Recommendation | Rating | Factor(s) underlying the rating |
|-----|---|--------|--|
| 38. | Mutual legal assistance: freezing and confiscation | LC | <ul style="list-style-type: none"> • It is not clear that Malaysia is able to comprehensively cooperate under MACMA for restraint /confiscation of instrumentalities and in non-conviction based matters, however in most circumstances a treaty, AMLA or DDFOPA provide for this. • The concerns regarding dual criminality in R.37 also apply to R.38. • Asset management guidelines are not comprehensive for MLA. |
| 39. | Extradition | LC | <ul style="list-style-type: none"> • Deficiencies with respect to dual criminality (where the predicate offence is missing) and prosecution in lieu. |
| 40. | Other forms of international cooperation | LC | <ul style="list-style-type: none"> • The LFSA has some minor limitations with sharing information related to supervisory materials outside an investigation or in cases not involving a home supervisor or those supervisors who are party to an existing MOU. |

Mutual Evaluation of Malaysia

Preface

This report summarises the AML/CFT measures in place in Malaysia as at the date of the onsite visit and includes an assessment of Malaysia's offshore sector, the Labuan International Business and Finance Centre. It assesses the level of compliance with the 2012 FATF 40 Recommendations and effectiveness of Malaysia's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was prepared using the 2013 Methodology. The evaluation was based on information provided by Malaysia, and information obtained by the evaluation team during its onsite visit to Malaysia from 13 – 25 November 2014.

The evaluation was conducted by an assessment team consisting of:

- Lani Rankin, Senior Legal Officer, Australian Attorney General's Department (legal expert),
- Robert Peri, Assistant Director of the Office of Terrorist Financing and Financial Crimes, United States Treasury (legal expert),
- Richard Walker, (representing Group of International Finance Centre Supervisors (GIFCS)) (financial expert),
- Amjad Iqbal, Senior Joint Director, State Bank of Pakistan (financial expert),
- Manual Vasquez, Senior Financial Sector Expert, International Monetary Fund (financial expert),
- Sgt. Steven Barker, Royal Canadian Mounted Police (law enforcement/FIU expert) and
- David Shannon, Dietmar Kahles, and Suzie White of the APG Secretariat.

The report was reviewed by Erin Lubowicz, Principal Policy Advisor, Ministry of Justice, New Zealand (legal reviewer), Minji Kang, Deputy Director, KOFIU, Korea (legal reviewer), Doreen Vai Kuan Pun, Senior Bank Examiner Monetary Authority of Macao, Macao, China (financial reviewer), Emal Yaqini, Deputy Director, FinTRACA, Afghanistan (financial intelligence unit reviewer), Lisa Bostwick, Senior Financial Sector Specialist, World Bank (law enforcement reviewer) and Richard Berkhout and Lionel Wong from the FATF Secretariat.

Malaysia previously underwent a joint APG/OGBS mutual evaluation in 2007, conducted according to the 2004 FATF Methodology. The 2007 evaluation has been published and is available at www.apgml.org. On those topics where there has not been any material change in the situation of Malaysia or in the requirements of the FATF Recommendations, this evaluation does not repeat the analysis conducted in the previous evaluation, but includes a cross-reference to the analysis in the previous report.

Malaysia's 2007 mutual evaluation concluded that the country was compliant with 9 Recommendations, largely compliant with 24, partially compliant with 15, and non-compliant with 1. Malaysia was rated compliant or largely compliant with 11 of the 16 core and key Recommendations

1. ML/TF RISKS AND CONTEXT

1.1. Malaysia is a federation comprising 13 states and 3 federal territories and covers an area of 330 290 km². Malaysia shares a land border with Thailand, Brunei Darussalam, Indonesia and Singapore and a maritime border with Thailand, Singapore, Vietnam, Indonesia, Brunei Darussalam and the Philippines. The population of Malaysia is approximately 29.72 million, and in 2013 its gross domestic product (GDP) was USD 312.4 billion (World Bank). Kuala Lumpur, Malaysia's largest city, has a population of approximately 1.7 million.

1.2. Malaysia is a constitutional monarchy with the Yang di-Pertuan Agong (His Royal Highness) as the head of state. The Malaysian Parliament consists of His Royal Highness, the Dewan Negara (Senate) and the Dewan Rakyat (House of Representatives). The Malaysian Constitution sets out the federal system of government and processes for the exercise of powers by the Legislature, Judiciary and Executive.

1.3. The Prime Minister and Cabinet exercise the federal executive power. The Prime Minister is chosen from amongst the members of the House of Representatives.

1.4. Malaysia's legal system is based on the principles of English common law and local customary law. It consists of the Federal Constitution, constitutions of the 13 states, primary, delegated or subsidiary legislation derived from Acts of Parliament or State Assemblies. Islamic law, which is limited to family and inheritance matters, is applicable only to the Muslim population and is administered by a separate system of courts.

1.5. The Federal Court is the highest court headed by the Chief Judge who has direct supervision over all courts. Judges are appointed by His Royal Highness on the advice of the Prime Minister. Judicial power at the state level is vested on the High Court in Malaya and the High Court in Sabah and Sarawak, and the inferior courts.

1.1 ML/TF Risks

1.6. Malaysia is exposed to a range of significant money laundering (ML) and terrorist financing (TF) threats and vulnerabilities. Malaysia's open economy, strategic geographic position and porous land and sea borders increase its exposure to ML/TF risks. Malaysia's geographic location within South East Asia positions it as a transit country for drugs originating from the Golden Triangle and Europe. Typologies illustrate that illicit funds generated within South East Asia flow into the regional financial centres, including Australia, Singapore and Malaysia. Similar to other countries in the region, Malaysia has an important cash-based and informal economy.

1.7. The TF risks in Malaysia are evolving, with TF traditionally carried out using cash and relying on a network of trusted members within a terrorist organisation. New global risks, in particular in relation to foreign fighters, have increased the prevalence of self-funded TF within Malaysia.

1.8. Malaysia's 2012 and 2013 National Risk Assessments (NRA) identified fraud, goods smuggling, drugs, tax crimes and corruption and bribery as high risk. The 2013 NRA identified forgery, theft and robbery, counterfeiting of currency, human trafficking and migrant smuggling, TF and organised crime as medium risk crimes. The banking, MSB (MVTS and money changers) and casino sectors were rated as high risk. Moderate scope limitations in the NRA process point to other crimes that may pose high risks to Malaysia including ML/TF linked with transnational crimes and criminal organisations. Details of the ML/TF risks, including the assessment of effectiveness are set out in s.2.3 below.

1.2 Materiality

1.9. Malaysia is an upper-middle income jurisdiction with an open economy and a well-diversified financial sector. It has a large-scale cash and informal economy and a relatively small offshore sector in Labuan (the Labuan IBFC). Banking institutions account for 50.2% of financial system assets, followed by fund management with 14.5% and pensions and provident funds with 13.8%.

1.10. Malaysia's economy displayed resilience during the global financial crisis and its banks are well capitalised and governed. Malaysia's financial sector is well developed and notable progress has been made in increasing access to finance. The World Bank's Global Findex for 2014 shows that 81% (an increase from 66% in 2011) of the adult population had an account with a formal financial institution. A separate 2011 survey conducted by BNM found that 92% of the adult population that have an account with a regulated financial institution in Malaysia¹. Malaysia has a national policy to promote greater use of e-payments to reduce the use of cash in the economy. Malaysia is a global leader in Islamic finance.

1.11. A significant number of FIs in Malaysia are foreign owned and large Malaysian FIs have regional operations. There is a high degree of interconnectedness between different financial sectors in Malaysia with a number of significant financial groups spanning multiple sectors and ownership and there are business linkages between the domestic and Labuan offshore FIs.

1.12. Malaysia's offshore sector, the Labuan IBFC comprises 6.6% of its financial sector assets. Some of these businesses, however, are service oriented and not asset-based. A significant proportion of business conducted in Labuan IBFC is by Malaysian linked entities.

1.13. Malaysia has over 26 000 DNFBPs, including real estate agendas, lawyers, trust companies, company secretariats, NBFIs, accountants, dealers in precious metals and stones, leasing and factoring companies, money lenders, gaming institutions and pawnbrokers.

1.14. Malaysia has a large NPO sector comprising more than 50 000 registered entities, however many of these entities are believed to be dormant and are in the process of deregistration.

1.15. Reflecting Malaysia's open economy and the movement of goods and people, Malaysia has a strategically significant money or value transfer services (MVTs) sector. Malaysia's money service business (MSB) sector comprises of remittance companies (MVTs) and money changers.

1.16. Malaysia has a single licensed casino, which has operated for almost 40 years. It caters to locals and a very large number of foreign players (in particular from Singapore). Casino junkets are permitted to operate to bring patrons to the casino, but not to operate games inside the casino premises.

1.3 Structural Elements

1.17. The key structural elements required for an effective AML/CFT are generally present in Malaysia, including political stability, accountability, an independent judiciary and improving rule of law. There is high level political commitment to Malaysia's AML/CFT regime, which is partly evidenced by the 2013 NRA being endorsed by the Economic Council (EC) chaired by the Prime Minister.

1.18. Independent commentators have criticised Malaysia's record on transparency, good governance, press freedoms and multi-party democratic institutions. A trend of increasing transparency of institutional governance and increased media scrutiny is noted, in particular since the large-scale advent of social media and more open multi-party elections in 2008. Nonetheless, they continue to report cases of impediments to

1 According to the authorities, the difference in the ratio is because the survey conducted by BNM used a different methodology and other variables such as sample size and demographics.

transparency related e.g. to controls on freedom of association. While not specific to AML/CFT, these factors can undermine confidence in the system, particularly in law enforcement agencies.

1.19. Malaysian authorities have identified that corruption is a high-risk issue for ML and preventing and combating corruption more broadly is articulated as a continuing national priority. Malaysia pursues a range of policy and operational responses to combat corruption, including specialist anti-corruption programs and agencies aimed at government (federal, state and local) and civil society. Anti-corruption results overall indicate a range of positive outcomes in identifying and punishing cases of corruption and implementing structures and systems to prevent corruption but sustained efforts are required to continue to mitigate the risks. The assessors are of the view that corruption does not, to a large extent, impede the effective functioning of the AML/CFT system in Malaysia.

1.20. **Malaysia National Coordination Committee to Counter Money Laundering (NCC)** was established in 2000. Its main functions are AML/CFT policy formulation, strategic direction setting for Malaysia's AML/CFT regime and operational issues. As at November 2014, there were 16 members of the NCC whose roles and responsibilities are outlined below.

Table 1.1. NCC members

| Agency | Functions |
|--|---|
| Attorney-General Chambers (AGC) | Legal advisor to government; undertakes legislative drafting; conducts prosecutions; central authority for MLA and extradition. |
| Bank Negara Malaysia (BNM) BNM Financial Intelligence and Enforcement Department (FIED) (part of BNM) | The competent authority under the AMLA. AML/CFT and prudential regulator and supervisor of banking and insurance sectors, money services businesses, non-bank card issuing entities Financial intelligence unit; AML/CFT supervisor for DNFBPs and other non-financial entities not supervised by other regulators; and an LEA investigating predicates and related ML |
| Companies Commission of Malaysia (CCM) | Regulates incorporation of companies, business registration and promotes ethical market conduct. An LEA investigating predicates and related ML |
| Immigration Department | Administers immigration and passports and all border crossings. |
| Inland Revenue Board (IRB) | Administers the tax system including cross-border tax matters. An LEA investigating predicates and related ML |
| Labuan Financial Services Authority (LFSA) | Regulates and supervises Labuan IBFC's financial and DNFBPs sectors. LFSA is also the registrar for legal person, legal arrangement and NPO incorporated and/or registered in Labuan. A LEA investigating predicates and related ML. |
| Malaysian Anti-Corruption Commission (MACC) | Administers Malaysia's anti-corruption efforts (prevention and enforcement). An LEA investigating predicates and related ML |
| Ministry of Finance (MoF) | Appoints the AML/CFT competent authority and empowered to provide for subsidiary legislation to invoke new RIs and include new predicate offences under the AMLA. It is also responsible for regulating and licensing the gaming industry, including licensing the single casino. |
| Ministry of Foreign Affairs (MOFA) | Responsible for Malaysia's international diplomacy and engagement with foreign states and organisations. Plays a role in relation to TFS which include application of basic expenses for sanction entities/individuals and application for listing or delisting to Sanction Committees |

Table 1.1. NCC members (continued)

| Agency | Functions |
|---|--|
| Ministry of International Trade and Industry (MITI) | Regulates strategic trade law, including measures to combat proliferation financing. The Strategic Trade Secretariat (STS) is under MITI. The STS coordinates the implementation of the Strategic Trade Act 2010 (STA) and is authorised to issue permits for strategic items. |
| Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) | Regulates and investigates offences in relation to domestic trade, cooperative and consumerism, including offences in relation to intellectual property. An LEA investigating predicate and ML offences. |
| Registrar of Societies (RoS) | Responsible for the registration, regulation and supervision of the majority (type and absolute numbers) of NPOs. |
| Royal Malaysian Police (RMP) | Malaysia's principal LEA responsible for investigating predicate offences, ML and TF. RMP Special Branch (SB) is responsible for Malaysia's security intelligence function. |
| Royal Malaysian Customs Department (RMC) | Administers and enforces customs laws and the cross-border currency reporting requirements. An LEA investigating predicates and related ML. |
| Securities Commission (SC) | AML/CFT regulator and supervisor for the capital market including compliance with the AMLA. An LEA investigating predicates and related ML. |

1.21. In addition to the 16 members of the NCC, other relevant authorities and representatives participate in the NCC working groups. For example, the Prime Minister's Department, which regulates a small number of NPOs, is a member of the NCC's working group on NPOs.

1.4 Other Contextual and Structural Factors

1.22. Malaysia's AML/CFT strategy is part of the broader National Transformation Policy (NTP) that is implemented through the Performance Management and Delivery Unit of the Prime Minister's Department in 2009 to ensure effective implementation of the NTP.

1.23. The NTP comprises two core programs, the Government Transformation Programme (GTP) and Economic Transformation Programme (ETP). The GTP's role is to establish Malaysia as a developed country by the year 2020 and focuses on six National Key Result Areas, two of which are fighting corruption and reducing crime.

1.24. As noted in this report and NRA, Malaysia has a significant cash-based (high vulnerability) and informal economy (moderate vulnerability) that pose challenges in the implementation of AML/CFT controls. Malaysia has taken strong enforcement action against unauthorized money services businesses that operate in the informal economy.

1.5 Scoping of Higher-Risk Issues

1.25. During the mutual evaluation, the assessment team gave increased focus to the following higher risk issues. The results of the 2013 NRA provided further information on areas of threats and vulnerabilities that were included in the assessment of risk related issues:

Threats

- Corruption –proceeds of bribery; role in facilitating ML at federal / state government levels; Malaysian entities involved in foreign bribery; and corruption linked to environmental crime

- Laundering foreign proceeds of crime (including corruption) – source and flows of funds
- Organised crime influence – key crime types and geographical linkages
- Terrorism and terrorist financing – domestic and regional terrorist groups, support for foreign groups and threats from foreign sources of financing
- Proliferation financing – financial exposure to Iran and the DPRK both onshore and offshore

Vulnerabilities

- Cash economy issues
- Offshore sector
- Non-bank remittance service providers and money changers
- International cooperation by law enforcement reflecting the regional threats
- Casino sector

1.26. The assessment team also explored the following components of Malaysia's system:

- The model of the taskforce on AML and tax offences and its implications for effectiveness
- Islamic financial services - any variation in ML/TF risk profile of these services

ML/TF RISKS AND CONTEXT

1



2. NATIONAL AML/CTF POLICIES AND COORDINATION

Key Findings

Malaysia has assessed its ML and TF risks through a number of assessments prior to and since the two NRAs (one completed in 2012 and the other in 2013) and other targeted and sectoral assessments. The most recent NRA (2013) identified five high threat/crime areas: fraud, goods smuggling, drugs, tax evasion and corruption. The NRAs did not sufficiently take account of foreign sourced threats, TF and the interconnectedness of specific crimes and financial sectors but these are considered moderate limitations in light of risks identification activities prior to and since the NRAs were completed which further enhance Malaysia's understanding of its ML/TF risks. The assessments of institutional strengths and vulnerabilities were reasonable, but could be enhanced including through the assessment of more institutions.

Understanding of ML/TF risks has increased substantially since the first NRA in 2012 but is still evolving. The NRA process enhanced the country's understanding of risks and while the assessment process was reasonable, moderate improvements in the methodology, scope and depth of analysis can be made in the future. Assessment of TF risks associated with the increasing threat of terrorism activities e.g. domestic recruitment and self-financed operations was still developing at the time of the onsite visit. A White Paper addressing the threat posed by ISIL was tabled in Parliament in November 2014. Malaysia has plans to update the last NRA, including further assessment of TF risks.

The framework for national coordination and cooperation through the AML/CFT National Coordination Committee (NCC) is very strong with only minor improvements needed. The inclusion of PF in 2012 into the NCC's mandate and relevant agencies supports good outcomes.

Given the timing and dissemination of the 2013, NRA, broad-based analysis of the results and updating of national strategies, priorities and action plans, including the revision of the risk-based elements of the sectoral guidelines, is continuing. The Interim Strategic Plans (October 2014) has started the process of further recalibrating the AML/CFT regime in line with the risks identified in the NRAs.

The financial and DNFBP sectors have not yet fully integrated the NRA findings in their internal risk identification, assessment and mitigation measures. Awareness of assessed risks by the non-bank and DNFBP sectors appears generally low (See IO 4). A planned red flags and typologies exercise should assist in this process but could be broadened beyond FIs. The sectoral Guidelines include a risk-based approach to compliance that is closely aligned with the revised FATF Recommendations and which provides a sound legal basis for more precisely implementing the applicable NRA findings.

2.1 Background and Context

2

(a) Overview of AML/CFT Strategy

2.1. Malaysia's AML/CFT regime is based on a well-coordinated and integrated inter-agency strategy and reflects its understanding of ML/TF risks. The government's priorities and objectives are part of wider policy objectives of modernising the economy, governance and responses to human security issues. A number of related policy objectives complement the AML/CFT strategy including enhanced financial inclusion, and contributions to regional global AML/CFT efforts (e.g. APG, ASEAN, the Egmont Group and the World Bank). Malaysia was granted FATF observer status in October 2014.

(b) The Institutional Framework

2.2. Malaysia's institutional framework for AML/CFT is well developed as set out in s. 1.3 above.

(c) Coordination and Cooperation Arrangements

2.3. Malaysia has effective mechanisms of coordination and cooperation for the development of AML/CFT and PF policies and activities. It established the NCC in 2000 with a membership now comprising 16 public sector agencies with a role in AML/CFT matters and predicate crimes. The NCC's main function is to coordinate inter-agency and national AML/CFT activities and there is clear political commitment and support for the NCC and AML/CFT efforts generally as evidenced by the involvement of the Economic Council (chaired by the Prime Minister) and the Prime Minister's Department in AML/CFT issues. In 2012, the NCC expanded to cover PF.

(d) Country's assessment of Risk

Timeline and process for assessing risk

2.4. The activities of the NCC have been focused on measures to combat ML/TF risk since its inception in 2000. The NCC's role in mitigating ML/TF was reflected in Malaysia's 2007 MER. Prior to the 2012 NRA some agencies undertook threat and vulnerability assessments on specific topics, including some at the national level¹. The results helped inform national AML/CFT policy and measures to mitigate identified ML/TF risks, but this was not consolidated until the first NRA in 2012.

2.5. The first NRA (December 2012) was mainly based on data collected on crime and sectoral self-assessments, ML threats linked to certain predicate crimes and vulnerabilities inherent in FIs and DNFBPs.

2.6. A key outcome of the 2012 NRA was improvements of data capture capabilities mainly through the Centralized Data Management Framework that came into effect in January 2013 for the NCC agencies. The framework formalised the compilation of data on financial intelligence; investigations; prosecutions; forfeiture (criminal and civil); international cooperation; supervision; ML/TF typologies cases and AML/CFT training. Financial intelligence, investigation, prosecution and supervisory statistics are collected every 4 months.

2.7. Following the 2012 NRA, the NCC revised and expanded the NRA methodology that, inter alia, expanded the scope of the country's vulnerabilities, ML predicates, TF, NPO vulnerabilities, and legal persons and arrangements. It also expanded the scope of information obtained, including from foreign counterpart

1 Other threat and risk assessments included e.g. Government Transformation Programme consultations identifying seven areas for prioritized action including corruption; continues monitoring and actions against threat of drug abuse threat since 1983; BNM's 2009 assessment and subsequent reform of the MSB sector; inclusion of tax offences as a predicate offence in 2010 resulting from analysis of STRs and CTRs; and strengthening of LEAs including establishment of specialized AML/CFT units

agencies, expert views, perception surveys (from LEAs and the private sector) and published reports. The 2013 NRA findings were finalised in December 2013 and presented to the Economic Council in June 2014. It was further reviewed by the NCC in July 2014 based on feedback from the EC. The process of dissemination to RIs started in July 2014.

2.8. NRAs enhanced Malaysia's understanding of its ML/TF risks and support the framework for implementing broad-based reforms to the existing AML/CFT regime including recalibration of strategies, priorities, policies and action plans to mitigate ML/TF risks. In September 2014 each of the NCC agencies were requested to draft action plans based on the NRA results. The interim strategic plan (ISP) outlines specific actions to be taken by NCC member agencies.

Methodology, scope and depth of analysis of the NRA

2.9. The NRA methodology was based on the combination of threats and vulnerabilities using the following formula:

Risk= threats + vulnerabilities

Threats= domestic and foreign **crimes + impact** from those crimes

Vulnerabilities= country (economic, legal, and geographical) and sectoral (FIs, DNFBPs, NPOs and legal persons)) **vulnerabilities + likelihood**

Strengths

2.10. The rating of risks provides a useful basis for applying countermeasures proportionate to the level of risk. The NRA identified five high-risk crime categories (fraud, smuggling, drug trafficking, tax crimes and corruption/bribery) as priority areas of focus. The dissemination of the 2013 NRA to the RIs articulated the various risk categories and their ratings, as well as vulnerability areas that can inform development of proportional risk mitigation controls.

2.11. As indicated above, the framework for data capture improved the quantity and quality of information available for the 2013 and future NRAs. The NRA included data from the FIU, LEAs, independent and external reports, perception surveys from LEAs and RIs, and experts' views. The range of stakeholders involved was also expanded.

2.12. Malaysia's engagement with international partners in seeking to capture data of risks of ML/TF arising in foreign jurisdictions is a valuable component of the NRA process but the few responses received from foreign jurisdictions was a limitation. Malaysia made effective use of Egmont channels and bilateral outreach to obtain risk information from surveys and open source materials.

2.13. Although domestic and foreign terrorism and related TF threats were not fully covered in the NRAs, Malaysian authorities provided general and specific information on the country's increasing exposure to such risks which included use of the country as a source of funds or recruits for terrorist groups active in other countries. The authorities have taken account of other risk assessments. For instance, a White Paper on the security threat posed by ISIL to Malaysia was tabled before Parliament on November 26, 2014.

2.14. Assessments of ML and TF risks prior to, during and following the two NRAs provided an ongoing basis for the NCC and individual agencies to prioritise their policies and activities towards risk mitigation. These risk mitigation activities are discussed throughout the report, and a number of key responses to the assessment of TF risk are summarised in the box below. Malaysia has committed to update the NRA at least every two to three years with more frequent reviews in response to emerging risks, as indicated by the case study below. Each NCC member agency will conduct risk assessments on an ongoing basis as per the NCC's October 2014 ISP.

Box 2.1. Case study: Assessing and responding to TF risk

Malaysia's assessment of TF risk predates the NRA process and includes activities to assess methods and trends of cross-border terrorism groups (Jemaah Islamiya, Abu Sayaf, LTTE, etc.), vulnerabilities of MVTS and money changers, risks in the NPO sector, and institutional vulnerabilities (prosecutions, etc.). Malaysia's assessment of TF has been evolving and responding to the changing nature of the TF risks. The 2014 White Paper on ISIL and associated TF risks reflects the iterative approach taken by Malaysia to assess risks. Policies and activities responding to the findings on terrorism and TF risks demonstrate that the authorities adapt flexibility to the changing environment and include:

- The intensity and scope of controls on the NPO sector (particular the tight controls on charitable collections from 2012 and targeted RoS and Special Branch activities (see IO10)
- The intensity and scope of regulation/supervision of the MSB sector during 2011-2013 (see IO3)
- Targeted outreach to FIs, DNFBPs and NPOs on the details of TF risk (see IO4)
- Focus on the use of targeted financial sanctions against terrorism (see IO10)
- RMP's focus on TF investigations since 2012 (see IO9)
- Interventions to arrest facilitators and shut down fundraising websites in 2014 (see IO9)

Areas for improvement of the NRA for assessing risks in the future

2.15. While assessors consider the NRA has provided a reasonable basis to assess many of the risks, this section identifies a number of moderate improvements to the methodology of the NRA which Malaysia should consider as it works on future iterations of the NRA process. The NRA results disseminated are generally high-level. Future NRAs would benefit from further details to guide RIs. In addition, deeper analysis of foreign sourced threats including those connected with cross-border trade and financial flows, and the Labuan offshore sectors, would be useful. A good example of this has been work to assess flows from China as part of FIED's analysis. The above threats were not adequately addressed in the NRA but are material in the context of Malaysia.

2.16. Existing assessments of domestic and foreign terrorism and related TF threats were not sufficiently consolidated in the NRA, but further assessment of these risks has continued since late 2013 which has enhanced Malaysia's understanding of TF risk such that post NRA is considered to be high by the authorities.

2.17. The interconnectedness and correlation of threats/crimes and their ratings do not appear to have been adequately assessed. In particular, the interconnectedness of organised crime (rated medium risk) and high risk rated crimes e.g. smuggling and drug trafficking; and reported links between organized crime and low risk rated crimes such as counterfeiting and piracy.

2.18. The assessment of domestic corruption as high risk was well supported but not the potential linkages with other domestic and cross-border crimes such as illegal logging/environmental crimes. Environmental crime is one of the areas where authorities sought targeted responses on risk from countries in the region, but did not receive responses. The work of Malaysia's well-functioning Anti-Corruption Commission (MACC) reflects the priority to mitigate this crime in the country.

2.19. Assessment of strengths and vulnerabilities in the institutional frameworks of AML/CFT stakeholder agencies beyond the legal framework could be improved in the NRA, including through the assessment of more institutions. Outside of the NRA, supervisors have conducted an assessment of vulnerabilities for each regulated sector, including through their ongoing supervisory activities to help benchmark approaches to

regulation and supervision. Some of the institutional vulnerabilities identified in the NRA are covered under the ISP as measures to be implemented.

2.20. With respect to sectoral vulnerabilities, further consideration could have been given to vulnerabilities (e.g. contagion risks) associated with the prevalence of financial groups spanning multiple sectors and the business linkages between the domestic and offshore FIs.

2.2 Technical Compliance (R.1, R.2, R.33)

2.21. R. 1 – Assessing Risks and applying a Risk-Based Approach – **Malaysia is rated largely compliant**

2.22. R. 2 – National Cooperation and Coordination - **Malaysia is rated compliant**

2.23. R. 33 – Statistics - **Malaysia is rated compliant**

2.3 Effectiveness: Immediate Outcome 1 (Risk, Policy and Coordination)

(a) *Understanding of ML/TF Risks*

Risks, context and materiality

2.24. Prior to the 2012 NRA some agencies undertook threat and vulnerability assessments on specific topics, including some at the national level. Malaysia's understanding of ML/TF risks has improved substantially since it started the process of systematic assessments, which culminated in a NRA in December 2012, and an expanded NRA in December 2013. The last NRA indicates that the country is exposed to a range of ML risk associated with high threat areas including fraud, smuggling, illicit drugs, tax crimes and corruption. With the exception of TF and, to an extent organised crime, the NRA appropriately highlights the findings of these crime areas as priority risk areas for attention (see the analysis of the NRA in s.2.1(d) above). Understanding the interconnectivity of risks, e.g. in relation to organised crime, corruption and domestic and foreign crimes appears to be limited requiring moderate improvements. For example, while corruption risk is rated as high, its linkages to other lower rated crimes (e.g. illegal logging) do not appear to have been sufficiently assessed and understood.

2.25. Terrorism and TF is considered as medium risk in the 2013 NRA, but in practice, the authorities consider it has high risk partly due to post NRA developments. Malaysia has faced a number of threats related to terrorist financing, including from Al Qaida, Jemaah Islamiya, the Liberation Tigers of Tamil Ealam (LTTE), Abu Sayef Group, and others. Recently significant threats related to the financing of ISIL recruits have emerged. Malaysia has porous national borders, rendering the country susceptible to the smuggling of cash and weapons and the relatively easy movement of people. Since 2004, some 156 Malaysians and a number of foreign nationals have been arrested in Malaysia for adherence to terrorist groups.

2.26. Malaysian authorities provided information on terrorism threats and the country's increasing vulnerability of being used as a source of TF or recruits for terrorist groups active in other countries, including ISIL. Malaysian officials estimated that in 2014 more than 75 Malaysians had joined or attempted to join ISIL. The authorities indicated that most of the cases detected so far involve low income, unsophisticated individuals but recent reported cases involve recruitment and financing operations using the internet. This suggests the emergence of more organized and sophisticated operations and that the understanding of this risk is still evolving in pace with TF methods. In November 2014, SB arrested those suspected of recruiting Malaysians via Facebook to send to Syria.

2.27. Malaysian authorities indicated that there is no evidence linking the proceeds of criminal activities such as kidnapping, extortion, robbery, smuggling, fraud and drug trafficking to terrorist groups, despite the prevalence of these activities in 'hot spots' associated with terrorism risks (Southern Philippines and

Southern Thailand). There have been incidents of kidnapping in Malaysia's territory, i.e. Sabah, by the Abu Sayyaf group for ransom to further terrorism activities in their home country. Malaysia collaborates with the relevant regional authorities to share risk information to address these threats.

2.28. In the past, Malaysia, through its cooperation with international partners, has had the experience of investigating terrorist groups that have raised monies in support of their causes on a larger scale. Malaysia has identified fundraising through contributions made by terrorist group members through a collection of *infaq*² of approximately 5% of monthly income in cash.

2.29. Malaysia has also focused on the use of the internet by terrorism-affiliated entities to channel logistical assistance to militant groups, recruitment, and funding terrorist activities. Between February 2013 and late 2014, SB has arrested 45 suspected militants of whom 22 have been charged, including three connected to Tadzim Al-Qaeda. The authorities contend that most of the cases detected so far involve low income unsophisticated individuals but recent reported cases involve recruitment and financing operations using the internet which suggests more organized and sophisticated operations.

2.30. Religious, charitable and political NPOs account for about 40% of NPOs and are considered a high-risk TF area in the NRA. The NRA indicates that a small proportion of NPOs account for the majority of international financial transactions and activities (approximately 1000 of a total of more than 47 000 NPOs) and that relatively few transactions are linked to high risk and conflict countries. NPO receipts during 2013 more than tripled far exceeding payments which had been steady during the previous 8 years. TF risk associated with this sector was rated as medium in the NRA. While awareness of TF risks in the NPO sector has been generally low in the past, oversight and risk mitigation have started to improve but is limited by resources. Outreach of TF has increased including through online portals and an annual conference. All of these factors point to a reducing but still high vulnerability for the NPO sector.

2.31. Malaysia has taken strong regulatory and enforcement measures to control the MSB sectors (remitters and money changers) in response to significant risks, but unauthorized illicit MSBs continue to pose a significant vulnerability, including with respect to TF. Malaysia is a net outbound remitter of funds, with a large presence of migrant workers both legal and illegal. Strengthened controls, enforcement and other supervisory measures are resulting in significant increases in formal channels for remittance which should mitigate the level of risk posed by this sector.

2.32. Malaysia's highly cash-based economy (vulnerability rated as high) and significant informal economy (vulnerability rated as moderate) is considered by the NRA. The NRA indicated that terrorists have used cash couriers in Malaysia in the past including cross-border operations. Malaysia's states that its efforts to increase financial inclusion have reduced the size of the informal economy while national efforts to promote e-money are aimed at reducing the use of cash. The World Bank's Global Findex for 2014 shows that 81% (an increase from 66% in 2011) of the adult population had access to accounts in formal financial institutions.

2.33. Malaysia's assessments and understanding of risk, as well as the assessment team's discussions with RIs and LEAs, indicate that use of informal nominee and front or 'mule' accounts in Malaysia is a challenge for RIs across Malaysia. The mule accounts identified by Malaysian authorities mainly involve individual account holders rather than legal persons. Use of formal nominees is also a feature in the offshore corporate sector. The authorities and private sector recognize this vulnerability and enforcement measures have been taken against those identified as mule account holders.

2.34. Malaysia has a small but important offshore financial centre in Labuan, which was rated as medium risk in the NRA. The assessment and understanding of ML/TF risks associated with Labuan-based businesses is partly based on the size of the sectors and the absence of cash transactions. Nonetheless, since many of the services are not substantially asset-based (e.g. company, trust, foundation and related services), these factors may be insufficient to properly assess and understand their associated ML/TF vulnerabilities and risks.

2 Infaq means spending or disbursement simply to please God without asking for any favour or hoping for a return. It is different from Zakat, which is obligatory on Muslims.

Many of the FIs operating in Labuan are owned or controlled by onshore banks (considered high risk), and a large proportion of business (e.g. loans by offshore banks) are to Malaysian customers. The Labuan offshore sector has exposure to a number of high-risk jurisdictions. These institutional, commercial and cross-border linkages and the associated ML/TF risks do not appear to have been sufficiently assessed and understood, requiring moderate improvements in the assessment and understanding of risk.

2.35. Only one large casino has been licensed in the country and is the single non-financial sector vulnerability rated as high risk in the NRA. This rating was well supported and the inherent ML risks and vulnerabilities are well known. The casino offers a wide range of high-risk services (e.g. those associated with client account and transaction practices), has several cross-border subsidiaries, affiliates and customers (e.g. through junket operations). The risks arising from the casino's foreign operations have yet to be viewed on a consolidated basis.

2.36. Malaysia has a significant Islamic finance sector involving banks, takaful (Islamic insurance) and other intermediaries which are subject to the same AML/CFT legal and regulatory regime as conventional and Islamic finance institutions. Supervisors are of the view that, based on their supervisory experience, there are no material differences in risks when compared to conventional FIs (for example Islamic banks and non-Islamic bank are all rated as high-risk sectors). The NRA and other assessments considered ML and TF risks for all sectors of FIs and did not separately assess ML/TF risk and vulnerabilities in the Islamic finance sector as it did, for example, for the domestic and offshore sector.

2.37. The role of Zakat³ and its potential connection with charitable organisations (NPOs) was another area that has been considered by the authorities, although it was not discussed directly in the NRA. Malaysia has centralised and closely monitors systems for collection and disbursement of Zakat to mitigate risks in the sector (see IO10).

Sectoral understanding of risk (see IO 3 and IO 4)

2.38. Malaysia's understanding of sectoral ML/TF risks was substantially improved by the process and results of the NRA (and recently the ISIL White Paper with respect to TF). The outcomes of the NRA process have commenced to be incorporated into the roles and priorities of the various AML/CFT stakeholders (e.g. the October 2014 Interim Strategic Plan) which should continue to enhance their understanding of risk.

2.39. BNM, in particular the FIED, and the banking sectors have a better understanding of ML risks. Much of this derives from the broad supervisory coverage of banks and other sectors subject to its supervision. During 2014, BNM, SC and LSFA developed an enhanced risk-based framework for AML/CFT supervision that provides for a more detailed assessment of institutional risks than was previously the case, and which is broadly consistent with the FATF requirements.

2.40. Discussions with the private sectors on the results of the NRAs mainly reflected their sectoral risk contributions to the NRA process and to the predicate crimes identified as high risk by the NRAs. Their own understanding of risks, including based on NRAs findings, are assessed under IO.4. The sectoral guidelines issued in 2013 closely follow the risk-based requirements of the FATF Recommendations. The authorities indicated that the development of these guidelines were also informed by the 2012 NRA process and results, including sectoral vulnerability assessments conducted for the 2013 NRA.

(b) Cooperation, Coordination and Policy

Interagency cooperation and coordination

2.41. The national framework for cooperation and coordination on AML/CFT issues is strong and supports

3 Zakat is an obligation on Muslims to give a specific amount of their wealth (with certain conditions and requirements) to prescribed beneficiaries called al-mustahiqqin with the main objective of achieving socioeconomic justice.

the development and effective implementation of policies and activities to combat ML and TF with only minor shortcomings identified. The NCC was established in 2000 with a membership now comprising 16 public sector AML/CFT stakeholders. There is no direct private sector representation on the NCC, but NCC members coordinate with the private sectors, mainly through their respective supervisory agencies. The NRAs engaged the RIs sectors who provided input into the assessment process. The ME process and the NRAs also reinforced the implementation of interagency coordination and cooperation including for setting national strategies and activities. The October 2014 ISP to address key findings of the NRA is one of the recent coordination outputs.

2.42. There is clear political commitment and support for the NCC and AML/CFT matters. The involvement of the Economic Council and the Prime Minister's Department in the NRA is process is evidence of such support.

2.43. There has been close cooperation among the main supervisor agencies, namely the BNM, SC and the LFSA. These agencies contribute to the work of the NCC, coordinated in the drafting of the 2013 sectoral guidelines, and participate in consolidated supervision of financial groups and sectoral awareness raising programs. The DNFBPs and their SRBs coordinate through the NCC's DNFBP Taskforce but their activities are not significant.

2.44. Coordination at the operational level is well developed but there are a number of areas requiring improvement. LEAs should more effectively coordinate their efforts to combat horizontal threats/crimes and their associated ML/TF risks identified in the NRAs. These coordination mechanisms should also extend to other agencies (e.g. supervisors) involved with risk mitigation including the reduction of sectoral and institutional vulnerabilities, such as in the NPO sector. The establishment of the Special Taskforce for the enforcement of Government revenue collection, including related ML has enhanced LEA cooperation.

2.45. Malaysia's coordination framework includes a number of specialized taskforces to deal with specific crimes and AML/CFT related issues, e.g. illicit money services businesses and cross-border currency transportation. The NRA highlighted the need to enhance inter-agency cooperation and cooperation by institutionalizing the 'ad hoc' taskforce mechanism drawing on the experience of the AGC's Special Taskforce but this is not part of the ISP. The ISP contemplates the establishment of a more permanent financial working group under the NCC including the financial sector supervisors. Enhanced private sector engagement in the work of the NCC would also enhance public-private sector collaboration.

2.46. There is good cooperation between the main supervisory agencies (BNM, SC and LFSA), the FIU and other LEAs. The ISP further requires that all LEAs attach officers to BNM FIED (FIU) to enhance inter-agency collaboration. For the NPO sector, efforts are being made to enhance cooperation between the RoS, IRB, regulators and other LEAs in order to improve information sharing in support CFT efforts, including development of systems for risk identification, assessment and mitigation.

2.47. Interagency coordination to combat PF is well supported. The inclusion of the Strategic Trade Secretariat (STS) in the NCC has provided a suitable platform for inter-agency cooperation and policy coordination on PF issues. Nonetheless, there is a need to further deepen the engagement between the Special Branch, regulators and other relevant agencies in information sharing and cooperation on combating PF.

Policies and other activities

2.48. The authorities have taken other specific AML/CFT risk mitigating measures in addition to those that are discussed in other parts of the MER. For example, in October 2014 the ISP was formulated to provide a useful framework for reviewing and calibrating national policies, priorities and action plans. The ISP contains 19 action points. Some of these activities are summarized below:

- Each NCC agency to establish an ML/TF risk assessment function.
- Labuan to undertake a more broad-based threat and vulnerability assessment.
- Establish specialized AML units in all LEAs.

- Develop red flags and typologies for high-risk threats between LEAs and FIs.
- Second LEA officers to the BNM FIED.
- LEAs to develop criteria for opening ML investigations.
- Increase ML investigations and prosecutions of high-risk crimes, including drugs.
- Increase international information exchange and MLA.
- Enhance the cross-border currency declaration regime.
- Increase investigations and prosecutions of TF.
- Operationalize the targeted sanctions regime under the Strategic Trade Act.
- Complete the revision of risk-based AML/CFT supervisory framework.
- Establish a permanent financial working group under the NCC.
- Issue specific guidelines to high-risk entities esp. casinos.
- Establish formal cooperation and information sharing mechanisms between the Registrar of Societies and other regulators e.g. through MOUs.
- Revise the Companies Act to require retention of beneficial ownership information.

Box 2.2. Case study: Special Taskforce

The Special Taskforce is an operational level taskforce established in 2011 by the High Level Taskforce on Combating Money Laundering and Related Crimes. It is led by the AGC and uses AML as one of its key tools to systematically target vulnerabilities in key elements of the economy. The Special Taskforce identifies strategic opportunities to collect revenues, investigate related crimes (e.g. illegal remittance) and proposes improvements to systems and procedures.

The Special Taskforce comprises the ACG, RMC, RMP, MACC, IRB, BNM, CCM, CyberSecurity Malaysia, National Audit Department and the Immigration Department. The Special Taskforce is an excellent example of effective interagency cooperation and policy coordination to use AML tools and has achieved notable successes, including administrative recoveries of over RM 2.5 billion (USD 747M)¹. The actions have directly contributed to overall increased levels of tax compliance, which has significantly increased revenue to the government.

1. Exchange rate as of last day of onsite (25 November 2014) used throughout report, 1USD: 3.3474RM

(c) *NRA and risk-based measures*

2.49. The 2013 NRA provided an important but not the only basis for the review and calibration of AML/CFT strategies, policies and action plans, (the ISP is one such measure) building on measures taken based on prior risk and vulnerability assessments. The 2013 sectoral guidelines (regulations) were developed during the 2013 NRA process and are largely based on the requirements of revised FATF Recommendations and other information available to supervisors, including findings of the 2012 NRA. These guidelines will be revised taking into account the results of the 2013 NRA. The ISP calls for a revision and updating of the risk-based supervisory frameworks but not of the sectoral guidelines. It requires the three supervisory agencies to further update their risk-based supervision frameworks which could be expanded to include

the identification and assessment of institutional risks relating to clients, products and services, including TF specific risk factors and use of nominee and “mule” accounts. Revision of the risk-based supervisory framework for all sectors was completed in November 2014.

(d) Activities and objectives of competent authorities

2.50. Malaysia’s ongoing assessments of risk have provided a good basis for competent authorities to prioritise their policies and activities to mitigate key risks. Examples of Malaysia’s responses to identified risks appear throughout the report. For example, IO3 notes enhanced supervisory resources and activities with the casino (since 2014); outreach and supervision of FI branches located in high-risk areas such as border towns (since 2011); and an increased intensity and focus of MSB regulation and supervision (2011-13). The BNM and SC have implemented a risk-based approach to general supervision that includes an AML/CFT compliance element. During 2014, both supervisors as well as the LSFA have developed a new and enhanced risk-based framework for AML/CFT supervision that provides for a more detailed assessment of institutional risks. The ISP contemplates the joint development of red flags and typologies by the LEAs and FIs based on high risk areas identified by the NRA but does not contemplate participation by DNFBPs in this process.

(e) Awareness by FIs and DNFBPs of NRA results

2.51. The results of the 2012 NRA were disseminated through outreach conferences to a large number of RIs and their respective associations. All financial and DNFBP sectors participated in the 2013 NRA by providing data through their respective supervisors, SRBs and the conduct of self-assessments. The results of the NRA were disseminated to RIs from mid-2014 through awareness programs, conferences and publishing the results on relevant AML/CFT websites. Based on discussions with RIs, the 2013 NRA dissemination was useful but did not provide sufficient details to enable RIs them to fine tune their internal risk assessment and mitigation systems because it was too high level for a more detailed assessment of specific risks and their mitigation, as required by the sectoral guidelines. Most RIs interviewed indicated that the NRA adequately reflected their individual sectoral inputs but did not seem to go beyond that in helping them understand the broader sectoral and country risks. This view was also reflected by some of the official AML/CFT agencies interviewed.

2.52. Malaysia’s White Paper on ISIL was published and was planned to be disseminated to RIs to enhance awareness of TF risk. The RMP and other authorities have engaged with the media to raise public awareness on the developing threats posed by ISIL, including groups at risk, activities involved and *modus operandi*.

Overall conclusions on Immediate Outcome 1

2.53. Overall, the level of understanding of ML/TF risks in Malaysia is reasonable and increasing, and Malaysia has a range of AML/CFT policies and activities to mitigate the risks. Assessments of ML and TF risks prior to, during and following the two NRAs provided a strong basis for the NCC and individual agencies to prioritise their policies and activities towards risk mitigation taking into account the evolving nature of risks. The NRA processes were a principal factor in enhancing risk awareness in the country. The assessment team was generally satisfied with the reasonableness of Malaysia’s assessment of ML/TF risks, but some shortcomings in the NRA’s scope, data availability and process were noted. These shortcomings limit the understanding of some of the ML/TF threats and vulnerabilities (e.g. foreign sourced and interconnected threats and vulnerabilities, and institutional strengths and vulnerabilities). Some of the shortcomings in the NRA’s scope and level of detail limits its utility for RIs in calibrating their internal risk identification, assessment and management systems.

2.54. Broad-based and detailed review of national and institutional strategies, policies and action plans has commenced based on the 2012 NRA and other information sources (e.g. supervisory data) with the ISP, but is still to be completed. This reflects the timing of the 2013 NRA results and the ongoing ME. The October 2014 ISP will be further developed once this MER is finalised. The supervisory agencies have revised their risk-based frameworks for AML/CFT supervision. These systems are more advanced for the banking and securities sectors than for other sectors.

2.55. The national AML/CFT coordination and cooperation framework is comprehensive and effective with only minor shortcomings identified. The NCC provides a sound foundation for continued inter-agency coordination and collaboration as was evidenced by the organisation and conduct of the NRA and this ME. The NRA identified a number of areas where inter-agency cooperation could be improved but not all are included in the ISP. The assessment team also identified areas for enhanced inter-agency coordination and cooperation to improve the quality of STRs and oversight of the NPO sector.

2.56. The expansion of the NCC agenda and membership to encompass PF issues provides a sound foundation to develop and implement coordinated policy responses to proliferation financing issues.

2.57. Malaysia demonstrated its commitment to improve a number of the risk-sensitive elements of the system that were not all implemented at the time of the onsite visit. The 2013 NRA was disseminated to RIs but its findings have not been fully taken into account in their risk identification, assessment and mitigation systems, mainly because dissemination was relatively recent. Following the 2013 NRA, the 2013 sectoral guidelines are being reviewed for high-risk entities, e.g. the single casino. The October 2014 ISP, which is partly based on the 2013 NRA, requires the issuance of typologies and the establishment of risk assessment functions by all NCC members, and upgrading of the risk-based supervisory frameworks which has been undertaken.

2.58. **Overall, Malaysia has achieved a substantial level of effectiveness for Immediate Outcome 1.**

2.4 Recommendations on National AML/CFT Policies and Coordination

2.59. In line with its plan for a 2-3 year NRA cycle, commence the next iteration of the NRA and other assessments to address issues of scope and depth of analysis, and enhance understanding of risk, including:

1. Implement the ISP action plan to establish a risk assessment unit in each NCC agency.
2. More in-depth assessment of foreign sourced threats/crimes, terrorism and TF threats, institutional strengths and vulnerabilities, interconnectedness of organised crime and other crime types.
3. Strengthen the risk assessment of Labuan, including interconnectedness with other sectors.
4. Ensure a deepened process of dissemination of risk findings to RIs following and between each iteration of the NRA to support their implementation of risk-based approaches to mitigate risk.

2.60. Review and update national strategies, policies, priorities and action plans to reflect findings of the NRA, beyond the action points in the ISP:

2.61. Enhance interagency coordination and cooperation under the NCC by permanently establishing the NCC financial working group and consider how self-regulatory bodies and the private sector can have a more active input to coordination processes and activities in the NCC. Establishment of the financial working group and other measures were completed after the onsite visit.

2.62. Further disseminate and raise awareness of risks through further development and dissemination of sectoral typologies and ML/TF risks based on the NRA.

2.63. Review and as necessary update the sectoral guidelines in line with the NRA findings by focusing on the risk-based provisions with respect to simplified and enhanced measures.



3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings

Malaysia has a well-structured, well-functioning FIU with analytical resources, expertise, tools and data sources that is producing a range of high quality financial intelligence. The FIED's integrated role as FIU, LEA and supervisor gives it broad perspectives into well targeted financial intelligence.

The uptake of financial intelligence is relatively mixed amongst Malaysia's nine LEAs. Financial intelligence products are generally utilised well by LEAs for targeting and conducting predicate investigations and related asset tracing. MACC and IRB, in particular, show the most regular and highest use of FIU intelligence products and RMP and RMC are moving towards much greater use of FIU data and developing other financial intelligence in support of predicate investigations. , More needs to be done to utilise financial intelligence at the targeting stage of ML investigations. Disclosures to the RMP (SB and RMP AMLA Unit) are increasing in support of CT and CFT investigations.

The moderate improvements needed to ensure greater effectiveness of the outputs of the FIU relate mostly to efforts by other agencies to improve the quality and quantity of reporting and LEAs' uptake of financial intelligence. The FINS system supports secure direct communication and cooperation between the FIU, RIs and LEAs for investigations.

Malaysia's legal and institutional frameworks are generally sound, but are not yet producing substantial outputs for ML. The number of ML investigations has recently increased and many are ongoing. The overall number of ML prosecutions and convictions is low and, other than for fraud, Malaysia is not effectively targeting high risk offences. In particular, there have been no ML prosecutions relating to drugs or tax offences, and only nine ML prosecutions relating to corruption and smuggling goods since 2009. Other than a handful of high value cases, most cases are low-medium level fraud cases; not higher levels of offending. Malaysia has not prosecuted ML in relation to a foreign predicate offence and could take a more proactive approach to pursuing such cases.

AGC's capability to prosecute ML is affected by resource constraints and LEAs have difficulties establishing all elements of the ML offence. RMP needs to strengthen its cooperation, coordination and capacity in ML investigations.

The sanctions imposed for ML have been low in absolute terms (particularly given the maximum penalty until September 2014 was only five years imprisonment) and it is not clear that they have been effective.

Authorities have adopted alternative measures with good results (such as confiscation and pursuing predicate offences), however in many cases these have diminished the importance of, and been a substitute for, ML investigations and prosecutions.

Malaysia has recently increased the penalties for ML and demonstrated an increased commitment to prosecuting ML, which holds promise for enhanced effectiveness in the future.

3

Malaysia has a largely compliant, broad and flexible legal regime and a strong focus on recovery of property and is seeing some successes, particularly through administrative recovery. Tax and goods smuggling confiscations through the Special Taskforce are achieving excellent results and reducing these types of offending, as demonstrated by increased voluntary compliance with tax laws. However results in remaining high risk areas (drugs, fraud and corruption) are low, and there has been a substantial decline in AMLA forfeitures. Malaysia has confiscated property from immediate targets but not the higher level organisers of crime; LEAs have difficulties linking property to offences and targeting more complex cases

The scope of confiscation cases has been limited: Malaysia has not confiscated property in terrorism or TF matters; Malaysia has not prioritised targeting foreign predicate offences or following the proceeds of Malaysian offences moved offshore; and IRB does not target all property types (only bank accounts and land titles in the name of the taxpayer).

The implementation of the cross border cash declaration regime has not produced substantial outcomes to date and results are declining, which is significant in light of the risks Malaysia faces regarding cash smuggling at the border. Implementation needs to be more thorough and more coordination and information sharing is needed, especially between RMC and RMP and BNM.

3.1 Background and Context

(a) Legal System and Offences

3.1. The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) covers the ML offence, financial intelligence, reporting obligations, investigative powers, the confiscation regime and the cross border declaration regime. Other laws supplement AMLA, such as the Dangerous Drugs (Forfeiture of Property) Act 1988 (DDFOPA), Malaysian Anti-Corruption Commission Act 2009 (MACCA) and the Criminal Procedure Code.

3.2. Since its last evaluation, Malaysia has amended the AMLA to provide more comprehensive coverage of predicates and confiscation action; strengthen the cross border declaration regime; and increase the penalties for ML. Malaysia has also introduced a new anti-corruption law, the MACCA.

3.3. ML is criminalised in s.4 of AMLA. It is also criminalised in the DDFOPA (for drugs offences) and MACCA (for corruption offences). Sanctions for ML offences under AMLA rely on Courts imposing a sentence upon conviction, plus AMLA has a 'compound' provision whereby criminal matters are settled outside the judicial process by way of a DPP approved fine. Other predicate offences are also able to be 'compounded'. In addition, fines and penalties can be imposed administratively for predicate offences (e.g. tax and smuggling offences).

3.4. Confiscation action can be taken under AMLA, DDFOPA and MACCA on both a conviction and non-conviction basis. In addition, for drugs matters, DDFOPA provides an administrative forfeiture scheme in which property is automatically forfeited after 3 months if no claim is made on it. The *Criminal Procedure Code* provides a general conviction based forfeiture provision. Authorities can also apply administrative processes to recover property, such as tax remedies.

3.5. There are nine LEAs that can investigate ML under AMLA, all of which have established an AMLA Unit. RMP accounts for nearly 75% of ML referrals to AGC. AGC has a specialist AML Unit and also outposts DPPs to key LEAs. In addition to prosecutions, AGC plays a significant role in approving investigative and provisional measures under AMLA and DDFOPA.

3.2 Technical Compliance (R.3, R.4, R.29-32)

- R.3 – Money laundering offence - **Malaysia is rated largely compliant.**
- R.4 – Confiscation and provisional measures - **Malaysia is rated largely compliant.**
- R.29 – Financial intelligence units - **Malaysia is rated compliant.**
- R.30 – Responsibilities of LEAs - **Malaysia is rated compliant.**
- R.31 – Powers of LEAs - **Malaysia is rated compliant.**
- R.32 – Cash Couriers - **Malaysia is rated largely compliant .**

3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)

3.6. The FIU is set-up as an independent and autonomous function within the FIED of BNM. The Head of FIU has the autonomy and power to receive, analyse and disseminate financial intelligence with domestic LEAs and with foreign counterparts. Although it is structured under FIED, the FIU in BNM operates with sufficient operational independence and autonomy to be free of undue influence or interference. The Deputy

Governor of BNM is responsible for the FIU. However, functionally, the Head of FIU decides the day-to-day operations of the FIU, including the dissemination of financial intelligence to domestic and foreign partners.

(a) Use of financial intelligence and other relevant information

3.7. Malaysia has demonstrated that LEAs have utilized financial intelligence from the FIU throughout all stages of their predicate and ML investigations. This includes strategic targeting, opening an enquiry paper, which is a preliminary investigation and, when sufficient evidentiary grounds are available, opening an investigation paper. Financial intelligence products are generally utilised well by LEAs for targeting and conducting predicate investigations and related asset tracing.

3.8. LEAs confirmed that FIU disclosures were comprehensive and provide a basis for investigative targeting and ongoing investigations and support investigations by providing grounds to conduct investigations, including establishing reasonable suspicion to use investigative powers. The MACC and the Special Taskforce advised that the disclosures received by the FIU provide substantial grounds to believe an offence in relation to corruption/tax evasion has been committed, thereby facilitating the next phases of the investigation where orders pursuant to Section 48 of the AMLA for records from reporting entities may be obtained.

3.9. Malaysia's nine LEAs access the FIU's financial intelligence for their investigations into ML, predicate offences and TF. LEAs receive proactive disclosures from the FIU, or they may trigger reactive disclosures by written request of following online search access to FINS. LEAs restricted access to FINS includes a limited number of persons (number dependent on functions of agency) being able to query the database online to seek possible target matches. If there is a match, LEAs provide a fast-track request to trigger a disclosure by the FIU.

3.10. MACC, IRB, RMC, RMP, CCM, FIED, LFSA and MDTCC have specialised AMLA Units and develop their own financial intelligence in support of financial investigations into predicates, ML and TF. All LEAs are well aware of the FIU's data holdings and have requested financial intelligence related to predicate offences. The MACC and IRB, in particular, show the most regular and highest use of FIU intelligence products. RMP (CCID and NCB) and RMC are moving towards much greater use of FIU data and developing other financial intelligence in support of predicate investigations. The uptake of direct FINS access by LEAs is low but increasing. The processes within LEAs should be strengthened to make full use of the financial intelligence available at the FIU.

RMP

3.11. In keeping with the risk profile, the use of FIU financial intelligence by the RMP is mainly related to drugs and fraud predicate investigation matters. RMP's investigations in other medium and low risk crime types would benefit from more use of FIU financial intelligence.

3.12. The RMP uses disclosures from the FIU, its own database, and other sources to carry out preliminary data collection and profiling of subjects. RMP demonstrated good intelligence development techniques supported by their direct RMP request for RI's financial records or via FIED.

3.13. The flow of formal TF-related-disclosures from the FIU to the RMP is low relative to TF risks identified, but is increasing, reflecting a widening focus from the RMP AMLA Unit on TF investigations. SB is an increasingly regular user of FIU disclosures. From 2011 to 2013 the FIU made four proactive disclosures involving 23 STRs to the RMP. In the same period the FIU made 14 reactive disclosures involving four STRs.

3.14. Case studies demonstrate that the SB has made regular use of financial intelligence over many years for counter terrorism investigations. Until recently, the SB principally dealt with TF elements of Malaysia's counter terrorism strategy in the context of its security intelligence activities. In this mode, SB had regular interaction with the FIU in relation to exchange financial intelligence to follow money trails related to terrorist groups. Given the security intelligence nature of such exchanges they are not captured in FIU disclosure statistics. From the examples provided, the assessment team were satisfied that this mode of information sharing added to Malaysia's efforts to combat elements of TF, albeit not leading to criminal prosecutions.

This did contribute, for example, to targeting financiers, dismantling terrorist networks in Malaysia, domestic designations under 1373 and the like.

BNM FIED

3.15. The FIED, in its LEA capacity, demonstrated that it makes extensive use of financial intelligence during the targeting stage of its predicate and ML investigations, and during asset tracing work. FIED has well trained and experienced investigators who apply sophisticated tools to utilise financial intelligence in their investigations. The FIED extracts and collates financial and other related information from FINS and a wide range of government (including international requests) and private sector data sources. This has led to a significant number of successful fraud-related ML investigations.

3.16. FIED investigations were shown to follow a structured approach, including coordination with all relevant LEAs to consider links to any ongoing investigations of the subject. Sanitized cases demonstrate strong results in joint intelligence development which has had a significant strategic impact with targeting high risk areas related to fraud and tax offences under the Special Taskforce.

Inland Revenue Board of Malaysia (IRB)

3.17. The Special Taskforce includes a large number of agencies, makes extensive use of financial intelligence at its targeting stage as well as in ongoing investigations and asset tracing work. Financial intelligence (strategic and tactical) is at the heart of its approach to focusing on strategically significant offending in the economy. The IRB takes a strong risk-mitigation approach and is working towards making use of financial intelligence in keeping with the risk profile. The value of this work is reflected in the significant number of successful ML investigations and asset recovery work by IRB.

3.18. The IRB demonstrated the regular and successful application of forensic tools to assist investigators in analysing financial intelligence. IRB's Intelligence Division receives information from various sources including the FIU and it is noted that its direct access to FINS is increasing.

Malaysian Anti-Corruption Commission (MACC)

3.19. The MACC makes extensive use of financial intelligence at its targeting stage for corruption, related ML and asset tracing work. A range of case studies and statistics demonstrate the quality of outcomes from MACC's use of financial intelligence largely in keeping with Malaysia's risk profile.

3.20. MACC's use of financial intelligence is resulting in a steadily increasing number of ML investigations, many of which have significant public interest, although only two have so far led to conviction, with the vast majority of cases ongoing.

Royal Malaysian Customs Department (RMC)

3.21. RMC is moving towards greater use of FIU data and developing other financial intelligence in support of its predicate offence investigations and in the context of its contributions to the Special Taskforce. The RMC makes use of FIU disclosures to identify specific targets and determine the possibility of predicate offences. Various units within the RMC are adopting processes which sees them increasing use and seek intelligence from the FIU. The Special Taskforce has pursued a higher number of smuggling-related ML investigations over the last three years which have predominantly led to asset tracing and confiscation actions.

3.22. The RMC collects cash and BNI cross-border declarations which are provided to the FIU on a monthly basis and stored in the FIU CADS system. FIU regularly uses CADS data in its analysis and disseminations to various LEAs. Only the RMC and FIU have full direct online access to CADS. Since the implementation of the system in 2011, assessors note that the RMC has increased its more systematic use of CADS data, with approximately 1 000 entity searches per annum over the last two years. This has contributed to a significant number of investigations being opened for predicate offences (approx. 5 000 per annum) and ML cases (37 in 2012 and 11 in 2013).

Securities Commission (SC)

3.23. The SC demonstrated that it makes good use of financial intelligence, including FIU data, in support of their investigations in keeping with the risk profile. Case examples saw the SC initiating investigations based on FIU disseminations from domestic sources and intelligence received from foreign FIUs. Case studies demonstrate complex trans-national ML cases successfully investigated by SC which included civil forfeiture proceedings. SC has specialized personnel capable of using financial intelligence to follow the money in their investigations.

Companies Commission Malaysia (CCM)

3.24. CCM, has requested financial intelligence related to predicate offences and ML. CCM has requested and received 32 disclosures from the FIU, six of which were related to ML offences.

(b) *FIU Analysis and dissemination*

Table 3.1. STRs received, analysed and disseminated

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | TOTAL |
|----------------------------------|--------|--------|--------|--------|--------|--------|---------|
| No. of STRs received | 12 800 | 16 650 | 28 025 | 27 288 | 22 792 | 27 988 | 135 543 |
| % of STRs reviewed by FIED | 100% | 100% | 100% | 100% | 100% | 100% | |
| No. of STRs analysed by FIED | 5 549 | 5 884 | 7 666 | 7 442 | 9 124 | 13 886 | 49 551 |
| % of STRs analysed by FIED | 43.40% | 35.30% | 27.36% | 27.28% | 40.03% | 49.62% | |
| No. of STRs disseminated to LEAs | 1,447 | 1,026 | 2,325 | 2,493 | 3,445 | 9,624 | 20,360 |
| % of STRs disseminated to LEAs | 11.30% | 6.20% | 8.30% | 9.10% | 15.10% | 34.40% | |

3.25. The FIU demonstrated that it conducts thorough and comprehensive strategic and operational analysis to support the dissemination of high quality intelligence products tailored to the needs of LEAs. Its systems and tools are sophisticated and well utilised and it has access to a wide range of data inputs to produce relevant intelligence products. The FIU takes a proactive approach to seeking input from LEAs on their intelligence needs and feedback on previous disseminations to continuously improve their processes and products.

3.26. The FIU works with a wide range of data sets and provides a significant added value to produce targeted and high-quality analysis. The FIU is not limited in the information it can obtain from RIs or government agencies in its operational and strategic analysis work. FIU disclosures examined by the team are comprehensive reflecting varied data sources (domestic and foreign). One of the disclosure packages outlined a detailed analysis of accounts and money flows involving 17 countries to 70 bank accounts which identified account holders, associates, friends, family members and legal entities implicated in corruption and ML. The disclosure provided an analysis of the flow of funds.

3.27. The FIU receives a steady stream of STRs and CTRs, but the quality of STRs varies across sectors. There are low rates of TF-related STR reporting (although improving somewhat since 2013). For the year over 70% of STRs were proactively provided by RIs while 30% were in reacting to FIU prompts. Authorities have closely considered the rate of TF-related STRs and note that it reflects the fact that TF activities mainly involve cash and self-funding and the increase in 2013 and 2014 is a result of increase threats from ISIL. The team recognises these dynamics, but sees a need for further detailed typologies and guidance from relevant LEAs to further support reporting. The outputs from the cross border declaration system are not yet robust and need to be strengthened to allow the FIU and LEAs to better develop intelligence (see IO8).

3.28. Statistics on FIU disclosures show that that eight of the nine LEAs have received proactive disclosures and all nine LEAs have requested information from the FIU. The number of proactive disclosures made by

the FIU to domestic LEAs and foreign FIUs has increased over the past three years, with an average annual increase of 33%. FIU disclosures based on requests decreased by 8% on average over the past three years, due in part to LEAs increased direct access to FINS. Notably, the number of STRs disclosed in 2013 has increased by 300% from 2012, mainly due to the range of subjects suspected to be involved in tax/duty evasion, scam/fraud activities and corruption.

3.29. The number of FIU disclosures received by respective LEAs for three years until the end of 2013 is set out in the table below.

Table 3.2. Table 3: FIU disclosures (disseminations)

| Agency | Proactive disseminations | | Reactive disseminations | |
|---------------------|--------------------------|------------|-------------------------|------------|
| | No. of disclosures | Total STRs | No. of disclosures | Total STRs |
| RMP | 43 | 928 | 174 | 423 |
| RMCD | 2 | 11 | 36 | 676 |
| MACC | 50 | 392 | 187 | 810 |
| IRB | 12 | 835 | 127 | 2284 |
| BNM – Investigation | 34 | 639 | 156 | 526 |
| SC | 8 | 18 | 24 | 12 |
| LFSA | 5 | 16 | - | - |
| MDTCC | 3 | 43 | 20 | 183 |
| CCM | 5 | 14 | 32 | 53 |
| MMEA | - | - | 1 | 0 |
| Foreign FIUs | 27 | 179 | 109 | 163 |

3.30. Malaysia provided a comprehensive breakdown of FIU disclosures and STRs by offences. Overall, FIU disseminations to LEAs closely correlate with Malaysia's identified high risk areas of fraud, goods smuggling, illicit drugs, tax crimes and corruption. FIU disseminations to RMP between 2011 and 2013 related to 14 categories of offences, with the most prevalent being ML and fraud. Disseminations to RMC, MACC, IRB and CCM align closely with these agencies core functions, with main offences being smuggling and incorrect declarations, corruption, tax evasions and securities offences respectively. Disseminations to BNM related to illegal deposit taking, illegal foreign exchange and illegal money changing and remittance. The biggest challenge is the extent to which LEAs are willing able to take on and follow up FIU disseminations.

3.31. As part of its operational analysis, the FIU requests further information from RIs via FINS, which provides RIs a secure online mechanism to receive and respond to requests. The number of requests made to RIs via FINS for further information was 597 in 2012 and 590 in 2013.

3.32. The FIU has demonstrated its sound application of sophisticated systems for operational analysis of data it receives with business rules and analysts' interventions for prioritising and conducting analysis. These are well developed and tested over many years. It is clear that FIU analysts are skilled and experienced and apply well developed tools to conduct tactical and strategic analysis. Data extraction tools include I2, analyst notebook and visual analytics.

3.33. Feedback from LEAs and sanitised examples provided to the assessors demonstrate that FIU products meet the operational needs of the LEAs and reflect good knowledge of LEA investigative methodologies and priority risk areas. Feedback from LEAs have also been utilised in the review of FIU's SOPs which has contributed to the enhancement of the parameters and criteria to prioritise STRs to be disclosed to relevant LEAs, and enhancement of mandatory reporting fields in FINS. The FIU continues to receive positive feedback about its proactive disclosures to LEAs, with more than 70% of cases taken-up by the LEAs over the past three years. The remaining 30% have been stored by LEAs for future reference.

3.34. The FIU has a robust strategic analysis capability to develop intelligence products addressing emerging and thematic intelligence issues, including adding to assessments of strategic threats, vulnerabilities and consequences. Feedback from a range of stakeholders on the FIU's strategic analysis outputs was that it made a strongly positive contribution to strategic direction setting.

3.35. The FIED's joint roles as FIU, supervisor and LEA allows it to access a wide range of information to support its intelligence development function and draw on specialist staff. A significant positive is the degree to which the FIU is able to exchange information and collaborate with foreign partner FIUs, primarily through Egmont channels.

3.36. The FIU collects typologies information from competent authorities on a yearly basis to ensure it understands the latest modus operandi, patterns and emerging trends, which is disseminated to RIs.

(c) Cooperation, Exchange of Information and Security and Confidentiality

3.37. Driven by the NCC, Malaysia has demonstrated its commitment to enhance cooperation among the key AML/CFT agencies, particularly in relation to the exchange of information.

3.38. The FIED's role as both FIU and LEA results in experienced ML investigators and AML/CFT intelligence analysts being available to cooperate and exchange information with other LEAs. FIED uses these expert resources to support the capacity of financial intelligence development and financial investigation methodologies in all LEAs.

3.39. FIED has designated Liaison Officers who are the primary contact for a specific LEA/competent authority. The assessment team found this approach ensured consistency, continuity, and maintains and built upon existing relationships between the FIU and LEA. In addition, the ISP includes plans for the FIED to seconded staff from LEAs to work within the FIU, to deepen cooperation on intelligence.

3.40. Competent authorities meet regularly in various forums to coordinate cooperation and information sharing on priority risk areas. The most effective platform for cooperation and exchange of financial intelligence is the Special Taskforce which is a standing structure with co-located staff. Another is the Online Financial Fraud Taskforce which meets at least twice a year to share information on scam cases involving credit card fraud and mule accounts. The Multi-Agency Taskforce (coordinated by the AGC) meets at least twice a year to discuss and initiate multi-agency investigations on complex cases or multiple offences. The FIU demonstrated that the proactive disclosures to domestic LEAs are delivered securely with well implemented information security controls. The assessment team was satisfied that all agencies treat financial intelligence and information with a high degree of security. Each agency has its own policies to ensure integrity and confidentiality, consistent with overarching Government standards. The FIU has detailed SOPs for security and integrity of data which appears to work well. The use of FINS is closely regulated and governed, with detailed processes of permissions and access tracking in place.

3.41. Disclosures to foreign FIUs are made through the Egmont Secure Website for all Egmont members and registered mail (by appointed courier) for non-Egmont members. Feedback ahead of the onsite confirmed the quality and timeliness of international cooperation from the FIU and the positive outcomes achieved.

3.42. The FIU is the primary government agency for contacting RIs for financial information related to investigations, STRs and CTRs. The private sector expressed their preference for communication with competent authorities to be channelled through the FIU. Most competent authorities are using this channel, however as noted above, RMP and MACC go directly to the RI to obtain further information for their investigations. While this may be necessary in some circumstances, RMP and MACC should explore whether they could utilise the FIU channel to obtain further information, as preferred by RIs.

3.43. The Compliance Officers Network Group (CONG) have a collaborate relationship with LEAs and have worked closely with the FIU on developing a framework on seizing and forfeiting property and on an SOP for handling requests for data pursuant to AMLA investigations. The FIU's strong cooperation with the CONG is a strength to support access to information and feedback from RIs.

Overall conclusions of Immediate Outcome 6

3.44. Malaysia has a well-structured, well-functioning FIU with analytical resources, expertise, sophisticated tools and access to a wide range of data sources that is producing a range and depth of outputs to support LEAs improve the uptake of financial intelligence for ML, predicate and TF offences. The FIU's well-developed tactical and strategic analysis capacity produces a range of value-added financial intelligence products support AML/CFT responses across identified high-risk areas as well as a wider range of ML/TF risk areas.

3.45. The FIU receives a large number of STRs and CTRs from RIs, a small number of cross border reports from RMC and certain international transactions from BNM. The FIU regularly reaches out to international partners for information. Feedback from the FIU to supervisors is assisting supervisors to take steps to support improved quality and quantity of STRs reported by RIs, however weaknesses include the rates of TF reports and the low rates of reporting by DNFbps.

3.46. The number of proactive disclosures made by the FIU to domestic LEAs and foreign FIUs has increased markedly over the past three years. Feedback from the LEAs on the quality of the FIU's intelligence products is consistently high and it is clear there is a significant increase in the number and range of ML and predicate investigations being commenced from these disseminations. Financial intelligence products are generally utilised well by LEAs for targeting and conducting predicate investigations and related asset tracing.

3.47. Improvements are needed to ensure financial intelligence is used to target ML investigations for at least all of the high risk crime types. Financial intelligence has added to TF and CT investigations, CT preventive measures and the assessment of ML/TF risks.

3.48. The Special Taskforce led by the AGC successfully utilizes financial intelligence and other related information in at the targeting, investigation and asset recovery phases of its work. Of the other LEAs, the MACC and IRB show the most regular and highest use of FIU intelligence products.

3.49. FIU cooperation with LEAs is working well and the plan for LEAs to second staff to the FIU will greatly enhance intelligence sharing and development.

3.50. **Overall, Malaysia has achieved a substantial level of effectiveness with Immediate Outcome 6.**

3.4 Effectiveness: Immediate Outcome 7 (ML investigation and prosecution)

(a) General – legal and institutional frameworks

3.51. Malaysia's legal and institutional frameworks for ML investigation and prosecution show high degrees of compliance. However three areas have caused difficulties in practice to date: the low maximum penalty for ML up to September 2014, the time frames for investigations and the judiciary's application of the ML offence as it relates to proof of the predicate offence. The two missing predicate offences (illegal fishing and counterfeiting of industrial designs) are not having a significant impact on effectiveness given they are not high risk offences (both are rated low risk in the NRA).

3.52. AMLA, DDFOPA and MACCA provide a good range of powers and all LEAs have specialised AML units that are reasonably staffed and trained. Over 320 investigators have completed Malaysia's "Certified Financial Investigators Program", most of who are from agencies responsible for investigating the high risk offences. The key LEAs have forensic accounting capabilities.

3.53. Within RMP the Narcotics Division (NCID) and Commercial Crimes Investigation Division (CCID) have dedicated AML teams, which provide a clear focus on targeting ML and criminal property. Authorities note that the Criminal Investigations Division (CID) and Special Branch (SB) would benefit from having more

awareness and involvement in AML investigations. Steps are in train to include experts from CID and SB within the RMP AMLA Unit and have that Unit report directly to the Inspector General of Police.

3.54. AGC's AML Unit has a significant role in overseeing investigations under AMLA and DDFOPA as well as conducting these prosecutions.

3

(b) ML identification and investigation

3.55. The selection of cases for ML investigations is generally reasonable, with appropriate criteria considered (financial threshold, links to syndicate crime, the nature and seriousness of the offence, loss of revenue to the government and availability/ sufficiency of evidence). The range of sources from which cases are considered is broad, including financial intelligence disclosures, information obtained through interviews of suspects or witnesses, documents seized from crime scenes or search warrants, publicly available information, LEA databases and other intelligence sources. RMC and IRB provided good case studies of how they analyse their internal databases to identify suspicious activity. FIU information is the main source of preliminary information.

3.56. When CCID open a ML investigation they obtain an initial briefing from the predicate offence investigator to understand the nature of the case and the property that might be involved. This is a positive feature. RMP noted that generally this communication is ongoing throughout the case, however, AGC noted that there had been instances where no further communication took place between the two investigators which led to problems in gathering evidence. Ongoing coordination could be strengthened within RMP to avoid duplication or investigative inconsistencies.

3.57. Until very recently drugs matters were not pursued for ML investigation as a routine practice. This was due to a long established policy position based on some initial adverse court decisions, rather than a lack of legal tools or powers. For over a decade no drug-related ML investigations were conducted. However, this policy position was overturned by RMP in September 2014. RMP NCID opened 106 ML investigations related to narcotics in 2014.

3.58. Parallel ML investigations are more common in RMP's AMLA Unit, MACC, BNM and IRB. Routine targeting is happening within RMP's CCID to identify ML (including daily mass media and police database checks), and this is leading to better results in the fraud area (250 ML cases investigated between 2009 and 2013). CCID also deliver training to other areas of RMP to raise awareness of ML to generate more cases.

3.59. Overall the number of ML investigations has increased in recent years, particularly for high risk offences (investigations into non-high risk offences are decreasing): see table four below. Authorities are starting to take positive action in recognition that parallel investigations into the conduct of ML are not always pursued. For example, between 2009 and 2013 there were 15 555 cases where property was forfeited under the drugs law and over 1 000 prosecutions for drug trafficking, but no ML investigations were conducted into any drugs matters. Between September and November 2014, RMP opened 106 investigations into ML for drugs matters, which indicates the potential for these matters to be pursued. Similarly, for other high risk offences such as tax, smuggling and corruption, the number of ML investigations was low, however authorities are starting to pursue ML more regularly (see table four) and are taking steps at a strategic level to encourage this. For example, 'key performance indicators' relating to ML investigations have recently been included in RMC's strategic planning documents to encourage this.

3.60. In cases where ML is investigated, financial tracing is done well, however more use could be made of investigative powers to establish all elements of the ML offence. As noted in IO6, some LEAs are making good use of financial intelligence (STRs and CTRs from FINS). Cooperation with other government departments to determine things such as vehicle and property ownership is good. LEAs also have good access to bank records; the power to obtain information from FIs (s.48 of the AMLA) is most heavily used by all LEAs and the process works well (it was used 16 841 times in 3 years). With this information, it was acknowledged (e.g. by AGC and judges, and the assessment team agreed) that key LEAs are good at financial tracing (e.g. RMP and MACC). However, the outcomes of the ML investigations are more often a prosecution of the predicate offence or recovery of property as opposed to prosecution of ML.

3.61. Malaysia provided five key reasons as to why ML cases were not taken up for both investigation and prosecution.

- i. Authorities noted the low sentences imposed for ML *vis a vis* the predicate offence. Authorities prefer to prosecute the predicate offence and not ML because: (a) prior to September 2014 the maximum penalty under AMLA for ML was only 5 years, (b) Courts often impose concurrent sentences for self-launderers, and (c) there are higher penalties for some predicate offences. In these circumstances authorities believed that it was not an efficient use of finite resources to pursue ML. This is not a 'justifiable reason' not to pursue ML as per 7.5. Malaysian authorities have indicated a shifting of focus to pursue the ML offence now that the penalty has increased (to 15 years).
- ii. Authorities consistently expressed the view that recovering property was more effective than prosecution in dissuading criminal activity. This was based on (a) belief that confiscation has more of a deterrent effect than prosecution and (b) because the standard of proof is lower for property recovery so AGC is more likely to be successful in property recovery (especially where the evidence for a prosecution is weak). Point (a) is not consistent with the FATF standards and Malaysian authorities did not demonstrate any unique circumstances as to why this would be the case in Malaysia. In fact, members of the judiciary noted that recovery of property was not having as much of a deterrent effect as prosecution. In relation point (a), confiscation indeed may be more dissuasive in cases where the evidence is insufficient to prosecute, however Malaysian authorities appear to have adopted this as a regular practice in lieu of pursuing ML prosecutions. This presumes that prosecution and confiscation are mutually exclusive and authorities should choose one over the other, which is also inconsistent with the FATF methodology. It essentially allows criminals to pay their way out of crime and never face any criminal punishment.
- iii. Authorities noted that the legislative timeframes imposed on investigations were causing difficulties. The timeframe for charges to be laid following seizure of property is 12 months under AMLA and 3 months under DDFOPA. LEAs are under pressure to balance the risk of dissipation of property versus collection of evidence up front. Malaysian authorities report that meeting these time frames can be difficult, especially in complex cases.
- iv. Authorities noted challenges with suspects having absconded. It is observed that few extradition requests were made in such cases (see IO2).
- v. Authorities noted difficulties in establishing the predicate offence and knowledge that property is the proceeds of a predicate offence. This is partly due to the limitations in LEA's investigative capacity, however, AGC has also experienced difficulties in Court. While legislation is clear that a conviction for the predicate offence is not required and the judiciary has stated that there is no need to prove who committed the predicate offence or that a person has been charged with or convicted of that offence, judges have held that the predicate offence needs to be proven to a prima facie standard (authorities advise that circumstantial evidence can be used). This has been a key reason for not pursuing ML prosecutions, particularly in drugs matters where pursuing administrative forfeiture (where the burden shifts to the property owner) is much easier. AGC will not prosecute if the predicate offence is not properly investigated. It appears that evidence tendered by AGC (gathered by LEAs) in support of ML cases could be more comprehensive. As noted above, LEAs need to focus on securing evidence of all elements of the ML offence. From September 2014 the new ML offence in AMLA also provides that proceeds need not be proven to be from any specific unlawful activity, which may assist.

3.62. The AGC may have been too cautious in its approach to prosecutions which has led to ML cases not being pursued and some LEAs being discouraged from taking action (e.g. RMP drugs matters). However, AGC

has demonstrated a willingness to appeal decisions on the ML offence which indicates a proactive approach is being taken. A key Court of Appeal decision is pending on the issue of proof of predicate offences, which may assist AGC to prosecute ML. Malaysian authorities indicated a willingness to pursue investigations and prosecutions for ML in the future. An increase in investigation and prosecutions of ML is a goal in Malaysia's ISP.

3.63. Consistent feedback from a range of agencies and the judiciary is that LEAs often have insufficient evidence regarding (a) the link between the property and the predicate offence and (b) the person's knowledge that the property was proceeds of crime. This was cited as a reason cases were not prosecuted. AML investigators should build upon their good financial tracing skills and focus on gathering evidence of all elements of ML using all necessary powers including controlled operations, telecommunication intercepts, search warrants and other investigative powers to establish these elements in ML cases. Presently RMP CCID relies on the predicate offence investigations to use those special techniques (despite that the ML investigations do have the power to use them under AMLA).

3.64. Additional focus needs to be given to ML prosecutions, but efforts are hampered by AGC's capacity and resource constraints. LEAs report that AGC is providing good support and guidance on ML investigations. AGC out-posting prosecutors (DPPs) to LEAs facilitates this. However, a high staff turnover rate within the AGC AMLA Unit (on average, 2-3 years) is affecting its level of expertise, which was noted by both AGC and the judiciary. AGC needs to strengthen its AML capability.

(c) Consistency with risk profile and national AML/CFT policies (Investigation and Prosecution)

3.65. In recent years, the process of developing the NRA appears to have led to LEAs better understanding risks and aligning their investigative focus to ensure a more targeted and strategic approach is taken. Malaysia has taken steps to ensure appropriate institutional frameworks are in place to support the investigation of the NRA-identified high risk offences, for example the establishment of the MACC and the Special Taskforce on goods smuggling and tax, and dedicated Divisions within RMP on drugs (NCID) and fraud (CCID) with AML Teams. However, the outcomes for combating ML for high risk offences have not yet been demonstrated, other than for fraud matters.

3.66. To date, the main outputs have been an increasing number of ML investigations, a large number of prosecutions of predicate offences and confiscation of property. Only 132 of the 821 ML investigations were prosecuted for ML and 56 only convictions were secured (noting that 257 of the 821 ML investigations are ongoing). As can be seen in the table below, between 2009 and 2013, ML investigations and prosecutions were not successfully pursued in large numbers other than for fraud.

Table 3.3 Money laundering cases for 2009 to 2013

| | 2009 | 2010 | 2011 | 2012 | 2013 | Total |
|-----------------------|------------|-----------|------------|------------|------------|------------|
| Investigations | 138 | 94 | 124 | 230 | 235 | 821 |
| Drugs | 0 | 0 | 0 | 0 | 0 | 0* |
| Fraud | 34 | 30 | 34 | 105 | 47 | 250 |
| Corruption | 5 | 5 | 30 | 49 | 50 | 139 |
| Tax | 0 | 0 | 6 | 19 | 100 | 125 |
| Smuggling | 1 | 1 | 28 | 37 | 11 | 78 |
| Other | 98 | 58 | 26 | 20 | 27 | 229 |
| Prosecutions | 22 | 16 | 19 | 15 | 60 | 132 |
| Drugs | 0 | 0 | 0 | 0 | 0 | 0 |
| Fraud | 21 | 15 | 13 | 13 | 59 | 121 |
| Corruption | 1 | 0 | 2 | 2 | 1 | 6 |

Table 3.3. Money laundering cases for 2009 to 2013 (continued)

| | 2009 | 2010 | 2011 | 2012 | 2013 | Total |
|----------------------------------|-----------|----------|-----------|----------|-----------|-----------|
| Tax | 0 | 0 | 0 | 0 | 0 | 0 |
| Smuggling | 0 | 0 | 3 | 0 | 0 | 3 |
| Other | 0 | 1 | 1 | 0 | 0 | 2 |
| Convictions | 12 | 5 | 12 | 8 | 19 | 56 |
| Drugs | 0 | 0 | 0 | 0 | 0 | 0 |
| Fraud | 11 | 5 | 8 | 8 | 19 | 51 |
| Corruption | 1 | 0 | 1 | 0 | 0 | 2 |
| Tax | 0 | 0 | 0 | 0 | 0 | 0 |
| Smuggling | 0 | 0 | 2 | 0 | 0 | 2 |
| Other | 0 | 0 | 1 | 0 | 0 | 1 |
| (Acquittals)** | 8 | 9 | 2 | 1 | 2 | 22 |
| (Ongoing Prosecutions)*** | 2 | 2 | 5 | 6 | 39 | 54 |

* There were 15,555 cases investigated under s.32 DDFOPA (confiscation), but none were investigated for ML

** Of the 22 acquittals, 21 related to fraud and 1 related to 'Other'

*** Of the 54 ongoing prosecutions, 4 relate to corruption, 49 relate to fraud and 1 relates to 'Other'

3.67. Of the 132 ML prosecutions between 2009 and 2013, 92% related to fraud, demonstrating the ML offence is not being prosecuted for a wide range of predicate offences, including all high risk offences. In relation to the high risk offences, between 2009 and 2013 Malaysia did not prosecute anyone for ML in relation to drugs or tax offences, even though there were a significant number of predicate offence prosecutions and confiscations for these offences. Many case studies were provided in relation to investigations and forfeiture where ML prosecutions were not pursued for various reasons. There were only three ML prosecutions related to smuggling and 6 related to corruption (resulting in a total of four ML convictions).

3.68. Malaysia has seen the most success in prosecuting ML relating to fraud. Of the 250 ML investigations relating to fraud, 121 are being prosecuted (106 (42%) were dropped by AGC, and other investigations are ongoing). Of the 56 convictions secured for ML between 2009 and 2013, 51 of these related to fraud and of the 54 ML prosecutions currently before the courts, 49 relate to fraud. This is believed to be due to the proactive targeting undertaken by RMP's CCID and the inherent synergies between investigations for fraud and ML.

3.69. While a small number of large-scale cases have been conducted (e.g. see case studies three and five) and there are four large-scale cases pending, most cases have related to a low-medium level of offending. There have been no ML investigations or prosecutions regarding grand corruption, though one investigation is pending – see case study in box 3.1. Of the 106 new ML investigations into drug matters in 2014, the average value of each case is RM 38 000 (USD 11 352) indicating these matters relate to low level offending. RMP noted that in relation to large fraud syndicates they have only been able to penetrate immediate targets (e.g. mule bank account holders in 23 cases and two cases of their organisers). The average value of the fraud cases investigated was RM 129 000 (approx. USD 38 500), and RM 173 077 (approx. USD 51 700) where a conviction was secured. The two smuggling-related ML convictions concerned low level ML offending (less than RM 200 000). Results in relation to civil forfeiture are higher.

Box 3.1. Case study: MACC ongoing investigation

A former senior political leader is being investigated for illegal logging, fraud, corruption and ML. The former leader was alleged to have used timber concessions for personal enrichment, enabling him to acquire assets in Malaysia and foreign countries. The investigation involves complex transactions and international cooperation. The estimated value involved may reach more than RM1 billion (approx. USD 300million).

3.70. MACC's proactive approach on ML and corruption offences may be an emerging strength, though many investigations are pending so it is difficult to assess results. MACC is conducting an increasing number of parallel investigations into ML and has targeted a number of high profile and complex ML cases. For corruption, of the 139 ML investigations, 6 were prosecuted for ML (with 2 convictions to date) and the majority (77) are still under investigation. In 56 cases criminal prosecution was not pursued, although MACC routinely explores options for pursuing other remedies, such as tax recoveries.

3.71. Organised crime offences were only recently criminalised in Malaysia and listed as predicate offences. Prior to that organised crime was prosecuted as a subset of drugs, corruption, smuggling, and fraud; there have been no ML investigations relating to organised crime specifically. As noted above, most of the ML cases involved only medium level offending, not the upper echelons of crime where organised crime would be expected. ML related to organised crime should be targeted by LEAs.

3.72. There are mixed results with investigating and prosecuting ML cases which have utilised the identified high risk sectors (banking, MSBs and the casino). LEAs have effectively targeted ML through the banking sector (although are not always using this material to pursue ML prosecutions), including cases relating to mule bank accounts and MSBs. Recently BNM raided two companies on suspicion of conducting illegal remittance business and ML activity. No ML prosecutions to date have involved ML conducted through the casino or Labuan.

(d) Different types of ML cases prosecuted and convicted

3.73. The majority of ML cases relate to self-laundering, however Malaysia has pursued stand-alone and third party ML offences. In 15 of the 132 ML prosecutions between 2009 and 2013 the matter was a standalone prosecution, and 12 convictions were secured. Below is an example of a case.

Box 3.2. Case study: Land Scam (standalone ML)

In 2011, two accused were prosecuted for laundering the proceeds of a land scam. A parcel of land was transferred and sold to third parties without the owner's consent for approximately RM9M (USD 2.7M). The monies were deposited into the bank accounts of the two accused. A separate trial of the predicate offence resulted in an acquittal, however the two accused were convicted of ML. Both accused were sentenced to 5 years imprisonment (the maximum penalty at that time) and also fined and ordered to pay restitution to the victim.

3.74. Between 2011 and 2013, 41 cases were prosecuted in relation to third party ML (23 of which led to convictions) and there are 37 cases still under investigation. These cases primarily relate to mule bank accounts. Below is an example of a case.

Box 3.3. Case study: Mule Bank Accounts (third party ML)

Arising from a telephone fraud, the victim transferred funds into an offender's bank account. RMP investigations found that the funds had been withdrawn via an ATM and that the account used belonged to Mr A, who was unemployed and was paid a commission for opening the account. He had opened several other accounts in different banks for the same purpose and surrendered his ATM cards to the third party. Mr A was convicted of eight charges of ML and ordered to serve four years imprisonment on each charge concurrently.

3.75. No legal persons were prosecuted for ML between 2009 and 2013, although five cases are pending.

3.76. While Malaysia is making some efforts, major improvements are required in relation to ML from foreign predicates. As noted under section 1, Malaysia faces a range of transnational crime threats, but while ML investigations are ongoing for three foreign predicate offence cases there have been no prosecutions relating to foreign predicate offences and not all LEAs pursue ML related to foreign predicates as a priority. One example was provided in which Malaysia secured non-conviction based forfeiture over property in Malaysia related to foreign offending. The funds were repatriated and the two suspects were deported to be prosecuted for fraud in their home country.

3.77. Some LEAs have reached out to foreign LEAs to help with targeting foreign predicates ML. For example, MACC provided examples of having actively engaged foreign counterparts (e.g. identifying possible cases in the news and writing to foreign counterparts offering assistance or contacting embassies). Most LEAs said the blockage in pursuing foreign predicates related to other countries not responding to their informal enquiries or foreign witnesses refusing to testify, though it is noted that no MLA requests were made (see IO2). Given there were a range of countries said to be causing blockages, the problem may partly be at the Malaysian end, including from not making formal MLA requests and not pursuing these matters proactively enough.

(e) Sanctions for ML convictions

3.78. The sanctions imposed for ML convictions between 2009 and 2013 were low. For example, in 2013, 19 people were convicted of ML and the sentences ranged from 1 day to 2 years imprisonment, with an average of 4 months imprisonment and an average fine of RM 8 236 (USD 2 460). In earlier years it has been higher (particularly between 2009 and 2011) although overall it was still low. The median value for imprisonment terms imposed for ML between 2009 and 2013 is two years. A key reason for the low sentences has been the low maximum penalty in AMLA until 2014 (five years imprisonment and/or RM 5M (approx. USD 1.5M) fine). The penalty for ML in DDFOPA has always been a minimum five year sentence and a maximum 20 year sentence and therefore could have been very effective, however this offence was not prosecuted.

3.79. Compared to the five year maximum that was previously available for ML, the sentences available for predicate offending are higher for drugs, fraud and corruption (e.g., up to 20 years for corruption and up to 14 years for fraud), although are comparable for tax and smuggling (e.g., smuggling offences carry up to five year maximums and tax offences carry up to three year maximums, depending on the conduct). Information on sentences imposed for predicate offences is not available, although were said to be higher for drugs, fraud and corruption and lower for tax and smuggling.

3.80. Malaysian court decisions indicate the judiciary is mindful of the need to combat ML and impose appropriate sentences and have imposed the maximum five year sentence (see for example *PP v Gan Kiat Bend & Anor* [2011] 8 CLJ at [70-72]). However, in the majority of cases the sentences imposed are low. This may reflect that the Courts are generally sentencing less serious conduct (e.g. ML in low to medium value fraud cases), although it may also reflect other sentencing considerations, such as the offender's personal

circumstances and the fact that sentences are often imposed concurrently with higher sentences for predicate offending.¹

3

3.81. Overall, it is not clear that the ML sanctions of themselves are having a dissuasive effect or are effective at combating ML given how low they are. However, judges are imposing the full range of sentences available in a way that appears to be proportionate to the seriousness of the ML conduct given the maximum penalty. Where sentences for ML are imposed concurrently with higher sentences for the predicate offence the overall sentence may be dissuasive, proportionate and effective (especially given they mostly relate to medium sized frauds), however Malaysia was not able to provide information on predicate offence sentences. The new maximum penalties in AMLA of 15 years in prison, and a fine that can be five times the value of the money laundered, that commenced in September 2014 should see an increase in the sanctions imposed. Sanctions would also be expected to increase if Malaysia pursued larger and more complex ML cases and a wider range of predicate offences (e.g. drugs). As noted below and in IO8, in some ML cases, non-conviction based forfeiture has been pursued, or criminal sanctions and administrative remedies have been imposed in relation to the predicate offending, which has a dissuasive effect.

(f) Application of other criminal justice measures where conviction is not possible

3.82. Malaysia often applies other criminal justice measures with success. Other criminal justice measures taken have included prosecution of predicate offences, ‘compounding’ offences (LEAs settling criminal matters outside the judicial process by way of a DPP approved fine), use of non-conviction based forfeiture and use of other administrative penalties. Tax remedies are heavily pursued, and these include an appropriate civil penalty component (45% for first time offenders), which is outlined at IO8. Malaysia makes good use of non-conviction based forfeiture provisions, which is particularly useful where a suspect has absconded and cannot be found, or has died.

Box 3.4. Case study: Fraudulent investment scheme (non-conviction based forfeiture)

A businessman established a property investment company which offered to buy properties at a low price with an option for investors to re-sell at a higher price. The difference between the purchase price and selling price was distributed to investors. Investors paid a substantial membership fee to the company annually. As the number of members grew, the businessman started to recycle the same properties among existing investors, proxies and resold the same properties to new investors with different prices, and investors continued to invest. Some monies were repaid to investors, but the majority was siphoned out by the businessman.

500 investors suffered total losses of RM 250M (approx. USD 75M). ML and cheating investigations were done in parallel. The investigation traced 288 properties and RMP issued orders to freeze them. The suspect absconded and could not be found, however RMP pursued the case for non-conviction based forfeiture under AMLTFA. The properties and several bank accounts (RM 26M) belonging to the suspect and his family were subsequently forfeited and returned to victims to partially compensate their losses.

1 While sentences were imposed concurrently in the majority of cases, AGC and the courts are advocating for and imposing consecutive sentences in cases where the ML conduct is distinct from the predicate offending.

3.83. In some MACC cases where corruption could not be substantiated either of itself or as a predicate for ML, MACC has used an illicit enrichment offence to target the person, which is a good, proactive measure. While difficulties have been encountered in the legal framework for this offence, amendments are proposed and this offence holds promise for effectiveness in future cases. In many cases a ML prosecution could have been pursued but authorities have applied other criminal justice measures as a substitute, particularly in drugs cases. In one instance, RMP seized assets amounting to RM 22.4M (USD 6.7M). Two of the suspects were detained for two years under preventative detention laws and all of the property was forfeited, despite no investigation into ML.

3.84. While the reasons that ML cases were not always pursued were not always 'justifiable' as required by the FATF methodology, Malaysia's focus on asset recovery and pursuing predicate offending is not to be discounted. However, to the extent that it is being done in lieu of ML investigations and prosecutions this reduces the dissuasive effect and ML risk mitigation.

Overall conclusions of Immediate Outcome 7

3.85. Overall, there are some characteristics of an effective system, such as the good financial tracing and the ML investigations and prosecutions in fraud cases. In addition, ML investigations are increasing. However, there are weaknesses, some of which are systemic, such as the former routine policy not to pursue drugs ML cases and the lack of use of special investigative tools to establish all elements of the ML offence. In addition, Malaysia's approach to foreign predicate offending has not produced any outcomes. Heavy weighting is given to the absence of ML prosecutions in two of the five high risk areas (drugs and tax) and low levels of ML prosecutions in the remaining two (smuggling and corruption), as well as the overall low level of ML prosecutions and the low sanctions that have been applied, and that high level offending has not been well targeted.

3.86. There were not many cases which demonstrated that the components of the system (investigation, prosecution, conviction and sanction) are functioning coherently to mitigate ML as many of the case studies provided were pursued for recovery of property only, rather than prosecution. While authorities have adopted alternative measures with good results, these have often diminished the importance of, and been a substitute for, ML cases. Ultimately, the prospect of detection, conviction and punishment for ML was not high and was therefore having a limited dissuasive effect on potential criminals. Recent increases to the ML penalties and a shift in approach by LEAs may lead to increased use and therefore increased dissuasiveness.

3.87. Of the major improvements needed, a number have commenced including ensuring ML investigations and prosecutions are pursued for at least the five priority areas and other significant profit generating crime types. LEAs need to pursue ML offences in addition to asset tracing investigations and more proactively target higher, 'profit taking' levels of offending and the risks relating to foreign predicates.

3.88. There are gaps with AGC and RMP capacities required to ensure effective targeting, investigation and prosecution of ML. The October 2014 decision of the High Level Taskforce that the Special Taskforce will pursue prosecutions for predicate offences and ML associated with tax evasion and smuggling is a positive development to apply specialist resources.

3.89. **Overall, Malaysia has demonstrated a moderate level of effectiveness for Immediate Outcome 7.**

3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

(a) Pursuit of confiscation as a policy objective

3.90. At a strategic and operational level Malaysian authorities place a clear emphasis on recovery of property, especially through civil and administrative processes. LEAs and AGC have specialised teams dealing with ML and confiscation and pursue confiscation as an objective. As noted under IO7, these teams are reasonably resourced and trained. For example, in 90% of drugs case (15 555/17 274 cases between

2009 and 2013), RMP took confiscation action. Malaysian authorities consistently indicated a strong belief in the deterrence value of confiscation and financial penalties. In addition, members of the judiciary indicated a high level of comfort with, and willingness to order, both conviction and non-conviction based forfeiture. However, this policy objective has not consistently translated into strong results in practice (see 8.2 below).

3

3.91. The Special Taskforce is the best example of the way in which Malaysia has prioritised and resourced the recovery of property for tax and smuggling offences as a policy objective. The interagency approach of the Special Taskforce, the techniques it has developed and the outcomes it has achieved is a model within the system. It has recovered approximately RM 2.5 billion (USD 747M) over 5 years through administrative recovery (primarily through taxation remedies) and has contributed to increased voluntary compliance with tax laws. See the case study in box 3.5 for further details.

Box 3.5. Case study: Special Taskforce (recovery of property for tax and smuggling offences)

In light of significant issues in tax and customs duties evasion and outflow of funds through illegal remittances by money changers, a High-Level Taskforce comprising AGC, BNM, IRB, MACC, RMC, RMP, MoF and the Immigration Department was established in 2010. The High-Level Taskforce is chaired by the Attorney-General who reports directly to the Prime Minister. A Working-Level Taskforce was established in 2011 to coordinate operations and investigations on cases with significant impact, particularly involving customs duties / tax evasion, illegal remittance, smuggling, ML & related corruption.

The Taskforce's priority is to recover losses of revenue owed to the Government. It coordinates enforcement actions and facilitates information sharing. It uses a range of powers, including AMLA powers, and relies heavily on FIU, IRB and RMC intelligence. It has identified high risk and vulnerable sectors and coordinated joint operations at a national level. For example, discrete operations have targeted cigarette importers, diesel industry, free zone operators, public officers, trade based entities, gaming and steel/crane importers.

Some key achievements of the Special Taskforce have included:

- Improved collection and voluntary compliance with tax laws – for example, overall IRB collections increased by 27%, 14% and 3% in the 2011, 2012 and 2013 years respectively.
- Actions on tax and customs duties evasion – e.g. over RM 3 B (USD 896 M) recovered over five years, including penalties (for confiscation purposes- approximately RM 2.5 B).
- Action on illegal remittances – supporting BNM to target this issue.
- Collaboration and partnership – more effective investigations including through better information sharing and processes; a more strategic and coordinate approach is taken to investigations.
- Prevented misuse of subsidies – e.g. by targeting diesel smuggling the amount of subsidies have declined.

In October 2014, the High Level Taskforce determined that the Special Taskforce will pursue prosecutions for predicate offences and ML associated with tax evasion and smuggling in the future.

3.92. The legal framework provides a strong legal basis and a good range of options which can be applied flexibly to confiscation. These are a key strength and include criminal confiscation, non-conviction based confiscation or administrative remedies such as tax recovery. Authorities look for creative options to ensure property can be recovered, for example the SC gave an example of using a worldwide Mareva injunction in which a positive confiscation outcome was achieved (see the case study in box 3.7 below).

3.93. In relation to cross border movements of currency and BNI, there has been a strong focus at the strategic level on putting the legal and practical frameworks in place. New AMLA provisions commenced in October 2014 and RMC has developed forms, signage etc to align with the new law. While additional measures have been implemented to enhance operational outcomes (such as guidance circulars and briefing sessions), more priority could be given to ensuring results are achieved on the ground.

(b) Confiscation from foreign and domestic predicates, and proceeds moved offshore

Domestic confiscation

3.94. Malaysia provided a range of case studies indicating a good variety of action is being taken, including over proceeds (direct and indirect), instruments and property of corresponding value. In many case studies victims were provided with restitution.

3.95. There is a strong preference to take administrative action to recover property, which is particularly useful where there is insufficient evidence to commence litigation or prosecution. The results for tax remedies are significantly higher than that of forfeiture; of the RM 2.9 B confiscated between 2009 and 2013, RM 2.6 B was by way of tax recovery and tax civil settlements (the remaining RM 290 M was by way of forfeiture or restitution).

3.96. In addition, there is a strong preference to pursue non-conviction based forfeiture in forfeiture cases. AMLA recovery is achieved primarily through non-conviction based forfeiture (85%) and DDFOPA recovery had been solely non-conviction based. This provides a good alternative where offenders cannot be prosecuted – see for example the case study in box 3.4.

3.97. AMLA forfeiture provisions are primarily being used for fraud cases, although there have been some non-conviction based forfeitures for other types of offences, including small amounts for corruption, tax, smuggling, kidnapping and illicit arms trafficking. Confiscation in relation to drugs, smuggling and corruption is primarily done under DDFOPA, Customs Act and MACCA respectively.

3.98. The confiscation results by year and type are outlined in table 3.4 below.

3.99. The figures do not include amounts of instruments confiscated as these statistics are not routinely kept. The only statistics routinely kept are from RMC, which show substantial seizures of instrumentalities. RMC seized approximately RM 52M (USD 15.5M) worth of these instruments (cars, boats etc) between 2009 and 2014. Final figures for confiscation of instruments by RMC are unknown as RMC only retains data relating to values of the goods at the time of seizure. In one fraud investigation investigated by BNM 140kg of gold was seized as an instrument with an approximate value of RM 28M (USD 8.4M), but confiscation has not yet taken place as the case is ongoing.

3.100. Recoveries for tax and smuggling offences are being achieved to a high extent largely due to the AGC-led Special Taskforce taking a proactive approach to revenue collection and depriving criminals of proceeds of crime. Approximately RM 2.6B (USD 776M) in tax remedies was recovered between 2009 and 2013. This represents the proceeds of crime, and additional penalty amounts of approx. RM 940M (USD 281M) were imposed.² On average, tax cases related to RM 790 000 (USD 236 011) (including penalty amount), indicating that the level of offending was not minor. Malaysia advises that all of the tax recoveries in the table above relate to tax or smuggling criminality, as opposed to administrative oversights or general tax debts.

² In Malaysia, for first time offenders a penalty amount of 45% is normally imposed on the tax recoveries (not the civil settlements), which is not taken into account in the above table as they are not 'proceeds' per se.

Table 3.4. Yearly confiscation figures by confiscation type for 2009-13

| | 2009 | 2010 | 2011 | 2012 | 2013 | Total |
|--|-------------------------|------------------------|--------------------------|-------------------------|--------------------------|------------------------------|
| AMLA* (Fraud RM50M; Tax RM0.8M; Corruption RM0.7M; Smuggling RM0.4M); Other offences RM6.1M) | RM 36.8M (USD 11M) | RM 15.7M (USD4.7M) | RM 3.5M (USD 1M) | RM 1.3M (USD0.4M) | RM 0.2M (USD0.06M) | RM 57.5M (USD 17M) |
| MACCA (Corruption) | RM 1.4M (USD 0.4M) | RM 0.2M (USD 0.06M) | RM 0.3M (USD 0.09M) | RM 2.5M (USD 0.7M) | RM 1.4M (USD 0.4M) | RM 5.9M (USD 1.8M) |
| DDFOPA (Drugs- administrative forfeiture) | RM 10.3M (USD 3M) | RM 8.3M (USD2.5M) | RM 15.8M (USD 4.7M) | RM 12.4M (USD 3.7M) | RM 6.8M (USD 2M) | RM 53.6M (USD16M) |
| Customs Act (Smuggling- administrative forfeiture) | Not available | Not available | RM 54.7M (USD 16.3M) | RM 61.7M (USD 18.4M) | RM 52.6M (USD 15.7M) | RM 169M (USD 50.5M) |
| Tax recoveries (Customs offences) | Not available | Not available | RM303.8M (USD 90.8M) | RM286.4M (USD 85.6M) | RM 101.1M (USD 30.2M) | RM 691.3M (USD 206.5M) |
| Tax recoveries (Tax offences, including civil settlements) | Not available | Not available | RM 646M (USD 193M) | RM 767M (USD 229M) | RM 534.4M (USD 160M) | RM 1.9B (USD 567.6M) |
| Restitution (all offences, including SC disgorgements) | RM 2.1M (USD 0.6M) | RM0.2M (USD0.06M) | RM 2M (USD0.6M) | RM 0.8M (USD0.2M) | RM 4.9M (USD 1.5M) | RM 10M (USD 3M) |
| TOTAL | RM 50.6M (USD 15.1M) | RM 24.4M (USD 7.3M) | RM 1B (USD 298.7M) | RM 1.1B (USD 328.6) | RM 702M (USD 209.7) | RM 2.9B (USD 866.4M) |

* Note: there were also 36 unvalued assets forfeited under AMLA for fraud/corruption that are not reflected on this table.

3.101. The yearly results for tax recoveries are relatively stable, other than the sharp decline in tax recoveries from smuggling in 2013 which is believed to be due partly to (i) the increased voluntarily compliance, and (ii) a shift towards using AMLA forfeiture as the tool for recovery in smuggling cases, results of which are still going through the system.

3.102. Aside from recoveries from tax and smuggling offences, the average values confiscated are not high, although there are a handful of high value cases. For example, for drugs matters between 2009-13 the average amount confiscated per case was RM 3500 (USD 1 046) and on average less than RM 11M (USD 3.3M) was confiscated per year. The amount seized for drugs offences from 2009-13 was RM 355M (USD106M), and only RM 54M (USD 16.1) (15%) was forfeited (and one case accounted for over 35% of this). In fraud matters, of the RM 8.77B (USD 2.6B) investigated, RM 318M (USD95M) was seized and only RM 50M (USD 15M) plus 34 unvalued assets have been forfeited (50% related to one case - see the case study in box 3.4). However, 49 fraud cases are pending with a total value of RM 158M (USD 47M). The average value confiscated in fraud cases to date is low – for example in 2012 it was RM 66 000 (USD 19 717).

3.103. Forfeitures under AMLA (primarily fraud cases) are consistently declining, with the totals dropping considerably between 2009 and 2013 (a 99% reduction; from RM 36.8M in 2009 to RM 0.2M in 2013). Although, with the pending cases noted above there may be a significant increase in coming years if these cases are finalised successfully.

3.104. For corruption, while RM 87.6M was seized during 2009-2013, only RM 6.6M and two properties have been forfeited – though some cases are pending. While confiscation values have been low, some cases have been significant - MACC provided an example where even though the value confiscated was only RM 3.5M (USD 1M), the case was significant and dissuasive as it related to a Chief Minister of a Malaysian State. In addition, there is an ongoing high value investigation into a former senior political leader (see case study in box 3.1). However, generally the corruption confiscations related to medium or low level corruption and low values were confiscated. The fact that only low-medium level corruption confiscations have succeeded to date is unlikely to be having a dissuasive effect on high level or grand corruption. There was also RM 55.6M fines imposed under MACCA during 2009-2013. While fines are generally considered as punishment, not confiscation, in MACC cases the value of the fine can be five times the amount of offending and fines are often used in lieu of confiscation where property cannot be recovered. However, the proportion of fines that can be taken to relate to unrecovered property is unknown and no case studies were provided.

3.105. The reasons provided to explain the low and declining results included: cases still pending; financial trails becoming increasingly complex and time consuming to investigate; not being able to link property to the offence; legitimate third party interests; not having enough time to investigate the case before property is legislatively required to be released; and the values of property declining. Malaysia is taking developmental action to enhance financial investigations, including the revision of its financial investigations training modules.

3.106. The low confiscation results tend to indicate LEAs are not targeting the profit taking level of crime. The drug-related forfeitures indicate that RMP are pursuing only the immediate target and their family members as opposed to confiscating larger amounts of property from high level organisers who profit significantly from crime. RMP noted in that in relation to large fraud syndicates they have only been able to penetrate immediate targets (e.g. mule bank account holders – 23 cases) and one level above such ‘mules’ (two cases). Members of the judiciary interviewed noted that they sometimes wonder where the bigger cases are.

3.107. However, five examples were given of high value or significant cases:

- a. RMP case involving RM 26M (USD 7.7M) forfeited from the organiser of a fraud - case study in box 3.4;
- b. SC case involving an internet scam in which RM 31M (USD 9.3M) was recovered –case study in box 3.7;
- c. MACC case involving confiscating property worth RM 3.5M (USD 1M) from the Chief Minister of a Malaysian State in relation to a corruption related offence under the Penal Code;
- d. BNM case involving an illegal deposit taking case in which over RM 100M (USD 29.9M) was seized (forfeiture has not yet occurred as the case is ongoing); and
- e. RMP case involving confiscating RM 19M (USD 5.7M) in its biggest drug case.

3.108. These five cases are the exception to the overall results. The vast majority of confiscations for drugs, fraud and corruption are at the lower levels and it has not been demonstrated that Malaysia is effectively making these crime types unprofitable through confiscation (as opposed to the positive results seen for tax and smuggling).

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Confiscation for foreign predicates

3.109. Confiscation for foreign predicates is not being pursued at a level commensurate with the risks and context. Malaysia has had three cases where it confiscated property in relation to foreign predicate offences. Of the three cases, two related to Malaysians arrested for drug trafficking in neighbouring countries. The third case is considered in the case study in box 3.6. In that case Malaysia repatriated the money to the country. Malaysia has also had two cases where it has frozen property in relation to foreign predicate offending (bank frauds valued at USD 320 00 and USD 215 500) – these cases are ongoing.

Box 3.6. Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence)

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C's name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust.

3.110. Malaysia has only received one MLA request from a foreign country to take confiscation action (the case discussed above). In that case, one of the limitations in MACMA identified at R.38 regarding assistance Malaysia can provide to foreign countries to restrain and forfeit property was borne out in practice. While the request was made under MACMA, because the country was not a 'prescribed country' the timing of the country's forfeiture order and the direction required by the Minister meant that MLA was not practical. Fortunately in that case the matter was dealt with under the non-conviction based provision in AMLA by consent. While the other issues identified at R.38 have not yet arisen in practice, they similarly have the potential to impede the provision of MLA assistance.

3.111. LEAs did not indicate that confiscation of foreign proceeds that were in Malaysia was a high priority, although Malaysia advises that if there was good evidence they would take action and some LEAs had made some informal enquiries to foreign countries in relation to these matters (this is discussed in more detail in IO7). The case study in box 3.6 is a good example of what Malaysia can do when another country seeks assistance, however Malaysia could also take a more proactive approach itself to ensure it does not become a safe haven for foreign proceeds.

Property moved offshore

3.112. Other than MACC and SC, Malaysian authorities do not 'follow the money' offshore and do not view this as a priority. SC gave an example of a very successful case – see case in box 3.7. Most Malaysian authorities perceived that the risks of Malaysian property being moved offshore are not significant; although MACC, RMP and FIED advised that in large and complex cases the property (and sometimes the conduct) is usually offshore. In addition, a number of the case studies provided indicated that property had moved offshore. Both MACC and RMP have made some attempts to follow money moved offshore but have encountered limitations. Malaysia has never made a mutual assistance request asking another country to take proceeds of crime action on its behalf although has made four requests to foreign countries in relation to the recovery stolen cars,

which were returned through police to police cooperation. The lack of use of MLA is further discussed at IO2. In addition, Malaysia has not assisted a foreign country to confiscate property from Malaysian crime.

3.113. AGC has done a 'roadshow' to LEAs, prosecutors and court officials regarding MLA to encourage further requests to be made to 'follow the money' offshore. The pursuit of money moved offshore may become easier when BNM starts capturing all international funds transfers.

3.114. Overall, Malaysia has not demonstrated significant outcomes in pursuing property moved offshore, other than the case study in box 3.7 and the return of stolen cars. Criminals who move their proceeds out of Malaysia do not appear to have been at serious risk of having it confiscated, which is not making crime unprofitable in these circumstances.

Box 3.7. Case study: Following money offshore (Securities Commission)

Following a complex investigation, in 2007 the SC filed a civil action against the perpetrators of an internet based investment scam which defrauded investors of approx. RM 280M (USD 83.6M). SC first froze property under AMLA and then obtained a worldwide Mareva injunction against the defendants with orders for their foreign bank accounts to be frozen and the monies transferred to Malaysia. SC worked with its counterparts in 7 countries who then froze foreign accounts. In 2008, SC obtained a consent judgment ordering the defendants to pay RM 280M (USD 83.6M) and any further amounts traceable, to be used to compensate victims. Following the judgment, SC entered into a settlement agreement with the defendants whereby RM 31M (USD 9.3M) was recovered from foreign countries. By December 2010, RM 30.5M (USD 9.1M) was paid out to victims, representing 99% of total eligible claims.

Asset management

3.115. LEAs (other than IRB) are confident in seizing and managing different types of property including cars, boats, real property and businesses and are looking to enhance the asset management regime through the establishment of a centralised asset management agency. RMC in particular was able to demonstrate that it has seized a large number of vehicles as instruments of crime. LEAs consider disposing of assets by sale prior to forfeiture on a case by case basis and otherwise using 'substitute bonds' where possible to preserve the values of property, although there is a strong preference to only sell property where the owner consents. As noted at R.4, where such consent is not forthcoming this may be prohibitive to selling property when necessary. At this stage assets are generally being well managed by each LEA individually, although some LEAs noted the current regime is not comprehensive. As noted in R.4 the asset management guidelines are not particularly detailed and therefore authorities are responding to asset management challenges on a case by case basis – however, this does not appear to have had a significant impact to date.

3.116. All LEAs noted that the establishment of a central asset management agency would reduce the asset management burdens such as storage and costs. At present, IRB only focus on bank accounts and placing caveats on land titles. Given the significance of tax offences in Malaysia, IRB should target more types of property, particularly to the extent that it cannot be recovered by imposing administrative tax remedies (e.g. property in third party names, property moved offshore, etc).

(c) Confiscation of falsely or undeclared cross-border movements of currency/BNI

3.117. The 2007 MER noted that implementation of the previous regime for cross border reporting (through exchange control laws) was not effective. AMLA amendments in 2010 and 2014 ensured Malaysia now has a sound legal framework for the declaration and identification of cross border movements of currency and BNI.

3.118. Given the risks and context in Malaysia, the cross border regime is critical in mitigating the risks of ML and TF. Malaysia has a significant cash based economy and the NRA identified that movement of cash is

'rampant' across the border. Malaysia has multiple porous borders and is a regional transit point, with a high number of passenger movements including from high risk countries.

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3.119. In recent years Malaysia has made significant improvements to the infrastructure for requiring declarations and the screening of passengers with RMC installing new baggage scanners to target high risk passengers since 2010, placing notices at strategic locations at all airports and important entry and exit points and issuing new declaration forms for the declaration of prohibited goods, cash and BNIs. In addition, training has been delivered to RMC officers and RMC has conducted onsite visits to check the effectiveness of these measures and the implementation of the laws. The new law that came into operation in 2014 covers movements by postal and courier services, and there has already been a focus on this, demonstrated by the case study in box 3.8.

Box 3.8. Case study 10: RMC use of the new legal framework for cross border declarations

In October 2014, RMC received information about a parcel entering Malaysia through an air courier service. The goods were declared on a customs form as 'toys'. Following a controlled delivery, RMC officials arrested the suspect (a foreigner). RMC found four teddy bears filled with USD 97 500. The suspect was charged with a RMC offence and charges for failure to declare are being considered under AMLA.

3.120. RMC provided two other case studies which demonstrated sound processes and outcomes: one where a person who failed to declare RM 70K leaving Malaysia forfeited the RM 70K and was also fined RM 37K; and another where RM 150 000 was confiscated from a person who failed to declare it on arrival in Malaysia.

3.121. However, the assessment team has significant concerns that prior to 2014 the cross-border reporting regime was not utilised well enough in practice and the results do not appear to have been commensurate with the risks (it is noted that the results are based upon the old regime, i.e. prior to the 2014 AMLA amendments). Between 2010 and 2013 there was a low number of declarations, low levels of seizures and penalties imposed and an overall decline in the number of cases and a decrease in forfeitures and fines, particularly in 2013 (see table 3.5). In 2013 there were only eight instances of cash being seized, no forfeitures or court fines and only one RM 5 000 (USD 1 494) fine (out of RM 2.3M seized), although two applications to forfeit cash are pending. The conversion rate from seizures to forfeiture where investigations were completed was low (6%) because fines were preferred to forfeiture (although it is noted that from 2012 RMC has had a preference to pursue forfeiture). Less than 40 people had any form of confiscation or fine imposed on them over the 4 year period under the old regime.

3.122. Authorities provided a number of reasons for the overall low and declining results; that different methods of moving cash may be being used (i.e. non-physical methods); that cash being moved did not exceed the threshold; and that the signs were having a deterrent effect. Malaysia also provided evidence that RMC searches revealed other infringements (e.g. drug detections), but not cash; on this basis Malaysia suggested RMC enforcement levels were good but that there was no cash to be found. However, the assessment team notes that the deficiencies outlined below may be having an impact. During the onsite authorities acknowledged the decline was a cause for concern and is being evaluated. The 2014 improvements to AMLA may see an increase in results, however effectiveness information under the new framework is not yet available.

Table 3.5. Cross border declarations and enforcement action between 2009-2013 (incoming/ outgoing)

| | 2010 | 2011 | 2012 | 2013 |
|---|--------------------------------------|---|---|--|
| Number of declarations | n/a | 2 541 | 4 545 | 3 716 |
| Value of amounts declared (6 key currencies only) | n/a | RM 2.2M USD 310.3M EU 39.6M UKP 52.9M AUD 34.8M SGD 1.6Billion | RM 22.7M USD 316M EU 107.3M UKP 46.5M AUD 47.6M SGD 2.4Billion | RM 3.9M USD 218.6M EU 35.2M UKP 45.2M AUD 41.1M SGD 5.8Billion |
| Number of cash seizure cases | 20 | 27 | 9 | 8 |
| Amount seized | RM 4.1M (USD 1.2M) | RM 9M (USD 2.7M) | RM 1.6M (USD 0.5M) | RM 2.3M (USD 0.7M) |
| Forfeitures | RM 3 255 (USD 972) (1 case) | RM 531 822 (USD 158 844) (3 cases) | RM 400 068 (USD 119 520) (1 case) | 0 (2 cases pending) |
| Court Fines | RM 32 500 (USD 9 709) (1 case) | RM 1 892 000 (USD 565 232) (4 cases) | RM 5 000 000 (USD 1 493 741) (2 cases) | 0 |
| Administrative fines | RM 60 630 (USD 18 113) | RM 247 500 (USD 73 940) (16 cases) | RM 10 000 (USD 2 987) (1 case) | RM5 000 (USD 1 494) (1 case) |
| Investigations | 25 | 44 | 16 | 14 |
| Prosecutions | 4 | 11 | 4 | 2 |

3.123. While the cross border reporting regime generally complies with R.32, in practice there are challenges to ensure that it works well. Passengers are not provided with a form to complete unless they make a request. The primary way in which they would become aware of the requirement to declare is if they see the detailed sign and approach a standalone booth or an RMC officer to seek out a form. The fact that completion of the form is not mandatory can cause difficulties pursuing non-declarations – RMC noted that there had been cases where the person stated that they did not know they had to complete a form (e.g. didn't see the sign) or forgot to make a declaration. In such cases RMC has assessed the credibility of this defence on a case by case basis based on the person's profile, however such a systematic problem may need a systematic solution. Given the low and decreasing outputs to date this issue should be considered. In addition, the passenger targeting system could be strengthened. RMC officials scan 20% of incoming luggage and are said to be targeting 'high risk passengers', however, while RMC has some tools, at this stage it does not have a process for mapping risks beyond looking at declarations data and being aware of high risk countries. Some coordination is done with RMP but mainly on drugs matters. It is also not clear that authorities are reviewing, investigating or profiling the significant sums that are declared.

3.124. None of the cross border cases have related to TF. There are operational coordination arrangements between RMC and RMP (SB) to guide RMC's implementation on the basis of risk, but these don't extend to identifying 'hot spots' and other risks for possible TF-related cross border movements of cash and BNI. As noted elsewhere in this report, SB operates on a strict 'need to know' basis which can lead to inefficiencies in systematically pursuing TF cases. While SB work closely with RMC on particular cross border matters, this is on an ad hoc basis and there is limited information sharing and transparency due to the sensitive nature of cases. There is limited exchange of information even on a high level strategic basis. This can lead

to duplication in work and an under-utilisation of RMC's capacity to detect TF cases. RMC and SB need to deepen and regularise the way in which information is exchanged so that profiling and detections can be more targeted. Malaysia advises that steps have been taken recently to improve information sharing at an operational level.

3.125. Overall, although there is some evidence that the cross border reporting regime is being implemented and has produced some results, major improvements are needed. The outputs of declarations, detections or seizures do not reflect the extent of the cash economy, the nature of the movement of people and capital and the regional experience. Operational coordination amongst relevant agencies is low and referrals are not systematically picked up; as a result, opportunities to seize and confiscate funds are not taken up which is a weakness. It is noted that the low number of outputs are based on the former legal framework, and the recently strengthened systems may improve outcomes.

3.126. Malaysia should focus on strengthening the practical implementation of the new law and ensuring the declaration requirement is more stringently enforced and targeted measures are used more effectively. This should include more interagency coordination. RMC is working on developing new guidelines for RMC officers, including on administrative fines and providing training on the new regime.

(d) Confiscation results reflection of ML/TF risks and national policies and priorities

3.127. The high risk offences in Malaysia are drugs, corruption, fraud, smuggling and tax offences. The confiscation results are excellent for smuggling and tax, however the results for drugs, fraud and corruption are very low. Forfeitures under AMLA (which relate primarily to fraud) have declined significantly, although it is noted that a number of fraud confiscations are pending. As noted above, the low confiscation results also tend to indicate LEAs are not targeting the higher end of crime, such as organisers, in relation to their property. As noted at IO7, to date organised crime has been considered by authorities as a subset of drugs, corruption, smuggling, and fraud; there have been no confiscations relating to organised crime specifically, although Malaysia notes that some confiscations related to organised crime, especially in tax and smuggling matters. Organised crime may be an emerging high risk and should be specifically targeted to minimise its impact.

3.128. Malaysia rates the risks relating to foreign offending as low, however the risks associated with transnational drug trafficking and fraud are relevant, as is Malaysia's geographical context. There have been very few confiscations relating to foreign predicate offences.

3.129. Malaysia also treats terrorism and TF as high risk, however there has been no confiscation in relation to terrorism or TF, although some action has been taken to freeze terrorist property under TFS, as outlined in IO10.

3.130. Malaysia has some experience of freezing property in the context of criminal investigations of TF. Malaysia reported that it froze RM 163 228 and seized RM 15 418 (equivalent to approximately USD 60 000 in total) in 2013 arising from one TF investigation which is ongoing. Instrumentalities and assets have not been frozen or seized in relation to the other 22 ongoing TF investigations in the absence of charges having been laid.

3.131. High risk sectors identified in the NRA are: banking, the casino and MSB's. Confiscation of money laundered through the banking sector is common, and authorities reported that a small number of non-conviction based confiscation cases related to money that has been laundered through the casino and MSBs. The assessors had also focussed on Labuan as part of the scoping exercise however no confiscation cases involved Labuan.

3.132. Given the NRA noted that Malaysia has a significant cash based economy and movement of cash is 'rampant' across the border, the results of the cross border declaration regime are low and not commensurate with the risks.

Overall conclusions of Immediate Outcome 8

3.133. Malaysia exhibits some characteristics of an effective confiscation system, and is seeing some successes, particularly through administrative recovery. Tax and smuggling confiscations are achieving good results – they are depriving offenders of criminal property, making these crimes unprofitable and reducing the predicate offending, as demonstrated by increased voluntary compliance; this is given significant weight in Malaysia’s favour. Malaysia’s key strength is its broad legal regime which allows it to consider of number of different options on a case by case basis; for example its use of non-conviction based forfeiture and administrative methods are producing better results than the standard conviction based forfeiture methods. Malaysia has a strong priority focus on recovery of property which is also given significant weight, although results need to be improved in key areas.

3.134. The low values for confiscation in drugs, corruption and fraud matters (including as a proportion of amounts investigated and values seized) and the decline in AMLA forfeitures is given significant weight against effectiveness. In these high risk areas it has not been demonstrated that overall confiscation has resulted in criminals being deprived of their property to a large extent when taking into account Malaysia’s context. LEA capabilities need to increase to develop the ability to link property to offences and to target more complex cases. Consideration also needs to be given to the extent to which legislative time frames are prohibitive to confiscation action.

3.135. Particular improvements are needed to a greater scope of cases. To date Malaysian authorities have confiscated property from immediate targets and not the higher profit-taking levels of crime (although there have been some cases involving high value amounts). IRB are not targeting all property types (only bank accounts and land titles). Malaysia has only had limited confiscation outcomes in relation to foreign predicate offences and property moved offshore; LEAs perceive this as low risk but assessors view them as reasonably significant. As noted at IO2, in light of the risks from transnational crime, Malaysia should make greater use of its MLA mechanisms to give additional focus to following the money offshore. Assets have been restrained in one TF investigation but there have been no confiscation results. This level of outputs does not reflect the TF risk profile in Malaysia.

3.136. The implementation of the cross border regime has not produced many results to date and results are declining, which is a factor that is also given significant weight against effectiveness in light of the risks Malaysia faces. Implementation of the regime needs to be more thorough and more coordination and information sharing is need, especially between RMC and RMP and BNM.

3.137. **Overall, Malaysia has demonstrated a moderate level of effectiveness for Immediate Outcome 8.**

3.6 Recommendations on legal system and operational issues

Immediate Outcome 6

3.138. Improvements to ensure greater effectiveness of the outputs of the FIU relate mostly to efforts by others to improve quality and quantity of reporting (IO 4& IO8) and LEAs’ uptake of FIU products.

3.139. The model of the Special Taskforce and the work of the MACC in developing financial intelligence and ‘following the money’ should be considered by the RMP and RMC as they work to strengthen and broaden their use of financial intelligence in ML and TF.

3.140. RMP should deepen its approach to using financial intelligence from the FIU and other sources to support targeting and ongoing investigations, particularly in relation to TF, narcotics and crime types beyond fraud. RMP should focus on development of intelligence of foreign threats for ML and TF in cooperation with other LEAs in Malaysia (MACC, BNM, CCM, SC, LFSA, etc).

3.141. 227. TF-related STR reporting should be further supported by communication of more detailed TF typologies and guidance from relevant LEAs, including SB.

Immediate Outcome 7

3.142. Cover offences in the *Fisheries Act* and the *Industrial Designs Act* (s.37) as predicate offences in AMLA.

3.143. LEAs and prosecutors should take steps to improve cooperation, coordination and capacity in ML investigations and expand the scope of ML investigations, including:

- a. Strengthen the RMP ML investigation capacity and ensure a focus on ML as a separate offence for investigation and build strong briefs that demonstrate the link between property and the predicate offence, including knowledge that the property is proceeds of predicates. ML evidence gathering should use all necessary powers, including special powers
- b. strengthen ongoing coordination between ML investigators and predicate offence investigators to avoid duplication or investigative inconsistencies
- c. ensure that RMP CID and SB are more heavily involved in ML investigations
- d. focus on ML for all high risk offences (particularly drugs, tax, corruption and smuggling).
- e. Target higher level offending, including organised crime and professional 3rd party launderers, and ML from foreign predicates; International cooperation will be essential to this.
- f. Further improve training on financial investigations and prosecutions, including in relation to combating transnational crime.

3.144. LEAs and AGC should focus on pursuing both ML prosecutions and confiscation, as opposed to confiscation only.

3.145. AGC should take steps to build its capability to prosecute ML by ensuring it has the appropriate resources and expertise to conduct ML prosecutions, noting the AML Unit is under resourced.

3.146. Regarding AGC's current appeal on the issue of proof of predicate offences, if court decisions are adverse, Malaysia should consider amending the legislation and/or further appeals.

3.147. Malaysia should reconsider mandated time frames for investigations to ensure they are not prohibitive to ML investigations, prosecutions and confiscation actions.

Immediate Outcome 8

3.148. RMC should ensure outcomes for the cross border reporting regime are significantly improved on the ground and the regime is targeted to address the risks identified, including through enhanced cooperation with the RMP (SB, CCID and others) on sharing ML/TF risk information.

3.149. RMP (and other LEAs investigating fraud, e.g. SC, CCM) should focus on securing confiscation in fraud matters given the AMLA forfeiture results have declined significantly (it is noted that a number of fraud cases are pending).

3.150. LEAs should expand the scope of their asset tracing and confiscations to cover the higher profit-taking levels of crime, including organised crime; foreign predicate offences and property moved offshore (this will require a more proactive approach to international matters); and terrorism and TF,

3.151. LEA capabilities need to increase to develop the ability to link property to offences and to target more complex cases.

- 3.152. IRB should target all property types for confiscation beyond accounts / land in taxpayers' names.
- 3.153. Ensure property of corresponding value to instrumentalities for predicate offences can be confiscated under AMLA absent a ML or TF prosecution. Ensure all instrumentalities intended to be used in the commission of an offence are covered.
- 3.154. Provide more comprehensive guidance to LEAs on asset management (noting that a long term goal is to establish a centralised asset management agency) including that property should be disposed of prior to forfeiture in appropriate circumstances even in the absence of consent of the owner. In keeping with the IO9 findings and the TF risk profile, Malaysia should intensify its efforts to trace, seize confiscate assets and instrumentalities related to TF offences.

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4

Key Findings

Malaysia has undertaken over 40 TF investigations of which 22 are ongoing, however no prosecutions have been taken forward. Malaysia successfully uses other criminal justice and administrative measures to disrupt terrorist and TF activities when a prosecution for TF is not practicable. These include various domestic terrorist plots, terror groups and foreign terrorists. Malaysia also uses these other measures to address the most relevant emerging TF risk – individuals travelling to conflict zones to participate in or advocate terrorist activity. Malaysian authorities identify and investigate different types of TF in each counter-terrorism investigation, and counter-terrorism strategies have successfully enabled Malaysia to identify and designate terrorists, terrorist organisations and terrorist support networks. In the absence of TF prosecutions, Malaysia has not demonstrated that it has sanctioned different types of TF offences, such as the collection of funds for TF, or the financing of terrorist acts or individual terrorists.

Malaysia demonstrates many of the characteristics of an effective system for targeted financial sanctions (TFS). A key area of effectiveness is in the direct implementation of TFS against UN designated persons and entities. Malaysia has also domestically listed individuals and entities pursuant to UNSCR 1373 representing a range of domestic and international terror threats. Many of the elements of the legal system and processes for implementing TFS related to UNSCRs represent a best practice for other countries. Effectiveness of TFS is supported by supervision of the FI and some DNFBP sectors, outreach and awareness raising, and government agencies checking their own databases. In absolute terms the amounts frozen under TFS are relatively small, reflecting to some extent the cash economy nature of TF in the SE Asian region and the detention of a number of Malaysian designees. Recently more freezing actions have taken place outside of the banking sector and covering property indirectly owned or controlled by designated entities.

Malaysia's approach to preventive measures, oversight and outreach to the NPO sector has improved significantly in recent years and demonstrates many of the characteristics of an effective system. Outputs reflect targeted approaches to TF risk mitigation, with outcomes achieved to a large extent. This includes RoS and other regulators as well as the RMP.

Despite good inter-agency cooperation on PF (policy and operational), Malaysia's technical gaps in relation to R7 are significant and major improvements are required to make the process more effective. The long delays in transposing designations made by the UN into Malaysian law undermine effectiveness. RIs have increasingly good awareness of obligations, particularly in Labuan and the major FIs. Supervision of obligations is taking place, but implementation could be deepened and further supported with additional guidance. Two Malaysian banks have frozen over USD29 million of assets related to the one Labuan domiciled Iranian bank designated under UNSCR 1737. No entities or assets related to UNSCR 1718 have been detected. Vigilance measures adopted by Malaysia add to effectiveness.

4.1 Background and Context

4.1. Malaysia's terrorism and TF risks are set out at s.1 and 2 of this report. Terrorism and TF is considered medium risk in the 2013 NRA, but the many recently reported cases (predominately related to ISIL) and the very high priority placed on CT and CFT by government suggest that this is a present and increasing threat. The November 2014 White Paper on Terrorism went into greater detail of the threats from ISIL.

4.2. Malaysian authorities treat the prevention of terrorism and TF as high priority issues. The Malaysian government has demonstrated outcomes in preventing terrorist attacks in Malaysia and dismantling terror groups over many years. Malaysia's preventative approach towards terrorism is focused on the terrorist activity, using financial intelligence to identify terrorism suspects, including financiers, who may be subject to CT preventative measures, including preventative detention without prosecution. Until recently, many of the prevention and enforcement actions against terrorism and terrorism financiers have been through security intelligence approaches, but this has been complemented with more criminal justice approaches in recent years.

4.3. The government has sought to tackle radicalisation, support de-radicalisation efforts, implement preventive measures against terrorism and terrorist financing, including by working cooperatively with regional and global partners on CT and CFT efforts. The Malaysian government takes measures to resistance to the involvement of extreme religious ideological influences in Malaysian charities and schools and steps to ensure related foreign funding is not provided to entities in Malaysia.

4.2 Technical Compliance (R.5-8)

- R.5 – Terrorist financing offence - **Malaysia is rated largely compliant**
- R.6 – Targeted financial sanctions related to terrorism - **Malaysia is rated compliant**
- R.7 – Targeted financial sanctions related to proliferation - **Malaysia is rated partially compliant**
- R.8 – Non-profit organisations - **Malaysia is rated largely compliant**

4.3 Effectiveness: Immediate Outcome 9 (TF investigation and prosecution)

(a) Prosecuting TF consistent with the risk profile

4.4. Malaysian LEAs and prosecution authorities demonstrated a generally broad understanding of TF risk well beyond the information contained in the public NRA. Malaysia faces a number of threats related to terrorism and terrorist financing from domestic, regional and international groups with a direct connection to Malaysia, reflecting Malaysia's open and diverse society, strategic geographic position and broader global trends of terrorism and terrorist financing. TF risks are particularly noted in relation to Al Qaida related groups, Jemaah Islamiya (JI), the LTTE and separatist/terrorist groups active in Southern Thailand, Southern Philippines, Indonesia and others in the region and beyond, and more recently relating to foreign fighters associated with ISIL. Since 2001, Malaysia has arrested or detained 264 Individuals suspected to be linked to terrorism. These individuals were connected to six known terrorist groups which have significant funding and resources to carry out their activities, including the Jemaah Islamiah, Darul Islam, Tadzim Al Qaeda, Darul Islamiah Malaysia, Abu Sayyaf Group, and other Al-Qaeda related groups.

4.5. Prosecutions are handled by the AGC following referral from investigative agencies. The AGC has designated CT (including CFT) prosecutors who are well trained to carry forward CT (including CFT) prosecutions. AGC works closely with the RMP to bring the strongest possible case, including provision of legal advice by AGC, joint training, etc. The AGC resource gaps identified at IO8 may undermine effectiveness of TF prosecutions if further AGC resources are not allocated before TF prosecutions commence.

Table 4.1. TF Investigations and Prosecutions

| | 2010 | 2011 | 2012 | 2013 | 2014 | Total cases |
|--|------|-------|------|------|-------|-------------|
| No. of TF cases / individuals involved | 5/5 | 19/19 | 2/2 | 2/2 | 12/22 | 40 |
| Cases in progress | 0 | 6 | 2 | 2 | 12 | 22 |
| Cases closed | 5 | 13 | - | - | - | 18 |
| Prosecutions | - | - | - | - | - | 0 |

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4.6. There have been no prosecutions for TF. The absence of prosecutions and convictions is not in keeping with the risk of TF identified by Malaysia, as Malaysia has prosecuted and convicted a significant number of terrorism cases and taken preventative actions against a number of individuals and organisations in relation to terrorism.

4.7. Since 2010, 40 TF investigations have been opened, and 22 TF investigations are ongoing. The cases opened between 2010 and 2013 relate to a range of terrorist groups including JI, LTTE and Babbar Khalsa. All of the TF cases opened in 2014 relate to ISIL, reflecting the strength of the emerging TF risks. Malaysia attributes the low number of TF investigations to the effectiveness of the RMP in dismantling two terrorist groups who were the primary threat to Malaysia.

4.8. The 18 cases closed in 2010 and 2011 did not proceed due to the absence of money trails on TF activities other than self-funding. Authorities indicated that the subjects of those investigations were, however, subject to actions taken under CT investigations, including preventive detention and deportation.

4.9. Assessors consider that the absence of TF prosecutions can be explained, in part, by the complexity of TF investigations amongst the 22 current matters (i.e. self-funding, funding by family members and small values), but also a previous focus on terrorism from a security intelligence perspective using prevention tools, rather than taking criminal justice action against the financiers.

4.10. Given the scale of the risk of terrorism identified by Malaysia, assessors consider that the justification for the low number of TF investigations and absence of TF prosecutions is not entirely supported. Malaysia is encouraged to use TF prosecutions to complement CT investigations and preventive measures to address the TF risks.

(b) Identified and investigation of TF cases

4.11. As discussed in IO6, the production of financial intelligence by the FIU contributes to RMP investigations of terrorism (including financial flows associated with terror groups and terror plots). The FIU and subsequently the RMP receive few STRs related to terrorist financing, although this has improved since 2013. The RMP has made regular use of financial intelligence in CT investigations, including those that led to prosecutions and CT preventive measures, including preventative detention.

4.12. The quality of the TF-related disseminations received by RMP from the FIU has been high and has assisted RMP CCID to target TF cases in parallel with CT investigations and has assisted the SB with financial intelligence related to terror groups and acts.

4.13. From 2011 to 2013 there were four proactive FIU disclosures on TF to SB, involving 23 STRs, and 14 reactive disclosures involving four STRs. In 2014 there were 127 TF related STRs which is attributed to RIs' increased awareness of risks associated with ISIL. This improvement enables meaningful disseminations from the FIU to the RMP. For example, an STR filed on remittances to subjects linked to the group involved in an intrusion in Sabah waters resulted in one of the remitters being detained under the Prevention of Crime Act.

4.14. TF investigations are conducted by the RMP AMLA Unit, which includes officers who specialise in financial investigations. The RMP AMLA Unit works in conjunction with SB, which is responsible for investigating terrorism offences. SB has good intelligence and often evidence relating to TF. RMP AMLA

officers have been well trained and apply well developed methodologies to investigate the ongoing TF cases. At the time of the onsite visit there were 97 established posts with 37 senior officers. All RMP AMLA officers conduct both ML and TF cases, but given the workload of both TF and ML cases, there do not appear to be adequate staff resources.

4.15. SB uses investigations into TF as a support function for terrorism investigations. The SB indicated that terrorism investigations often identify roles played by terrorist financiers and the SB conducts financial investigations of terrorist groups and terrorist financiers, making use of a wide range of investigative techniques and sources of financial intelligence, including cooperating with the FIU and other domestic authorities and international partners. SB has a significant number of successes in preventing terrorist attacks on Malaysian soil and dismantling terrorist groups in Malaysia. Through financial investigations Malaysia has identified the roles played by terrorist financiers in terror plots and terrorist organisations active in or connected to Malaysia. Malaysia has particularly focused on investigating the financing of persons traveling overseas as foreign fighters who support Al Qaeda and ISIL. The amounts of TF funds associated to such activities have been classified as small amounts of money. Malaysia notes trends of self-funding or persons being funded by relatives/family members. Cases of Malaysians joining Syrian militant activities identified suspects having sold their personal effects to finance their travel to Syria. Investigations into five Syrian fighters who have returned to Malaysia revealed that they did not bring home any funds, with their return tickets funded by family members.

4.16. The RMP AMLA Unit relies on FIU disseminations or referrals from SB to commence a TF investigation. SB conducts enquiries into both CT and TF elements, and RMP AMLA Unit is often included in the process. Once the elements of TF have been established, TF investigations are opened by RMP AMLA Unit. Since 2010 there has been a steady increase in parallel CT and TF investigations between SB and the RMP AMLA Unit. The CCID unit is continuing to strengthen its specialist TF investigation capacity and is cooperating with the SB and the FIU on the 22 continuing TF cases. The increased capacity reflects the RMP's expectation of significantly more TF cases with the increasing ISIL financing threat.

Box 4.1. Case study: Financing foreign fighters to join ISIL

Person A was exposed to ISIL activities online, and made acquaintance with person B who claimed to have in-depth knowledge about ISIL. Person B influenced person A to travel to Syria through Turkey to join ISIL. Person A was arrested prior to departing Malaysia and TF investigation is ongoing with respect to his financial activities.

4.17. The investigative powers utilised by SB to pursue terrorism investigations also affects Malaysia's investigations into TF. SB's investigation powers are provided under Acts such as the Security Offences (Special Measures) Act (SOSMA) 2012, Penal Code and AMLA, which includes the interception of private communications as well as freezing, seizure and forfeiture of terrorist property.

4.18. Local authorities had investigated UNSCR1373 entities prior to their designation and outputs from investigations were included in material provided to the UN in the case of co-sponsoring a nomination for UNSCR1267 designation. Most of the designees who were arrested in Malaysia were already detained under the Internal Security Act before their designation for TFS.

(c) Integration of TF investigations with national CT strategies and investigations

4.19. National Strategy Directive 18 set by the Malaysian National Security Council sets out a clear policy objective for the countering of terrorism in all aspects, including terrorist financing. Centralising CT and TF investigation functions within the RMP promotes integrated and coordinated efforts. The split in responsibility between SB and RMP AMLA Unit may not promote effectiveness and efficiency in combatting TF. All terrorism matters are referred to SB and the RMP AMLA Unit for investigation and it is standard practice to commence CT and TF investigations in parallel. This is evidenced by the fact that all of the TF investigations are derived

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from CT investigations. The integration of this TF investigation-related policy directive is taking time to bear fruit, given the long timeframes of the 22 ongoing TF investigations.

4.20. SB has established contacts in many departments and the financial sector for the purpose of countering terrorism. There is evidence of a good working relationship between SB and relevant government and private sector stakeholders. This reflects the RMP strategy to support CT efforts by the establishment of a good networking with local authorities, institutes of higher learnings and other relevant agencies.

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4.21. There have been numerous meetings at the national level on issues relating to CT and TF, with 13 held in 2011, 12 in 2013, 14 in 2013 and five in 2014. Due to the threat posed by ISIL, there have been frequent inter-agency meetings at the operational level. In 2014 there were a total of 11 operational meetings

4.22. There is a dedicated liaison officer in the FIU who acts as coordinator between RIs and SB for facilitating and channelling intelligence; however SB regularly makes direct contact with RIs in the course of their investigations. SB and CCID have direct access to query the FINS system.

4.23. Malaysia's CT and TF initiatives include both 'hard' and 'soft' approaches. The hard approach is in the form of arrest and prosecution to disrupt terrorist groups' networks and capability and the use of preventive detention, which may continue for long periods. In this regard, TF investigations and financial intelligence are used as tool in the prevention of terrorist activity as it assists in identifying the support network and co-accused, leading to the arrests of suspects. The soft approach includes disengagement, rehabilitation, de-radicalisation and other counter radicalisation preventive measures. While the hard approach supports the elimination or weakening of immediate terrorism activities, the soft approach counters the spread of terrorism ideology and support to terrorist groups. This has an effect on terrorist financing as funding for terrorist activity is through support, donations, contributions by sympathizers and extremists. Eliminating the support for the group and/or activity helps to reduce sources of funding.

(d) Sanctions or measures applied against natural and legal persons convicted of TF offences

4.24. To date there have been no prosecutions or convictions for TF offence, so no sanctions applied for the TF offence.

(e) Use of other criminal justice or regulatory measures to disrupt TF

4.25. Malaysia primarily and successfully uses other criminal justice, security and administrative measures to disrupt TF activities when a prosecution for TF is not practicable. Malaysia places a strong focus on disrupting terrorist organisations, and terrorist acts before they occur. Thus, investigations may not advance to the stage where a TF charge is practicable.

4.26. Malaysia has demonstrated increasing effectiveness in dismantling financing and facilitation networks in Malaysia that support international terrorist groups. SB appears to be adequately seeking and cooperating with foreign counterparts to enhance their investigations and analysis functions in relation to CT and related TF. This is done, in part, in the context of security intelligence exchanges.

4.27. Malaysia employs a combination of preventive legislations and other preventive measures to suppress and disrupt TF activities. In addition to the Penal Code and AMLA, other Acts also facilitate CT and TF initiatives, as follows:

- SOSMA 2012 for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters. Provides for prosecution of persons believed to be involved in high risk security offences (the successor to the Internal Security Act 1960);
- Communication and Multimedia Act 1998 and Computer Crime Act 1997 on digital, cyber and internet offences;
- Administration of Islamic Law on deviant teaching of Islam; and

- The Immigration Act 1959/63.

4.28. RMP has conducted disruptive operations to incapacitate the operating capabilities of terrorist groups in Malaysia. These include the JI, Darul Islam, Al-Qaeda, LTTE, and the East Turkistan Islamic Movement. These measures are being used to identify and disrupt domestic and international terrorist activity and the provision of financial support from Malaysia to offshore extremist groups. This confronts the risk posed by individuals travelling to conflict areas abroad (in particular Syria and Iraq) to become directly involved in designated terrorist groups.

Box 4.2. Case study: Examples of outcomes produced from international cooperation

- Arrest of a Singapore JI fugitive, and his three accomplices in Malaysia in April 2009;
- Arrest and deportation of (1) eight key figures of Liberation Tigers of Tamil Eelam (LTTE) including its second in command, KP Kumaran, (2) five operatives of Babbar Khalsa International (BKI) between 2010 to 2013, and (3) several militant operatives including those from Al-Qaeda in Malaysia;
- Arrest of Indonesian Jemaah Anshorut Tauhid (JAT) member, Fadli Sadama on 13 October 2010 while trying to smuggle two revolvers and ammunitions from Malaysia to Indonesia;
- Arrest and deportation of 12 Al-Qaeda operatives in 2010;
- Arrest of two persons suspected to be involved in an Al-Qaeda operation, on 18 October 2012 in Beirut, Lebanon;
- Arrest of 13 Darul Islam members in 2011 in Malaysia;
- Arrest of one of the Iranian suspects in 2012 Bangkok bombings in 2012 in Malaysia;
- Arrest of an Iranian counterfeiter who provided forged documents for the 2012 Bangkok Bombings in 2013 in Malaysia;
- Arrest of an Al-Shabab element from Somalia who holds dual citizenship of Somalia and USA in 2014

4.29. In the cases outlined above, where arrested suspects are not subject to prosecution or preventative detention, deportation occurred in cooperation with foreign partner governments.

4.30. As noted above, Malaysia has placed a great deal of emphasis on 'soft' approaches in combating terrorism and TF activities. The initiatives mainly centre on rehabilitation/disengagement program for detainees and close family, and countering radicalisation activities through internet. Individuals detained for terrorism and TF activities undergo rehabilitation program and have to prove that they have fully rehabilitated and disengaged from terrorism ideology before they are released. There is also a series of seminars, workshops and meetings organised with civil society to educate the public about the danger of terrorist ideology and activities.

Table 4.2. Statistics on the rehabilitation program

| | 2009 | 2010 | 2011 | 2012 | 2013 |
|----------------------------------|------|------|------|------|------|
| Communication programs | 10 | 12 | 14 | 12 | 10 |
| No. of individuals enrolled | 40 | 42 | 50 | 41 | 40 |
| No. of individuals rehabilitated | 40 | 42 | 50 | 41 | 40 |

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4.31. The success of these rehabilitation programs is evidenced through the UN's decision to remove four Malaysian citizens from the UNSCR Al Qaeda list in 2013. The individuals demonstrated rehabilitation and have rendered valuable assistance to authorities in rehabilitation programs among other detainees.

Overall conclusions on Immediate Outcome 9

4.32. Malaysia's significant TF threats and the context of those threats appear to be well understood by the authorities and TF investigation and prosecutions are incorporated in Malaysia's broader CT strategies. Despite this the results of these efforts have not yet come through the system as TF prosecutions.

4.33. Malaysia has prosecuted and convicted a significant number of terrorism cases. Malaysia has taken preventative actions against a number of individuals and organisations in relation to terrorism and financial aspects of terrorism.

4.34. Following the national policy, RMP AMLA Unit has commenced 40 TF investigations in parallel with CT investigations since 2010. 22 of these TF investigations are ongoing. While financial investigations have occurred, TF charges have not been laid. The reasons for an absence of TF prosecutions appear to be the complexity of ongoing investigations, capacity challenges with the RMP AMLA unit (including making international assistance requests), a focus on terror groups and acts and a security intelligence approach to prevention, rather than taking criminal justice actions. Malaysia has cooperated with foreign partners to support their investigation and prosecutions of terror threats to Malaysia, including financial aspects of those threats; however this has not yet extended to international cooperation in the 22 ongoing TF matters. SB supports the RMP AMLA Unit and is encouraged to deepen that support by further strengthening information sharing on terrorism with the RMP AMLA Unit.

4.35. Given the scale of the risk of terrorism identified by Malaysia, the justification for the low number of TF investigations and absence of TF prosecutions is not well supported, although the greatly increased number of TF investigations in 2014 reflects the increasing risk profile.

4.36. In the context of terrorist risks in Malaysia and the security and law enforcement roles of the SB, a number of the objectives of Immediate Outcome 9 are in effect being achieved to a significant extent, in part, by employing other security, rehabilitation and criminal justice measures to disrupt TF activities. This reflects the identified typologies of self-funding and Malaysia's focus on rehabilitation and preventive detention in these cases.

4.37. **Overall, Malaysia has demonstrated a moderate level of effectiveness in relation to Immediate Outcome 9.**

4.4 Effectiveness: Immediate Outcome 10 (TF preventive measures and financial sanctions)

(a) *Implementing targeted financial sanctions*

4.38. Malaysia is actively using the TFS framework and demonstrates many of the characteristics of an effective system. Malaysia's legal framework supports Malaysia's ability to give effect to a UNSCR 1267 designation without delay. Under the 2014 amendments to the AMLA, s.66C (2) provides for an

automatic translation of UN designations into designations under Malaysian law and direct reference to the lists maintained by the UN. Freezing obligations and prohibitions on providing funds/financial services automatically follow designation for both 1267 and 1373. Malaysia's well developed systems to promptly transmit designations and freezing obligations to the RIs and the public without delay adds to effectiveness.

4.39. Pursuant to UNSCR 1373, under s.66B of the AMLA, Malaysia has used its compliant legal mechanisms to make a number of designations at the country's own motion. As of November 2014 Malaysia had listed 39 individuals and 18 entities under s.66B. The entities designated have not only included Malaysian-based and SE Asian-based individuals and groups directly threatening Malaysia's interests, but terror groups active in regions outside of SE Asia including the LTTE and ISIL, which increases the likelihood of detecting funds and other assets of designated entities in Malaysia.

4.40. At the time of the onsite visit Malaysia had not received any request from a foreign country for Malaysia to designate under the 1373 framework. Malaysia indicated that it was considering requesting other countries in the region to give effect to Malaysia's designations under 1373. The assessors encourage Malaysia to closely consider reaching out to foreign partners on the possibility of cross-designating to address regional risks.

4.41. At the time of the onsite visit two Malaysians were included on the Al Qaeda list. Malaysia has not sponsored any 1267 designation proposals to the UN; however it has co-sponsored designations proposed by other states, including providing information to add to the case for UN designation. The assessors encourage Malaysia to consider sponsoring designation proposals to the 1267 committee.

4.42. Tools under both 1267 and 1373 are resulting in a range of assets being identified and frozen.

Table 4.3. Assets frozen under UNSCR1267 and UNSCR 1373 as at 2014

| No. of designated individuals with assets frozen | Type of Asset | Owned by designated individuals | | Controlled by designated individuals | |
|---|-----------------------|---------------------------------|-----------------------------|--------------------------------------|----------------------------|
| | | No. | Amount (RM) | No. | Amount (RM) |
| Assets frozen under UNSCR1267 | | | | | |
| <i>As at 2011</i> | | | | | |
| 6 | Bank accounts | 14 | 30 628.42 (USD 9 150) | 3 | 110 694.39 (USD 33 070) |
| <i>As at March 2014 upon delisting of 4 individuals in 2013</i> | | | | | |
| 2 | Bank accounts | 5 | 13 486.44 (USD 4 029) | - | - |
| Assets frozen under UNSCR1373 | | | | | |
| 34 | Bank accounts | 98 | 212 800.66 (USD 63 574) | 8 | 6 178.25 (USD 1 846) |
| 9 | Insurance Policies | 14 | 285 129.07 (USD 85 182) | - | - |
| 17 | Pilgrim Fund accounts | 17 | 16 389.53 (USD 4 896) | 9 | 7 171.91 (USD 2 143) |
| 14 | Securities accounts | 17 | 193 835.86 (USD 57 908) | - | - |
| 23 | Vehicle | 44 | 495 762.00 (USD 148 108) | - | - |

* Caveat against dealing has also been entered to land office on immovable property of listed entities

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4.43. Malaysia has frozen assets amounting to RM 13 486 (USD 4 029) pursuant to UNSCR 1267 and almost RM1.2 million (USD 358 500) arising from designations made under UNSCR 1373. In absolute terms the amounts frozen under 1267 and 1373 are small, reflecting to some extent the cash economy nature of financing designated entities in the SE Asian region, but this may not explain the whole picture and the full TF context in Malaysia. In four cases Malaysians who were designated by the UN had already been detained by the Malaysian government under the previous Internal Security Act and one case where the person was arrested by a neighbouring country.

4.44. Malaysia's experience of using the UN processes to apply directly for delisting four individuals from the Al-Qaida Sanction List indicates well-functioning processes on Malaysia's side. From 2011 on the grounds of fully rehabilitation during their detention under the Internal Security Act 1960. The delisting process involved MOHA, RMP and MOFA. The applications were approved by UNSC on 25 March 2013. Delisting and unfreezing orders were issued and communicated appropriately.

4.45. Malaysia does not have any experience of reviewing or delisting 1373 designations, as the designations are so recent.

4.46. Malaysia has well developed systems to ensure that designations, whether 1267 or 1373 are transmitted to the RIs and publicised without delay. In both cases, designation information is shared promptly online with RIs through the FINS system which is a secure platform for information sharing. RIs are also required to keep up to date with designations on the UN website. Malaysia demonstrated that in the cases of additions or removal of names to the lists, the disseminations occurred without delay. In addition, BNM, SC, and LFSA send the names and identifying information to the relevant RIs and post the information on their websites. An important step has been that regulators require RIs to confirm receipt of updated listings and that they have checked new listings against customers and transactions. This is being supervised in practice by all BNM, SC and LFSA (see IO 3)

4.47. MOHA's website portal adds to the mechanisms to expedite the dissemination TFS information to RIs, regulatory and supervisory authorities including SROs covering the DNFBPs, as well as to the public. This adds to the effectiveness from the FINS communication to RIs. In addition to the designations, the portal details the obligations and procedures for RIs, government agencies and the public. The portal also includes an implementation guideline to assist all parties with implementing the freezing process, which offers practical guidance on the process.

4.48. The FIU checks its database (including CADS) for matches with 1267 and 1373 designations in real time. The CCM also conducts periodic screening of the companies' registry as detailed in its internal SOP. For RoS, the SB role in the character vetting registered societies boards of trustees involves it screening the names against the 1267 & 1373 lists.

4.49. The assessment team observed that RI's have a good understanding of their general TFS obligations and processes, influenced by regulators' outreach. A range of outreach sessions have been undertaken through the CONG and other forums which have helped RIs to go beyond list-based sanctions screening to underlying customer relationships.

4.50. As outlined in IO9, RMP SB has targeted outreach to elements of the financial sector on TF risk and detailed information on evolving TF risks should continue to be made available to the private sector to assist their implementation of TFS related to terrorism. The SB shares information on TF threats with other LEAs, regulators and RIs on a case by case basis and in relation to broader threats. RIs rely on publicly available information as their only means for going beyond simple list-based screening in attempting to mitigate the risk of TF. SB has shared concluded cases with RIs at various courses, seminars and public forums. The recent White Paper on ISIL is an additional move towards more detailed information being available on TF threats.

4.51. Supervision of FIs and DNFBPs has focused on the implementation of TFS requirements. Supervisors indicate that the intensity and focus of their supervision has taken TF risk into account, including when focusing on TFS implementation. The findings of the NRA and BNM supervisors highlighted the banking and MSB sectors as high risk overall, and this is reflected in the intensity and scope of their supervision of those

sectors in relation to CDD and TFS. The MSB sector (MVTS and money changers) has received particularly close attention in relation to its systems and routines for implementation of CDD and TFS.

4.52. The Haj (Pilgrims) Fund has been subject to supervision for TFS and it is notable that a number of freezing actions have recently been taken by that Fund relating to accounts owned or controlled by designated persons.

4.53. An outcome of supervision has been an increased TFS compliance across all supervised sectors and increased detections and instances of asset freezing beyond the banking sector. At the same time supervisors identified instances of weaknesses in internal controls and routines to implement TFS in some sectors. Supervisors have required follow up actions to be taken.

4.54. Assessors confirmed the supervisors' views that FIs and supervised DNFBPs implement list based screening without delay. A concern is that the implementation of TFS by those DNFBPs which have not yet been subject to onsite supervision (see IO3) has resulted in an incomplete picture of the depth of implementation of TFS in those sectors. Moderate improvements are required to deepen the implementation of steps to identify funds controlled rather than owned by a designated individual or entities.

4.55. Malaysia's procedures for verifying false positives are in keeping with the standards, but these have not been fully tested. In one case a potential false positive was encountered by a bank which raised the case with the FIED, but the false positive was able to be cleared with basic identity checking. This demonstrated open channels for engagement between RIs and the regulator on potential sanctions matches. Malaysia indicates that the nature of national identity requirements (see details at IO4) combined with robust implementation of CDD reduces the likelihood of false positives in the Malaysian context.

4.56. Malaysia's experience with applying to the UN 1267 Committee to obtain necessary approvals for access to funds for basic and extraordinary expenses for designated individuals reflect implementation of appropriate procedures. Malaysia's last case for considering applications for basic expenses was in 2004. The absence of recent cases may reflect designated entities' unwillingness to make such claims and, in a number of cases, the fact that designated persons were under detention or in jail in Malaysia.

Box 4.3. Case study: Malaysian national designated by UN

Malaysia has shown improving implementation of freezing and access to funds to take into account complex matters of ownership and control. In the case of a Malaysian national designated by the 1267 Committee in 2003, the person had been detained under the Internal Security Act (ISA) from 2001 to 2010. However, the accounts of his spouse and children were opened between 2007 and 2009 during his detention and the authorities investigated and determined they were not under his control. His activities were monitored after being released from ISA detention. Upon him being re-arrested and charged with incitement of terrorist acts, Malaysian authorities froze assets in the names of his spouse and adult children and investigated to determine whether the designated person had any control over the property. At the end of 90 days, these funds were released as authorities verified that the funds were not under the designee's ownership or control.

4.57. Malaysia's de-listing procedures for 1373 are comprehensive and comply with FATF standards but have not yet been tested in practice due to the newness of the designations.

(b) Targeted approach to outreach and oversight of NPOs at risk from TF

4.58. At the time of the 2007 ME CFT controls over the NPO sector were relatively weak, but since that time Malaysia has recognised the TF risk profile and has taken steps to improve CFT responses to those riskier parts of the NPO sector, in particular religious and charitable NPOs and the public collection of funds. Oversight and risk mitigation in the NPO sector has shown some real progress, but further improvements are needed.

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4.59. Malaysia has a centralised and closely monitored system of government controls over Zakat¹ across the whole of Malaysia. The government administers all zakat collection and disbursement to NPOs through specialist federal authority in close cooperation with the IRB. This is a significant risk mitigation step for potential TF risks in that stream.

4.60. Malaysia has reviewed its NPO sector and has identified some 47 042 registered NPOs, of which more than 95 percent (nearly 44 826) are supervised by the Registrar of Societies (RoS). The remainder of Malaysia's NPOs are supervised by the CCM, the Legal Office of the Prime Minister (BHEUU), and the LFSA. Malaysia has assessed the number of NPOs which conduct international transaction at approximately 1 000 societies. Malaysia has identified NPOs which are charities and religious NPOs as being high risk, representing a category of approximately 12000 societies and CLBGs. Within that risk profile, Malaysian authorities are adopting targeted approaches to supervise the NPO sector to mitigate the risk of terrorist abuse. However, given the risks, there is further to go.

4.61. The RoS website has various guides and FAQ to provide information to the public on the registration and administration of societies. LFSA has comparable information on its website.

4.62. Compulsory annual financial statements to RoS or semi-annual activities report to LFSA are the primary mechanism by which supervisors monitor the NPOs under their purview unless there is a specific concern or risk factors identified. Authorities noted that as of the end of 2013 the rates of compliance with annual filings by societies with RoS were very low with over 49% of societies not submitting their annual financial statements to RoS by that time. Since late 2013 the RoS has pursued a project to enforce greater compliance with annual filings and has made significant progress to that end, including de-registering 8 099 NPOs due to various compliance issues in the period 2010-November 2014. RoS is following up with the remaining NPOs and continues to initiate deregistration processes as appropriated. Nonetheless, the RoS should continue to work with NPOs to further improve compliance with the annual financial reporting requirements.

4.63. The RMP has taken targeted measures to assist the RoS to mitigate the risks of abuse of NPOs. The RMP SB has access to the registries of NPO supervisors and can flag entities of concern to the relevant NPO supervisor. SB provides character vetting on application for registration of NPOs. RMP officers are attached to RoS for investigation of breach of the Societies Act and other Acts. Cooperation and information sharing between SB and RoS is working well to raise awareness of and mitigate TF risks; however this coordination is encouraged to be further widened for increased effectiveness.

4.64. NPO supervisors consider TF risks in determining their priorities for oversight and supervision. RoS has taken a more targeted, risk-mitigation approach using improved systems, offsite and onsite work and has sought to leverage the roles of RMP in the field. The RoS and CCM conduct checks that focus on the structure of the NPO in relation to its international presence, any associated NPOs in foreign jurisdictions, its geographic scope of operations and its participation in any high risk areas, such as the aforementioned religious and charitable sectors. In addition the RoS and CCM conduct a number of more targeted offsite and onsite inspections of NPOs, including inspections without notice, which assessors noted were covering key areas to mitigate risks.

4.65. In response to identified TF risks, the regulatory framework covering charitable funds collection by NPOs was strengthened in 2012 to include licensing and oversight of collectors. This includes a role for police at the local level to vet applicants, which assessors view has significantly added to risk mitigation over charitable collection as it provides for local oversight of those conducting charitable collection, including ongoing monitoring by local police to identify cases of abuse and emerging risks. Officers in charge of local police stations do vetting in consultation with SB. Permission given is limited by time and location and has

1 Zakat is an obligation on Muslims to give a specific amount of their wealth (with certain conditions and requirements) to prescribed beneficiaries called al-mustahiqqin with the main objective of achieving socioeconomic justice.

to be renewed, with vetting, every three months. 1267 / 1373 sanction screening is also done by the RMP at this stage.

4.66. There has been an increasing range of outreach on TF risk to NPOs which has been directed more at-risk elements of the sector. RoS uses a number of delivery channels to reach out to the sector, including online portals and an annual conference on TF risks. The annual conference included many of the NPOs identified in the sector review as having key risk factors. The range of outreach materials available and the targeted outreach adds to the effectiveness. NPOs gave positive feedback on the utility of these approaches. SB reaches out to certain at-risk NPOs, in particular focusing on NPOs in areas of Malaysia with greater risks, including on vulnerabilities for TF.

4.67. While NPO sector oversight has not resulted in any detections of TF in the sector, awareness raising with financial institutions of TF risks related to NPOs has led to STR reporting from RIs.

4.68. The assessment team notes that the RoS, the primary supervisor of NPOs, may require additional resources to effectively oversee the 44 826 NPOs under its purview. While RoS has effective channels of delivery, further effectiveness would arise from including additional focused risk information from SB that could be more widely shared.

4.69. The risk-based approach to NPO oversight is improving, but further refinements are needed. RoS considers NPO type and structure as the primary determinants of risk, with religious and charitable NPOs considered the highest risk for abuse by terrorists. Several NPOs suggested that the RoS and CCM could form an international department (either jointly or separately) to deal with NPOs that send and receive funds from abroad. Such a department could provide NPOs with more extensive guidance on how to guard against the risk of terrorist financing.

(c) Terrorist assets seizure and confiscation (criminal justice measures)

4.70. Effectiveness of freezing and confiscating in the context of criminal investigations and prosecutions of TF are considered at IO8.

(d) Consistency of CFT measures with the overall TF risk profile

4.71. The extent to which the TFS against terrorism and controls on NPOs are consistent with the overall TF risk profile is considered at each sub-section and is not repeated here.

Overall conclusions on Immediate Outcome 10

4.72. Malaysia's compliant legal framework for R.6 provides strong tools to identify terrorist networks and take steps to freeze terrorist assets.

4.73. The TFS regime is administered robustly and is effectively implemented to a large extent for both 1267 and 1373. Malaysia's 1373 designations in 2014 represent a wide cross-section of terrorist groups including local radical Islamic groups, regional groups and the LTTE. The authorities make a concerted effort to sensitize the public to TFS obligations and to assist potential asset holders in their TFS implementation. Malaysia is strongly pushing awareness of the TFS obligations to the RIs and is supervising implementation across FIs, casinos and TCSPs, but only a limited number of other DNFBP sectors. Supervisory outcomes, asset freezing and feedback on practical implementation by the private sector demonstrate improving outcomes across the Malaysian economy in keeping with the risks.

4.74. The TFS system is being used with increasing success and implementation is being steadily deepened. Terrorists and terrorist organisations are being identified in an effort to deprive them of the resources and means to finance terrorist activities. In absolute terms the amounts frozen under 1267 and 1373 are small, reflecting to some extent the cash economy nature of financing designated entities in the SE Asian region and the detention of a number of Malaysian designees. Malaysia considers that the amounts reflect the TF profile, i.e. self-funding and funding by family members, coupled with dismantling of terrorist groups capable

of large scale and systematic TF activities over the last decade, with only a recent upswing from ISIL threats. Assessors maintain that this may not explain the whole picture and full TF risks facing Malaysia.

4.75. Recently more freezing actions have taken place outside of the banking sector, including insurance companies, the pilgrims fund, securities firms and the freezing of ownership transfer for 44 motor vehicles by the Road Transport Department. These freezing actions reflected better implementation of checks on property indirectly owned or controlled by designated entities.

4.76. A significant risk mitigation for potential TF risks in the NPO sector is the centralised and closely monitored system of government controls over Zakat across the whole of Malaysia.

4.77. Outcomes of preventing TF abuse of NPOs have been achieved through the implementation of a targeted approach to educate and oversee NPOs that are at risk from the threat of terrorist abuse. Assessment of risk, outreach, targeted controls on high risk activities (charitable collection), centralised controls on Zakat and targeted compliance monitoring and enforcement of regulatory controls add to effectiveness for CFT. While improvements in its targeted approach to oversight and outreach have contributed to the prevention of terrorist abuse of the NPO sector, supervisors, particularly the RoS, may benefit from further resources to effectively monitor and conduct outreach to the sector. Continuing targeted risk information from SB is needed to support supervisors and the NPO sector to mitigate risks of terrorist abuse of NPOs.

4.78. **Malaysia has achieved a substantial level of effectiveness for Immediate Outcome 10.**

4.5 Effectiveness: Immediate Outcome 11 (PF financial sanctions)

(a) *Key technical compliance points which support or undermine effectiveness:*

4.79. Malaysia is rated partially compliant with R.7. Malaysia's Strategic Trade Act 2010 (STA) sets out a freezing obligation in regard to designated persons and entities in article 3(2)(b). The key deficiency is that the long process for the Strategic Trade Secretariat (STS) to convert UN designations into domestic designations builds in a substantial delay.

4.80. An additional gap is that the freezing obligation set out in article 3(2)(b) of the STA limits the scope of coverage of the entities obliged to take action. Section 3(2)(b) covers only citizens of Malaysia and bodies incorporated in Malaysia. While market entry conditions require all licensed RIs to incorporate in Malaysia, it is not clear foreign nationals or foreign legal persons in Malaysia who have not otherwise incorporated in Malaysia would be subject to the full range of freeze obligations and prohibitions on dealing.

(b) *Observations on context*

4.81. Labuan-based First East Export Bank was designated by the UN under UNSCR 1929 (a successor to UNSCR 1737) for links to the financing of proliferation. Malaysia's broader exposure to potential financing of proliferation include, but are not limited to, the country's exposure to Iranian and DPRK citizens and legal persons. Overall Malaysian FIs' exposure to customers from Iran and North Korea is very low (Iran: on-shore - 0.042% of total deposits placed in banking institutions, and offshore - 0.33% of total deposits; DPRK: on-shore 0.0012%, offshore - nil) with important exceptions. Malaysian businesses have exposure to trade and services with Iranian entities in the oil and gas sectors, although there was no trade in oil and gas between Malaysia and Iran in 2013 and 2014 (total trade with Iran was 0.24% in 2013 and 0.16% in 2014). There is limited exposure to the DPRK, although a small population of overseas foreign workers from the DPRK is present in Malaysia.

4.82. At the time of the onsite visit, there were some 3 000 Iranian companies registered in Malaysia (this is less than 1% of the total of approx. 445 928 active registered companies in Malaysia). There were 192 Iranian companies operating in Labuan including six engineering and construction companies. This represents approximately 2% of the roughly 10 000 Labuan companies (5 894 active companies) registered as at the end of 2013. There is also a population of Iranian students studying in Malaysia (5 009 Iranian

students were enrolled in learning institutions in Malaysia, i.e. 1.8% of total students (higher learning) in Malaysia as of 31 December 2013).

4.83. Malaysia has provided limited guidance to RIs on their exposure to PF risks to assist with implementation of TFS. Malaysian authorities have mapped out some of the elements of financial exposure to Iranian and DPRK entities to assist RIs with implementation.

(c) Implementing TFS to combat of financing of proliferation

4.84. Coordination for implementation TFS against financing of proliferation of WMD is conducted through a sub-committee of the NCC and is strongly supported by the STS (housed within MITI) and lead AML/CFT agencies. In addition, the Strategic Trade Action Committee (STAC) was established in 2011 to discuss issues to implement the STA. A number of agencies beyond the NCC members are included in these processes. These strengths are set out at IO1 and add to effectiveness.

4.85. Malaysia has taken steps to prevent persons and entities involved in the proliferation of WMD from raising, moving, and using funds by implementing TFS and vigilance measures. Malaysia implements TFS through the Strategic Trade Act 2010, the CBMA 2009, and the LFSAA 1996.

4.86. The legal framework for transposing UN designations into domestic designations builds in long delays which undermines effectiveness. Following a UN designation, Malaysia's STS must go through a domestic designation process that, at best, may take several weeks, and in practice may often take a number of months. While FIs and government agencies outside of the STS may be made aware of a UN designation during the period in which the STS is processing the designation, the government and private institutions do not have a proper legal basis to freeze assets of the designated individual or entity during this time even if a match is detected.

4.87. Once Malaysian authorities complete the domestic designation process for an individual or entity designated at the UN for financing of proliferation, this information is shared automatically with FIs through the FINS system and through online portals on the MITI website. In addition, BNM, SC, and LFSAA send the names and identifying information to the relevant RIs and DNFBPs and post the information on their websites. These avenues ensure that all RIs are made aware without delay of the requirements to check customers and transactions and follow the prohibitions on providing funds and services.

Extent of implementation

4.88. Malaysia has demonstrated a number of steps to identify and freeze the funds or other assets of designated persons and entities, however, major improvements are required to make the process more effective. FIs screen against the UN and other relevant lists both when on-boarding a customer and at the time of a transaction. DNFBPs also conduct list-based screening of names, although it is not clear that DNFBPs do so with the same level of regularity and rigour as larger FIs.

4.89. The case of a Labuan-licensed bank designated under UNSCR 1929 (a successor to UNSCR 1737) is the primary case of asset freezing for IO 11 and demonstrates the points of strength and weakness in Malaysia's system of TFS related to proliferation financing. Malaysian institutions and authorities have frozen significant assets related to listed entities under UNSCR 1737 and successor resolutions, but no assets related to UNSCR 1718. Assets were held in the Labuan-licensed bank designated by the UN and two onshore banks with the most significant holdings being in foreign currencies.

Table 4.4. Assets Frozen in Malaysia pursuant to UNSCRs against WMD Proliferation

| UNSCR | Year | Number of institutions | Total Frozen (in USD equivalent) |
|-------------|------|------------------------|----------------------------------|
| 1718 (DPRK) | - | - | - |
| 1737 (Iran) | 2010 | 3 | 29 407 068 |

Box 4.4. Case study: A Labuan-licensed bank designated under UNSCR 1929

A Labuan-licensed bank was designated under UNSCR 1929 (10 June 2010) for involvement in Iran's nuclear or ballistic missile activities. On 17 June 2010, Malaysia's MOFA informed LFSA, BNM, the SC and STS of the UNSC Resolution. From June to August 2010, the relevant Malaysian authorities issued directions to RIs to implement the required freeze orders under UNSCR 1929. The licensed bank's activities in Malaysia were suspended and the accounts it held were frozen and accounts at two other Malaysian financial institutions were also frozen. While this process was not without delay, TFS were eventually imposed upon the entity by Malaysian authorities.

4.90. Malaysia's experience in allowing access to frozen funds is in accordance with the international standards. Malaysia allowed the financial institution holding frozen funds to access funds to pay for basic expenses. Malaysian authorities sought guidance from the UN Security Council's 1737 Committee and have required extensive reporting from the financial institution to ensure compliance with the permitted payments. This example demonstrates that Malaysia's framework for managing funds and licensing for basic expenses in such cases is comprehensive and working well to ensure the UN maintains oversight of release of frozen funds.

4.91. Malaysian authorities were successful in freezing assets pursuant to UNSCR 1929. The small number of depositors were neither persons or entities designated under the UNSCR nor were they controlled by designated entities. LFSA conducted due diligence check on all the depositors and shared the list of the depositors with the special committee that investigated the case comprising LFSA, MOHA, MOFA, MoF, Atomic Energy Licensing Board and BNM. In addition, the report on the Labuan-licensed bank designated under UNSCR 1929 was tabled to the Prime Minister and the members of the Cabinet. The NCC high level group had also been informed of the implementation of TFS.

4.92. LFSA, BNM and SC have market entry procedure in conducting CDD including cross checking with LEAs on persons including but not limited to the list of person or entities sanctioned by UNSCR or other relevant authorities. This is an effective control in relation to the possibility of re-entry of undesirable persons into the Labuan/Malaysian financial market, including former account holders with the Labuan-licensed bank designated under UNSCR 1929 as management or licensees of financial institutions. This information also informs the risk mitigation work of supervisors.

4.93. Malaysia has proactively sought information from the UN Sanction Committee to provide detailed information on TFS related to PF to guide RIs. However, to date Malaysia has not received any response from the committee on the specific case. While Malaysian authorities took comprehensive steps to alert regulators and other authorities, their alerts to FIs and DNFBPs on the risks associated with persons and entities potentially acting on behalf or at the direction of the designated entities were confined to the vigilance measures outlined below.

(d) FIs and DNFBPs compliance with targeted financial sanctions

4.94. Since 2010 there have been six outreach events to RI, including Labuan DNFBPs, focused on PF TFS. These have included the Association of Banks. These have included targeted sessions to certain FIs at particular risk as well as broader awareness raising through the CONG-organised 2013 International Conference on Financial Crime and TF. This outreach has added considerably to the awareness of RIs.

4.95. For Labuan, engagement sessions given to the industry players touched on general risks which included TF and PF risk awareness and guidance. In 2014 LFSA conducted six outreach sessions with industry players. LFSA has communicated the UNSCR list to the industry as and when this is updated.

4.96. BNM has issued a series of circulars to RIs on how to implement TFS related to PF, which has helped to raise awareness of the UN lists the obligations for freezing and prohibitions. However, some of these

circulars have provided a narrow reading of operative paragraphs of UNSCRs, which could limit Malaysian FIs' understanding of their TFS obligations, albeit the full UNSCRs were also included in the circulars. The guidance does not adequately address the potential for PF-related sanctions evasions, by persons and entities acting on behalf or at the direction of a designated person or entity.

4.97. FIs seem to understand their obligations and comply with TFS relating to financing of proliferation in so far as they screen against the UN and other lists of designated persons and entities both when on-boarding a customer and at the time of a transaction. Despite the delays in giving effect to UN designations at the national level, in practice, large FIs in Malaysia monitor the UN lists directly rather than waiting for the lists to be transposed into Malaysian law. The Malaysian government encourages this practice as a way to mitigate the delays in transposing designations. In 2014, BNM also distributed circulars to FIs and DNFBPs highlighting new UN listings prior to giving effect to the designations under Malaysian law. Authorities acknowledge that FIs would not be obliged under Malaysian law to freeze assets if such a case were to arise.

4.98. Given that the level of information available to RIs on red flags and typologies associated with PF and sanctions evasion is generally lower than it is for TF, there is a need for major improvements. Further information sharing between competent authorities such as the RMP's SB, the Ministry of Foreign Affairs, and the STS and supervisors could assist in this regard. While authorities share information on PF threats with RIs other than on a case-by-case basis and through some of the outreach described, RIs rely largely on publicly available information as their principal means to mitigate the risk of financing of proliferation.

4.99. Most FIs and DNFBPs have identified Iran and the DPRK as high-risk jurisdictions. However, Iran and the DPRK are generally identified as such due to the FATF call for countermeasures, and not particularly due to sanctions obligations. The STS has done some work to detect activities intended to evade export control requirements, but competent authorities have yet to extend this work in any systematic way to the detection of attempts to evade targeted financial sanctions.

4.100. Supervisors monitor FIs and certain DNFBPs for compliance with TFS and outcomes of supervision demonstrated implementation of list based screening. Supervisors have recognised the need for some RIs to do more to detect assets of entities acting on behalf or at the direction of a designated person or entity. The increase in success with such detections for terrorism related TFS indicates an overall level of improvement in this area, but more needs to be done.

Vigilance Measures

4.101. Malaysia has implemented a series of vigilance measures which go beyond the standard of R.7 and add to effectiveness. Malaysian authorities have demonstrated vigilance over DPRK citizens and legal persons at the point of market entry BNM circulars issued further to UNSCR on Iran and WMD require RIs to exercise vigilance over the transactions involving the Islamic Revolutionary Guard Corps that could contribute to Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems; and (j) when doing business with entities incorporated in Iran or subject to Iran's jurisdictions including those of the ICRG and Islamic Republic of Iran Shipping Lines and any individuals or entities acting on their behalf or their direction, and entities owned or controlled by them, if there is information that provide reasonable grounds to believe such business could contribute to Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems or to violation of the provisions in the relevant UNSCRs. Malaysian FIs, taking a risk-based approach, have tended to focus their vigilance on the country's exposure to Iranian citizens and legal persons. It was not clear to the assessment team, however, that RIs understand the specific concerns related to DPRK diplomatic personnel arising from OP 24 of UNSCR 2094 which 'calls upon States to exercise enhanced vigilance over DPRK diplomatic personnel so as to prevent such individuals from contributing to the DPRK's nuclear or ballistic missile programs.'

4.102. The STA extends the obligation to comply with activity-based financial prohibitions as laid out in the relevant UNSCRs to RIs. This could add to effectiveness if it was well understood and implemented by RIs, however, it was not clear to the assessment team that RIs had any detailed understanding or method for complying with activity-based financial prohibitions.

Box 4.5. Case study: Malaysian bank ceases correspondent banking relationships with Iranian Banks

In 2008 a bank in Malaysia which had maintained correspondent banking relationships with three Iranian banking institutions since 1992 and a further one since 2004 decided to terminate its relationship with these institutions. The bank had maintained correspondent banking relationships with Bank Melli, Bank Sepah, Bank Tejarat and Bank Saderat, which were not designated by the UN, but were subject to other countries' bilateral designations based on links to proliferation financing. The Malaysian bank decided to terminate these relationships due to the level of operational risk they presented.

4

Monitoring and ensuring compliance by RIs

4.103. Competent authorities generally do not share sufficient information with RIs to ensure full and timely compliance with all obligations regarding targeted financial sanctions relating to PF.

4.104. Supervision of FIs and DNFBPs has focused on the implementation of TFS requirements, including PF-related TFS for both onshore and offshore entities. Recognising Labuan's exposure to Iranian entities, LFSA has conducted targeted supervision of Labuan RIs, including TCSPs, for compliance with TFS related to PF. LFSA has indicated that it is sensitive to the PF risks and potential vulnerabilities. LFSA intends to reconsider the inherent risk rating for PF as part of the Labuan Risk Assessment review. LFSA shared details of stricter oversight and controls over those regulated entities with exposure to Iran have been implemented, including tightened market entry controls.

4.105. As set out at IO3, supervision of DNFBPs other than casinos, Labuan TCSPs and a limited number of other DNFBPs has not yet been undertaken to any significant degree, so levels of implementation of PF-related TFS have not been tested and are assumed to be weak. No specific sanctions have been applied to RIs for breaches of PF-related targeted financial sanctions requirements.

Overall conclusions on Immediate Outcome 11

4.106. Malaysia's technical gaps in relation to R7 are significant and major improvements are required to make the process more effective. The long delays in transposing new designations made by the UN into Malaysian law undermine effectiveness, particularly taking into account the context of Malaysia's exposure to PF-related entities. Malaysia is working to address the legislative gaps by amending the STA. RIs have increasingly good awareness of obligations, particularly in Labuan and major FIs with relevant risk exposure and supervision of obligations is taking place, but implementation could be deepened and further supported with additional guidance.

4.107. Two Malaysian banks have together frozen over USD29 million of assets related to one Labuan domiciled Iranian bank designated under UNSCR 1737 and successor resolutions, but no assets related to UNSCR 1718. Vigilance measures adopted by Malaysia add to effectiveness.

4.108. **Overall, Malaysia has demonstrated a moderate level of effectiveness for Immediate Outcome 11.**

4.6 Recommendations on Terrorist Financing and Financing of Proliferation

- Amend the Penal Code to ensure the TF offence applies to all offences set out in the treaties annexed to the TF Convention.

TERRORIST FINANCING AND FINANCING OF PROLIFERATION

- Give greater priority to the use of the TF offence (including prosecution) to disrupt, dismantle and sanction terrorist acts and terrorist organisations in keeping with the risk profile.
- Further enhance the resources of the RMP AMLA Unit in relation to TF investigations.
- Consider moving CFT responsibility within the RMP structure to co-locate with relevant officers of SB looking at CT investigations and raise the institutional prominence and capacity of the TF intelligence/investigations function. As part of this consider the joint agency model Special Taskforce for a more robust joint agency intelligence and investigation response to TF.
- SB should deepen sharing of TF-related intelligence with RMP AMLA Unit and other core partners such as RMC and BNM FIU to assist with targeting TF and developing TF intelligence.
- Support greater information sharing on TF risks and vulnerabilities both within the Malaysian government and with all RIs to support TFS implementation.
- See IO3 and IO4 recommendations regarding awareness raising, further guidance and supervision of all sectors, but particularly those DNFBPs not yet subject to onsite supervision for TFS related to TF and PF.
- Consider increasing the resources dedicated to supervision of the NPO sector and continue to deepen the risk-based approach to outreach and supervision of the NPO sector while making a push to increase compliance with reporting requirements for NPOs.
- Intensify efforts to trace, seize confiscate assets and instrumentalities related to TF offences in keeping with the risk profile.
- Remove the delays in the process to translate UN designations into domestic law for Rec 7. Consider making designation automatic for purposes of asset freezing.
- Deepen the implementation of the mechanism of list-based screening and focus more on identifying those acting on their behalf or at the direction of designated entities.

5. PREVENTIVE MEASURES

5

Key Findings

Malaysia is achieving the immediate outcome to some extent. The majority of Malaysia's preventive measures are technically compliant and cover all FIs and DNFBPs, with the exception of a small number of dealers in precious metals and stones.

While Malaysia has a risk-based approach, several sectors are still transitioning from a rules-based to risk-based approach. Supervisory findings demonstrate that RIs have a mixed understanding of risk and application of CDD requirements, including CDD on beneficial owners, on a risk sensitive basis, but rather in a prescriptive formal manner. TFS appear to be well understood and implementation has recently been deepened beyond list checking.

There has been strong regulatory engagement across the FIs, the casino and offshore TCSPs, which reflects the higher risk areas to raise awareness of risk and obligations. Other DNFBPs have received less outreach and supervisory attention.

5.1 Background and Context

(a) Financial Sector and DNFBPs

Table 5.1. Malaysia's Reporting Institution Population as at 31 December 2013

| No. of entities as at 31 December 2013 | |
|---|--------|
| Onshore Financial Institutions | |
| Banking institutions | 55 |
| Development financial institutions | 13 |
| Insurance companies (incl. general insurance) | 56 |
| Pensions & provident fund | 3 |
| Fund management | 86 |
| Other non-bank financial institution | 10 940 |
| Stockbroking | 31 |
| Dealing in derivatives | 18 |
| Money service businesses | 474 |
| Non-Bank FIs | 4 |
| Leasing & Factoring | 405 |
| Moneylenders | 2 563 |
| Labuan IBFC (offshore) | |
| Commercial banks | 43 |
| Investment banks | 16 |
| Insurance companies (incl. general insurance) | 213 |
| Leasing companies | 312 |
| Private funds | 59 |
| Onshore DNFBPs | |
| Casino | 1 |
| Lawyers | 4 753 |
| Estate agents | 1 764 |
| Trust companies | 28 |
| Company secretaries | 12 359 |
| Gaming companies | 6 |
| Jewellers | 1 600 |
| Accountants | 2 782 |
| Pawnbrokers | 329 |
| Notaries | 275 |
| Labuan IBFC DNFBPs | |
| Trust companies | 36 |

5.1. Details of the structure and scope of Malaysia's financial sector are set out at s.1.2.

PREVENTIVE MEASURES

(b) Preventive Measures

5.2. Malaysia has updated almost all the technical elements of the preventive regime for AML/CFT since the last evaluation in 2007. There is a high degree of consistency between Malaysia's preventive regime and the FATF Standards for both FIs and DNFBPs. The level of technical compliance for preventive measures is generally high for all sectors. The AMLA establishes the scope of AML/CFT obligations, the core requirements for CDD, other preventive measures, STR reporting, and supervision of these obligations. The AMLA is supplemented by revised Guidelines which are enforceable regulatory instruments, and which include unenforceable guidance which is delineated in each Guideline. The Guidelines were issued by supervisors in late 2013 under the AMLA and parallel powers in legislation supporting each supervisor's functions.

5.3. There is a range of written guidance and feedback to assistance compliance with the obligations, which includes typologies, dialogue, conferences and one-on-one meetings. Outreach by the FIU and supervisors is a strong feature of the system.

(c) Risk-Based Exemptions or extensions of preventive measures

5.4. Malaysia has granted some risk-based exemptions based on domestic considerations. Following the assessment in the 2013 that general insurance (including takaful) is low risk due to the nature of the products sold, it is no longer subject to AML/CFT obligations under the Guidelines. Similarly, custodians of cash and liquid securities are not subject to AML/CFT obligations based on low risk because (a) the business is carried on by other institutions that are already subject to these obligations and is limited to business conducted with fund managers; and (b) they do not interact directly with customers of fund managers.

5.5. In line with the standards relating to applicable designated thresholds for occasional transactions, Malaysia has implemented the following thresholds:

- a. Banks and deposit-taking institutions: RM 3 000 (USD 896) for currency changing transactions and RM 50 000 (USD 14 937) for occasional transactions including linked transactions.
- b. Money changing and wholesale currency entities: RM 3 000-10 000 (USD 896-2 987) identification information only is required while above RM 10 000 (USD 2 987) a photocopy of the identification information is also required.
- c. Electronic money and non-bank charge and credit card entities: for transactions RM 3 000 (USD 896) and for customer purses when the balance is RM 5 000 (USD 1 494) or above.

5.2 Technical Compliance (R.9-23)

- R.9 – Financial institution secrecy laws - **Malaysia is rated largely compliant**
- R.10 – Customer due diligence - **Malaysia is rated compliant**
- R.11 – Record-keeping - **Malaysia is rated largely compliant**
- R.12 – Politically exposed persons - **Malaysia is rated largely compliant**
- R.13 – Correspondent banking - **Malaysia is rated largely compliant**
- R.14 – Money or value transfer services - **Malaysia is rated compliant**
- R.15 – New technologies - **Malaysia is rated compliant**
- R.16 – Wire transfers - **Malaysia is rated compliant**

- R.17 – Reliance on third parties – **Malaysia is rated largely compliant**
- R.18 – Internal controls, foreign branches and subsidiaries - **Malaysia is rated compliant**
- R.19 – Higher-risk countries - **Malaysia is rated compliant**
- R.20 – Reporting of suspicious transactions - **Malaysia is rated compliant**
- R.21 – Tipping-off and confidentiality - **Malaysia is rated compliant**
- R.22 – DNFBPs: Customer due diligence - **Malaysia is rated largely compliant**
- R.23 – DNFBPs: Other measures - **Malaysia is rated largely compliant**

5.3 Effectiveness: Immediate Outcome 4 (Preventive Measures)

(a) *Understanding of ML/TF risks, AML/CFT obligations, and application of mitigating measures*

5.6. The risk-based approach was introduced in Malaysia in 2006/2007 for all FIs and DNFBPs on a phased basis. While risk-based approaches have been required for some years, the shift from rules-based to risk-based approaches has taken some time and key supporting elements for full implementation, such as the completion of a comprehensive NRA, are quite recent. In most sectors, particularly MSBs (MVTS and money changers) and DNFBPs, there appears to be a preference to approach AML/CFT obligations in a rules-based manner.

5.7. The updated NRA was disseminated only a few months before the onsite visit and processes within RIs of analysing and incorporating the risks in their risk assessment and mitigation systems are therefore still to be completed.

5.8. Malaysia's assessment and the evaluation team's visit indicate that the degree of understanding of ML/TF risks and AML/CFT obligations varies amongst sectors. The banking sector has a better understanding of risk. Regulatory obligations for RIs are generally better understood than ML/TF risks and ML risks are better understood than TF risks. Larger, more sophisticated entities, such as the larger banks, present relatively better understanding of their risk profile and their AML/CFT obligations and better application of mitigating measures.

5.9. The Labuan offshore sector exhibited a lesser understanding of ML/TF risks compared with the RIs supervised by the BNM and SC. The offshore sector's understanding of TF risks in particular appeared to be low.

5.10. Understanding of ML/TF risks and the NRA among DNFBPs, with the exception of the casino and some TCSPs, appeared to be very low. In relation to the standards on groups introduced in November 2013 and, as identified by the BNM, the casino has not done enough to consider the ML/TF risks arising from its foreign subsidiaries. The evaluation team noted that one TCSP in Labuan was of the view that there were no ML/TF risks as cash transactions are not permitted in the IBFC. In light of the foregoing and the low level of STRs, the evaluation team considers that there is a need for a further assessment of risks of DNFBPs by the authorities.

5.11. The supervisory authorities have conducted a cross-sector analysis of the level of awareness of risk and obligations in order to identify strengths and weaknesses. The level of understanding of AML/CFT requirements in the revised AMLA and the Guidelines varies across sectors. Implementation in key areas such as beneficial owners, PEPs and the risk-based approach has proven challenging. Malaysia has recognized that improvements are needed in how RIs outside the banking sector address the identified risks to those sectors. Supervisors and the FIU have conducted significant outreach activity with RIs and industry associations to

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seek to raise awareness of the AML/CFT obligations. The most comprehensive outreach has been provided to FIs regulated by the BNM and the SC. The analysis undertaken by the authorities provides a strong basis for identifying further areas for enhanced outreach and regulatory activity regarding risk and risk identification and mitigation. Significant outreach needs to be provided to DNFBPs beyond the casino and Labuan TCSPs in particular.

5.12. The results of the NRAs have been transmitted to RIs and they appear to be aware of the five high risk areas which have been identified. They are generally accepted by the private sector although some supervised RIs noted that they expected TF also to be classified as higher risk. RIs demonstrate broader awareness of TF risk and awareness of the need to apply CFT measures. However, detailed identification and assessment of TF risk is still developing and insufficient consideration is given by some RIs met by the evaluation team to TF beyond TFS compliance. In addition, in practice there was no clear or explicit link between the five high risk areas and the risk identification and mitigation approaches of RIs. More guidance on how to identify and address risk relevant to each sector in the context of the NRA is needed.

5.13. Obligations for RIs to conduct a risk assessment with periodic review and updates have applied for many years. Except for the supervised DNFBP sectors such as lawyers and accountants, it appears that supervisory engagement before and since the publication of the latest NRA has largely resulted in RIs updating their own risk assessments and taking steps to identify threats and vulnerabilities, including risk profiling, CDD and enhanced due diligence.

5.14. In some instances, supervised RIs have shown a preference for avoiding business with certain high-risk customers (for example, some MSB MVTs providers), rather than applying graduated measures or enhanced CDD. This is a challenge for financial inclusion. Malaysian supervisors strongly support measures to enhance financial inclusion while strengthening AML/CFT and indicate that the number of RIs that have terminated their relationships with MSBs is low and confined to some foreign banks. Given the number of commercial banks continuing to provide banking services to MSB players, BNM does not see any issues relating to exclusion of MSB operators.

5.15. BNM and SC have identified weaknesses in RIs and are working seriously to deal with them. Sanctions issued by BNM and SC have been persuasive in enhancing compliance/awareness of obligations. This is evidenced by the increased importance placed on AML/CFT compliance functions and a trend toward improved reporting of TF. The banking sector appears to understand the risks posed by cross-border customers at a high level although more needs to be done to seek to prevent the proceeds of foreign crimes from entering Malaysia or Labuan. Banks have implemented risk assessments and mitigating controls. The depth of risk assessments varies across the industry, with larger institutions developing more detailed assessments. The interconnectedness of the Malaysian financial sector means that these banking groups control key players in a number of other sectors, which adds to effectiveness. There is a compliance culture within these entities, illustrated by the CONG's close collaboration with authorities on industry standards, standard operating procedures, and international conferences. The insurance sector has varying understanding of AML/CFT obligations, which would extend to insurers taking appropriate measures commensurate with their risk profiles. The authorities consider that the majority of insurers have put in place measures commensurate with risk.

5.16. It is clear that mitigation of ML/TF risk in the MSB (MVTs and money changers) sector has improved significantly over the last two years. This is primarily attributable to the relicensing of the sector from 2011 to 2013. The risk based approach is new to the sector and its adoption is at an early stage. The level of understanding of implementing a risk based approach and how to relate this to mitigating measures is still an issue, in particular for some small and medium sized MSBs.

5.17. Malaysia's casino has developed a structured approach with senior management commitment and is largely aware of its risks and obligations. It continues to implement measures to mitigate risks such as those presented by junket operators. It has a proactive approach - for example, it proposes to issue warrants which bear the player's name and which are traceable.

5.18. There has been limited interaction between supervisors and the estate agent sector, which remains largely uninformed about AML/CFT obligations and mitigating measures.

5.19. Dealers in precious metal and stones have very low awareness of AML/CFT obligations and measures. Three hundred and forty-five dealers in precious metals and precious stones are not covered by the AML/CFT framework. Those dealers already subject to AML/CFT requirements under the AMLA are not being supervised.

5.20. The evaluation team noted that legal professionals did not have much understanding of AML/CFT until 2014; they are still familiarizing themselves with their AML/CFT obligations. The awareness of obligations and mitigating measures of other DNFBPs which have a ML/TF gatekeeper role appears to stop at record keeping and STRs.

(b) CDD and record-keeping

5.21. Most sectors tend towards a rules-based approach to compliance with CDD requirements. Risk-sensitive approaches to implement CDD requirements, including those for beneficial owners, are uneven across sectors. The understanding by some sectors and smaller supervised RIs' of the RBA is sometimes inadequate and, as a result of this and the matters identified in section (a) above, preventive measures may not always be informed by full information on customer relationships or well targeted to mitigate ML/TF risks. Supervisors have identified some deficiencies in the implementation of CDD measures.

5.22. Malaysia's national identity card (NRIC) system includes a population register available to government. The national identity cards, which have been in place in their current form since 2001, include biometric data and provide a strong element of identification during CDD processes. Given the ability of RIs to conduct biometric verification from the NRIC, the holder is required to attend in person to complete opening of accounts and transaction over the counter biometric verification. The strength of the national identity card system may have contributed, to some extent, to an over-reliance on this identity point in CDD processes.

5.23. Supervised RIs are undertaking beneficial ownership checks. Malaysia has taken some strong steps to support RIs in obtaining beneficial ownership information and in identifying and overcoming challenges in order to deepen implementation. Discussions with institutions and supervisors indicate that identification and verification of beneficial owners is one of the main challenges for industry. The issues and problems in practice are specified in more detail in IO5. There are some gaps in the effectiveness of identifying and verifying beneficial owners.

5.24. There are also challenges arising from (a) the recent updates to the Guidelines and the practice of 'mule' accounts, which includes individuals who are paid for the use of their ATM cards. Supervised RIs seem to be aware of the risks and cooperate with supervisors and LEAs to mitigate them. While some 300 names of individuals who have allowed their identities to be used as mule account holders have been disseminated by RMP, the evaluation team does not consider that the total number of mules is limited to these 300 individuals. The challenge appears to be significant. In addition, the evaluation team was advised that challenges arise from business relationships which are structured to use both Malaysia and Labuan and which have different parts of the relationship onshore and offshore. Structuring of relationships in both Malaysia and Labuan was described as quite common.

5.25. Malaysia was able to demonstrate a credible level of instances where RIs have refused new business or have terminated existing relationships, and also that they file STRs where CDD is incomplete. STR data indicates that failures in relation to CDD arise from the use of fictitious documents and the unwillingness of customers to provide information required by RIs.

5.26. Malaysian institutions do not tend to rely on third parties for the CDD process. The controls on such reliance are applied to a substantial degree. RIs are able to verify some ownership information provided by customers with the CCM and the LFSAs registries when the ownership structure is wholly within Malaysia. However, there are challenges where structures have foreign ownership.

5.27. Customers are normally categorised into low, medium and high risk categories with differing levels of CDD and ongoing monitoring attaching to each category. Ongoing monitoring by supervised entities can also include trigger events and transaction monitoring.

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5.28. Banks have incorporated CDD requirements within their policies and processes. Difficulties in the banking sector in verifying beneficial ownership also arise from resource constraints within some banks, including capacity challenges with compliance teams and concerns about the sharing of information between banks (except within groups). In addition, banks are increasing business at a rapid rate and there may be an over reliance on their second line of defence, i.e. the compliance function, to mitigate ML/TF risk after customers have been taken on, although this is not the case for all banks. There is a need to further support the ML/TF prevention role by front line staff in some cases.

5.29. Within the MSB (MVTs and money changers) sector, the reduction in number has improved the quality of AML/CFT measures generally, including the obtaining of beneficial ownership information. However, there are still implementation challenges in relation to small and medium sized MSBs, which BNM is working to address.

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5.30. Onshore trust companies tend to meet clients face to face. Half of the trust companies are bank-backed and subject to their respective parent bank's AML/CFT compliance program. Onsite examinations indicate that, while a significant number of trust companies have high awareness of their risks and responsibilities, there are varying levels of sophistication with respect to the systems and internal controls established to address these risks. The less effective RIs require substantial improvements to their risk management functions with respect to client risk profiling and in the detection of suspicious transactions.

5.31. The casino undertakes ongoing monitoring of customers. Monitoring has now been streamlined so that it more effectively concentrates on red flags and exception reports.

5.32. Compliance with CDD obligations by other DNFBPs is not sufficiently known to the authorities. In addition, from its meetings onsite the evaluation team is of the view that improvements are needed given the gate keeper role of many DNFBPs.

5.33. In Labuan most business is face to face business. The more effective Labuan entities have established good procedures for CDD and enhanced CDD on higher risk clients and to prevent dealings with sanctioned persons. On a number of occasions STRs have been made by Labuan RIs in connection with refused business. Nevertheless, improvements are needed to implement more sophisticated controls, supported by up-to-date management information systems. Client risk profiling by trust companies is varied in terms of quality. Onsite inspections indicate that there have been gaps in both risk profiling and CDD in the banking sector, especially by investment banks. In addition, for some investment banks with non-bank parents and insurers, deficiencies have been observed with regard to the absence of EDD and trigger parameters. Ongoing scrutiny of business relationships is rules based with the period of time between ongoing scrutiny being subject to the risk of the relationship.

5.34. Record keeping requirements in Malaysia are long-established. The implementation of these requirements is closely monitored by supervisors. LEAs reported a range of cases involving legacy records and good availability of records from FIs in line with legal requirements. Taken together, feedback from supervisors, LEAs and RIs indicate that implementation of these requirements is at a high level by supervised RIs in Malaysia and Labuan.

(c) Enhanced measures

5.35. Findings by supervisors and feedback from RIs noted that identification of close associates and family members of foreign PEPs and of domestic PEPs is a challenge. Banks and larger players in the securities and insurance sectors, as well as TCSPs, utilize a combination of commercial databases and customers' self-declaration for PEP screening and no significant issues seem to have arisen with the identification of foreign PEPs. Supervisors recognise that such systems are unable to identify all domestic PEPs and their family members and associates and that obtaining source of funds presents challenges. Malaysia has indicated that it is preparing further guidance for RIs, which will include targeted guidance to support the risk profiling of domestic PEPs.

5.36. Should a person become a PEP (or a close associate or family member) after the business relationship has commenced, it is likely that this fact would only become known to RIs during their ongoing reviews of

relationships unless a self-declaration is made. The frequency of monitoring is largely dependent on risk. A typical scenario for routine reviews is the review of high-risk relationships every year and reviewing medium or low risk relationship every two or three years respectively. Trigger events for PEP related CDD include elections and receipt of applications for new products and services. Some FIs run daily checks against commercial databases and it is therefore also possible for changes of status of PEPs to be discovered at an early stage.

5.37. Awareness and compliance with the standards on correspondent banking appear to be satisfactory. Banks are conscious of the FATF's published lists of jurisdictions when considering whether or not to establish correspondent banking relationships.

5.38. With reference to assessment of risk in relation to products, business practices and new technologies, RIs met by the evaluation team had not introduced new products or practices since the requirements were introduced. Most procedures manuals of supervised FIs have been updated to meet the requirements of the 2013 Guidelines in this area. Prior to the evaluation, SC noted that more than 60% of RIs it supervises had introduced the requirements in their policies and procedures.

5.39. There appears to be a good level of compliance with wire transfer requirements, including the requirements for beneficiary information. Wire transfer systems are automated. It appears that incomplete fields would prevent payment from being made and lead to banks and MSBs (MVTs and money changers) seeking to obtain the missing information.

5.40. Supervisory results and discussions with RIs confirm that there appears to be good awareness of obligations to implement targeted financial sanctions against terrorism, including UN and domestic (1373) lists. Supervised RIs generally conduct list-based screening as part of their CDD both when onboarding a customer and at the time of a transaction. A wide range of supervised RIs subscribe to transaction and account monitoring systems to assist with screening. Recent TFS freezing of assets indirectly owned or controlled reflect improved processes for sanctions screening (see IO10).

5.41. Supervisors have guided RIs regarding higher risk jurisdictions identified by the FATF. Supervised RIs which have banking relationships with particularly high-risk jurisdictions (Iran and DPRK) have procedures in place to limit services provided. There are some controls in place in the offshore sector that are specific to Iran but more considered guidance for identifying and mitigating risks from high risk jurisdictions (going beyond off-boarding) is needed.

5.42. In relation to higher risk jurisdictions more generally, supervised RIs have good awareness of the TFS lists and three approaches appear to be taken across sectors: first considering Iran and DPRK and only these two jurisdictions as high risk jurisdictions; second, considering all of the jurisdictions in the public lists issued by the FATF as high risk; and third, considering as high risk all jurisdictions listed by the FATF together with other jurisdictions. In light of these differing approaches, RIs would benefit from further guidance. In general, there appears to be a good standard of AML/CFT measures which have been adopted in relation to customers from high-risk jurisdictions.

5.43. Within Labuan, the picture of compliance with enhanced measures in relation to PEPs, correspondent banking, wire transfers and higher risk countries appears to be good. The evaluation team noted that not all RIs interviewed obtain source of funds for high-risk relationships. The same point on timing of the detection of PEPs made for Malaysia applies to Labuan. In addition, there were not always mechanisms in place to identify family members and close associates of PEPs.

(d) Reporting suspicious transactions

5.44. The FINS system supports timely and accurate reporting of STRs and CTRs and feedback from the FIU. There is regular contact between RIs and the FIU on the quality of STRs.

5.45. In general, reports are considered to be useful by the authorities (noted under IO.6). The Malaysian authorities are broadly content with the number and quality of STRs made by FIs but clearly wish to see

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improvements to the quality of STRs filed by MSBs (MVTS and money changers). The tables below demonstrate levels of STRs made by FIs and DNFBPs.

Table 5.2. STR submitted from 2009 to 2013 by industry group

| STR by industries | Risk (NRA) | 2009 | 2010 | 2011 | 2012 | 2013 | TOTAL |
|--------------------------|------------|---------------|---------------|---------------|---------------|---------------|----------------|
| Banking (including DFIs) | High | 5 549 | 5 884 | 7 666 | 7 442 | 9 124 | 35 665 |
| Insurance | Low | 1 747 | 1 344 | 1 358 | 1 393 | 1 344 | 7 186 |
| Money Services Business | High | 5 187 | 7 730 | 14 137 | 15 541 | 9 203 | 51 798 |
| Non-Bank FIs | Medium | - | 7 | 17 | 8 | 291 | 323 |
| DNFBP – Casino | High | 229 | 1 170 | 3 257 | 849 | 1 392 | 6 897 |
| DNFBP – Other | Medium-Low | 62 | 107 | 109 | 102 | 115 | 495 |
| Offshore FIs | Medium | 1 | 8 | 5 | 8 | 12 | 34 |
| Securities | Low | 21 | 25 | 66 | 99 | 63 | 274 |
| E-money Operators | Low | - | 368 | 1 360 | 1 788 | 1 232 | 4 748 |
| Others | Medium-Low | 4 | 7 | 50 | 58 | 16 | 135 |
| TOTAL | | 12 800 | 16 650 | 28 025 | 27 288 | 22 792 | 107 555 |

5.46. There is significant variation across sectors in the filing of STRs, some of which does not match with the risk profile of the sectors. The Malaysian authorities have reviewed the levels of reporting by sector and the pattern of predicate offences within STRs made by particular sectors. FIED intends to continue these reviews. Supervisory action and feedback from the FIU over a number of years has sought to ensure increasing quality of STRs. These interventions appear to have resulted in positive outcomes, particularly in the banking sector, although the MSB (MVTS and money changers) sector in particular still has some way to go. FIED and supervisors are working on guidance and red flags to support improved quality of STRs.

5.47. Banks and MSBs (MVTS and money changers) submit the highest volume of reports, which, at face value, reasonably reflects their risk profile and the volume of business and transactions. In order to form a view of the total level of STRs from the securities sectors, STRs reported by investment banks in relation to capital market related transactions should be included within the analysis. The total number of STRs made for Malaysia's securities sectors are 90 in 2009, 146 in 2010, 323 in 2011, 342 in 2012 and 330 in 2013 (totalling 1 231). Based on their reviews, the Malaysian authorities have concluded that the number of reports is not a concern; the evaluation team does not challenge this view. The level of reporting for DNFBP sectors except the casino is very low, which does not accord with the numbers and types of activities of DNFBPs. BNM is intending to work with other authorities such as the CCM and SRBs to improve the level of reporting by DNFBPs.

5.48. The evaluation team is concerned about RIs favouring thresholds as primary indicators for making STRs in the MSB and insurance sectors – threshold reporting accounts for an estimated 62% and 42% of reports respectively. Threshold reporting would seem to account for the relatively high number of STRs from the insurance sector. It is noted that the thresholds serve as an initial trigger leading to further checks being conducted to determine grounds for suspicion.

5.49. The casino contributes a significant portion of the STRs made by DNFBPs, which reflects the risk profile and FIED's outreach and supervision. Some STRs have, of necessity, been founded on failures by customers to complete CDD and based on pictures.

5.50. There is a very low level of STR reporting from lawyers. With regard to legal privilege, the original uncertainty about what is covered by privilege appears to have been resolved. The near absence of STRs from the sector appears to reflect a lack of supervisory attention rather than legal obstacles.

5.51. Attempted transactions have been reported to the FIU although the evaluation team noted that a few RIs it met appeared to lack awareness of the scope of the obligations to report attempted transactions.

5.52. Taking into account the context and risk in Malaysia, rates of filing TF-related STRs are low (see paragraph 4.25). The FIU and supervisors note that there have been some improvements in the rate of such STRs since 2013, reflecting enhanced outreach by the authorities and an upswing in risk from ISIL. Until 2013 many TF-related STRs were filed on the basis of a suspected name match with a designated entity. While the legal obligations are comprehensive and generally understood, there is a need for more targeted guidance on TF risk and 'red flag' indicators relevant to specific sectors, which would support higher rates of good quality STR filing on TF. Malaysia's ISP includes a short term goal to issue such guidance and indicators.

5.53. STR filing from Labuan entities is improving but is still very low. It is only recently that there has been widespread understanding that STRs should be made in relation to attempted transactions. LFSA has also noted from onsite inspections that, as a generality, internal reports of suspicion had also not been considered expeditiously to ascertain whether an STR should be filed.

5.54. Supervisors have prioritized the implementation of practical measures to seek to ensure tipping off is avoided by RIs and instances sanctioned. Supervised RIs met by the evaluation team generally had procedures regarding tipping off. Feedback from supervisors and LEAs did not indicate particular challenges with tipping off. RIs were also able to describe to the evaluation team what is meant by tipping off and were mindful that it was an offence.

(e) Internal controls

5.55. Internal controls are a key focus of guidance and inspection by supervisors. Controls are generally well established across FIs and the casino. The quality of controls varies across sectors, with greater strengths in the larger RIs.

5.56. Many banks and the casino have noticeably increased the strength of their compliance functions. The case study below demonstrates intervention by BNM and resulting action by a bank.

Box 5.1. Case study: Action taken by bank to improve processes following BNM supervisory intervention

As a result of intervention by the BNM following a thematic review in 2013, Bank X introduced a process called "Rules of Engagement" in order to standardise approaches for the bank's branches in dealing with operational (including AML/CFT) lapses. An underlying aim was for the new process to improve staff efficiency by creating an approach built on deterrence.

Actions taken by the bank were based on a scale of severity within the Rules of Engagement. The lowest level of severity for a first or second incident by a member of staff led to face to face counselling, oral advice, or a letter of advice. The highest form of severity, for a fourth incident, led to the issue of a report to the human resources department. Statistics maintained by the bank indicated that, in the first three months of 2014, 56 actions were taken by the bank using the scale.

5.57. Subject to a concern by the evaluation team about some banks' increasing levels of business and reliance on compliance teams rather than 'frontline' staff, it is apparent that FIs, in particular in the more at-risk sectors, have increased the resources they apply to implement AML/CFT policies and controls relative to their size, complexity, business activities and risk profile. Even so, there are resource constraints, including capacity challenges with compliance teams within some banks.

5.58. Following attention by BNM, the casino appears to have well-structured internal controls for AML/CFT through its risk management unit at the strategic level and the legal and compliance unit at the operational level.

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5.59. Malaysia's casino, which has controlling interests in a number of foreign casinos, does not extend its internal controls to those foreign casinos. The casino operation within Malaysia is subject to internal audit, which is informed by ML risk. Internal audit and training for staff appear to be good quality.

5.60. The inadequacy of internal controls of other DNFBP sectors in Malaysia is a concern.

5.61. FIs with operations outside Malaysia appeared to the evaluation team to extend their internal controls to such operations. BNM has noted that the application of group standards to branches and subsidiaries is a challenge in light of differences in the frameworks of the various jurisdictions in which the branches/subsidiaries operate. BNM expects banking institutions with a regional presence to adopt a stricter approach in their internal controls.

5

5.62. Supervised RIs ensure adequate access to information by the AML/CFT compliance function and relevant frontline and business staff. Discussions with supervised RIs indicated that internal controls enable the review of potential STRs for filing with the FIU.

5.63. Within Labuan, controls have been generally well established in the TCSP sector. Weaknesses identified at trust companies have included inadequate board oversight of AML/CFT and employee training and awareness programs. There has been an increase of resources by Labuan TCSPs but there is further to go as there are some concerns about the level of knowledge of compliance officers and not all trust companies appear to have the necessary staff resources in order to manage ML/TF risk effectively or have adequate policies and procedures in place to reflect the recent changes to the AML/CFT framework. These comments are particularly pertinent to smaller trust companies. The evaluation team was advised that more time would be needed to address these issues and for the requisite training to be undertaken. Onsite inspection findings have noted policies which were predicated on the previous AML/CFT standards, issues of independence of the compliance functions and weaknesses in the knowledge of compliance officers. In addition, some procedures had not been applied in practice. A few insurers also had gaps in relation to internal controls and independence of compliance arrangements. The Labuan authorities recognise that improvements are needed to implement more sophisticated controls, supported by up-to-date management information systems.

Overall conclusions on Immediate Outcome 4

5.64. Malaysia's legal and regulatory framework demonstrates a high degree of technical compliance with the FATF standards. This establishes a good foundation for Malaysia to implement measures to understand and mitigate risk. However, more needs to be done by RIs to transition from a rules-based to a risk-based approach. In this regard, the authorities are undertaking various measures to assist RIs' full transition to a risk-based approach.

5.65. Targeted work by supervisors through outreach and supervision (including thematic inspections and the application of sanctions) is bearing results. The completion of the NRA and cross sector assessments has added key input to support the better implementation of risk-based approaches. In practice, there was no clear or explicit link between the five high-risk areas and the risk identification and mitigation approaches of RIs. ML risk is better understood than TF risk. Detailed identification and assessment of TF risk is still developing and some RIs are paying insufficient attention to TF risk. Understanding of ML/TF risks differs between sectors; the banking sector has a better understanding of risk than other FI sectors. Understanding of ML/TF risks among DNFBPs with the exception of the casino and some DNFBPs appeared to be very low.

5.66. The level of understanding of AML/CFT obligations and mitigating measures differs between sectors. Supervisors have identified some deficiencies in the application of mitigating measures (also noted by the evaluation team). Key areas include implementation in relation to beneficial ownership, PEPs and the risk based approach. The evaluation team is concerned that there are some gaps in the effectiveness of implementation in these areas. The understanding by some sectors and smaller supervised RIs of the RBA is sometimes inadequate. Malaysia has recognized that improvements are needed in how RIs in particular sectors address the identified risks to those sectors.

5.67. Implementation with record keeping by supervised RIs is at a high level. There appears to be good compliance with wire transfer requirements and awareness of the obligations to implement TFS against terrorism. There are varying approaches to what are considered to be high-risk jurisdictions.

5.68. As a generality, FIs in Malaysia appear to meet their reporting obligations although the level of threshold reporting by MSBs and insurers is a concern. There is a very low level of STRs made by Labuan FIs, and by DNFBPs other than the casino. A few RIs appeared to lack awareness of the scope of the obligations to report attempted transactions. Onsite inspections have noted that internal reports of suspicion have not always been considered expeditiously within FIs. Overall, the quality of reports made by the supervised sectors have improved but the quality of reports made by the MSB sector in particular still needs to be improved.

5.69. Internal controls are generally well established across supervised FIs, the casino and Labuan TCSPs. The quality of controls varies across sectors with greater strength in the larger RIs. Weaknesses in the depth of implementation and the capacity of compliance functions need to be addressed in the banking sector and certain DNFBPs. The adequacy of internal controls of DNFBP sectors other than the casino and Labuan TCSPs is a concern.

5.70. Relatively, the position of FIs and DNFBPs in Labuan is weaker than in Malaysia.

5.71. Many of the strengths and weaknesses identified in the above analysis have already been identified by Malaysian supervisors and concerted coordinated efforts by supervisors and the FIU are being undertaken to deepen the awareness and implementation of risk mitigation measures.

5.72. The quality of supervision in both Malaysia and Labuan is ahead of market outcomes. In considering the rating for IO4, the evaluation team has considered all RIs. In doing so, it has ascribed greater weight to the number, importance and ML/TF risk of the higher risk sectors but the team has also taken into account the other FI sectors and DNFBPs and its conclusion that there should be a further reassessment of risk of DNFBPs.

5.73. **Overall, Malaysia has demonstrated a moderate level of effectiveness for Immediate Outcome 4.**

5.4 Recommendations on Preventive Measures

- A range of measures should be adopted to help RIs to understand their ML/TF risks and to enable more effective implementation of AML/CFT obligations and risk mitigating measures. These measures are delineated below.
- Supervisors should assess DNFBPs understanding of their ML/TF risks and obligations, and the risks of DNFBPs from a jurisdictional perspective, and circulate information from these assessments.
- As is already planned for DNFBPs supervisors should establish stronger requirements for the assessment of risk, for risk to be managed effectively, and for AML/CFT risk management and compliance functions to be more integrated within the businesses. These requirements should include the coverage of acceptance of customers and greater board oversight.
- Supervisors should issue enhanced guidance on (a) risk, including identification of risks relevant to each sector and supervisors' expectations of RI's practices in relation to the five high-risk areas specified in the NRA; (b) RIs' risk identification and mitigation measures, including guidance on beneficial ownership, domestic PEPs and high risk jurisdictions; and (c) the identification and mitigation of TF risk, together with additional information on red flags/indicators to complement the various sector Guidelines (which has been included in the Malaysian ISP).

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- The authorities should enhance existing outreach (a) so that there is a more detailed and systematic program of outreach to DNFBPs (particularly those DNFBPs which have not been subject to close supervision); and (b) to FIs generally. This program should be undertaken with the support of the SRBs and industry associations.

5

6. SUPERVISION

Key Findings

Malaysia has a sound legal framework for supervision and supervisors have the required powers to regulate the RI population. Malaysia has well implemented market entry fit and proper controls across FIs, though some gaps exist with market entry for certain DNFBPs, including casino management.

All regulators apply a risk-based approach to supervision. The substance of supervision has been transitioning from a more rules-based approach to truer risk-based approaches with comprehensive risk assessment inputs in the last two years.

BNM is a strong, professional and well-resourced risk-based supervisor, and is demonstrating effective supervision of the banking sector and MSBs (MVTs and money changers), which carry the bulk of the ML/TF risks. SC takes a comparably sound approach in supervising and mitigating ML/TF risks in the securities sector. LFSA's AML/CFT supervisory capability is improving in relation to the relatively small offshore sector, in part through its joint supervision with BNM of prudentially regulated FIs present in Labuan. The BNM FIED is taking a risk-based approach to DNFBP supervision with the casino a clear priority reflecting the identified risks. FIED requires additional resources to adequately supervise the balance of the sizable DNFBP population.

Remedial actions and sanctions, including fines and the revocation of licenses have been imposed for violations of AML/CFT requirements. This has contributed to successes in improving a focus on risk mitigation and compliance by regulated entities, although this needs to be deepened across a range of sectors.

6.1 Background and Context

6.1. There is a sectoral based supervisory arrangement in Malaysia but dual-track supervision is also followed for entities with hybrid activities. The three main regulators are also responsible for AML/ CFT supervision with BNM supervising those DNFBPs which are not otherwise regulated by either SC or LFSA. BNM is the apex supervisory body with coverage of 60% assets of the financial sector. It regulates banks, DFIs, Insurance companies, MSBs (MVTs and money changers) and NBFIs, as well as certain DNFBPs. SC is responsible for the supervision of capital markets services intermediaries. The LFSA supervises the offshore financial sector entities in the Federal Territory of Labuan. LFSA regulates commercial banks, investment banks, insurance companies, leasing companies and TCSPs. The offshore sector accounts for between 6. 6% of the total financial sector, meaning the vast majority of the Malaysian financial sector is onshore.

6.2. Due to the off-shore / on-shore conglomeration and cross-shareholding of banking sector entities in Labuan and across Malaysia there is close coordination between BNM, SC and LFSA to mitigate ML/TF risks.

6

6.2 Technical Compliance (R.26-28, R.34, R.35)

- R.26 – Regulation and supervision of FIs - **Malaysia is rated compliant**
- R.27 – Powers of supervisors - **Malaysia is rated compliant**
- R.28 – Regulation and supervision of DNFBPs - **Malaysia is rated largely compliant**
- R.34 – Guidance and feedback - **Malaysia is rated largely compliant.**
- R.35 – Sanctions - **Malaysia is rated largely compliant**

6.3 Effectiveness: Immediate Outcome 3 (Supervision)

(a) *Measures to prevent criminals and their associates from entering the market*

6.3. All the financial sector supervisors have controls in place to prevent criminals and their associates from entering the market. BNM and SC have demonstrated examples and consistent statistics of withdrawal of permission or rejection of applications by banking, insurance and securities in positions ranging from key management to board members and CEOs due to failures of fit and proper controls. LFSA also has good practices of conducting fit and proper tests, with statistics demonstrating adverse findings and market entry being denied for Labuan TCSPs.

6.4. Reflecting identified risks, BNM conducted a comprehensive relicensing exercise across the MSB (MVTs and money changers) sector in 2012 and 2013. This involved applying significantly upgraded regulatory controls, including fit and proper tests, which resulted in the expulsion of a large number of entities from the sector. In 2012 all 839 entities had to reapply for licenses under the MSBA, which resulted in wide scale industry consolidation. Over 200 entities voluntarily surrendered their licenses, for reasons including merging with other licensees, converting to agents or exiting the industry. BNM rejected more than 100 relicensing applications due to failure to meet basic regulatory requirements. The number of licensed entities further reduced from 515 in 2012 to 474 in 2013 due to further consolidation in the industry. BNM required 323 entities that obtained licences under the new Act to significantly improve existing processes and controls to address ML risks within six to 12 months. The cancellation of licenses and improved controls resulted in a significant removal of risk from the sector without greatly affecting financial inclusion.

6.5. Licensing and fit and proper controls of the sole casino suffer from capacity and resources constraint in MoF to carry out background checks on beneficial owners, management and operators of the casino. While the continued stable ownership of the casino by a prominent publicly listed company gives a high degree of

transparency to its beneficial ownership, the lack of controls and checks on beneficial owners, management and operators is a significant gap. The MoF requires greater capacity to implement more effective market entry controls with a particular focus on management and operators. The casino has presence in the USA, UK and Bahamas with foreign shareholding patterns.

6.6. Different types of DNFBPs are subject to fit and proper controls by government regulators and SROs. Each of the DNFBPs has experience in applying these controls and it is apparent that they are achieving a number of fit and proper outcomes which adds some effectiveness. The onshore trust companies are subject to regulation and supervision by CCM under the Companies Act (CA) and Trust Companies Act (TCA) and the MAICSA established SOPs on assessment of fitness and propriety for induction of members. The Bar Council has a well-established track record of applying the fit and proper controls under the Legal Professions Act 1976. The Board of Valuers, Appraisers and Estate Agents enforces registration conditions which are akin to fit and proper requirements by estate agents (Section 22A of VAEAA 1981). The Accountants Act 1967 provides for suitable fit and proper controls at the point of entry to as a member of the Malaysian Instituted of Accountants. Auditors of public interest entities are also subject to fit and proper requirements regulated by the SC, which underpins a sound audit sector.

6.7. Fit and proper requirements for dealers in precious metals and stones in East Malaysia are limited to those DNFBPs which are registered as a company under the CA 1965. At the time of the onsite 345 dealers (small retailers) were not registered as a company out of 1600 dealers in precious metals and stones in total.

(b) Supervision for compliance with AML/ CFT and identification of ML/ TF risks

6.8. Overall the supervisors' internalisation of risk-based approaches is good. The measures used by the supervisory authorities to understand and assess ML/TF risks of their respective sectors and entities they supervise generally reflect a decent understanding of the threats and vulnerabilities. Each supervisor has developed a risk analysis tool to assess inherent risk of each sector using a wide range of information. This includes the finding of the NRA and sector-by-sector threat and vulnerability assessments and periodically produced FIED strategic products on risk. BNM, SC and LFSA also include a greater focus on TF and emerging issues and BNM and SC, in particular, have an open channel to RMP to discuss risk issues. The results of the risk analysis feed into the supervisory authorities' ongoing risk assessment process within each sector. The overall ML/TF risk serves as a key input in determining the intensity of supervision.

6.9. The frequency, scope and intensity of BNM and SC supervision is guided by risk considerations, in particular the findings of the NRA and sectoral assessments and other inputs from LEAs and supervisors. BNM's four supervision departments and SC's two departments have the necessary tools and processes to collect information needed for identifying and maintaining an understanding of ML/TF risk. LFSA's supervisory team is developing its understanding of ML/TF risk and increasingly basing the scope and intensity of supervisory interventions on risk mitigation factors.

6.10. The process of supervisors assessing ML/TF risk generates a classification of their RIs which helps to guide the frequency, scope and intensity of supervisory treatment. This includes a consideration of elements of risks associated with products, services, customers, delivery channels, geographic locations etc. Thematic inspections by supervisors have focused on key preventive measures, including CDD, processes for identifying and reporting suspicion, implementation of targeted financial sanctions and identification of beneficial ownership.

6.11. There is a high level of co-operation between supervisors and other competent authorities, in particular LEAs, in relation to AML/CFT risk mitigation. All AML/CFT supervisors are also LEAs responsible for predicate and ML investigations. All three have a close working relationship with RMP, in particular with the SB on CFT issues. Supervisors seek and share information with LEAs and other regulators in relation to market entry, risk mitigation events, etc. to guide their selection of supervisory interventions.

6.12. The three supervisory authorities are members of the Financial Working Group under the NCC and the close coordination and joint supervision amongst them assists with identifying risk areas. There is cross membership between the boards of BNM, LFSA and SC and MOUs are in place between each body for supervisory matters.

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6.13. Joint supervision between BNM and LFSA, and BNM and SC adds to effectiveness. BNM partners with SC in supervising certain institutions such as investment banks and partners with LFSA in many of its inspections.

Table 6.1. Supervisory staff available to supervisors

| | Total number |
|------------------------------|--------------|
| Bank Negara Malaysia | 438 |
| Banking | 252 |
| Insurance | 127 |
| Money services | 44 |
| DNFBPs and other FIs (FIED) | 15 |
| Securities Commission | 65 |
| Labuan FSA | 16 |

Table 6.2. Financial Institutions onsite examinations and supervisory reviews

| | 2011 | 2012 | 2013 | 2014 | Total |
|--|-----------|-----------|-----------|-----------|--------------|
| BNM sectors | | | | | |
| Banking | 65 | 62 | 110 | 76 | 313 |
| Investments banks | 14 | 13 | 20 | 14 | 61 |
| DFIs | 7 | 7 | 19 | 12 | 45 |
| Insurance/ takaful | 36 | 19 | 26 | 25 | 106 |
| MSBs (MVTs and money changers) | 89 | 681 | 157 | 212 | 1 139 |
| SC financial institutions | | | | | |
| Stockbroking/ Derivative broking | 15 | 16 | 20 | 26 | 77 |
| Fund management/ Unit Trust Management | 7 | 28 | 29 | 43 | 107 |
| LFSA FIs (with BNM) | 12 | 10 | 11 | 10 | 43 |

Table 6.3. DNFBP Supervisory activity

| | 2010 | 2011 | 2012 | 2013 | 2014 |
|--------------------------------------|---------------------------|--|---|---|--|
| Full scope onsite inspections | 10 x Lawyers (FIED & MBC) | 5 x Onshore TCSPs (FIED & CCM) 1 x Casino (FIED) 6 x Labuan TCSPs (LFSA) | 3 x Onshore TCSPs (FIED & CCM) 1 x Labuan TCSPs (LFSA) | 5 x Onshore TCSPs (FIED & CCM) 6 x Labuan TCSPs (LFSA) | 1 x Casino (FIED) 14 x Labuan TCSPs (LFSA) 10 x Lawyers (FIED & MBC) |

Table 6.3. DNFBP Supervisory activity (continued)

| | 2010 | 2011 | 2012 | 2013 | 2014 |
|---------------------------------------|--|---|--|---|---|
| Internal Audit for AML/CFT | 1 x Casino 1 x Lembaga Tabung Haji | 1 x Casino 1 x Lembaga Tabung Haji | 1 x Casino 1 x Lembaga Tabung Haji | 1 x Casino 1 x Lembaga Tabung Haji 35 x Labuan TCSPs (LFSA) | 1 x Casino 1 x Lembaga Tabung Haji 36 x Labuan TCSPs (LFSA) |
| Self-Assessment questionnaires | | 2 x industry groups: - Lawyers - Onshore TCSP | 3 x industry groups: - Lawyers - Jewellers - Labuan TCSPs | 1 x industry groups: - Lawyers | 1 x industry group: - Lawyers |

6.14. BNM regulates the majority of RIs in Malaysia and has four departments responsible for supervision, including the DNFBP supervisory team in FIED. The assessment team is satisfied that the available resources, skills and experience of the supervisory personnel and the tools available to them to conduct off and onsite supervision provides a sound basis for supervision which targets ML/TF risk, with the exception of the resources available for DNFBP supervision beyond the casino. Details of supervisory staff numbers are in the table above. BNM dedicates a significant budget to the ongoing development of its supervisory staff, reflecting best practice.

6.15. BNM has sought to undertake sufficient AML/CFT supervision across those sectors identified as having the higher risks, particularly banking, MSBs (MVTs and money changers) and the casino. This has included onsite examinations of branches located in high risk areas, such as border town and areas with particular ML/TF risks. Further, BNM supervisors conduct onsite supervision of domestic bank branches and subsidiaries outside Malaysia. BNM's focus on high risk entities is complemented by thematic inspections to assess specific areas prioritised by supervisors.

6.16. BNM has adopted a Supervisory Risk-Based Framework (SuRF) to assess the safety and soundness of licensed FIs. This enables BNM to evaluate an institutions risk profile, quality of risk management processes, governance, compliance and financial condition. SuRF allows BNM to focus attention and efforts on areas or activities of higher risks. It also allows a consistent assessment of ML/TF risks across various entities, including an assessment of the risks arising from all activities or entities within a financial group (subsidiaries and branches), both domestic and foreign. BNM uses a dedicated AML/CFT Supervisory Framework to complement SuRF, which provides greater detail in the assessment of ML/TF risks. The intensity and frequency of the ML/TF assessment is based on several factors, such as the size and complexity of the institution, type of customers, products, geographical exposures and channel of deliveries.

6.17. BNM supervisors also conduct thematic assessment on AML/CFT, which complement the ongoing supervisory reviews conducted under SuRF. Thematic assessments are carried out simultaneously across an industry and are focused on a specific area. For instance, in 2007 the thematic assessments focused on AML/CFT policies and procedures, and in 2010 the focus was on the oversight by senior management and the board of directors. Based on the outcomes of previous assessments and the need to assess the effectiveness of AML/CFT preventive measures implemented by FI's, thematic assessments conducted in 2013 focused on the implementation of preventative measures, including the effectiveness of CDD, reporting of STRs and controls implemented, particularly at the frontline level. Results of thematic assessments are used as inputs for FIED's review of AML/CFT policies and the assessment of ML/TF sectoral risks in the NRA.

6.18. BNM demonstrated a structured and open approach to its oversight of foreign branches and subsidiaries supported by close engagement with the respective foreign supervisory counterparts, particularly in Singapore, Thailand, Indonesia, Cambodia and Hong Kong, China. BNM frequently meets with and shares inspection reports with foreign regulators to remain current on risk factors and risk mitigation outcomes. The depth of implementation of the requirements of group compliance adds to effectiveness. Malaysia

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demonstrated that supervisors enforce group policies and procedures of foreign branches and subsidiaries, including instructions to follow the more stringent requirements in respect of home and host country. BNM also adopts an open approach to its oversight of locally incorporated foreign banks through close engagement with the respective home supervisors.

6.19. BNM is cooperating well with its regional counterparts, which is crucial given the strong presence of Malaysian banks operating in emerging markets within the ASEAN region. It is important for BNM to maintain this support and cooperation given the risk and context.

6.20. BNM has applied a great deal of resources to reform and supervise the MSB (MVTs and money changers) sector due to ML/TF risks identified over a number of years. Results from the large-scale reforms to the MSB sector demonstrate that MSBs have improved governance and compliance, though challenges remain and the supervisor is cognizant of the fact. BNM has conducted a very large number of onsite assessments during the previous five years with 157 in 2013 and 212 in 2014. Greater supervisory attention has been given to higher risk licensees (e.g. licensees located at border town and areas susceptible to ML/TF risk), and to licensees not due for renewal in order to gauge their implementation. AML/CFT assessment is also the key focus areas for Branch/Merger and Agent/Principal thematic examinations. The current focus is on the areas of governance, record keeping, internal controls, and compliance with other regulatory requirements.

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6.21. BNM and other authorities demonstrated a range of priority actions to identify and act against illegal MSB activity in Malaysia which adds to compliance. This has included BNM –FIED conducted onsite surveillance visits to 409 companies (not registered as MSBs) between 2012 and September 2014, of which 68 were found to be conducting illegal MSB activities, which were subjected to enforcement actions. As at the end of September 2014, 11 cases had been charged and convicted; 10 cases were in the process of prosecution and 47 cases were at various stages of investigation.

6.22. In relation to DNFBP FIED, as the DNFBP AML/CFT regulator (for all except Labuan TCSPs) applies a risk-based approach towards its supervision of approximately 26 000 DNFBP RIs. Annual supervisory planning determines the targets for supervision activity based on the inherent sectoral ML/TF risk rating from the 2013 NRA, LEA inputs, responses to offsite supervision (questionnaires), previous supervision findings, complaints and the availability of supervisory resources within FIED and the relevant regulatory/licensing authorities. Analysis of these factors drives on site examinations, offshore surveillance, internal audits, regular engagement or the conduct of awareness/training sessions.

6.23. In relative terms the levels of FIED's supervision of DNFBP sectors are lower than for FIs, with the exception of the casino, taking into account FIED only has 15 staff. While the FIED supervisory staff are professional and well trained with extensive experience, the existing strength of staff cannot fully engage the entire DNFBP sectors. FIED has conducted full-scope and thematic AML/CFT onsite examinations of the casino, onshore and Labuan trust companies, selected law firms and jewellers. Offsite surveillance of lawyers, jewellers and non-bank financial institutions is conducted through analysis of self-assessment questionnaires and internal audit reports.

6.24. Despite the gaps with the MoF market entry controls on casino management, FIED has prioritized the AML/CFT supervision of the casino, in keeping with its findings on risk. FIED demonstrated that it applies various regulatory tools to target casino supervision and has complemented full scope audits with thematic reviews, with the most recent inspections guided by particular risk parameters.

6.25. The SC utilises a risk-based supervisory approach through its Risk Profiling Framework to determine supervisory priorities. Its risk-based capabilities have been further strengthened with the introduction of Risk-Focused Supervisory Framework (RSF). RSF facilitates the in-depth risk assessment of ML/TF risks posed to RIs and assesses whether adequate control are in place to mitigate such risks. SC undertakes sufficient AML/CFT supervision of its RIs identified as having the higher risks. SC make use of range of offsite and onsite tools like desk reviews, supervisory engagements, self-assessment questionnaires and onsite examination to assess the adequacy of risk mitigation measures being applied by RIs. The statistics show that supervisory activity has increased during the last year with matching enforcement actions taken by SC. As with BNM, SC has applied significant resources to ensure adequate numbers of well-trained supervisory staff (65 in total) are available.

6.26. During the period 2011 to 2014, SC conducted 77 supervisory visits on stockbroking and derivative broking companies and took administrative action for AML/CFT failings in 8 cases. SC also conducted 107 supervisory visits to fund management and/or unit trust management companies during the same period. SC examinations including a number of return visits and visits to branch offices, including follow-up supervisory visits in cases of compliance failures. In relation to offsite supervision, in 2014, for example, SC conducted nine desktop reviews and submission of self-assessment questionnaires by 134 RIs.

6.27. SC's AML/CFT supervision included a suitable range of interventions, including systems and transaction testing and interviewing of key staff responsible for the broking and fund management business, for implementing AML/CFT policies and processes and controls. SC identified weaknesses with CDD implementation and client risk assessment as key deficiencies and these areas formed the basis for follow-up inspections and continuing engagement on application of enhanced due diligence measures.

6.28. LFSA has put in place the Risk-Based Supervisory Framework (RBSF) which is being steadily implemented and enhanced. Under the RBSF, compliance with regulations and legal requirements is incorporated into the risk management and control function. Banking, insurance and capital market entities are subject to AML/CFT regulation and supervision in line with the respective core principles. Full supervision of the Labuan TCSP sector took place in 2008. LFSA's supervision is beginning to bear results in protecting the relevant sectors with an increase in onsite visits. While Labuan's share of the Malaysian financial sector is small overall, it is felt that supervisory activity is relatively low, albeit increasing. This is reflected in lower number of onsite reviews of Labuan FIs and relatively few sanctions applied. LFSA is supervising 284 FIs (including 43 banks, 46 Reinsurance and 81 brokers) along with 36 trust companies (DNFBP) and has 16 supervisory staff. It should be noted that all LFSA supervision (on and offsite) of banks, reinsurance and brokers is done jointly with BNM, which adds to effectiveness. The assessment team considered supervision reports and it is clear that results of LFSA's supervision are increasingly robust.

6.29. In 2011 and 2012 CCM and BNM collaborated to conduct joint AML/CFT onsite examinations of eight onshore TCSPs. CCM conducts compliance monitoring of onshore TCSPs with the primary aim of ensuring compliance with lodgment of annual returns, while FIED covered AML/CFT obligations.

6.30. SRBs have important roles in relation to market entry, guidance, training and outreach and elements of offsite supervision of their respective DNFBP sectors. The core supervisory functions are conducted by the FIED, which relies on the support of SRBs in conducting self-assessment exercises on respective DNFBP sectors. To date FIED have collaborated with the Bar Council and the Federation of Goldsmith and Jewellers to assist with distribution and submission of self-assessment questionnaires on AML/CFT compliance.

(c) Remedial actions and sanctions for non-compliance with AML/CFT requirements

6.31. Supervisors take a graduated approach to promoting and enforcing remedial actions to address deficiencies identified through offsite and onsite inspection. This focus on remedial measures through engagement with the supervised sectors followed by sanctions in cases of persistent failures or inattention to remedial actions is sound. Malaysia was able to demonstrate a cross section of remedial interventions leading to improvements with risk-based implementation from RIs.

6.32. In cases of remedial actions failing or gross violations, supervisors make use of a range of civil and criminal sanctions available in AMLTFA as well as under sectoral legislation. The recent amendments in AMLTFA have enhanced monetary penalties for different violations which are likely to create additional deterrence for RIs. Financial sanctions can include administrative fines or a 'compound' provision under AMLTFA and other laws whereby criminal matters are settled outside the judicial process by way of a DPP approved fine (50% of the maximum fine for an offence) in the case of a breach of a regulatory offence. Compound is not offered for every offence and many factors are taken into consideration prior to offering of compound such as the nature of offence, the behaviour of the person committing the offence etc. The legal framework allows the compound to be coupled with other sanctions.

6.33. BNM has imposed significant fines through compounding. SC has imposed some monetary fines. LFSA has taken mix of enforcement action including issuance of supervisory letters and engagements. Overall,

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regulated sectors are quite mindful of sanctions. The following table provides details of supervisory actions and sanctions for violations.

Table 6.4. Remedial actions and sanctions for AML/CFT – Financial Institutions

| Types of actions | 2011-2012 | | | | 2013 | | | | 2014 | | | |
|---|---------------------|---------|----|------|---------------------|---------|----|------|---------------------|---------|----|------|
| | BNM bank/ insurance | BNM-MSB | SC | LFSA | BNM bank/ insurance | BNM-MSB | SC | LFSA | BNM bank/ insurance | BNM-MSB | SC | LFSA |
| Supervisory letters | 37 | 0 | 33 | 4 | 45 | 132 | 25 | 17 | 13 | 299 | 14 | 18 |
| Reprimand/ warning | | | 2 | | | | | | | | | |
| Directive | 10 | | 1 | | | | 1 | | | | - | 11 |
| Compound* | 3 | 27 | - | - | 2 | 55 | - | - | 11 | 62 | - | - |
| Administrative Fines/Penalties | NA | NA | 2 | - | - | | 3 | - | - | - | - | - |
| Show cause for revocation/ non-renewal | - | 97 | - | - | - | 4 | - | - | - | 22 | | 8 |
| Revocation of licence/ non-renewal of licence | - | 72 | - | - | - | 4 | - | - | - | 22 | - | 1 |
| Removal of director | - | - | - | - | - | - | - | 2 | - | - | - | - |
| Prosecution | - | 36 | - | - | - | 11 | - | - | - | 17 | - | - |

Table 6.5. Fines issued to Financial Institutions via compounding of offences

| Sector | Item | 2011-2012 | 2013 | 2014 |
|------------------------------|-------------------------------|--------------------------------|------------------------------|----------------------------------|
| Banking and Insurance - AMLA | No of institutions | | 3* | 2# |
| | No of cases | | 4 | 2 |
| | No of offences (total) | | 104 | 2 |
| | Value of compound (RM) | 1 040 000 (USD 310 698) | 625 000 (USD 186 718) | 4 370 000 (USD 1 305 530) |

Table 6.5. Fines issued to Financial Institutions via compounding of offences (continued)

| Sector | Item | 2011-2012 | 2013 | 2014 |
|-----------------------|------------------------------------|------------------------------------|--------------------------------------|--------------------------------|
| MSBs – AMLA | AMLA | | | |
| | No of institutions | 7 | 8 | 2 |
| | No of cases | 7 | 8 | 2 |
| | No of offences (total) | 110 | 106 | 223 |
| | Breakdown | | | |
| | Section 13 on record keeping | 7 (110) | 8 (106) | 2 (223) |
| | Value of compound (RM) | 110 000 (USD 32 862) | 106 000 (USD 31 667) | 62 000 (USD 18 522) |
| MSBs – MCA and MBSA | Other laws | | | |
| | No of cases | 14 | 49 | 60 |
| | No of offences | 14 | 50 | 60 |
| | Value of compound (RM) | 169 500 (USD 50 638) | 628 000 (USD 187 614) | 94 000 (USD 28 082) |
| TOTAL BNM (RM) | 1 319 500 (USD 394 198) | 1 359 000 (USD 405 999) | 4 526 000 (USD 1 352 135) | |

6.34. The vast majority of breaches compounded in banking and insurance related to submission of CTRs, implementation of CDD obligations, risk profiling and processes for identifying and reporting suspicion. Amongst the range of other uncommon breaches was one case of tipping off. For MSBs (MVTs and money changers) the breaches related to record keeping and failure to report audited reports.

Table 6.6. Remedial actions and sanctions for DNFBPs

| | 2009 - 2010 | 2011 | 2012 | 2013 | 2014 |
|--------------------|--|-----------------------------|--------------------------------|------|---------------------------------|
| Supervisory letter | 1 - casino in 2009 | 5 – trust co. 1 - casino | 3 – trust co. 5 - jewellers | - | 1 – casino 14 – Labuan TCSPs |
| Directive | 1 – casino in 2009 10 – lawyers in 2010 | - | - | - | - |
| Compound | - | 2 – law firms | - | - | - |

6.35. As explained in the preceding paragraph, BNM has focussed more on corrective actions where irregularities were not of serious nature. However, serious violations/ offences were dealt with compounding of fines. SC has imposed some fines for violations of AML/ CFT requirements. The fine imposed by SC have been not less than RM 150 000 (USD 44 812) and more than RM 275 000 (USD 82 156) which appear to be proportionate and dissuasive. However, there is no information about LFSA taking such actions to support the proportionality and dissuasiveness of sanctions.

6.36. For the most serious breaches BNM has prosecuting offences and/or revoked licenses. This has been confined to the MSB (MVTS and money changers) sector.

Box 6.1. Case study: Improved compliance through relicensing and supervision of the MSB sector

Company B was a licensed remitter with 26 branches throughout Malaysia. During the relicensing exercise in 2012 and 2013, Company B's licence was renewed for only a short tenure (six months) due to deficiencies identified with governance, its AML/CFT program and controls and risk management.

BNM issued supervisory letters to highlight the gaps and gave specific timeframes to address the issues. BNM engaged with Company B's board and management to set expectations and monitor progress. Supervision activity confirmed the company had taken extensive measures to address the gaps in its governance and operations, which included a change of CEO, allocating more resources to compliance functions and strengthening its internal controls and risk management procedures.

As compliance was verified through ongoing monitoring by BNM, licensing intervals were steadily increased (six months, then one year, then two years).

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(d) *Impact of supervisory action on compliance*

6.37. BNM and SC have noted marked improvement in AML/CFT compliance as a result of enhanced engagement and supervisory reviews. The positive results are seen through recent onsite inspections and feedback from the private sector. BNM's supervision activity has identified significant improvements, particularly in relation to greater oversight and understanding by the board and senior management on ML/TF risks and the implementation of more comprehensive policies and procedures, enhanced monitoring, and strengthened compliance functions (including increased staff resources, investment in IT systems, structured training). In addition the numbers and quality of STRs have improved (see case study in box 6.2 below). BNM noted the demonstrable results with the MSB (MVTS and money changers) reforms and subsequent improvement in compliance. The remedial actions and continued engagement has resulted in an enhanced level of understanding the obligations and improved compliance. All MSBs have shifted to systems-based operations which have increased their ability to analyse transactions and customers more accurately.

Box 6.2. Case study: Supervisory response to weaknesses in ongoing CDD (BNM)

While conducting an AML/CFT review of a bank in 2013 BNM supervisors identified inadequacies in controls for ongoing transaction monitoring. The bank reviewed only the 10 - 20 largest monthly transactions generated from exception reports and failed to capture trade facilities and credit cards transactions. Reviews conducted by the bank focused on historical transactions without sufficient understanding of the customers' profile.

BNM supervisors sampled account records of customers from high risk countries and identified failures to conduct ongoing CDD to examine and verify the economic background and purpose of transactions performed by 93 customers. Supervisors' sampling of branches referring suspicious activity to management revealed weaknesses in applying processes to justify management not reporting STRs.

BNM issued a supervisory letter to the board and senior management to highlight, among other things, lapses in the transaction monitoring process and required the bank to implement an automated

transaction monitoring system, given the high volume of transactions and customer base, by March 2014.

A compound notice of RM 940 000 (USD 280 823) was issued against the bank for failure to conduct ongoing CDD on high risk customers and for non-submission of STRs. The bank responded to the issues highlighted and reviewed its entire AML/CFT processes and controls (including automated transaction monitoring) and increased the trained personnel to manage ML/FT risks.

6.38. SC has also noted a marked reduction in AML/CFT breaches by stockbroking, derivative broking companies, unit trust management companies and fund managers through comparison of violations booked in 2012 and 2013 examinations. SC has demonstrated through case studies how RIs were engaged, which finally resulted in rectification of deficiencies.

6.39. LFSAs supervision has established that the competence of compliance officers has improved. This is reflected in increase in the number of STR reported as well closer engagement with the regulator.

6.40. Supervisory action, in particular outreach by supervisors and regulators reflect a strong effort to create awareness and engage the RIs by BNM, SC and LFSAs.

6.41. However, impacts amongst the DNFBP sectors are far lighter, with the recent exception of the casino and Labuan TCSPs. Those two sectors have demonstrated significant progress in their risk mitigation settings, allocation of resources and the structured approach to AML/CFT. For other DNFBP sectors, the supervisory interventions outlined above, coupled with the strong focus on outreach have not yet generated great progress on compliance with risk-sensitive implementation. The impact of offsite and onsite engagement is undermined by a shortage of supervisory staff in BNM FIED for DNFBP supervision. The low level of supervisory activity has not resulted in greatly increased understanding and compliance amongst DNFBPs.

(e) Promoting a clear understanding of ML/TF risks and AML/CFT obligations

6.42. BNM, LFSAs and SC continue to create awareness and provide guidance and feedback as necessary, but more needs to be done as reflected in IO4. Various channels are used to interact with the regulated sectors including annual conference, periodic meeting with compliance officers and focused group meetings to discuss and sort out regulatory issues. These mechanisms appear to be working well to rectify irregularities and improve understanding of AML/CFT requirements. In addition to regular offsite and onsite engagement with FIs, BNM also conducts an annual AML/CFT conference, organises an annual International Conference Financial Crime and Terrorist Financing (in collaboration with the CONG and Asian Institute of Finance), issues various guidance through FINS and BNM's internet platform, engages regularly with the CONG on AML/CFT related matters and arranges bilateral meetings with FIs to discuss specific issues.

6.43. Further, BNM is a partner in joint supervisory work with SC and LFSAs, which is generally working well, although there are instances of apparent divergence between regulators which creates difficulty for RIs. The continuing close coordination amongst the three regulators and adjustments in the MoUs between regulators and the Financial Working Group under the NCC to address such instances should overcome such complaints if similar feedback persists in future.

6.44. For MSBs (MVTs and money changers), BNM has conducted five communication sessions to socialize and provide clarifications on AML/CFT requirements. BNM has collaborated with the industry association to support its efforts in enhancing compliance and professionalism. 16 training workshop were conducted between February and March 2014, particularly for the compliance officers and staff to ensure a clear understanding of AML/CFT requirements.

6.45. Over the period 2011 to 2014 BNM undertook a wide range of supervisory outreach activities to DNFBP industry associations and directly including over 1 500 DNFBPs in total.

Table 6.7. BNM Outreach from 2011 to 2014

| 2011 | 2012 | 2013 | 2014 |
|--|---|--|--|
| <ul style="list-style-type: none"> •1 session - with 260 lawyers (<i>with MBC</i>) •1 session with 50 company secretaries (<i>with MAICSA</i>) | <ul style="list-style-type: none"> •1 session - 281 lawyers (<i>with MBC</i>) •1 session - 305 company secretaries (<i>with MAICSA</i>) •5 sessions - 187 precious metals/stones dealers (<i>with FGJAM</i>) •1 session - 4 estate agents (<i>with BVAEA</i>) •1 session - Lembaga Tabung Haji •4 sessions – 293 moneylenders | Focus group sessions with selected SROs / industry associations ahead of the issuance of revised Sector 5 Guidelines <ul style="list-style-type: none"> •1 session with Malaysian Building Society Berhad •1 session – 36 Labuan TCSPs (<i>via LFSA</i>) | <ul style="list-style-type: none"> •1 session - 300+ estate agents (<i>with BVAEA</i>) •1 session - 120 lawyers (<i>via MBC</i>) •1 session - 120 accountants (<i>via MIA</i>) •1 session - 120 company secretaries (<i>via CCM, MAICSA, MACS</i>) •1 session – 30 Labuan TCSPs (<i>via LFSA</i>) |

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6.46. SC's efforts show increasing levels of AML/CFT understanding by RIs in order to mitigate their risks. SC regularly updates information on electronic platforms and has issued publications for enhancing AML/CFT understanding of the regulated sector. In addition to regular offsite/ onsite engagements with the industry, SC conducted a series of engagement session between 2010-2014 as follows:

- Dialogue with CEOs and/or compliance officers on AML/CFT;
- Engagement with Association of Stockbroking Companies Malaysia (ASCM) on compliance and AML/CFT;
- Engagement with Malaysian Investment Banking Association (MIBA) on compliance and AML/CFT; and
- Sharing AML/CFT examination findings/updates with compliance officers.

6.47. LFSA has arranged yearly engagement session for compliance officers since 2012. In addition, engagement sessions were conducted throughout 2014 with the Associations for Labuan International Insurance Associations (LIIA), Labuan Investment Banks Group (LIBG), Associations of Labuan Banks (ALB), and also Association of Labuan Trust Companies (ALTC). From 2012 to 2014, there were five sessions held with ALB, seven with LIIA and five with LIBG. These awareness sessions were in addition to regular supervisory reviews and follow up engagement.

Overall conclusions on Immediate Outcome 3

6.48. Malaysia has a well-developed supervisory framework for the financial sector and generally demonstrated that supervisory actions have made a positive impact on market entry and compliance with the targeted implementation of AML/CFT controls. The mechanism of licensing and preventing the market entry of criminals is largely sound and the regulators are mindful of ML/TF risks.

6.49. All regulators apply a risk-based approach to supervision and assessors note that given the risks in the banking sector, BNM's approach is the most developed. Both SC and LFSA have moved to a model of risk-based approaches, although LFSA has needs to make further progress in the application of it approach.

6.50. The skills, experience and expertise of supervisory staff and the number of staff and tools available to supervisors to conduct surveillance and supervision are strong and support a deepening risk-based approach to supervision. This is reflected in the intensity and frequency of supervisory interventions across the key sectors.

6.51. MSBs relicensing exercise and focused supervision serve to mitigate many of the risks in the sector. MSBs high-risk status in NRA has prompted the supervisor to engage the sector on a continuous basis, which is work in progress. Future results of offsite/ onsite supervisory reviews will determine the effectiveness of these measures.

6.52. While the Labuan financial sector represents 6.6% of Malaysian financial sector assets, it is felt that supervisory activity is relatively low. This is reflected in proportionally by lower numbers of offsite/ onsite reviews of Labuan FIs and in the associated applications of sanctions.

6.53. The DNFBP sectors, with the exception of the casino are under-supervised for AML/CFT compliance due mainly to a shortage of AML/ CFT supervisory staff in FIED, although risk-based approaches and cooperation with SRBs is allowing for steps to mitigate risks in the high-risk DNFBP sectors. The scope of onsite supervision of Labuan TCSPs in 2014 is a strong development. The fit and proper controls for casino management have visible gaps which could be a potential ML/TF risk, but FIED's increasingly risk-sensitive supervision is ensuring the risks are being mitigated.

6.54. Despite the risk-based supervision taking place, there is a need to do more to ensure that FIs and DNFBPs deepen their understanding of risk and risk mitigation measures and implement their AML/CFT obligations using a risk-based approach. Supervisory interventions have further to go to ensure RIs take a truly risk based approach to AML/CFT implementation.

6.55. **Overall, Malaysia has achieved a substantial level of effectiveness for Immediate Outcome 3.**

6.4 Recommendations on Supervision

- Unincorporated dealers in precious metals /stones in East Malaysia should be regulated.
- Licensing and fit & proper requirements for the casino should be improved, including carrying out background checks on major shareholders for domestic and overseas operations as well as management and operators.
- Extend fit and proper controls and enhance AML/CFT oversight to junket operators.
- MSBs reforms should continue including the focus on ML/ TF risks in licensed entities along with identification and prosecution of illegal operators, preferably with the assistance of area police in all parts of the country.
- Malaysia should strengthen and deepen their understanding of risk in each DNFBP sector.
- Malaysia should strengthen oversight of the DNFBP sectors, including onsite inspection and enforcement based on the identified risks.
- SRBs should be engaged for enhanced AML/ CFT role in their respective professions, including at least for offsite inspections.
- Consider empowering CCM to undertake AML/CFT onsite inspection of trust companies and company secretaries under its purview to share the load with BNM.
- BNM should review the resourcing of its FIED DNFBP supervisory function to ensure it has adequate systems and resources to effectively supervise DNFBPs on a risk sensitive basis.
- LFSA should enhance their engagements and supervisory reviews of the regulated sectors on a risk-sensitive basis.

SUPERVISION

- LFSA should respond to regulatory violations with proportionate and dissuasive sanctions.
- All supervisors should deepen their approaches to ensure RIs take a truly risk based approach to AML/CFT implementation.

6

7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings

Malaysia has assessed elements of ML/TF risk and vulnerabilities involving legal persons through the NRA and other processes, but a deeper assessment is required.

Malaysia has a system of registering the ownership of legal persons with the CCM (onshore) and LFSA (offshore). CCM registers are publicly available through online searches. The LFSA's registers only became easily accessible at the end of 2014. Companies are required to maintain basic ownership information. There are some gaps in the timeliness and accuracy at the Malaysian registry although it is clear that their significance is diminishing as there is an increasingly active process of oversight and compliance monitoring to ensure quality of returns included on the CCM register. The LFSA is also increasingly active in its oversight in relation to the Labuan register.

Malaysia relies on obligations on RIs, including TCSPs regulated under the AMLA, to identify the beneficial owners of legal persons and parties to a trust. The quality of implementation of the obligations on TCSPs and other FIs/DNFBPs is mixed (IO3 and IO4 refer). Challenges for RIs include that beneficial ownership information may not be available at the company or from other RIs to support CDD.

Malaysia requires all trustees opening or operating an account with a bank to declare their trustee status to the bank. Trustees transacting with RIs outside the banking sector face no such obligations.

Malaysia's policy decision to amend the Companies Act to require companies to obtain and register beneficial ownership information is welcome. Malaysia is urged to enact the revisions and make changes to relevant legislation for all legal persons, including Labuan entities, in order to achieve the same outcome.

7.1 Background and Context

7.1. Both legal persons (particularly companies) and legal arrangements (trusts) may be established in both Malaysia and Labuan. Although Malaysia has a considerable number of companies, neither jurisdiction is a major centre for the establishment of legal persons or legal arrangements. Professional trust and company service providers exist in both jurisdictions. Trust business is much smaller than company business. The Labuan business model includes the formation and administration of legal persons and trusts; target markets include both Malaysia and international markets.

(a) Overview of legal persons

7.2. There were 1 113 465 companies in Malaysia at 31 December 2014 and 3 744 limited liability partnerships. 454 227 of these were active companies, with 374 516 dissolved companies and 284 722 under strike-off processes. Of the active companies, 443 649 had 20 or fewer owners. 36 327 had legal persons as shareholders and 407 322 had only natural persons as shareholders. In addition, of the active companies, 2 654 were private companies with more than 20 shareholders comprising corporate entities and natural persons and 1,355 of these companies had more than 20 natural persons as shareholders. Some 1 972 companies were limited by guarantee. Nominees are used for 1.8% of active companies in Malaysia. Malaysian companies must have at least two directors who are ordinarily resident in Malaysia. Directors must be individuals.

7.3. Within Labuan, legal persons can be created as companies, limited partnerships, limited liability partnerships and foundations. There were 11 630 companies in Labuan at 31 December 2014, of which 5 881 were active companies, 4 379 were dissolved and 1 264 were in the process of winding up. Unlike Malaysia, companies are not divided into private and public companies. 11% of Labuan companies include use of nominees. There were also 45 limited partnerships (31 active) and 12 limited liability partnerships.

(b) Overview of legal arrangements

7.4. The only legal arrangements which may be established in Malaysia are trusts, which are created under common law. Malaysian law also recognises trusts created under statute. At 31 December 2014 the IRB identified 2 387 trusts, all formed under Malaysian law. In Labuan the LFSA has registered 52 Labuan trusts (of which 28 are active) and TCSPs have created 123 unregistered trusts. The number of foreign trusts subject to Malaysian law and/or using Malaysian RIs is not known. Persons who are not RIs may act as a trustee.

7.5. Malaysian trusts mostly hold passive assets, in particular real estate (houses and apartments); they also hold investments, companies and time share arrangements.

(c) International context for legal persons and arrangements

7.6. Malaysia has an open economy with significant levels of international trade and investment but is not an international centre for the creation and use of legal persons and arrangements for holding assets. A range of legal persons and arrangements created in other jurisdictions (or under the laws of other jurisdictions) hold assets or conduct transactions in Malaysia. Many of the customers of the Labuan IBFC are Malaysian corporate entities and foreign businesses structured as companies trading in or with Malaysia.

7.2 Technical Compliance (R.24, R.25)

- R.24 – Transparency and beneficial ownership of legal persons - **Malaysia is rated as partially compliant**
- R.25 – Transparency and beneficial ownership of legal arrangements-**Malaysia is rated partially compliant**

7.3 Effectiveness: Immediate Outcome 5 (Legal Persons and Arrangements)

(a) *Transparency and Risk– legal persons and arrangements*

7.7. There is adequate basic information on the creation, types and basic features of legal persons. There is public information available on Labuan but not Malaysian trusts, albeit the Labuan information publically available outside trust law does not cover all types of trust.

7.8. CCM maintains registers of companies and limited liability partnerships (and businesses). The public has access to the registers. The CCM has also issued guidance forms on the provision of information to it ranging from initial registration to various filings.

7.9. LFSA maintains a register of Labuan companies and other legal persons, which only became accessible to the public from November 2014. Available via the LFSA website, the register allows the public to find which TCSP holds company information. There is no publically available information in relation to partnerships outside the legislation itself.

7.10. Information on the creation and types of legal arrangements in Malaysia is not publicly available.

7.11. In contrast, Labuan has enacted the LTA1996 and the LFSA has placed a series of questions and answers in relation to the formation, conduct and regulation of trusts and foundations in Labuan.

7.12. The Malaysian authorities recognise that legal persons might be used for illegal purposes, including ML and TF but they have, only to a limited extent, identified and assessed the ML/TF risks associated with different types of legal persons. The understanding of vulnerabilities is, therefore, incomplete. Vulnerabilities posed by legal arrangements have not been well identified and assessed. While there appears to be an understanding that trusts pose a vulnerability, this view is not shared by all authorities.

7.13. NPO risks and their mitigation are considered at IO10.

7.14. The 2013 NRA key findings summarises the scope of foreign ownership of companies in Malaysia and very limited indicators of risk but it does not include all types of legal persons. Onshore, as at 30 June 2013 only 0.003% of companies were classified as foreign owned with Singapore (16 309), China (8 619), Pakistan (8 002), India (5 773) and Bangladesh (4 790) representing the largest shares of such ownership. At the same time, 58% of Labuan companies originated from South East Asia and the Asia Pacific. The highest proportions of ownership are British Virgin Islands (762), Singapore (611), Hong Kong (334), Indonesia (309) and Cayman Islands (300). Onshore, less than 7% of STRs involved companies. Offshore, less than 0.1% of STRs involved companies.

7.15. There are several areas which create possible risks, the existence of corporate nominees being one of these. The Malaysian authorities had more information than is apparent from the NRA key findings alone. For example, as result of investigation of tax offences, the IRB had concluded that limited partnerships are not high risk for tax evasion or ML. In addition, the reviews of the NPO sector and the CA 1965 and the recent move by the LFSA to publish its register of Labuan companies reflect, in part, consideration of the risks arising from use of legal persons. The evaluation team noted that the CCM has identified vulnerabilities arising from shareholders and officers and from the source of funds. The LFSA has focused particularly on legal persons from high risk jurisdictions, in particular Iran and DPRK, which is an important risk mitigation measure (see IO11).

7.16. Malaysia has indicated that there are a high number of ML investigations involving legal persons (mostly sole proprietorships) compared with a low number of STRs involving companies. Discussions with LEAs indicate that the use of informal nominees is more common than using corporate structures to hide beneficial ownership/control of accounts or assets. In discussions, LEAs did not indicate general challenges in obtaining beneficial ownership information, but did raise the challenge of informal nominees undermining the accuracy of CDD processes. Use of nominees is not included in the NRA.

7.17. There has been no assessment of the risks that may exist in relation to trusts. The LFSA holds information on the number of trusts with Labuan trustees subject to the legislation of foreign jurisdictions and which jurisdictions. Outside this, the extent to which trustees and/or beneficiaries of foreign trusts or of Malaysian trusts subject to the laws of other jurisdictions is a feature in Malaysia is not known. STRs do not appear to have involved trusts and there have been no ML investigations which have involved trusts.

(b) Legal persons – basic and beneficial ownership

Basic information

7.18. Legislation and the supervisory guidelines contain a range of provisions which seek to ensure that there is access to basic information on legal persons. Legal persons are required to hold basic information and to provide it to the registrars in Malaysia and Labuan albeit within a period of one month between an event and having to file the change of information and annual returns. The registrars are now taking a more proactive approach to compliance. Action has been taken by both registrars, and by the CCM in particular, to ascertain to what degree information held by companies is complete and up to date, and to enforce compliance with the requirements. The CCM has taken great strides forward as an enforcement authority and in preventing misuse of companies albeit there are still some gaps in relation to the accuracy and timeliness of basic information it holds: this is important where RIs and others are relying on this information rather than approaching a company directly. The authorities noted that the information held by CCM is very useful. The authorities have suggested that Malaysian companies will have a bank account in Malaysia and that basic (and beneficial) owners are therefore subject to the CDD disciplines of banks.

Beneficial ownership

7.19. While some ownership information registered with the CCM and LFSA may include beneficial owners, the mechanism Malaysia uses to ensure that information on beneficial ownership can be obtained in a timely manner is through CDD and related information obtained by RIs.

7.20. There are detailed obligations on RIs to obtain beneficial ownership information. The best available information in Malaysia is information held by RIs; the CCM's register also allows a search of the various company records when Malaysian companies are registered as owners of companies. In particular, the obligations to conduct ongoing CDD (which are compliant with R.10) may not lead to an RI updating its CDD information whenever the beneficial ownership of a legal person in the business relationship changes unless this is triggered by another risk event or the periodic review of the customer which is part of the ongoing CDD requirement.

7.21. It is clear that identification and verification of beneficial owners is challenging (also see 104). Understanding of the beneficial ownership requirements by RIs is weaker than for other CDD obligations and there are gaps in the effectiveness of identifying and verifying beneficial ownership by FIs and DNFBPs. The position in relation to DNFBPs is distinctly weaker than for FIs; a more effective regime for DNFBPs will also enhance the effectiveness of the regime for FIs. Therefore, there are gaps in the adequacy, accuracy, and timeliness of beneficial ownership information available such as incorrect identification of beneficial owners as a result of the use of "mules". There is use of nominees and complex structures, and it is difficult for RIs to rely on other RIs to provide them with beneficial ownership information. A range of firms met by the evaluation team, including banks, considered that verification of beneficial ownership and identification of mule accounts are the key issues to be resolved.

7.22. The information on the banking sector provided by the authorities stated that there are challenges with regard to the identification and verification of the beneficial owner as the requirements for beneficial owners have recently been enforced and clarified, that understanding is still being developed and that implementation requires significant improvement. For the other high risk FI sector, the MSB sector (MVTS and money changers), conducting CDD on beneficial owners is also a challenge, particularly on legal persons and transactions conducted by a third party. This stems from lack of understanding by front line staff of CDD processes for beneficial owners especially at small MSBs. In cases where a customer does not declare that a transaction is being made on behalf of other individuals CDD is conducted on a best efforts basis although

it cannot be properly performed; the risk is mitigated when ongoing monitoring detects the trend of the customer's transactions, enabling CDD to be conducted on the beneficial owner.

7.23. The authorities have also advised that insurers face challenges in obtaining information in complex cases. Both the Bursa Malaysia and the SC indicated to the evaluation team that beneficial ownership information had been available when required in relation to securities accounts opened with the central depository and shareholdings of 5% or more in listed companies.

7.24. Labuan is not immune to these challenges. Trust companies are better at risk profiling than banks and appear to be better at obtaining beneficial ownership information. Some onsite inspections in 2014 found that banks had policies relating to the previous AML/CFT requirements, application forms were not completed and compliance officers lacked knowledge. This will have a detrimental effect on the adequacy of beneficial ownership information.

7.25. The BNM has not seen evidence of bearer shares or bearer warrants used in business relationships administered by banks, other FIs or DNFBPs. The same is true of the LFSA. This was borne out by the evaluation team's findings.

7.26. In light of the feedback from both authorities and RIs, the evaluation team can only conclude that the gaps in verifying beneficial owners cannot be characterised as minor. Nevertheless, as described in IO2, authorities have generally demonstrated that they are cooperating constructively and in a timely manner with their foreign counterparts. This includes cooperation in relation to the provision of beneficial ownership information.

7.27. Malaysia has effective mechanisms for quickly ensuring that beneficial ownership information held by RIs can be obtained in an investigation of TF, ML or related predicates. AMLA section 48 orders can be used to require all RIs (without a court order) to identify whether a particular legal person or legal arrangement is a customer; these were shown to have been sent regularly to the vast majority of FIs and some DNFBPs via FINS. LFSA, RMP and other LEAs have similar powers. The ability to issue these orders to all DNFBPs and ensure responses in a timely manner is more challenging. It is not clear that the mechanisms for RIs to share CDD information are well supported in all cases.

(c) Legal arrangements – disclosure obligations and beneficial ownership

7.28. Beneficial ownership information of trusts in Malaysian and Labuan declaring income is registered with the IRB. Settlers may choose to register Labuan trusts with the LFSA. Every Labuan trust must be administered by a Labuan trust company and one of the trustees must be a trust company.

7.29. As with legal persons, the primary mechanism to seek to ensure transparency of beneficial ownership information of trusts is CDD and related information obtained by RIs and access to that information by LEAs and other authorities. In addition, IRB holds beneficial ownership information for trusts. There are detailed obligations on RIs providing services to trusts to obtain comprehensive beneficial ownership information relating to legal arrangements. The same issues identified above on identifying and verifying beneficial owners mean that the same limitations on what is available in practice to be obtained by RIs and the gaps in beneficial ownership information will also apply in relation to trusts. No deficiencies in relation to basic or beneficial ownership specific to trusts as compared with legal persons have been identified.

7.30. Natural or legal persons which are not RIs under the AMLA may act as settlor, trustee or protector of a trust (excluding Labuan trusts) or equivalent or similar positions for other types of legal arrangements. In such cases AMLA obligations to identify and verify parties to the trust or other legal arrangements do not apply directly although it is likely that non-professional trustees need to establish a bank account or deal with a lawyer to prepare a deed of trust as well as being subject to taxation legislation. It is likely that a lawyer will prepare a deed of trust for a non-professional trustee. However, it is possible that there might be no ongoing relationship with the trust by a lawyer or other RI such as an accountant in relation to filing tax returns, thereby resulting in very little possibility of updating information on the parties to a trust except where a bank holds information as a result of a bank account having been established.

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7.31. There is a requirement for domestic and foreign trustees using banks in Malaysia to declare their trusteeship. The relationships are subject to banks' CDD disciplines. Compliance with the provisions is monitored by the BNM and some RIs noted that trusteeship is declared in practice. In their capacity as trustee, trust companies in Labuan open separate accounts with banks for trust relationships and acknowledge to the banks that they are acting as trustees.

7.32. Registration of trusts with the LFSA has not been widely taken up. Provision of the trust deed to the LFSA and Labuan TCSPs is a mandatory part of the registration process. Trust deeds contain at least some beneficial ownership information. When a trustee registers a trust deed with LFSA there is no obligation to submit details of beneficial owners of the trust. However, the beneficial ownership information is still available at Labuan TSCPs.

7.33. On an annual basis trust companies must advise the LFSA of the number of trusts for which they are trustees and, for registered trusts, the identity of the trustees. The compliance rate for the provision of returns to the LFSA in relation to active registered trusts is uneven with 8% compliance in 2010 and 32% compliance in 2014. There is no data on the compliance rate by the 123 Labuan trusts not registered with the LFSA.

7

7.34. With reference to the IRB, information on settlors, protectors and beneficiaries can be obtained from trust deeds lodged with it. The IRB indicates that the information on the ultimate beneficiary is available from the audited accounts combined with the trust deed which must be provided. The IRB considers that, if a party to the trust is another trust, the ultimate beneficiary can be traced based on the information available in the IRB's database and, if it involves an overseas trust, by making a request for information using a Double Taxation Agreement or a Tax Information Exchange Agreement where these agreements are in place. While the IRB has experience of obtaining beneficial ownership information under TIEAs, it is not clear that foreign tax authorities would be able to obtain information on settlors, protectors and beneficiaries of a foreign trust. Trusts are monitored by the IRB to the same extent as any other category of tax payer.

(d) Preventing Misuse/Adequacy of Information

7.35. Malaysia and Labuan have sought to prevent the misuse of legal persons and legal arrangements and ensure high quality basic and beneficial ownership information is obtained by RIs and available to competent authorities by taking steps to improve transparency by the registrars of legal persons and through the supervision of CDD obligations.

7.36. The adequacy of supervision of FIs and DNFBPs in preventing misuse of legal persons and legal arrangements is analysed in IO3. Supervision of the banking and MSB (MVTS and money changers) sectors is sound but there are gaps in relation to the supervision of DNFBPs in particular; supervision of DNFBPs in relation to the misuse of legal persons and legal arrangements has not been meaningful except in relation to the casino and Labuan trust companies. While measures to prevent abuse have been implemented, the outcomes are behind the level of supervision (see above overview of beneficial ownership and IO4).

CCM

7.37. The accuracy of the information on the company register is monitored by the CCM and it has taken measures to improve the timely updating of records. Between 25,000 and 42,000 companies per annum have failed to lodge annual returns with the CCM or have failed to lodge them in a timely manner over the last five years. The pattern of the CCM's desk based monitoring and onsite inspections is demonstrated in the table below.

Table 7.1. CCM supervision activities from 2010 to 2014

| Type of Inspection | 2010 | 2011 | 2012 | 2013 | 2014 |
|--|---------|---------|---------|---------|---------|
| Number of database inspections (desk based monitoring) | 431 986 | 555 360 | 434 353 | 528 559 | 546 849 |
| Number of onsite inspections | 23 968 | 12 948 | 11 317 | 7 911 | 6 784 |
| Number of inspections of illegal investment schemes | 151 | 140 | 214 | 173 | 87 |
| The CCM has undertaken database inspections of 843 LLPs and 30 onsite inspections of LLPs. | | | | | |

7.38. The CCM's activities have resulted in an increase in the compliance rate by companies from 80% in 2008 to 93% in 2013, based on the submission of annual returns and financial statements. The figures do not include non-filings where the CCM does not know that there has been a change of information (for example, dormant companies). For these companies and, in addition, in case of non-filing of annual returns (i.e. 7% of companies in 2013), some of the information at the registry is not up to date for those persons using the registry to undertake CCD rather than the company. Basic ownership information is required at the company level but access to a company may not always be a convenient gateway for third parties.

7.39. The following case study shows how basic and beneficial ownership information can be combined with supervision to ascertain the identity of a person with ultimate effective control of fraud schemes.

Box 7.1. Case study: CCM's identification of beneficial owners of fraudulent schemes

The CCM was contacted by the Ministry of Domestic Trade Consumers and Co-operative and received multiple complaints from the public about an illegal scheme involving bird's nest cultivation. The scheme had been aggressively marketed by a company through public promotion and by enticing potential investors with incentives. High investment returns were suggested, including a structure which indicated higher investment would produce higher return.

CCM identified two separate unapproved schemes which triggered an in-depth investigation. The companies shared common directors and promoters. A combination of documentary intelligence and oral statements meant that CCM was able to ascertain that these persons were acting as nominees for the true beneficial owner. CDD information from RIs assisted CCM to follow financial trails and identify the beneficial owners of the fraudulent schemes.

7.40. The CCM has met all requests for information made to it by other authorities. In total, requests made amounted to 284 in 2011, 343 in 2012 and 552 in 2013. The CCM has not been directly requested by a foreign counterpart or foreign LEA to provide information, although such information has been required through other domestic LEAs.

7.41. The CCM is a robust registrar and is to be commended for the structured approach to prevention of misuse of legal persons by monitoring and enforcement it has taken, particularly during the last year. The evaluation team noted that the CCM was perceived in Malaysia as having become a serious regulatory body.

LFSA

7.42. The AML/CFT supervision of Labuan RIs, including TCSPs, is set out at IO3.

7.43. Trust companies (which are subject to the AML/CFT obligations for RIs) are required to provide an annual return to the LFSA for each company they administer one month prior to the anniversary of the

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incorporation of the company. This means that information at the registry, except with regard to directors is potentially only accurate or current once a year – assuming returns are presented in a timely manner. An online registration system was introduced in 2014 by the LFSA in order to provide more effective surveillance of companies. The LFSA monitors compliance and directors are checked by the LFSA against an external data base. A penalty is always applied if the change of director notification is late. During the period 2010 to 2014 the compliance rate for the returns received by the LFSA's registration department has been consistent at over 97%.

7.44. Labuan trust companies provide nominees shareholders and/or directors for 604 of the 5 529 active companies in Labuan. Shareholders or directors who are nominees are required to disclose the fact of their being nominees to the LFSA in a declaration form.

7.45. The LFSA provided responses to the 15 requests for basic company information which were made to it in 2013 from a combination of international agencies, government agencies and private organisations.

IRB

7.46. Names of directors and the five main shareholders are provided to the IRB on the annual tax return for companies. The IRB matches its data to the CCM's database. Returns from companies must be provided to the IRB within seven months of the end of the accounting period. Even if every return is made in a timely manner, there is a potential gap of nineteen months between the beneficial ownership information held at the end of one accounting period (assuming the accounting period has not changed).

7.47. The IRB's IT systems have been significantly upgraded so as to be able to provide timely information to third parties such as LEAs. It has been able to provide information on beneficial owners to the CCM for investigation purposes. The IRB has also successfully provided ownership information to foreign counterparts under DTAs and TIEAs, with 25 of 61 responses to requests for information in 2012, including beneficial ownership information. None of the 21 responses to requests in 2013 included such information. With regard to Labuan, the IRB has not used the powers to obtain information.

Sanctions

7.48. IO3 describes the application of the sanctions framework by the supervisory authorities of RIs. The BNM relies more on remedial measures though continuous engagement, particularly with the banking and insurance sectors; this approach appears to be working effectively. The SC and the LFSA have imposed more of a mix of penalties. It is recommended in IO3 that LFSA should respond to regulatory violations with proportionate and dissuasive sanctions.

7.49. Table 7.2 below demonstrate the range and number of sanctions applied by the CCM, the degree of non-compliance by companies and the need for the CCM to maintain and enhance its current approach to the imposition of sanctions.

7.50. The CCM's general rule is that a late filing will lead to a financial penalty, the norm being for a compound to be 10% of the maximum statutory penalty available. The evaluation team agrees with the CCM's view that this level is too low and does not serve as a deterrent. The proposed changes to the CA 1965 include increases in the level of penalties.

7.51. Most of the CCM's repressive actions are taken against companies and directors although it has also taken action against company secretaries. The CCM has successfully prosecuted four company secretaries for lodging false statements. It has not to date applied sanctions in relation to limited partnerships. Most of CCM's 550 investigations since 2010 and prosecutions are made into the making of false and misleading statements (90 in 2010, 62 in 2011, 33 in 2012, 112 in 2013, and 136 in 2014 prior to the evaluation).

7.52. The LFSA applies penalties for submission to it of late forms and documents, and strikes off companies when a resident secretary has not been appointed or for non-payment of annual fees. The number of companies struck off each year (mostly for non-payment of annual fees) since 2010 has remained steady with 466 struck off in 2010 and 438 in 2013.

Table 7.2. CCM monitoring and enforcement actions from 2010 to 2014

| CCM Monitoring & Enforcement Actions | 2010 | 2011 | 2012 | 2013 | 2014 |
|--|----------------------|--------------------|----------------------|----------------------|--------------------|
| Show cause letters or letters of reprimand | 396 | 395 | 396 | 5 | 21 |
| Compound fines for late lodgement of documents (other compound fines were issued) | 255 235 | 148 091 | 72 319 | 114 598 | 69 621 |
| Of the total compound fines, number of fines for late submission of annual returns | 254 725 | 147 134 | 71 071 | 113 691 | 65 518 |
| Total value of compound fines for failure to lodge annual returns (RM) | 22.41M (USD 6.7M) | 4.3M (USD 1.3M) | 15.63M (USD 4.7M) | 17.99M (USD 5.4M) | 19.96M (USD 6M) |
| Number of black listings | 1 | 2 | 1 | 18 | 485 |
| Number of companies struck-off | 24 098 | 130 823 | 25 261 | 17 092 | 29 496 |
| *The 2010 CCM data monitoring project resulted in a higher number of companies being issued notices. | | | | | |

7.53. The IRB imposes a significant number of compound fines for late returns, including approximately 750 per annum for Labuan entities and from 14 to 62 per annum for onshore trust entities from 2010 to 2013.

7.54. The Malaysian authorities have indicated that the CA 1965 will be revised in 2015 by requiring Malaysian companies to obtain and hold up-to-date information on beneficial ownership, and reporting that information to a registry within a relatively short period of time. The revisions to the CA 1965 will include changes which will strengthen the ability of all companies to obtain information from third parties (as opposed to just company members on the beneficial ownership of voting shares or holding such shares as trustee) and an increase in the penalty.

Overall conclusions on Immediate Outcome 5

7.55. The number, importance, materiality and ML/TF risk of companies in Malaysia and Labuan has led the evaluation team to ascribe greater weight to legal persons than to legal arrangements when considering the rating of this IO. Malaysia has assessed elements of ML/TF risk and vulnerabilities involving legal persons through the NRA and other processes but understanding of the range of threats and vulnerabilities needs to be deepened and risks of legal arrangements should be fully assessed.

7.56. Basic information held by companies is accessible to the public; registered information is publicly accessible from the two registrars. While there are some gaps in the information held by company registrars, regulators are enforcing compliance with reporting requirements. The mechanism Malaysia uses to ensure that information on beneficial ownership of legal persons and arrangements can be obtained in a timely manner is through the use of CDD and related information obtained by RIs. As such, many of the relevant findings at IO3 and IO4 on the strengths and weaknesses of CDD and its supervision and enforcement apply to IO5. The quality of supervision is ahead of market outcomes for CDD.

7.57. Implementation in relation to beneficial owners is mixed. In light of the feedback from both authorities and RIs, the evaluation team concludes that the gaps in verifying beneficial owners cannot be characterised as minor. In addition, compliance with the R.10 obligation to conduct ongoing due diligence and the distinction between the R.10 obligations and the R.24 obligation that beneficial ownership information should be as up to date and accurate as possible might not lead to a RI updating its CDD information whenever a legal person which is part of a business relationship changes its beneficial ownership.

7.58. Malaysia is enforcing the obligation on all trustees of domestic and foreign trusts opening or operating an account with a bank to declare their trustee status to the bank. The bank is then obliged to identify the parties to the trust under AMLA. Customers of other FIs face no such obligations.

7.59. Malaysia makes regular use of mechanisms for quickly ensuring that beneficial ownership information held by RIs can be obtained in an investigation of TF, ML or related predicates through AMLA orders to identify whether a particular legal person or legal arrangement is a customer of any RI. These are shown to be regularly circulated to the vast majority of FIs and some DNFBSs via FINS.

7.60. The authorities have generally demonstrated that they are cooperating constructively and in a timely manner with their foreign counterparts, including the provision of beneficial ownership information.

7.61. **Overall, Malaysia has demonstrated a moderate level of effectiveness for Immediate Outcome 5.**

7.4 Recommendations on Legal Persons and Arrangements

- Undertake more detailed assessments of the risks of legal persons in both Malaysia and Labuan and carry out an assessment of the risks of legal arrangements in both jurisdictions, and use these assessments to inform the application of appropriate mitigation measures.
- Review the legislation for legal arrangements, including the direct and indirect requirements in relation to transparency, in the review.
- Amend the CA 1965 as planned to require companies to obtain and hold up-to-date and accurate beneficial ownership information and report that information in a timely manner to the registry, and revise legislation governing other legal persons in order to achieve similar outcomes. The Malaysian authorities should cover the FATF definition of beneficial owner in the law so that the law goes beyond the holding of voting shares. Also, any company should be able to obtain information on its beneficial ownership and for sanctions to be available for failure to provide this information.
- Extend existing obligations to trustees which are RIs to obtain and hold accurate and current information on beneficial owners of trusts and introduce such obligations for non-professional trustees.
- Extend the existing obligations to trustees to disclose their status to all RIs, not only banks, when forming a business relationship or carrying out an occasional transaction above the threshold.

8. INTERNATIONAL COOPERATION

Key Findings

Malaysia is achieving the immediate outcome to some extent. Major improvements are needed to ensure Malaysia's international cooperation is better aligned with its risk profile, in particular requesting legal cooperation to address the risks it faces from transnational crime.

The minor technical deficiencies in relation to MLA have not, to date, affected Malaysia's ability to cooperate. Mechanisms are generally in place to allow for the timely exchange of information and assistance.

Statistics and cases show that Malaysia provides a range of international cooperation, including extradition, MLA, financial intelligence and beneficial ownership information. However, for MLA, extradition and LEA cooperation the experience is that Malaysia receives far more requests than it makes, which the assessors judge as reflecting a need for a greater focus on foreign threats and property/people moved offshore.

The FIU and supervisors have generally demonstrated well-functioning cooperation with foreign counterparts in keeping with the risk and context. This is producing strong outcomes which benefit Malaysia's investigative and supervisory efforts as well as its efforts to assess foreign sourced risks.

Some authorities, particularly the RMP, should enhance their focus on international cooperation to better support their investigation functions to cooperatively respond to trans-national risks

8.1 Background and Context

8.1. Malaysia's strong and open economy, strategic location in SE Asia, its high degree of integration with international financial markets, porous borders and identification as a transit country heighten the necessity for Malaysia to cooperate with other jurisdictions to achieve effective outcomes.

8.2. Malaysia has a sound legal framework and mechanisms for international cooperation. There are some technical deficiencies identified at R.36-40 however most of these do not, or are not anticipated to, significantly impact Malaysia's effectiveness in cooperating internationally.

8.3. As noted in IO1, Malaysia's assessments of risk have not focused on the risk of Malaysia being used to launder foreign proceeds, nor to raise funds for financing foreign terrorism activity and groups. The five high risk areas identified in the NRA (drugs, corruption, fraud, smuggling and tax offences) all include significant trans-national issues for Malaysia, as does TF. The NRA found that fraud is the highest risk relating to foreign predicates offences, followed by drugs and corruption. The NRA rates the risk of foreign predicates as low, which is consistent with the levels of requests from foreign countries for proceeds of crime action. FIED, MACC and RMP noted that in large and complex cases trails usually lead offshore through jurisdictions in the Asia/Pacific and further afield.

8

8.2 Technical Compliance (R.36-40)

- R.36 – International instruments – **Malaysia is rated largely compliant**
- R.37 - Mutual legal assistance – **Malaysia is rated largely compliant**
- R.38 – MLA: freezing and confiscation - **Malaysia is rated largely compliant**
- R.39 – Extradition - **Malaysia is rated largely compliant**
- R.40 – Other forms of international cooperation - **Malaysia is rated largely compliant**

8.3 Effectiveness: Immediate Outcome 2 (International Cooperation)

8.4. Feedback from other countries regarding Malaysia's international cooperation was generally positive, with most responding countries noting that responses and information were timely and useful. The assessment team received responses from 12 countries. The feedback emphasized the strength of FIED, Malaysia's FIU in responding to and requesting international cooperation. Responses also highlighted cooperation provided by the RMP (including on drugs related matters) and cooperation by supervisory agencies.

(a) *MLA and Extradition*

8.5. The central authority for MLA and extradition is the AGC. The MLA and Extradition team consists of seven staff that are located directly under the Attorney-General.

8.6. The legal framework for MLA and extradition in Malaysia is generally broad, with most deficiencies not having a significant impact on Malaysia's effectiveness in cooperating internationally. One deficiency identified is the mandatory requirement for dual criminality in all cases. In practice however, Malaysia adopts a broad and constructive approach to dual criminality wherever possible. There has only been one extradition case where this could not be overcome. Malaysia has not otherwise refused any MLA or extradition request on any ground between 2009 and 2013, although refused a request in 2014 on the basis of lack of reciprocity.

8.7. The technical gaps identified at R.38 have not had a significant impact to date given the limited range of cases seen in this area, but they have the potential to do so. However, Malaysia is able to use other

instruments to achieve the same result. For example, in the one case where a foreign country asked Malaysia to forfeit property pursuant to a foreign forfeiture order, the matter could not be dealt with under MACMA due to the deficiency relating to the timing of foreign forfeiture orders from non-prescribed countries. Malaysia was however able to resolve the matter by using AMLA provisions.

8.8. From 2009 to 2013 Malaysia received 16 MLA requests relating to ML, 142 relating to predicate offences and two relating to TF. Over the same period Malaysia made two requests relating to ML (one in 2009 and one in 2013), 34 relating to predicate offences and none relating to TF.

Table 8.1. MLA and Extradition Requests (ML, TF and predicates) from 2009 to 2013

| Types of requests | MLA | | Extradition | |
|---|--------------------------|----------------------|--------------------------|----------------------|
| | No. of requests received | No. of requests made | No. of requests received | No. of requests made |
| Requests related to ML | 16 | 2 | 5 | 0 |
| -Requests fulfilled | 16 | 2 | 5 | 0 |
| -Requests denied | 0 | 0 | 0 | 0 |
| Requests related to predicate offences | 142 | 34 | 49 | 0 |
| -Requests fulfilled | 142 | 34 | 49 | 0 |
| -Requests denied | 0 | 0 | 0 | 0 |
| Requests related to TF | 2 | 0 | 0 | 0 |
| -Requests fulfilled | 2 | 0 | 0 | 0 |
| -Requests denied | 0 | 0 | 0 | 0 |

8.9. The main types of crime which MLA and extradition requests relate to are loosely correlated to the key high risk areas identified in the NRA, although Malaysia did not make any MLA requests relating to TF, drugs, smuggling or tax offences between 2009 and 2013.

Table 8.2. International legal assistance requests received and made

| MLA – 2009-2013 | | |
|-----------------------------------|--------------------------------------|---------------------------------|
| Types of crime | No. of requests received | No. of request made |
| Fraud | 110 | 16 |
| Theft | 6 | 5 |
| Murder | 5 | 6 |
| Corruption | 9 | 7 |
| Drugs | 14 | 0 |
| EXTRADITION | | |
| Types of crime | No. of requests received (2009-2013) | No. of request made (2009-2013) |
| 'Export Control' related offences | 5 | 0 |
| Drug | 4 | 0 |
| Criminal breach of trust | 3 | 0 |
| Theft | 2 | 0 |
| Money Laundering | 2 | 0 |

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(b) Provision of assistance to other countries

8.10. Malaysia has provided a broad range of MLA to other countries. Production of documents and the taking of evidence were the most common types of assistance for MLA requests received by Malaysia from 2009 to 2013, with 150 and 68 requests respectively. Other MLA requests received by Malaysia during the same period related to service of judicial documents (11 requests), recovery of property (six requests) and attendance of person (five requests). Malaysia has also facilitated search warrants, video-link testimony, controlled deliveries and forensic evidence. Malaysia indicates it could also provide telephone intercept assistance though has not as yet been requested to do so.

8.11. Malaysia has 15 treaty partners for MLA, seven for extradition and is a signatory of the ASEAN MLA Treaty. Approximately half of the requests Malaysia receives come from non-treaty partners. Malaysia can also receive and make requests under other instruments such as the UN conventions and the Harare Scheme.

8.12. Malaysia experiences some challenges when providing assistance to non-bilateral treaty countries however these have not been insurmountable. These limitations include delays experienced in receiving the request through the diplomatic channel, a longer approval process in securing the consent of the Minister of Law (for MLA) or Minister of Home Affairs (for extradition); though approval can be obtained rapidly in urgent circumstances, and the requirement for a prima facie evidentiary standard for extradition. Wherever possible Malaysia looks for ways to overcome these challenges. For example, AGC work on advance email copies of requests going through the diplomatic channel and can take some action on copies of documents. ACG appropriately prioritises urgent requests. Malaysia is looking to negotiate treaties to overcome these types of issues and has plans to negotiate a further 17 treaties. The prioritisation of treaty negotiations is soundly based and consistent with Malaysia's NRA.

8.13. AGC has taken steps to ensure requests are handled efficiently; for example, ACG appropriately prioritises urgent requests, the Mutual Assistance and Extradition team now reports directly to the Attorney General and is utilising a new case management system which provides a good framework and built-in reminders and reports to ensure cases are not stalled. AGC is also developing an additional database which foreign countries will be able to log into to check the status of their requests. Malaysia has received positive feedback in relation to extradition requests it has responded to (see the case study in box 8.1).

Box 8.1. Case study: Extradition Request from United Kingdom

An arrest warrant was issued in October 2011 for Mr Z, who was wanted for prosecution of 13 charges under the Financial Services and Market Act 2000, Fraud Act 2006, Proceeds of Crime Act 2002 and Companies Act 2006 in the UK.

The UK requested Malaysia for the extradition of the subject in April 2012. Following close cooperation in tracing Mr Z, in January 2014 RMP located the suspect in Malaysia.

In May 2014 the UK provided sufficient information which resulted in an order for warrants of apprehension and Mr Z was arrested in Malaysia. On application, the court issued a warrant of committal, pending the issuance of a surrender order from the Minister.

In late September 2014 Mr Z was surrendered to the UK Police and extradited. He was successfully prosecuted in the UK, with Malaysia's contributions recognised following the case's conclusion.

8.14. Case studies provided by Malaysia during the onsite demonstrated that Malaysia's provision of assistance was generally timely. AGC's built-in system reminders support the timeliness of responses. As noted above, additional ministerial consent is required when providing assistance to non-treaty countries; however this can be obtained quickly for urgent matters. Feedback received from other countries was generally positive in relation to timeliness of Malaysia's response to international legal assistance request.

8.15. AGC demonstrates a very proactive and constructive approach to MLA and extradition and has adopted international best practice approaches. For example, Malaysia works closely with key partners and adopts the practice of early and direct consultation where possible to ensure requests can be executed. Malaysia has adopted a sensible approach to dealing with requests containing insufficient information. This has included liaising with the other country, leveraging LEA networks, and encouraging informal requests and early consultation. Malaysia provided a number of case studies in which this was done.

8.16. The MLA and extradition processes and procedures are working well in practice, although delays can be seen in the execution of requests by RMP. This primarily occurs when there is uncertainty regarding which division in RMP should execute the request. The creation of a central coordination point within RMP may assist the timely execution of requests.

8.17. The RMP coordinates with foreign LEAs to deport foreigners suspected of being involved in terrorism related activities. The deportations of these individuals are coordinated with foreign authorities to ensure the persons are investigated in their home countries.

(c) Extent to which Malaysia seeks international legal assistance

8.18. Malaysia makes significantly fewer MLA and extradition requests to other countries than it receives and has made no MLA requests related to drugs, smuggling, tax or TF matters in the last five years. For example, in 2013 Malaysia made only two MLA requests and no extradition requests. This does not appear to match the risk situation in Malaysia. The gap may be explained, in part, by weaknesses in Malaysian LEAs use of financial intelligence to target more complex trans-national ML and TF cases and a focus on domestic asset recovery work in a number of the high risk categories. The absence of complex investigations and prosecutions may also explain the absence of detailed MLA requests to foreign partners in such cases.

8.19. In light of the risks faced from transnational crime, including drugs, fraud and smuggling, Malaysia should make greater use of its MLA and extradition mechanisms and should give additional focus to following the money offshore through MLA. Malaysia has only made one request related to property moved offshore and this related to obtaining bank records. The assessment team found that the low number of requests was due to LEA's not being aware of the benefits and availability of MLA and not proactively following property moved offshore. While AGC has conducted outreach to encourage LEAs to make MLA requests, including a recent roadshow for LEA, created guidance documents and delivered training to prosecutors, further guidance is required.

8.20. Malaysia's most common outgoing MLA requests from 2009 to 2013 relating to the production of documents (26), taking of evidence (25) and attendance of person (17). Nine requests were made for the service of judicial documents and four for the recovery of property.

Box 8.2. Case study: MLA assistance sought from other country in terrorism case

In January 2014 Malaysia sent a request to Country U, seeking assistance to obtain evidence of the internet activity of an accused person in Malaysia and other related individuals who use the internet extensively to conduct terrorism related activities. Malaysia consulted Country U prior to submitting the formal request to ensure the information provided in the request would comply with the requirements under law in Country U.

In late February 2014 Country U informed Malaysia that the internet contents requested were preserved and a warrant application was made in late March 2014 to enable the relevant authority in Country U to extract and obtain the required internet contents.

In July 2014 Malaysia received the evidence as requested, which is being used in a criminal prosecution against an accused in Malaysia.

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8.21. Malaysia has not sought extradition in the past five years however a small number of persons have been returned from Singapore or Brunei under the backing of warrants extradition scheme¹ (see case study in box 8.3 below). Malaysia has previously successfully extradited persons for predicate offences, for instance from Australia for a fraud matter in 2008. Malaysia also cited one case in which they worked with a foreign country to ensure that a criminal who absconded from Malaysia was apprehended in that country and deported to Malaysia where he was convicted of a financial crime.

8.22. Malaysia has experienced challenges obtaining MLA and extradition. A number of countries were cited as applying dual criminality in a strict manner which has prohibited Malaysia's ability to receive MLA or to extradite persons. Examples of this have been in cases relating to the offence of sedition and offences which are punishable by the death penalty. Malaysia noted that some potential requests were not made in light of early consultation with foreign countries which indicated that extradition or MLA would not be possible. From 2010 to 2015 Malaysia did not proceed with making an extradition request following negative advice from the counterpart on five occasions, and did not proceed with making an MLA request following negative advice on three occasions. Malaysia also noted that the lack of extradition requests is because absconded persons cannot be located; however Interpol red notices had been lodged where possible.

8.23. Malaysia plays a leading role in ASEAN's MLA function and is proposing an ASEAN extradition arrangement. Malaysia is not a member of the Asset Recovery Interagency Network – Asia Pacific (ARIN-AP). Joining ARIN-AP would enhance Malaysia's regional connections and expose Malaysian practitioners to best practices which will assist its formal and informal international cooperation with regional counterparts.

8

Box 8.3. Case study: Backing of warrants scheme

Mr L was a suspect for criminal breach of trust and money laundering, which was investigated by the AML unit of CCID, RMP. Following the investigation, it was decided that there was sufficient evidence to charge the suspect in the courts of Malaysia. However, Mr L was serving his prison term for similar offence in Singapore.

A warrant of arrest was applied in the Malaysian High Court. After the release of the suspect from prison in Singapore, the Singaporean Police served the Malaysian warrant of arrest on Mr L in front of a Singaporean judge. Mr L was officially handed over the CCID by the Singaporean Police at the border and he was successfully charged for ML offence at the High Court soon after.

(d) Other forms of International Cooperation

FIU

8.24. FIED pursues cooperation with foreign counterparts both upon request and spontaneously, generally in keeping with Malaysia's risk profile and engages strategically with key jurisdictions to support more effective international cooperation outcomes informed by risk. Statistics and qualitative data were well kept to review effectiveness.

8.25. FIED makes extensive use of the Egmont, APG and FATF channels for supporting international cooperation. From 2009 to 2013 FIED made 107 requests to foreign FIUs and received 101 spontaneous disclosures. Over the same period FIED received 284 requests and proactively shared information with a foreign FIU on 26 occasions. The pattern of fewer spontaneous disclosures to foreign FIUs suggests more could be done to reach out to its foreign counterparts when FIED identifies a link with a foreign country.

1 Malaysia provided statistics to the Plenary that were not previously available on the use of backed warrant scheme provided for in Malaysia's Summons and Warrants (Special Provision) Act 1971. These were: 49 cases of criminals being returned to Malaysia for 2011-2014..

8.26. The quality of FIED's engagement with foreign counterparts appears high. This is supported by comprehensive statistics; including the average time it takes for a foreign FIU to meet foreign request. In many cases, the information received from foreign counterparts has allowed FIED to add value to its dissemination to LEAs and supervisory authorities. FIED provides feedback regarding the assistance received from foreign FIUs when requested. Feedback received from other countries largely complimented the cooperation receive from FIED, particularly the timeliness and quality of the information provided.

8.27. FIED can facilitate diagonal cooperation on behalf of other Malaysian authorities and can use its powers to collect additional information based on a request from a foreign counterpart; however, this information does not extend to the collection of information from FIs, unless the request matches a specific STR or CTR.

8.28. Overall, FIED cooperates effectively with its foreign counterparts and provides good quality, useful responses to requests. Requests made by Malaysia to FIU counterparts generally are of a high standard and contain sufficient details. This is supported by feedback received from other countries.

Law Enforcement

8.29. LEAs did not generally indicate that pursuit of foreign proceeds was a priority, so there is not a particular focus on AML-related international requests from most LEAs. It is apparent that some LEAs (MACC, BNM, SC) make proportionally more requests, reflecting their risk-mitigation focus.

8.30. LEAs are generally cooperating well with foreign counterparts, however some agencies have notable disparities between the number of request they receive compared with the small number they make. A legal requirement which may impact LEAs decision to request international cooperation is the 12 month timeframe required under AMLAFA and three month timeframe under DDFOPA for charges to be laid following seizures of property. Given the time taken in obtaining cooperation and information from foreign counterparts, this may deter authorities from seeking cooperation.

RMP

8.31. RMP has made a low number of formal requests for information from foreign counterparts; however it regularly utilises its outpost liaison officers in 24 countries to obtain information, with a particular focus in countries of interest such as Singapore, Indonesia, Thailand, Vietnam, Australia, China, India, France and the United States. RMP also uses platforms such as Interpol and ASEANAPOL to enhance its police-to-police connections and its collection of information.

8.32. Different divisions within RMP, including NCID, SB and RMP AMLA Unit, share information with and obtain information from foreign counterparts. Statistics on information sharing across the RMP do not appear to be adequately maintained. MLA requests investigated by RMP are sometimes delayed in commencing as there is no central coordination point to receive these requests from AGC.

8.33. RMP's NCID has an international affairs unit which received 70 intelligence or information disclosures from foreign counterparts and provided assistance to counterparts 83 times from 2009 to 2013. In 2013 NCID received intelligence or information on 13 occasions, including from Singapore; USA; Indonesia; Philippines; Hong Kong, China and Australia, which it used to seize drugs and open investigations. These figures are low compared to the risk profile, however they do not include joint operations between NCID and international counterparts. NCIP has conducted a number of joint operations which have resulted in successful arrest and corresponding seizures (see case study in box 8.4 below). NCID also holds regular bilateral meetings with its counterparts, including with the Central Narcotics Bureau of Singapore every three months, with Indonesia and Thailand on an annual basis.

Box 8.4. Case study: Joint Operation with foreign counterparts - Operation Jackknife

Operation Jackknife, which commenced in March 2013, was a joint policing operation which targeted the distribution of methamphetamines across Malaysia, Singapore and Australia. The joint operation, led by the South Australia Police, involved officers from the RMP, Singapore Central Narcotics Bureau and the Australian Federal Police. The operation identified a number of targets who were regularly travelling to Malaysia, and were believed to be facilitating the importation of pseudoephedrine and methamphetamines into Australia.

In May 2014 the Operation identified and dismantled a previously unknown Malaysian-based drug distribution syndicate, which authorities believed was responsible for exporting controlled drugs and precursors from Malaysia into neighbouring countries and Australia.

In May 2014 the RMP raided six properties which resulted in the arrest of 24 people and the seizure of a range of drugs (16.7kg heroin, 525g methamphetamine, 257 ecstasy pills and 168g ketamine), 10 vehicles, RM 47 176 (USD 14 094) and gold jewellery worth RM1.4 million (USD418,248). Similar arrests and seizures also occurred in Australia.

8

8.34. In relation to ML, RMP's pursuit of international cooperation with foreign counterparts requires improvement to align more closely with Malaysia's risk profile. While efforts have been undertaken to engage strategically with key jurisdictions to support more effective international cooperation outcomes informed by ML risk, more could be done in relation to Malaysia's high risk areas to improve the depth of proactive engagement with foreign counterparts.

8.35. In relation to TF, RMP CCID's pursuit of international cooperation with foreign counterparts is generally stronger and more in keeping with the risk profile and Malaysia is more closely engaged with key jurisdictions to support more effective international cooperation outcomes informed by TF risk. Productive working relationships with the LEAs and security organisations of countries in South East Asia, East Asia, Central Asia, Europe, America, Australia, and Africa, have provided numerous successes as outlined in IO9.

8.36. Feedback received from other countries was largely positive in relation to the cooperation received from RMP, including in relation to drug investigations.

RMC

8.37. RMC pursues international cooperation with foreign counterparts to a reasonably limited degree, mostly in relation to foreign requests and is yet to strategically target cooperation to mitigate some specific cross border risks. From 2009 to 2013 RMC received 176 formal requests for assistance and made only 20. RMC makes informal requests through its customs attaches located in Malaysian embassies or high commission in countries of interest or high risk areas.

8.38. Multilaterally, RMC utilises the World Customs' Regional Intelligence Liaison Office to seek international cooperation with regional counterparts. RMC also provides mutual administrative assistance under the Nairobi Convention to European Anti-Fraud Office for matters related to fraud. Regionally, RMC uses the ASEAN Customs platform to make and receive intelligence requests to fellow ASEAN members, which have recently included requests directly linked to ML/ Bilaterally, RMC can provide assistance using WCOs instruments on cooperation and the Harare Scheme. RMC have signed seven MoUs and five FTAs with foreign counterparts.

MACC

8.39. MACC pursues a wide range of international cooperation with foreign counterparts, targeting responses to mitigate specific cross border risks. MACC has effectively utilised international cooperation

in recent complex high value cases and is continuing to pursue opportunities to improve international cooperation where it has encountered past challenges in receiving cooperation.

8.40. From 2009 to 2013 MACC made 51 requests to foreign counterparts and received 52 requests for assistance. Statistics show that MACC provides good cooperation in relation to the requests it received, but the responses were mixed in relation to the requests it sent. MACC uses formal and informal cooperation which are supported by bilateral and multilateral approaches. Recent examples have included cooperation with Brunei Darussalam, Hong Kong, China, Singapore, Switzerland, the US and Australia.

8.41. MACC noted significant risks of proceeds of corruption moving to foreign offshore centres, including Switzerland; Hong Kong, China and Singapore. MACC indicated that cooperation has greatly improved with Switzerland which has contributed to significant ongoing ML investigations. MACC identified challenges with some counterparts requiring very specific information prior to responding positively to requests. MACC should continue to pursue requests of foreign counterparts in keeping with the risk profile and do more to engage with key jurisdictions to support more effective international cooperation outcomes. In addition, MACC seconds officers to Interpol to support its international cooperation efforts.

Supervisors

8.42. Malaysian regulators are generally providing effective international cooperation, primarily exchanging supervisory information through bilateral agreements/MoUs, IOSCO MMoU, supervisory college meetings and during visits to counterparts.

BNM

8.43. BNM is generally cooperating effectively with its international partners and regularly shares inspection report findings on banks with its regulatory counterparts. For example, BNM has undertaken onsite examination on domestic bank with foreign operation in Indonesia annually and once every two years with Singapore; Thailand; Hong Kong, China and Cambodia. In addition, regular engagement is taking place via bilateral meetings and supervisory colleges. BNM has previously cooperated with Indonesia and Singapore in its identification of illegal remittance activity. In addition, between 2012 and 2014 BNM met with authorities from each Singapore, Brunei Darussalam, Indonesia and Thailand to discuss regulatory reform, MSB industry developments, regulatory challenges and how to enhance collaboration in intelligence and enforcement. BNM has also conducted regulatory visits to authorities in Australia; Hong Kong, China and the United Arab Emirates to discuss issues relating to the MSB industry.

8.44. BNM cooperates well with its regional counterparts. It is important that this level of cooperation continues, given the presence of Malaysian banks operating in emerging markets within the ASEAN region, and the regional risk and context.

8.45. International cooperation on supervision of DNFBPs, including the casino, has not yet occurred. While there are few DNFBPs which operate outside Malaysia, given that the NRA assessed the casino sector to be high risk, it is expected that BNM would liaise with its foreign counterparts as part of its supervision of the Genting Casino which has subsidiaries located in the United States, United Kingdom and the Bahamas.

SC

8.46. The SC is closely engaged in international cooperation through IOSCO and bilateral channels. It received 30 requests for assistance from foreign counterparts from 2009 to 2013 and made 148. Information exchanged included securities transaction documents, banking records, telephone records, facilitating/recording of witness statements and carrying out corporate information searches. It is clear SC is generally cooperating effectively.

LFSA

8.47. LFSA has signed 10 MoUs with its international counterparts. From 2009 to 2013 it received 15 requests and made 29 relating to beneficial ownership, financial records, incorporation records and statutory

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lodgement documents. LFSA has shared information with 19 foreign regulations with and without MoUs. LFSA's international cooperation is showing positive progress.

CCM

8.48. CCM has not received any direct international requests; however this can be performed via CCM's website for a small fee. CCM provides information in support of requests for basic or beneficial ownership information received by IRB and other agencies.

ROS

8.49. The RoS has some experience of cooperation with foreign counterparts, including the United Kingdom Charities Commission. This cooperation has been on the topic of TF and charities regulation. RoS is encouraged to deepen its channels of international cooperation taking into account the risks of TF in the sector. As required under the ToR of the NCC committee on NPOs (SCONPO), all NPO regulators must have a point of contact for international requests.

IRB

8.50. IRB exchanges information with foreign counterparts through Double Tax Agreements (DTA). Requested under DTA include information on ownership and BO. 82 requests were received from 2010 to 2013. In 2013 IRB made five requests to foreign counterparts, prior to which none had been made. Requests are made through the International Tax Department and it takes three months to make a request. IRB is taking steps to improve the speed of this process by establishing a dedicated exchange of information unit, which demonstrates the process is improving.

(e) International exchange of basic & beneficial ownership information of legal persons/arrangements

8.51. LFSA and IRB are exchanging basic and BO information of legal persons and arrangements with their foreign counterparts. One of Malaysia's key mechanisms for exchanging information about basic and beneficial ownership is through DTA. Of the 82 requests for Exchange of Information under DTA received from 2010-2013, 13 specifically requested beneficial ownership information on Labuan IBCs and 25 requested ownership information on legal persons for either Labuan companies, onshore companies or foreign companies. Malaysia obtained information from the CCM, IRB, banks or tax payers to fulfil these requests. In July 2013 IRB implemented an electronic database which supports the handling of exchange of information requests, including tracking the timeliness of responses.

8.52. The delays the current IRB process, as outlined above, hampers the effectiveness of the collection of information and investigations relevant to the framework for transparency of beneficial ownership.

8.53. LFSA receives and responds to, and makes requests relating to beneficial ownership and other records. As noted above, LFSA made 29 requests and receive 15 from 2009 to 2013.

8.54. Malaysia's current system where RI's are relied on to collect BO may affect Malaysia's timeliness in responding to request, however this problem was not evident in practice. The policy decision to amend the CA 1965 to require companies to obtain and register BO information should have a positive impact on Malaysia's ability to exchange BO information in a timely manner.

Overall conclusions on Immediate Outcome 2

8.55. Malaysia demonstrates a moderately effective system for international cooperation and major improvements are required, primarily to increase the use of international legal cooperation to enhance Malaysia's investigation and prosecution functions. Authorities have generally demonstrated they are cooperating constructively and in a timely manner with their foreign counterparts, and some diagonal cooperation is occurring.

8.56. Malaysia is providing constructive and timely MLA and extradition assistance and has a good framework in place. Shortcomings in the system include delays in RMP executing requests, a longer approval process for providing assistance to non-prescribed countries and that Malaysia has sought limited MLA and made no extradition requests between 2009 and 2013. Malaysia has demonstrated limited use of MLA or extradition to produce significant criminal justice outcomes in Malaysian cases. While AGC has undertaken an education campaign to raise awareness amongst LEAs about the value and availability of MLA, this has not yet generated a higher volume of requests. Malaysia acknowledges additional capacity building is required.

8.57. Other forms of cooperation are occurring regularly and most LEA are utilising international cooperation to enhance their functions and results. The FIU demonstrates consistently effective international cooperation. Supervisors are also cooperating well with their counterparts, reflecting in an increasingly risk-sensitive approach which adds to effectiveness. LEA's are generally cooperating well with their counterparts. Improvements are needed within the RMP to enhance its approach to international cooperation to ensure that it reflects the priority ML risks faced by Malaysia and to ensure international cooperation is coordinated within the agency.

8.58. **Overall, Malaysia has achieved a moderate level of effectiveness with Immediate Outcome 2.**

8.4 Recommendations on International Cooperation

- Malaysia should amend MACMA and s.49 of the Extradition Act to rectify the minor technical deficiencies noted in the TC Annex.
- Malaysia should ensure it is using international cooperation mechanisms and efforts in a manner than is commensurate with its risk profile, including responding to the identified cross border risks and continue to support efforts for cooperation when attempted cooperation has not succeeded. This should include training for LEAs and prosecutors on the systematic use of international legal assistance.
- Malaysia should more systematically seek legal assistance for international cooperation to support risk assessments, investigations, prosecutions and other activities in keeping with its risk profile.
- Malaysia's process of MLA and extradition treaty negotiations with priority countries should continue as planned, as treaties allow for a more efficient provision of assistance between jurisdictions.
- The RMP needs to enhance its approach to international cooperation to ensure that it reflects the priority ML risks faced by Malaysia, and that is taking appropriate action to pursue property and funds which have been moved offshore. RMP should establish a centralised coordination mechanism for MLA and police-to-police investigation requests and should maintain comprehensive statistics about international cooperation.
- Malaysia should consider joining ARIN-AP and taking other proactive steps to support cooperation with foreign police and prosecution authorities including improved policies, training and practices.

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TECHNICAL COMPLIANCE ANNEX

1. INTRODUCTION

This annex provides detailed analysis concerning the level of technical compliance for Malaysia with the FATF 40 Recommendations. It does not include descriptive text on the member's situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

a2.1. The previous MER did not assess compliance in relation to understanding and mitigating risk, although it did set out a range of risks and risk mitigation measures.

a2.2. **Criterion 1.1** – Malaysia has identified and assessed its ML/TF risks through the conduct of two National Risk Assessments (NRAs) in 2012 and 2013 and a range of risk assessments prior to and since the NRA, including focused assessments of specific sectors or crimes. The NRA had inputs on threats and vulnerabilities from government sector and risk inputs from reporting institutions (RIs). The first NRA had a relatively simple methodology and did not assess TF risk. In February 2013 the methodology of the NRA was expanded to include an analysis of threat, vulnerability and consequences for ML and TF with a wider range of government and non-government stakeholders and data sources. While the 2013 NRA's methodology was an improvement on the 2012 methodology there are still gaps evident in its design and application. The scope and depth of assessment of TF risks in the 2013 NRA is relatively weak. Additional assessments of TF risk have been undertaken including a White Paper on ISIL published in late 2014. The TF risk findings available to the private sector are limited in detail, particularly compared to those on ML risks.

a2.3. **Criterion 1.2** - Malaysia has designated the AML/CFT National Coordination Committee (NCC) to conduct the national risk assessment and related risk assessment tasks and the work to prepare the NRA has been led by a team from the FIU. The NCC has been able to draw on a wide range of ministries, agencies and non-government players to conduct the risk assessment. Data collection strategies and resources have been adjusted to collect necessary data to support assessment of risks.

a2.4. **Criterion 1.3** - Through the work of committees of the NCC, since 2012 Malaysia has updated the NRA, including improving the methodology to assess risk and included an assessment of TF in 2013. Malaysia has indicated that the full NRA process will be undertaken every three years, with agency-level and thematic assessments produced within that time, as evidenced by the ISIL White Paper.

a2.5. **Criterion 1.4** - Malaysia has a number of mechanisms to provide the findings of the risk assessment to government and non-government stakeholders. The NCC is the chief mechanism for sharing the detailed findings. At the political level the Economic Council (chaired by the Prime Minister) considered and contributed to the NRA. All NCC agencies received the full NRA and discussions during NCC briefings to each agency centred on agency-specific issues, including risk mitigation plans. NRA findings were communicated to the private sector via publication of key findings and information sharing sessions with RIs. While the published NRA lacks details of TF risk, more detailed briefings on TF risks were given to the private sector via briefings and the White Paper on ISIL.

a2.6. **Criterion 1.5** - Malaysia has taken steps to apply a risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF risks based on the NRA and other assessments. More intensive resource allocation for intelligence / investigation / prosecution activities against priority risk areas is achieved through a number of multi-agency task forces focusing on certain areas (prevention of white collar crime, online financial fraud, smuggling/ tax evasion). This is undertaken under the NCC and other policy structures. There is a continuing focus on re-allocating resources and reconfiguring task forces or multi-agency mechanisms in response to ongoing experience (e.g. combating aspects of fraud).

a2.7. The frameworks for risk-based supervision of all sectors, including the allocation of supervisory resources, are being adjusted to take into account risk assessment findings. Based on risks identified with MVTS, the legal and regulatory framework covering the sector was overhauled in 2011, with all entities having to relicense resulting in a significant consolidation of the sector.

a2.8. **Criterion 1.6** - Malaysia applies all of the preventive measures required in the FATF Recommendations to all categories of FIs and DNFBPs, with one exception; however the intensity of the measures to be applied varies in certain specific circumstances set out in law and regulation. The one exception is for custodian

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services in relation to capital markets which is limited to those defined in s.121 of the Capital Market and Services Act 2007 (CMSA) which includes banks, subsidiaries of banks and trust companies. Malaysia assessed that these custodians are low risk for ML/TF purpose due to the financial activity being limited to clients of fund managers which are subjected to AML/CFT requirements. Additionally these custodians' functions under CMSA do not have direct interactions with the client of the fund managers, as their role is limited to the safekeeping of cash and liquid securities. Fund managers are expected to conduct CDD on individual investors who invest with fund managers.

a2.9. **Criterion 1.7 (a)** - In the case of MSBs (MVTs and money changers), based on the findings of the NRA the CDD threshold for money changing transactions was revised downwards and any exemptions from CDD on corporate customers were removed for this sector. It is not clear that this extends to requiring RIs to take enhanced measures or additional assessment where the NRA/other risk assessments identifies high risk situations.

a2.10. **Criterion 1.7 (b)** - RIs are obliged to assess their ML/TF risks and conduct additional assessment as and when required by the supervisor and such instructions have been given to all RIs based on NRA findings.

a2.11. **Criterion 1.8** - Malaysia has put in place a limited number of risk-based simplified measures which are consistent with the findings of the NRA.

a2.12. **Criterion 1.9** - Supervisors and SRBs in Malaysia are taking steps to ensure RIs assess their risks and apply risk-based measures. This includes engagement, outreach and supervisory actions.

a2.13. **Criterion 1.10 (a-d)** - Obligations on RIs to assess ML/TF risks on an ongoing basis and share the findings with the regulatory authorities directly mirror the FATF standard.

a2.14. **Criterion 1.11 (a-c)** - Obligations on RIs for ML/TF risk controls and mitigation directly mirror the FATF standard. RIs are required to conduct independent testing to monitor their policies, controls and procedures for risk assessment and mitigation.

a2.15. **Criterion 1.12** - The limited number of risk-based simplified measures are not permitted in circumstances where there is a suspicion on ML or TF.

Weighting and Conclusion

a2.16. There are some minor gaps in the level of detail in the assessment of TF risk and foreign sourced threats and minor doubts about connection between NRA findings and MSB's enhanced measures for high risk scenarios.

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a2.17. **Malaysia is rated largely compliant with R.1.**

Recommendation 2: National cooperation and coordination

a2.18. Malaysia was rated largely compliant with former R.31. The main deficiencies noted were a limited focus on cross-agency coordination of supervisory initiatives specific to AML/CFT, and a need for inter-agency coordination in relation to cross border cash declarations (SR IX).

a2.19. **Criterion 2.1** – The NCC developed and implemented an AML/CFT Strategic Plan for the years 2010-2012 to address the shortcomings of the 2007 MER, to reflect the revised FATF standards and ensure a focused and effective AML/CFT regime. This was achieved by identifying ML/TF risks half yearly, having an annual peer assessment/review of the AML regime to identify and address implementation gaps; and to have a high level NCC meeting at least once a year to review the developments of the AML/CFT regime and set strategic direction.

a2.20. In October 2014 the NCC adopted an Interim National AML/CFT Strategic Plan (ISP) to reflect the findings of NRA and other assessments of ML/TF risks and gaps identified when preparing for the 2014

mutual evaluation. The ISP will be reviewed and updated taking into account risks and other policy decisions. NCC members have taken steps to reflect the national policies, based on the NRA findings, are reflected in their respective agencies policies and strategies.

a2.21. **Criterion 2.2** - The NCC is a coordinating body made up of 16 core government agencies and is the mechanism responsible for the development and implementation of national AML/CFT policies. While SROs which are the licensing body for certain DNFBPs are not directly represented, the FIED engages with the SROs in its role as AML/CFT regulator/supervisor for those DNFBPs.

a2.22. **Criterion 2.3** - Malaysia has demonstrated that there are mechanisms in place (MOUs, Joint Committees, Task Forces, etc.) to ensure that regulators, supervisors, LEAs, prosecutors and the FIU cooperate and coordinate domestically on the development and implementation of AML/CFT policies and activities. This is assisted by the dual functions of a number of supervisors as LEAs and the FIED as FIU, LEA and supervisor. Development and implementation of the amended cross-border reporting regime was derived from such mechanisms.

a2.23. **Criterion 2.4** - Malaysia's competent authorities have commenced cooperation in relation to the financing of proliferation of WMD. The objectives of the NCC have been expanded to include the development and implementation of national strategies, policies and measures to effectively combat financing the proliferation of WMD. The NCC Legal working group was established to agree on the workflows to operationalize the relevant UNSCRs. While not required under the FATF standard, it is noted that the next iteration of the NRA will consider the risks of proliferation financing.

a2.24. **Malaysia is rated compliant with R.2.**

Recommendation 33 – Statistics

a2.25. Malaysia was rated largely compliant with former R.32. Deficiencies related to statistics on supervisory action by BNM, accurate statistics and records of data obtained through the cross border reporting systems were not retained or made available to competent authorities, and statistics were not maintained on the use of search and production powers in relation to ML or TF investigations.

a2.26. **Criterion 33.1** – Malaysia maintains comprehensive AML/CFT related statistics. In June 2012 the NCC enforced a 'Centralized Data Management Framework' which came into effect in January 2013. The framework requires each NCC agency to adopt policies and systems to capture statistical data related to AML/CFT work across a range of relevant categories. These include financial intelligence (reports received and disseminated); investigation (cases investigated; amounts frozen, seized and forfeited); prosecution (cases prosecuted; forfeiture (criminal and civil) and international cooperation (MLA and extradition)); supervision (onsite and offsite examinations; sanctions); ML/TF typologies (sanitised cases based on ML/TF investigations) and AML/CFT training (events conducted and attended). The outputs of the cross-border reporting system are included. Financial Intelligence, investigation, prosecution and supervisory statistics are collected every four months and typologies and training statistics are collected annually.

a2.27. **Malaysia is rated compliant with R.33.**





3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3 – Money laundering criminalisation

a3.1. Malaysia was rated partially compliant with former R.1 and largely compliant with former R.2. The MER concluded that the ML offence was compliant with the Vienna and Palermo Conventions and met most of the essential criteria. Two key areas of concern were coverage of predicate offences (environmental crime, piracy and counterfeiting/piracy of non-artistic goods) and the inadequacy of sanctions. The AMLA was amended in June 2014 (with amendments to the ML offence coming into force on 1 September 2014) and Regulations have added a number of offences to the list of predicate offences. The new R.3 adds additional predicate offences, including tax offences.

a3.2. **Criterion 3.1** - Both the former and the new ML offence are in accordance with the Vienna and Palermo Conventions.

a3.3. **Criteria 3.2 and 3.3** - Malaysia adopts a list approach to predicate offences. As at 14 July 2014 there were over 280 serious offences from 42 laws listed as predicate offences in Schedule 2 of AMLA. Tax offences and offences in accordance with the new categorisation of 'smuggling' have been added and piracy is covered. However, some of the deficiencies identified in the 2007 MER remain. While most environmental crimes and one trade designs offence have been added, the list of predicate offences still does not comprehensively cover environmental crime (illegal fishing) and the offence in the industrial designs law.

a3.4. **Criterion 3.4** - The definition of 'property' is broad enough to apply to any type of property regardless of its value and the definition of 'proceeds of unlawful activity' applies to property that directly or indirectly represents the proceeds of crime. The 2014 AMLA amendments expanded the definitions.

a3.5. **Criterion 3.5** - It is not necessary for a person to be convicted of a predicate offence. The 2014 amendments to AMLA added a clarifying provision expressly confirming this (s.4(4)).

a3.6. **Criterion 3.6** - Predicate offences include foreign serious offences, as was the case in 2007. The definition of 'foreign serious offence' in the 2014 amendments to AMLA is in keeping with the international standards.

a3.7. **Criterion 3.7** - The ML offence applies to self-launderers.

a3.8. **Criterion 3.8** - It is possible for the intent and knowledge for the offence to be inferred from objective factual circumstances. The 2014 amendments to AMLA confirmed this at s.4(2).

a3.9. **Criterion 3.9** - The previous law did not contain proportionate or dissuasive criminal sanctions (imprisonment for a maximum of five years and/or a fine of RM 5M (USD 1.5M)). The 2014 amendments to AMLA increased the term of imprisonment for ML to a maximum of 15 years and the fines were increased such that they can be considered proportionate and dissuasive. The penalty for ML relating to corruption in MACCA is still only a maximum of 7 years and/or RM 50 000 (USD 14 937) fine, however the MACC could use the ML offence in AMLA. The judiciary has the discretion to impose an appropriate sentence up to the maximum based on proportionality considerations. There is also the option of 'compounding' the offence under s.92 AMLATFA where, with the consent of the Public Prosecutor (the Attorney General, who is qualified to be a judge), the person can be fined up to 50% of the maximum fine instead of being prosecuted, though this has not been used for ML.

a3.10. **Criterion 3.10** - The 2007 MER found that the ML offence applies to both natural and legal persons (para 186) and that AMLA did not preclude the possibility of parallel criminal, civil or administrative proceedings. This has not changed with the 2014 amendments. These measures appear to be without prejudice to the criminal liability of natural persons (see also ss.87-88).

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a3.11. **Criterion 3.11** - The existing appropriate ancillary offences were expressly confirmed with s.86A of 2014 amendments to AMLA.

Weighting and Conclusion

a3.12. With the 2014 amendments to AMLA, the ML offence has only minor technical shortcomings in relation to predicate offences, with a small number of offences within two categories of offences not being covered.

a3.13. **Malaysia is rated largely compliant with R.3**

Recommendation 4 - Confiscation and provisional measures

a3.14. Malaysia was rated largely compliant with former R.3. The 2007 MER concluded that the laws relating to drugs, corruption, ML and TF offences provided comprehensive confiscation regimes but that laws applying to other offences did not. The amended AMLA now applies to ML, TF and all predicate offences and addresses the deficiency with coverage of indirect proceeds of corruption offences. Asset management is a new component in R.4.

a3.15. **Criterion 4.1** - The new AMLA provisions provide an enhanced regime that applies to all types of property for ML, TF and predicate offences (other than those predicate offences identified as missing in R.3). This includes conviction and non-conviction based confiscation and pecuniary penalty orders (ss.55-56 and 59 respectively). A very minor deficiency exists in AMLA whereby property of corresponding value to instrumentalities for predicate offences cannot be confiscated unless a person is prosecuted for ML or TF (ss.55(2), noting s.59 only applies to benefits derived from instrumentalities); this deficiency cannot be overcome by the general provision in the Criminal Procedure Code (s.407). The DDFOPA and MACCA provide comprehensive schemes in relation to drugs and corruption matters. All regimes apply to property that is held by criminal defendants or by third parties. **Other than for terrorism, instrumentalities intended to be used in the commission of an offence are not expressly covered by any of the laws. As noted in the 2007 MER, in some cases they may be covered if an attempt offence applies, but this will not suffice in all cases.**

a3.16. **Criterion 4.2** - AMLA provides a comprehensive scheme to carry out provisional measures and take steps that will prevent or void actions that prejudice Malaysia's ability to freeze or seize or recover property that is subject to confiscation. This applies to ML, TF and all predicate offences other than those predicates noted as missing under R.3. AMLA provides comprehensive measures to identify, trace and evaluate such property and take any appropriate investigative measures in relation to ML and TF. These powers can also be used for predicate offences where an LEA has a suspicion regarding an offence under AMLA. DDFOPA and MACCA provide comprehensive investigative measures in relation to drugs and corruption offences.

a3.17. **Criterion 4.3** - Measures are in place to protect the rights of *bona fide* third parties, including in s.61 AMLA. This has not changed following the 2014 amendments.

a3.18. **Criterion 4.4** - Malaysia's laws set out mechanisms for basic asset management, which include provisions for authorities to take custody and control in certain cases, the sale of frozen and movable property, processes for registration on land titles, management and closure of seized businesses and for records to be kept. There are no provisions to sell or take custody and control of immovable property during the restraint phase; Malaysia takes the view that this is not 'necessary' given dealings can be prevented on the title of the property and because of the nature of the property and duration of restraining orders. This may pose issues if the real estate market is in decline or if the property owner is no longer willing or able to manage the property appropriately, however Malaysia advises such property could be sold by consent or be subject to early civil forfeiture proceedings.

a3.19. Asset management is handled administratively by respective LEAs. Each LEA has their own standard operating procedures to guide management of assets. BNM has an asset management guide for AMLA matters, which is a short summary of action to be taken for each property type. It is not comprehensive but

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is a good starting point that should be built upon. However, with respect to the sale of restrained property the BNM Guide relies heavily on consent to sale which may not always be forthcoming and therefore may be problematic. RMP's guide for disposing of property under DDFOPA is the most detailed.

Weighting and Conclusion

a3.20. Malaysia's confiscation laws are relatively advanced and provide good coverage of the vast majority of the requirements, with only two minor deficiencies in scope identified that may not have significant implications in practice. The investigative powers are broad and laws provide a good basic asset management framework. However, LEAs' asset management guidelines should be enhanced.

a3.21. **Malaysia is rated largely compliant with R.4.**

Operational and Law Enforcement

Recommendation 29 - Financial intelligence units

a3.22. Malaysia was rated compliant with former R.26. Since the last evaluation the FATF standards on FIUs have been significantly strengthened by imposing new requirements which focus, among other issues, on the FIUs strategic and operational analysis functions, and the FIU's powers to disseminate information upon request and request additional information from reporting entities.

a3.23. **Criterion 29.1** – BNM is the competent authority under the AMLA and has established the Financial Intelligence and Enforcement Department (FIED) to perform the function of Malaysia's FIU. FIED is empowered under the AMLA, through a legal delegation by BNM to be the national centre to receive and analyse information from any person and send any report or any information derived from such a report to an LEA if it is satisfied or has reason to believe or suspect that a transaction involves proceeds of an unlawful activity or serious offence or relates to TF.

a3.24. **Criterion 29.2** - Under s.8 of the AMLA, the FIU is the central agency for the receipt of the information and report from any person, including the following disclosures filed by RIs: cash threshold reports (CTRs) filed under s.14(a) of the AMLA and suspicious transaction reports (STRs) filed under s.14(b). The requirements under s.14(b) requiring RIs to report STRs are applicable to all FIs and DNFBPs. STRs and CTRs are received from RIs via the FINS system, which is a secure and protected channel for the FIU to receive reports.

a3.25. **Criterion 29.3** - Under s.8 of the AMLA, the FIU is empowered to give instructions to RIs to provide additional information. The FIU may also make recommendations to a relevant supervisory agency, including for the supervisor to request additional information. In conducting its analysis the FIU has access, directly or indirectly, to the widest range of sources of financial, regulatory, administrative and LEA information to undertake analysis.

a3.26. **Criterion 29.4** - Malaysia has demonstrated that it conducts both operational and strategic analysis. The FIU has established the following units to carry out its functions:

- **Operational Analysis Unit** - conducts operational analysis in identifying specific targets, following the trail of particular activities or transactions and determining links between those targets and possible proceeds of crime related to predicate offences and ML/TF. Criteria used to conduct analysis on a subject include the number of STR/CTR matches, amount reported, suspected criminal activity, occupation and nationality.
- **Macro Analysis Unit** - conducts strategic analysis by using information in identifying ML/TF trends and patterns, as well as possible ML/TF threats and vulnerabilities. The information analysed is escalated to relevant stakeholders for appropriate regulatory and enforcement action or policy development.



LEGAL SYSTEM AND OPERATIONAL ISSUES

- **Surveillance Unit** - focuses on investigation support in gathering intelligence for offences related to financial crime especially those under BNM's purview.

a3.27. **Criterion 29.5** - The FIU is able to disseminate, spontaneously and upon request information and the results of its analysis to relevant competent authorities. The FIU utilizes dedicated, secure and protected channels for dissemination by using the FINS system. The FIUs SOPs outline procedures for the dissemination of information to competent authorities in a secure manner which ensures the integrity and protection of the financial intelligence. Some LEAs have limited direct access to search the FINS system and all LEAs receive spontaneous and reactive disclosures through that system in a closely governed secure framework. Disseminations to those LEAs which are not on FINS are conducted in a secure and protected manner.

a3.28. **Criterion 29.6** - The FIU's 'Framework for Analysis and Dissemination of Financial Intelligence' sets out the procedures for handling confidential information to be disseminated to domestic LEAs or foreign counterparts. FIU staff have the necessary security clearance levels and access is limited to facilities and information, including information technology systems.

a3.29. **Criterion 29.7** - Under s.7 of the AMLA the government has designated BNM as the competent authority for the purposes of the various powers under the act, including FIU functions. In implementing sections 9 and 10 of the AMLA, BNM as the competent authority has delegated the function to disseminate and exchange information with domestic agencies and foreign counterparts, to the Head of FIU. Although it is structured within BNM, the FIU operates with sufficient operational independence and autonomy to be free of undue influence or interference. The Deputy Governor of BNM is responsible for the FIU, however, functionally the Head of FIU has the autonomy and power to receive, analyse and disseminate financial intelligence with domestic LEAs and with foreign counterparts. The Head of the FIU has control in setting and expending necessary budgets and other resources. The FIU is operationally independent and autonomous as a separate unit within FIED. The FIU has a SOP which outlines the autonomy of the Head of the FIU in relation to the FIU operations.

a3.30. **Criterion 29.8** - Malaysia's FIU has been a member of the Egmont Group since July 2003 and has represented the Asia Group in the Egmont Committee.

a3.31. **Malaysia is rated compliant with R.29.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

a3.32. Malaysia was rated largely compliant with former R.27. The MER noted that RMP had not yet developed sufficient capacity to effectively investigate ML or TF offences. There were varying levels of awareness of AML/CFT issues and application of powers under AMLA to investigate ML and TF. No TF investigations had yet taken place.

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a3.33. **Criterion 30.1** - LEAs enforce serious offences as listed in the Second Schedule of the AMLA (Appendix I). Part V of AMLA provides for the powers of investigation which all LEAs can exercise. There are nine LEAs responsible for investigating ML and associated predicate offences, namely the RMP, MACC, RMC, IRB, BNM, SC, CCM, MDTCC and LFSa. All LEAs have established ML investigation units or designated capacity to conduct investigations under the AMLA.

a3.34. **Criterion 30.2** - LEAs are authorized to pursue investigations of any related ML offences in parallel with predicate offences under s.29(1) of the AMLA and to co-ordinate and co-operate with other LEAs in and outside of Malaysia with respect to an investigation into any serious offence or foreign serious offence, as the case may be, as provided under s.29(3). Malaysia advised that all investigations and findings related to TF will be referred to RMP for further investigation.

a3.35. LEAs investigate predicate offences under their respective laws and also authorize their AMLA Unit or designated investigating officer to investigate ML in parallel with the predicate offence. The authority to investigate ML offences is granted under s.30 of the AMLTFA. LEAs will appoint any of their officers or any

person to be an investigating officer for the purpose of carrying out the investigation of any offence under AMLA.

a3.36. **Criterion 30.3** - LEAs have investigative powers, under Part V and VI of the AMLA, to identify, trace (ss.31, 32, 37, 48 and 67) and initiate freezing (s.44) and seizing of property (ss.45, 46(6), 50, 51 and 52), which may become a subject matter of proceeds of crime or is derived from proceeds of crime. Apart from the AMLA provisions, similar powers can also be found in other laws relevant to the respective LEAs.

a3.37. **Criterion 30.4** - Competent authorities that are not LEAs *per se* are able to exercise the functions under this Recommendation pursuant to s.29(1) of AMLA. Criterion 30.1 also refers.

a3.38. **Criterion 30.5** - MACC is an independent commission set up in 2008, replacing the Anti-Corruption Agency. The powers to identify, trace and initiate freezing and seizing of assets under the AMLA are also accorded to the MACC, by virtue of enforcing the provisions under the MACC Act 2009 (MACCA) which are listed under the Second Schedule of the AMLA. MACC has jurisdiction to pursue offences of corruption, bribery and misleading which are listed as 'Prescribed Offences' under the MACCA. In addition to the powers under the AMLA, MACCA also provides comprehensive measures to identify, trace, and initiate freezing and seizing of assets arising from, or related to, corruption offences (ss.29, 30, 31, 33, 36, 37, 38, 40, 41, 43 and 46 refer).

a3.39. **Malaysia is rated compliant with R.30.**

Recommendation 31 - Powers of law enforcement and investigative authorities

a3.40. Malaysia was rated compliant with former R.28. The requirements under this Recommendation have expanded substantially and require LEAs to have a much wider range of powers.

a3.41. **Criterion 31.1** - Malaysia's LEAs and investigative authorities have sufficient powers to access all necessary documents and information for use in ML, associated predicate offences and TF investigations, prosecutions and related actions.

a3.42. **Criterion 31.2** - Malaysian LEAs are permitted under the law to use the wide range of investigative techniques for the investigation of ML, associated predicate offences and TF, including undercover operations, the interception of communication, accessing computer systems and controlled deliveries. Although the SC advised that that they cannot conduct undercover operations, if necessary it can be done by the RMP. The RMP has the power to investigate any offence under any of the laws in Malaysia as stipulated under s.20 of the Police Act 1967 and s.23 of the Criminal Procedure Code. During the onsite visit the BNM advised that the RMP assistance is requested to help enforce their respective Acts.

a3.43. **Criterion 31.3** - Under s.48 of the AMLTFA, LEAs can obtain an order for RIs to provide information which would identify, whether natural or legal persons hold accounts. The AMLA includes provisions to ensure no person shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under the Act. This includes information obtained from RIs to identify assets and accounts.

a3.44. Malaysia has developed a coordinated approach for the execution of s 48 orders through the FIU. On its own or on behalf of LEAs the FIED uses FINS as secure and fast conduit for serving orders on all RIs. This provides an efficient, secure and timely mechanism to obtain information from RIs.

a3.45. **Criterion 31.4** - Under powers in the AMLA, LEAs investigating ML associated predicate offences and TF are able to ask for all relevant information held by the FIU.

a3.46. **Malaysia is rated compliant with R.31.**

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Recommendation 32 – Cash Couriers

a3.47. Malaysia was rated non-compliant for SR IX. The 2007 MER concluded that while Malaysia had a system for completing a cross-border declaration for cash and travellers' cheques, there were some technical gaps and major weaknesses with implementation. The declaration system did not extend to bearer negotiable instruments (BNIs) and the available sanctions for false disclosure were rendered ineffective due to deficiencies in the implementation of the declaration system.

a3.48. **Criterion 32.1** – Sections 28B and 28C of the AMLA now require residents and non-residents to declare incoming and outgoing cross border movement of currency and BNIs exceeding USD 10,000 or its equivalent. This covers passenger, postal and cargo streams. The declaration is to be made to RMC officers using a prescribed form (Customs Form Number 1, 2 and 22) at all points of entry and exit in Malaysia. Notices are placed at all entry and exit points to give prior warning to travellers of their obligation to make a declaration.

a3.49. **Criterion 32.2** - Declarations are required to be truthful and made in the respective prescribed form to RMC, the competent authority under s.28B, s.28C and s.28H of the AMLA and s.87 of the Customs Act 1967.

a3.50. **Criterion 32.3** – This criterion is not applicable as Malaysia implements a written declaration system.

a3.51. **Criterion 32.4** - RMC officers have the authority to obtain further information from the carrier with regard to the origin of the cash or BNIs and their intended use.

a3.52. **Criterion 32.5** - Persons who make a false declaration or disclosure are subject to proportionate and dissuasive sanctions. AMLA imposes a criminal penalty upon conviction of a fine not exceeding RM 3 million (USD 896 240) or imprisonment for a term not exceeding five year or both for the offence of failure to make such declaration. AMLA also provides for compounding of a sum not exceeding fifty percent of the amount of the maximum fine for that offence. The offence of making a false declaration is also an offence under s.135(1)(a) of the Customs Act 1967 with a sanction (if it is a first offence) of a fine between ten times and twenty times the value of the currency or BNI, or imprisonment for a term not exceeding three years or both. For a subsequent offence the fine is between twenty and forty times the value of the currency or BNI or imprisonment for a term not exceeding five years or both. The court can forfeit currency or BNI seized under the Customs Act. The offence of making an incorrect declaration of currency or BNI in the prescribed form is also punishable under s.133(1)(a) of the Customs Act. The criminal sanction for a person convicted for this offence is a fine not exceeding RM 500 000 or imprisonment for a term not exceeding five years or both.

a3.53. **Criterion 32.6** - The Cash Declaration System (CADS) introduced in 2011 enables the FIU to have access to all declaration information. CADS facilitates the secure access to and analysis of declaration data by RMC and the FIU as part of both agencies ongoing intelligence and investigative work. RMC is also able to notify the FIU about suspicious cross border currency / BNI transportation incidents.

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a3.54. **Criterion 32.7** - There are a number of coordination mechanisms to support the cooperation between RMC, BNM and other relevant authorities in the implementation of R.32. The Cross Border Transportation of Currency (CBTC) Task Force was established in June 2007 to establish the CBTC Framework and is comprised of BNM, RMC and the Immigration Department, however this was recently disbanded as it was focused on establishing the cross border currency reporting framework. CADS was introduced in July 2011 as a platform to coordinate access to cross border declaration data between BNM and RMC. BNM collaborates with RMC in capacity building and training for RMC staff on cash declarations and utilisation of CADS. There are operational coordination arrangements in place between RMC and RMP to generally guide RMC's implementation. However, there is not yet sufficient coordination between RMC and RMP to guide RMC's implementation on the basis of risk and 'hot spots' for possible TF-related cross border movements of cash and BNI.

a3.55. **Criterion 32.8** - RMC officers are able to stop or restrain currency or BNIs for a reasonable time where there is a failure to declare under s.23(2) AMLA or s.134(1)(a) of the Customs Act or an incorrect declaration under s.133(1)(a) of the Customs Act. These offence provisions give RMC officers the reason for affecting a seizure, whether or not there is a suspicion of ML. Under the new s.28H of AMLA, RMC officers are authorized to seize cash/BNI or other things if there is a reason to suspect that the cash/BNI or other things

may afford evidence relating to commission of an offence under the AMLA. Section 29 has been amended to allow RMC to investigate and exercise the relevant investigation powers in relation to offences on cross-border movement of cash/BNIs.

a3.56. **Criterion 32.9** - Since 2011 all cross border declarations have been retained in the CADS which is maintained by the FIU. Access is limited to RMC and the FIU. The FIU may disclose declaration information to other competent authorities via reactive or proactive disclosures, including to foreign agencies. The FIU is able to share cross border declaration data with foreign counterparts proactively or on request as per Recs 37-40. Processes for international cooperation on CADS data is supported by SOPs.

a3.57. In addition, all information (including declarations) collected for purposes related to investigations is considered 'public records' as such is retained in accordance with Section 25 of the National Archive Act 2003. The period of retention is seven years in line with the Limitation Act 1953. After that period, such records are to be moved to the National Archive.

a3.58. **Criterion 32.10** - The cross border declaration information is stored in CADS and can only be accessed by RMC or the FIU and can only be shared by seeking permission of either agency. The declaration only requires travellers or person who moves cash/BNI by courier services and other means to declare their cash/BNI and does not impede trade payments between countries or limit the movement of capital.

a3.59. **Criterion 32.11** - See criterion 3.9, recommendation 4 and criterion 5.6.

Weighting and Conclusion

a3.60. There is a minor shortcoming with the extent of cooperation between RMC and RMP to support implementation.

a3.61. **Malaysia is rated largely compliant with R.32.**

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4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Recommendation 5 - Terrorist financing offence

a4.1. Malaysia was rated largely compliant with the former SR II. The 2007 MER concluded that the provisions in AMLA and offences in the Penal Code were broadly compliant with SR II. The MER noted that the offence of providing or collecting property to terrorist individuals or groups is indirectly criminalised. The MER recommended that Malaysia adopt a direct approach to criminalising this conduct for effectiveness reasons. In its 2011 progress report Malaysia advised that it is of the view that the existing regime is sufficient. No amendments have been made to Malaysian law. The new R.5 is largely unchanged from SR II.

a4.2. **Criterion 5.1** - The 2007 MER (paras 208-211) concluded that s.130N of the Penal Code is compliant with the TF Convention. This section of the Penal Code is unchanged since that time. Assessors note, however, that while Malaysia has criminalised the conduct set out in the treaties annexed to the TF convention, the TF offence may not extend to such conduct in every circumstance.

a4.3. **Criterion 5.2** - The 2007 MER concluded that the offence of providing or collecting funds for a terrorist act is comprehensively criminalised (paras 208-211). The offence of providing property to or collecting property for a terrorist organisation(s) or individual terrorist(s) is indirectly criminalised in s.130Q of the Penal Code (para 213). The 2007 MER recommended that Malaysia adopt a direct approach to criminalising this conduct to avoid potential problems prosecuting the conduct in practice. Malaysia has not done this as it believes the existing regime is sufficient (2011 detailed progress report). In the Evaluation Team's view, s.130Q is technically compliant and the suggestion in the 2007 MER related to effectiveness which is now relevant under IO9. Sections 130G and 130O of the Penal Code also cover some aspects of providing and collecting property. The offences apply even in the absence of a link to a specific terrorist act or acts.

a4.4. **Criterion 5.3** - The offences in the Penal Code apply to 'any property', 'financial services or facilities' and 'any terrorist property'. The definitions of property and terrorist property are broad enough to cover both legitimate and illegitimate property. The phrase 'financial services or facilities' is not defined however it is used broadly enough to apply to legitimate and illegitimate property.

a4.5. **Criterion 5.4** - The 2007 MER concluded that the offences do not require that the funds were actually used to carry out or attempt a terrorist act(s) (para 214). There is nothing in the law that requires the funds to be linked to a specific terrorist act.

a4.6. **Criterion 5.5** - The provisions of the offences and the Evidence Act 1950 confirm that intent and knowledge can be inferred from objective factual circumstances.

a4.7. **Criterion 5.6** - The 2007 MER (para 216) concluded that proportionate and dissuasive criminal sanctions apply to natural persons convicted of TF. The judiciary has the discretion to impose an appropriate sentence up to the maximum based on proportionality considerations.

a4.8. **Criterion 5.7** - The 2007 MER (para 216) concluded that the TF offences apply to both natural and legal persons and that this does not preclude parallel criminal, civil or administrative proceedings. It found that the penalties were proportionate and dissuasive. It did not expressly address whether such measures are without prejudice to the criminal liability of natural persons, however they appear to be.

a4.9. **Criterion 5.8** - The 2007 MER (para 214) concluded that the ancillary offences are appropriately covered.

a4.10. **Criterion 5.9** - The 2007 MER (para 215) concluded that TF offences are predicate offences for ML.

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a4.11. **Criterion 5.10** - The 2007 MER (para 215) concluded that the TF offences apply where the act of financing takes place in a different country to the one in which the terrorist group is located or the terrorist act will occur. The TF offences do not require the person to be in the same country as the terrorist(s)/terrorist organisation(s) or where the terrorist act(s) occurred/ will occur.

Weighting and conclusion

a4.12. Malaysia's laws generally comply with R.5 however there is a minor deficiency in the application of the TF offence to all conduct set out in the treaties annexed to the TF Convention.

a4.13. **Malaysia is rated largely compliant with R.5.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

a4.14. Malaysia was rated largely compliant with SR III in the 2007 MER. The new R.6 is largely unchanged from SR III.

a4.15. **Criterion 6.1** - The Ministry of Home Affairs (MOHA) is the competent authority responsible to propose persons or entities to the 1267/1989 and 1988 Committee for designation. Any proposal for designation will be made by MOHA through the Ministry of Foreign Affairs (MOFA) and Malaysia's Permanent Representative in the UN. Malaysia has used the procedures to co-sponsor an Al Qaeda designation at the UN.

a4.16. The mechanism for identifying targets for designation involves the RMP providing information on entities or persons who meet the criteria for designation set out in the relevant UNSCRs to MOHA. MOHA has a role in reviewing the information and consulting with the other relevant authorities, if necessary. If MOHA finds that the target meets the designation criteria, the proposal is provided to MOFA for deliberation at the Cabinet level before the designation is forwarded to the UNSC Committee.

a4.17. The evidentiary standard that RMP applies is a 'reasonable basis' to believe that the target is involved in any of the activities listed under UNSCR 1267 and the relevant successor resolutions. The process is not conditional on the existence of a criminal proceeding.

a4.18. RMP submits any proposals for designating targets using standard forms that Malaysia has prepared to support the mechanism for review. The forms call for as much relevant information as possible to be included.

a4.19. **Criterion 6.2 (a, c & e)** - The Minister of Home Affairs is the competent authority responsible and empowered for designating persons or entities, including non-Malaysians, that meet the specific criteria for designation as stipulated in UNSCR 1373, whether the designation is made following a domestic process initiated by Malaysian authorities or is based on a foreign request. Any request by foreign countries to designate an individual or persons in accordance with the UNSCR 1373 must be made through MOFA which will then forward the request made by the foreign country for MOHA's consideration. The MOFA would pass on any request to foreign partners supported by information obtained by MOHA.

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a4.20. **Criterion 6.2 (b & d)** - The RMP may submit a proposal for designation to the MOHA, if there is a 'reasonable basis' to believe that the target meets the designation criteria under UNSCR 1373. The competent authority will determine the designation in the case where s/he 'is satisfied on information given to him by a police officer' that the entity meets the designation criteria. Any proposal for designation or the designation itself is not conditional upon the existence of a criminal proceeding.

a4.21. **Criterion 6.3 (a & b)** - The RMP may use powers of investigation and compulsion to produce documents and other things provided in the Criminal Procedure Code (CPC) to collect or solicit information to identify persons and entities that meet the criteria for designation. Collection of information and the proposal for designation against a person or entity by MOHA is conducted without involvement of or prior notice to the person or entity identified for designation.

a4.22. **Criterion 6.4** – The 2014 amendments to the AMLA (s.66C(2)) establish a system of automatic domestic designation in Malaysia upon UN designation, which brings the freeze and prohibition obligations immediately into force. There is no longer a requirement for the Minister to make an order or decisions in relation to persons and entities designated under UNSCR 1267/1988 and 1989.

a4.23. **Criterion 6.5 (a)**- The freezing obligations, property subject to a freeze and prohibitions on providing funds or financial services to entities designated under UNSCR 1267 and 1373 are set out under AMLFA 66B(3) and the Penal code. The freezing obligations apply *ex-parte*. The freezing obligation set out in 66B(3) covers citizens of Malaysia and bodies incorporated in Malaysia. This includes all licensed RIs in Malaysia, as licensed or registered FIs and DNFBPs are required to incorporate in Malaysia as part of the market entry controls. The freezing obligations for foreign corporates and non-citizens who are not RIs are contained in the Penal Code prohibition on dealing with property of a designated entity (s.130Q). The effect of this prohibition is a mandatory freeze as it extends to anyone who ‘deals in’ the property, which is broadly cast to cover acquiring, possessing, converting, concealing, transacting, etc.

a4.24. **Criterion 6.5(b)** – The scope of property subject to freeze and the prohibitions on dealing in the AMLA (66B) extends to assets of every kind and legal documents or instruments in any form that are owned or controlled directly or indirectly by the designated individuals or entities. This would cover funds that are wholly or jointly owned or controlled by the designated persons and those acting on behalf or at the direction of such persons. The Penal Code prohibitions and freeze obligations extend to funds derived or generated from property owned or controlled by or on behalf of the designated entity, including funds derived or generated from such property.

a4.25. **Criterion 6.5(c)** – Comprehensive prohibitions on dealing with property of designated entities and providing financial services are set out in the Penal code and apply to all persons (including legal persons) within Malaysia and Malaysian nationals outside of the territory. Equivalent prohibitions are set out at s.66D(3) of the AMLA to cover all Malaysian citizens and bodies incorporated in Malaysia.

a4.26. **Criterion 6.5 (d - f)** - The AMLA and related mechanisms include processes for communicating designations (MOHA and relevant regulators), guidance for RIs, obligations on RIs and other entities to report freezing actions and measures which protect the rights of *bona fide* third parties.

a4.27. **Criterion 6.6 (a)** - The MOHA’s website makes available forms for listed persons to submit de-listing requests. The AMLA provides for the Minister to consider application before submitting them to the UN Sanctions Committees. These procedures, including the role of the UNSCR 1988 Focal Point mechanism and the role of the UNSCR 1989 Office of the Ombudsperson are on the MOHA website.

a4.28. **Criterion 6.6 (b)** - The AMLA includes procedures and legal authorities to delist and unfreeze funds of entities designated pursuant to UNSCR 1373. This may occur within the first 60 days if there is evidence that the basis for listing was not present, or arising out of review every six months or legal protections to allow court-sanctioned procedure to review listing.

a4.29. **Criterion 6.6 (c)** - A listed individual or entity aggrieved with MOHA or other authorities’ decision, action or omission in relation to the exercise of their duties or functions may make an application for judicial review. An application for judicial review can only be filed if the High Court grants leave to commence judicial review proceedings. Having obtained leave to commence judicial review proceedings, the aggrieved person can institute a substantive application for judicial review

a4.30. **Criterion 6.6 (d & e)** - Any request for de-listing to the Focal Point needs to be submitted through MOFA, but Ombudsperson requests are transmitted directly. Information pertaining to procedures for de-listing requests to the UN is published on MOHA’s website.

a4.31. **Criterion 6.6 (f)** - An individual or entity inadvertently affected by a freezing mechanism due to ‘false positives’ may seek clearance from MOHA to verify that they are not the designated individual or entity. After considering the claim, MOHA informs the relevant regulatory and supervisory authorities and other agencies regarding its verification (or not) of a false positive. The relevant regulatory and supervisory authorities will notify the RI to ensure RIs can unfreeze the property without delay.



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a4.32. **Criterion 6.6 (g)** - The MOHA (via its website) and individual regulators have mechanisms for communicating de-listing actions and to guide those entities which may have frozen funds on their obligations to unfreeze funds and other property.

a4.33. **Criterion 6.7** - Access to funds or other assets is regulated by the AMLA and is at the discretion of the Minister of Home Affairs in cases where the Minister deems it is necessary for basic or extraordinary expenses. The implementation procedures of the Part VIA of AMLA provide that the MOFA should seek approval by the UN sanctions committees for access to frozen funds for basic expenses. The implementation procedures do not explicitly address the issue of extraordinary expenses, though Malaysia notes that the procedure is the same and would reflect UNSCR 1452.

a4.34. **Malaysia is rated compliant with R.6.**

Recommendation 7 – Targeted financial sanctions related to proliferation

a4.35. Targeted financial sanctions relating to the financing of proliferation is a new FATF Recommendation added in 2012.

a4.36. **Criterion 7.1** - Targeted financial sanctions related to financing the proliferation of WMD are set out under Malaysia's Strategic Trade Act (STA) 2010, Strategic Trade (United Nations Security Council Resolutions) Regulations (STA Regulations) 2010 and the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order (STA Order) 2010. The STA provides for control over the export, transshipment, transit and brokering of strategic items, and other activities that may be related to proliferation of WMD consistent with Malaysia's international obligations. The operative provisions related to targeted financial sanctions are set out in subsidiary legislation issued as a Regulation under s.55 of the STA, which provides a broad basis to issue regulations as subsidiary legislation, including sanctions for non-compliance.

a4.37. The STA Regulation requires a step for the Minister of International Trade and Industry to make a domestic designation of persons and entities designated by the UN, by including them on the 1st Schedule to the STA Order. The schedule to the STA Order lists out designated individuals in Part 1 and entities in Part 2. Given the extensive process to be pursued prior to designation under the STA regime, domestic designation by the Minister cannot be done without delay. At best the process may be able to be completed in 20-30 days. Recent practice indicates that much more time was required for domestic designations to be updated (five to six months). A number of interim measures are taken to alert RIs immediately on listing, but legal powers to take freezing action are not available until the domestic designation is complete.

a4.38. **Criterion 7.2(a)** - Section 3(2) of the STA Regulation sets out the measures to be taken for freezing of funds and other assets of and persons and entities designated under the STA Order. There is nothing in the mechanism which requires prior notice.

a4.39. **Criterion 7.2(b)** - While s.3(1) of the STA Regulation suggest a wider application, the enforceable freezing obligation set out in s.3(2)(b) covers citizens of Malaysia and bodies incorporated in Malaysia, but does not extend to persons or FIs in Malaysia if they are not citizens. The obligations are generally extensive, however there is a limitation on the scope of coverage of the entities obliged to take action. The freezing obligations and prohibitions set out in s.3(2)(b) cover citizens of Malaysia and bodies incorporated in Malaysia. This ensures all RIs in Malaysia are covered, as licensed or registered FIs and DNFBPs are required to incorporate in Malaysia as part of the market entry controls. It is not clear foreign nationals or foreign legal persons in Malaysia who have not otherwise obtained incorporation as a Malaysian legal person would be subject to the full range of freeze obligations and prohibitions on dealing. The type of property to be frozen extends to funds derived or generated from property owned or controlled directly or indirectly by a designated person.

a4.40. **Criterion 7.2(c)** - Section 3(2)(b) sets out a prohibition on providing funds and financial services, but only for Malaysian citizens and bodies incorporated in Malaysia and only in relation to designated persons. Individuals and entities which are not Malaysian but operating in Malaysia may not be subject to these obligations.

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a4.41. **Criterion 7.2(d)** - Mechanisms for communicating designations include gazettal of the schedule to the STA Order. BNM, SC and LFSAs have issued some guidance on freezing obligations. The Strategic Trade Secretariat (STS) is working with BNM, SC and LFSAs to develop further guidance.

a4.42. **Criterion 7.2(e)** - The STA Regulation requires a citizen or Malaysian corporate to report to the ST Controller in case assets are frozen. BNM, SC and LFSAs have instructed their regulated entities to submit a parallel report to them in case of a freeze.

a4.43. **Criterion 7.2(f)** - The STA Regulation includes measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations for freezing property. Section 52(A) of the STA read with s.3(2)(b) of the UNSCR Regulation establish protections from suit and other legal proceedings outside the STA.

a4.44. **Criterion 7.3** - BNM, LFSAs and SC supervise compliance with the STA obligations for asset freezing. Sanctions are clearly available in the STA Regulation for non-compliance.

a4.45. **Criterion 7.4 (a)** - Malaysia issued procedures for de-listing, unfreezing funds, accessing funds and communicating de-listing on 4 November 2014. These were prepared by the STS, MOFA and other relevant authorities to address the due process aspects of the targeted financial sanctions against the financing of proliferation of WMD. Any application for de-listing to the UN Security Council will be submitted through the MOFA to the Focal Point / UNSC Committee based on information provided by STS and other authorities.

a4.46. **Criterion 7.4 (b)** - Individuals or entities affected by a freezing mechanism due to 'false positives' may seek clearance from the STS to verify that they are not the designated individual or entity. STS will seek assistance from BNM in this regard. After considering the claim, STS informs the relevant regulatory and supervisory authorities and other agencies regarding its verification (or not) of a false positive. The relevant regulatory and supervisory authorities will notify the RI to ensure RIs can unfreeze the property without delay.

a4.47. **Criterion 7.4 (c)** - Access to funds or other assets is regulated by the November 2014 procedures and is at the discretion of the Minister in cases where the Minister deems it is necessary for basic or extraordinary expenses. This is in keeping with the exemption conditions set out in UNSCRs 1718 and 1737.

a4.48. **Criterion 7.4 (d)** - The STS website and individual regulators have mechanisms for communicating de-listing actions and to guide those entities which may have frozen funds regarding their obligations to unfreeze funds and other property.

a4.49. **Criterion 7.5** - In accordance with the Procedures on Freezing, Seizure and Forfeiture of Property under the AMLA, RIs are permitted to continue collecting or receiving payments from the customer, however the account will continue to remain frozen. Malaysia has also indicated that funds may be credited to a frozen account, however the funds will become frozen once received.

Weighting and Conclusion

a4.50. The delays with translation of UN designations into domestic freezing obligations plus the gap on the scope of who is obliged to take freezing are given greatest weight.

a4.51. **Malaysia is rated partially compliant with R.7.**

Recommendation 8 – Non-profit organisations

a4.52. Malaysia was rated partially compliant with SR.VIII in the 2007 MER as there was no ongoing strategy to identify and mitigate TF risks within the NPO sector; limited outreach to the NPO sector by authorities; and inadequate mechanisms for information exchange with foreign counterparts. The requirements for R.8 are largely similar to those of the former SR.VIII.

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a4.53. Malaysia's NPO sector comprises societies (44 826 entities, 95% of total NPOs), companies limited by guarantee (1 928 entities, 4% of total), Labuan foundations/Islamic foundations (18 entities, 0.04% of total) and associations formed for charitable purposes (270 entities, 0.5% of total). There are separate legal, licensing/registration and oversight regimes for each type of NPO. The main statutes dealing with the establishment and regulation of NPOs in Malaysia are the Societies Act 1966 (SA), Companies Act 1965 (CA), Labuan Foundations Act 2010 (LFA), Trustees (Incorporation) Act 1952 (TIA) and the Income Tax Act 1967 (ITA). The main NPO supervisors/regulators are the Internal Revenue Board (IRB), the Registrar of Societies (RoS) for registered societies, the Companies Commission of Malaysia (CCM) for CLGBs, the LFSA for Labuan foundations/Labuan Islamic foundations and the Legal Affairs Division of the Prime Minister's Department (BHEUU) for trustees of bodies and associations formed for charitable purposes.

a4.54. The NPOs under the purview of the ROS and CCM account for a significant portion of financial resources under the sector and a substantial share of the sector's international activities in Malaysia. The NPOs registered under LFSA and BHEUU, constitute a small financial share in the sector and do not have presence or receive funds from abroad. Information on LFSA and BHEUU controls are included for completeness, rather than the purpose of compliance ratings.

a4.55. **Criterion 8.1(a)** - Several reviews of the adequacy of laws and regulations related to NPOs have been undertaken or are ongoing.

a4.56. **Criterion 8.1(b)** - Malaysia's domestic review of the NPO sector considered information on the structure and activities of the sector, exposure to international activities, indicators of TF, LEAs' experience, and controls on NPO. Supervisors and LEAs provided data and validated outputs based on their expertise. The review assisted NPO regulators in assessing TF risks of their regulated entities. Malaysia's NPO regulators provided information on NPOs activities, size and other relevant features to the 2013 NRA's focus on TF risks in the NPO sector. NPO risk of abuse for TF and mitigation of TF risk was considered as part of the review into Labuan foundations.

a4.57. **Criterion 8.1(c)** - The NRA (including a review of the NPO sector) is subject to review by the NCC every three years. The NCC has agreed for ad hoc reviews of the NRA in the event of emerging risks and the ROS, CCM and LFSA will conduct ad hoc review of the NPOs sector as necessary.

a4.58. **Criterion 8.2** - Under the NCC committee on NPOs (SCONPO), CCM and RoS organised the 'National Seminar on AML/CFT 2013 - Towards Better Governance of NPOs', which was also attended by NPOs supervised by BHEUU. CCM and RoS have conducted other AML/CFT awareness raising programs. LFSA conducted its first outreach program for the new Labuan charitable foundations in September 2014. Prior to this LFSA's priority had been outreach to trust companies which act as the secretary and manage Labuan foundations.

a4.59. **Criterion 8.3** - The transparency and integrity of and public confidence in NPOs is facilitated by Malaysia's legal and supervisory framework. The public is able to inspect any documents (with the exception of accounts) submitted by NPOs under the SA (efforts are underway to allow the public to search information through a dedicated website). RoS prohibited house to house fundraising and street collections by NPOs in 2012 unless a specific license is granted by the RMP. Information submitted to CCM by CLGBs is accessible by the public on-line and onsite. CLGB fundraising activities involving the public require ministerial approval. All Labuan foundations are required to have a trustee in the form of a Labuan trust company. Similar requirements apply to Labuan Islamic trusts. As trust companies are RIs under the AMLA, record-keeping and CDD requirements apply to them. NPOs supervised by BHEUU are required to supply relevant information when applying to incorporate a trustee under TIA however these records are not publically available. RMP has recently implemented a system of licensing charitable collection agents, which is done at a local level to ensure effective oversight and accountability.

a4.60. **Criterion 8.4(a)** - All NPOs applying for tax exemption must provide the information required under criterion 8.4(a) to the IRB. All NPOs, regardless of their tax exemption status, are required to submit tax returns to the IRB. Registered societies must maintain the required information under the SA and that information is publicly available. CLGBs are required to disclose this information in the registration document and update any changes via prescribed forms. This information is publicly available, both on-line and onsite.

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Secretaries of Labuan foundations and Labuan Islamic foundations are required to keep accurate records of their trusteeship. That information is not publicly available. BHEUU keeps accurate records of trusteeship of NPOs registered under the TIA. Appointment of new trustees and reappointment of trustees is subject to approval from the Minister in the Prime Minister's Department.

a4.61. **Criterion 8.4(b)** - The ITA requires NPOs applying for tax exemption to submit audited financial statements with a detailed breakdown of income and expenditure. Under s.14 of the SA, annual returns (including income and expenditure statements) of societies (including of any branches) are required to be submitted to the RoS within 60 days after the end of each calendar year or following their Annual Meeting. CLGBs are required to prepare and lodge their audited financial statements with CCM under s.169(1) of the CA, including a detailed breakdown of income and expenditure. Under s.59 of the LFA, Labuan foundations are required to keep proper accounting records. Section 15 of the TIA requires trustees to submit audited financial statements to the Minister on or before 30 June of each year.

a4.62. **Criterion 8.4(c)** - By virtue of their constitution, societies need to ensure that funds are spent consistent with the purpose and objectives. Under s.49 of the SA, RoS can deregister committee members of NPOs found acting against their constitution. Under s.24(1) of the CA, CLGBs must comply with their licensing conditions which require them to maintain proper accounting records and demonstrate good internal controls to ensure their funds are utilised in accordance with stated purpose and objectives. Section 11(2) of the LFA provides that a Labuan foundation must manage its affairs in accordance with its constituting documents and relevant provisions of the LFA. Pursuant to s.107(2) of the LIFSSA, the LFA also applies to any Labuan Islamic foundations. In addition, Shariah principles apply. Section 15(4) of the TIA provides that NPOs must ensure that their funds are spent in a manner consistent with the purpose and objectives.

a4.63. **Criterion 8.4(d)** - NPOs in Malaysia need to be either registered with RoS, BHEUU or LFSA or incorporated under the CA (CLGBs).

a4.64. **Criterion 8.4(e)** - Licensed persons conducting charitable collection must disclose their beneficiary NPOs under the terms of the 2012 Circular. Section 14(1) of the SA requires societies to list the names and addresses of affiliated NPOs. Section 14(2)(d) enables RoS to request an audited account (which may include details of beneficiaries) from a society at any time. Sections 167(1A) and 167(2) of the CA require a company to make appropriate accounting entries within 60 days of the completion of a transaction (including the names of beneficiaries and associated NPOs). Labuan foundations (under s.8(2) and the First Schedule of the LFA) must keep records of matters in relation to their charters (which detail founders and beneficiaries). Labuan NPO can have an associated NPO when it establishes a subsidiary or associated company and this require an insertion to the NPO's existing charter. Such changes in the charter are required to be lodged by the NPO's secretary with LFSA pursuant to s.17(1)(1) of Labuan Foundation Act. Under s.15 of the TIA trustees must keep accounts of all monies received and paid (including to beneficiaries) on behalf of the trust. However, there is no provision for trustees to know associated NPOs.

a4.65. **Criterion 8.4(f)** - The SA does not contain record keeping obligations for societies. However, in accordance with their constitution office bearers of societies are required to keep relevant records (but the period of time records need to be kept is not prescribed). Record keeping obligations of CLGBs are set out in s.167(2) of the CA. Accounting and other records need to be kept for a period of 7 years. Labuan foundations and Labuan Islamic foundations are required to keep their records for 6 years (pursuant to s.82 of the LFSSA 2010). Record keeping obligations of NPOs supervised by BHEUU are set out in s.15 of the TIA 258, however the period of time records need to be kept is not prescribed.

a4.66. **Criterion 8.5** - Under s.13 of the SA, a registered society can be de-registered for a number of reasons. Sections 54 and 54A provide penalties for fraud, false declaration, misappropriation and furnishing false information. Between 2011 and 2013 more than 4,000 societies were de-registered by RoS. If a CLGB is found to be operating against national security or public order, it may be subject to civil proceedings. Penalties are set out in ss.132, 364(2) and 367 of the CA. CCM has targeted programs to monitor compliance by NPOs. LFSA monitors the compliance of Labuan foundations upon submission of their annual returns. Under s.78 of the LFA, LFSA can impose administrative penalties (at a maximum of RM 500 (USD 149) per day and RM 10 000 (USD 2 987) in total) on any person failing to comply with the provisions of the Act, compound penalties and deregister foundations. The financial penalties available are not dissuasive, but the ability of the regulator

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to compound penalties may add to their effectiveness. Under s.17 of the TIA, the Minister has the power to revoke or suspend a certificate of incorporation if a body is found in breach of any provision. BHEUU has carried out monitoring and sanctioning.

a4.67. **Criterion 8.6(a)** - RMP has close cooperation with NPO regulators and has staff seconded to the RoS to facilitate real-time information exchange, including real time TF risk information. Malaysia's NPO regulators have signed a Note of Understanding (NOU) involving RoS, CCM, LFSAA and BHEUU dated September 2014 to support information exchange. Coordination and information sharing also takes place through the NCC committee on NPOs (SCONPO) which was established in May 2008. SCONPO is comprised of CCM (lead agency), RoS, IRB and BNM. As part of the NCC, it does not require formal legal arrangements or MoUs for domestic cooperation. No specific information regarding domestic cooperation by BHEUU was provided.

a4.68. To date, there have been no TF investigations involving NPOs in Malaysia. Section 63 of the SA empowers RoS to enter and search premises and inspect all documents. CCM is empowered to enter premises, search and seize documents under s.7(11) and 69A of the CA. Under s.28B of the LFSAA, LFSAA can share, publish or disclose information.

a4.69. **Criterion 8.6(b)** - Section 14(2) of the SA allows RoS to compel any society to furnish in writing any information deemed required by it. Section 64 empowers RoS to enter, search, seal and confiscate any documents relevant to the search, as well as taking statements for further proceedings. CCM is empowered to enter premises, search and seize documents under s.7(11) and 69A of the CA. Under s.28B of the LFSAA, LFSAA can compel RIs to submit any information on the identity, affairs or accounts of any of its customers. Section 28B of the LFSAA allows LFSAA to compel Labuan foundations, and corporations related to a Labuan foundation, to submit information to LFSAA. Apart from s.15 of TIA 258 which provides for trustees to keep accounts and render audited annual returns of accounts, BHEUU requests information on the management of trusts through an administrative form. The TIA 258 does not have a specific provision for access to information.

a4.70. **Criterion 8.6(c)** - Pursuant to Regulation 17 of the Societies Regulations 1984, RoS is able to promptly share information with LEAs such as the RMP and the MACC. LEAs have direct access to the CCM database. However, the sharing of investigation outcomes is on a case-to-case basis and subject to consent by the in-house Legal Advisor. Under s.28B(6) of the LFSAA, the LFSAA is able to disclose relevant information to domestic LEAs where there is a reasonable suspicion that a criminal offence has been, is being or is about to be committed. Section 28B(6) of the LFSAA should be read together with other provisions in the LFSAA including s.17A of the LFSAA which allows a member, an officer etc. of LFSAA to disclose information if he is required by any court or under any written law. CCM could share information promptly by using various other mechanisms including the interagency committees such as the Committee on Combating White Collar Crime platform, which does not require consent by legal advisor. No information on information sharing mechanisms was provided in relation to BHEUU.

a4.71. **Criterion 8.7** - The points of contact for international cooperation at Malaysia's NPO supervisors are provided at Article 14 of the MoU signed by the four supervisors in September 2014. In addition, RoS has established contact points and procedures to deal with international information requests. RoS has existing working relationships with its counterparts in Singapore and the UK. LFSAA has procedures in place for receiving and vetting requests. LFSAA's prosecution unit handles all requests for information, either formally through the MLA route or under an existing MoU/legal agreement.

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Weighting and Conclusion

a4.72. There are some minor gaps in public access to records on NPOs, explicit record keeping requirements in all cases and gaps in the range of sanctions available to NPO regulators.

a4.73. **Malaysia is rated largely compliant with R.8.**

5. PREVENTIVE MEASURES

Preamble: Scope of FIs, DNFBPs and AML/CFT regulatory instruments

a5.1. The full range of FIs and DNFBPs are subject to AML/CFT preventive measures under the AMLA and subsidiary instruments. The competent authority three main financial regulators (BNM, SC and LFSA) have issued almost identical enforceable guidelines between September 2013 and January 2014 to specify in detail the requirements contained in the AMLA, prior to the coming into effect of the AMLATF Amendment Act in 2014.

a5.2. As indicated in the 2007 MER assessment, Malaysian case law confirms that the guidelines issued by the competent authority are enforceable. Each guideline clearly articulates which provisions are enforceable and which are purely intended to guide implementation. While the provisions in the guidelines are similar in the key components, they do address, where appropriate, the characteristics of each sector.

a5.3. Section 5 of the AMLA states that 'the competent authority' (which is BNM under the Act) shall, upon consultation with the relevant supervisory authority, issue directions or guidelines to FIs on the undertaking of CDD measures to inter alia, specify additional CDD measures to be undertaken by FIs and DNFBPs. Sectoral guidelines issued by BNM, LFSA and SC reflect this power and draw on the rule making powers in the relevant sectoral statutes.

BNM AML/CFT Guidelines

- Banks and deposit-taking institutions (effective date: 15 September 2013) – Sector 1
- Insurance and takaful (effective date: 15 September 2013) – Sector 2
- Money services business (effective date: 15 September 2013) – Sector 3
- Electronic money and non-bank affiliated charge and credit card business (effective date: 15 September 2013) – Sector 4
- DNFBPs and other non-financial sectors (effective date: 1 November 2013) – Sector 5

LFSA AML/CFT Guidelines

- Banking sector (effective date: 30 December 2013)
- Capital markets and other business (effective date: 30 December 2013)
- Insurance and takaful (effective date: 30 December 2013)
- Trust Company Sector (effective date: 30 December 2013)

SC AML/CFT Guidelines

- Capital market intermediaries (issued: 15 January 2014)

a5.4. A broader category of financial activities, including those carried out by DNFBPs, are covered under the First Schedule of the AMLA, which include the activities listed above and in the Glossary to the FATF Recommendations. These include:

- Activities carried out by banks, investment banks, insurers carrying on life business, financial advisers, insurance broker, issuer of designated payment instrument and approved money broker under the Financial Services Act 2013.

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- Activities carried out by Islamic banks, international Islamic banks, takaful operator carrying on family takaful business, international takaful operators carrying on family takaful business, Islamic financial adviser, takaful broker and issuer of designated Islamic payment instrument under the Islamic Financial Services Act 2013.
- Activities relating to building credit business, development finance business, factoring and leasing business.
- Activities of dealing in securities, dealing in derivatives or fund management carried out by a holder of a licence under the Capital Markets and Securities Act 2007.
- Activities carried out by a licensee under the Money Services Business Act 2011.
- Activities carried out by a prescribed institution under the Development Financial Institutions Act 2002.
- Activities carried out by Lembaga Tabung Haji (includes deposit taking) under the Tabung Haji Act. 1995.
- Activities carried out by a licensee in relation to postal financial services as defined under the Postal Services Act 2012 (money orders, postal orders, postal drafts, postal cheques, postal travellers' cheques, giro, cash-on-delivery, collection of bills, savings service, subscription to newspapers and periodicals and any other form of financial service).
- Activities carried out by a casino activity as defined in the Common Gaming Houses Act 1953.
- Activities carried out by members as defined in the Accountants Act 1967.
- Activities carried out by an advocate and solicitor as defined in the Legal Professions Act 1976, the Advocates Ordinance Sabah 1953 and the Advocates Ordinance Sarawak 1953.
- Activities carried out by a licensed secretary of a company pursuant to the Companies Act 1965.
- Activities carried out by a licensee as defined in the Pool Betting Act and a racing club as defined in the Race Club (Public Sweepstakes) Act 1965.

Table A5.1. The types of FIs and DNFBPs falling under the three supervisors

| Supervisor | Types of FIs and DNFBP |
|------------|--|
| BNM | Commercial banks ; Islamic banks; Lembaga Tabung Haji (deposit taking fund for Muslim pilgrims); Insurance and takaful (Islamic insurance); Money services businesses: money changing, remittance business and wholesale currency business; Development financial institutions; Payment systems: electronic money and non-bank charge and credit card issuers; Casino; Accountants; Lawyers and advocates; Dealers in precious metals and stones; Company secretaries (onshore); totalizer agency; pools betting; racing clubs |
| SC | Capital markets services intermediaries (e.g. dealing in securities, advise on corporate finance, investment advice, fund management, dealing in derivatives, dealing in private retirement schemes). |

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Table A5.1. The types of FIs and DNFBPs falling under the three supervisors (continued)

| Supervisor | Types of FIs and DNFBP |
|------------|--|
| LFSA | Labuan Banks, Labuan Investment Banks , Labuan Islamic Banks, Labuan Islamic Investment Banks, Labuan Insurance and Insurance Related, Labuan Takaful and Takaful Related, Labuan Capital Market : mutual funds (public and private); fund managers; fund administrators; Trustees; Custodian, Labuan Financial Business (building credit business; credit token business; development finance business; leasing business; factoring business; money-broking business, Labuan international trading commodity) , Labuan Islamic Financial Business (Islamic building credit business; Islamic credit token business; Islamic development finance business; Islamic leasing business; Islamic factoring business; Islamic money-broking business, Labuan Securities Licensee, Labuan Trust Companies, Sukuk, Islamic Mutual Funds (Private and Public Fund), Fund Managers and Fund Administrators, Trustees and Custodian. |

a5.5. As a result of the 2013 NRA it was assessed that general insurance (including takaful) is low risk due to the nature of the products sold and is no longer subject to the AML/CFT obligations under the guidelines. Similarly, custodians of cash and liquid securities are not subject to AML/CFT obligations based on low risk because (a) the business is carried on by other institutions that are already subject to these obligations and is limited to business conducted with fund managers and (b) they do not interact directly with customers of fund managers.

Recommendation 9 – Financial institution secrecy laws

a5.6. Malaysia was rated partially compliant with former R.4. The 2007 MER found that Offshore Banking Act inhibited the ability of LFSA legally to acquire customer information in the normal course of its supervisory role and that there were legal constraints on BNM and LFSA to share customer information with foreign counterparts.

a5.7. **Criterion 9.1** - A duty of confidentiality and secrecy is imposed by the financial and regulatory laws on directors, officers, auditors, agents etc. of licensed FIs with respect to customers and the affairs of such institutions. A similar duty is also imposed on the supervisors of such institutions, but with exemptions as provided for in the law, including with respect to sharing of information with foreign counterparts and domestic LEAs which they obtain in the course of their supervisory functions. For purposes of the STR obligations of all entities covered under the AML/ATFA, the secrecy and restrictions on disclosure imposed by any law or otherwise are overridden.

a5.8. In 2010, the Offshore Banking Act (OBA) was repealed and the Labuan Financial Services and Securities Act (LFSSA) which includes provisions for banks, was enacted. In 2010, the LFSA Act was also amended to address information access restrictions in the predecessor OBA. Section 17A of the LFSA Act contains broad secrecy and disclosure restrictions that can cover information obtained in the course of the LFSA supervisory functions (e.g. ‘...any record, book, register, correspondence, document, material or information, relating to the business and affairs of the Authority in the performance of his duties or the exercise of his functions ..’). Exemptions to the secrecy provisions under s.17A are disclosures when required by a court or written law. There are pecuniary and imprisonment penalties for violations of secrecy provisions.

a5.9. Section 28B(1) allows the LFSA to require FIs to submit to it a wide range of information for purposes of its supervisory functions including information , then imposes restrictions on divulging that information care of Section 28B(5) of the Act. Section 28B (6) allows the LFSA to divulge information submitted to it under s.28B(1) to a range of recipients including home supervisors, LEAs, under MOUs, on order of the courts, etc. but only with respect to information obtained under s.28B(1), that is, customer and beneficiary identification information “or” the general information submission requirement under item (c).

a5.10. Sections 28(E) and 28(F) combined with s.29P provide very wide powers for LFSA investigating officers to obtain the widest range of information and things from Labuan RIs and share any such materials

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or information, but only in the context of the investigation of a breach of regulatory offence set out in the Act and acts in the schedule to the LFSAA. The threshold for obtaining this information is reasonable suspicion by an investigating officer. Section 29P of the LFSAA clearly puts aside any secrecy obligations, regardless of MOU, home supervisor relationship or any other provision and empowers LFSAA to share the widest range of information held by LFSAA with any authority vested with supervisory and regulatory or enforcement powers situated within or outside Malaysia. The disclosure to a supervisory or regulatory authority in the context of s.29P of the LFSAA is not limited to home supervisory authority, but is limited to information obtained by an investigating officer when there is a suspicion of a breach of a regulatory offence.

a5.11. Some basic supervisory information which does not reasonably give rise to suspicion of an offence and which is not requested by a home supervisor or a party to an MOU would still be captured by secrecy obligations. This appears to be a relatively minor gap, and would include information that the LFSAA does not request and may obtain on its own or itself generate through the examination process that may be of interest to other competent authorities and information which is not collected in the context of suspicion of an offence.

Weighting and Conclusion

a5.12. Some basic supervisory information which does not reasonably give rise to suspicion of an offence and which is not requested by a home supervisor or a party to an MOU would still be captured by secrecy obligations. This appears to be a relatively minor gap.

a5.13. **Malaysia is rated largely compliant with R.9.**

Recommendation 10 – Customer due diligence

a5.14. Malaysia was rated largely compliant with former R.5. The 2007 MER noted uncertainties about current levels of implementation; varied interpretations of the obligation to identify beneficial ownership; no obligation on securities firms to close accounts when they have doubts about the identity of existing customers; and uncertainty about the extent to which insurers can verify CDD undertaken by agents.

a5.15. Since then, a number of enhancements have been made to the legal and regulatory framework, particularly through the issuance of updated guidelines reflecting the revised FATF Recommendations, including risk-based elements. The main CDD requirement is established in the AMLA (Amendment) Act of 2013 (passed in June 2014). Section 16(2) states that FIs shall undertake CDD measures in the circumstances listed in the Act, e.g. establishment of business relations, conduct of transactions, etc. Therefore, the basic requirement that the CDD obligation be established in law has been met.

Detailed CDD requirements

a5.16. **Criterion 10.1** – Section 16(1) of the AMLA prohibits FIs from opening or operating an anonymous account or any account in a fictitious, false or incorrect name. This prohibition also applies to the establishment or conduct of business relationships in a similar manner. In addition, s.18 states that no person shall open, operate or authorize the opening or operation of an account, or establish, conduct or perform any business relationship, transaction or activity with a FI in a fictitious, false or incorrect name. Provisions are also made for persons that are commonly known by two or more names.

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a5.17. **Criterion 10.2** – Section 16(2) of the AMLA and the sectoral guidelines require FIs to conduct CDD when: (a) establishing or conducting a business relationship; (b) carrying out a transaction or activity for occasional or 'usual' customers; (c) when any transaction or activity exceeds the thresholds specified by the applicable supervisor (see below); (d) there is suspicion of ML or TF, but does not state that this applies regardless of any threshold or exemption but which can be so implied. The guidelines elaborate on the requirements of the Act and state that CDD should be conducted when there is suspicion regardless of the amount; and (e) when there is doubt about the veracity or adequacy of previously obtained identification data. This requirement in the Act (s.16 (2) and (7) in particular) is also elaborated in the guidelines. For instance, guideline 13.1.1 (c) and (d) for banks requires CDD for occasional transactions and cash transactions

of RM 50 000 (USD 14 937) and above. For occasional transactions this also includes ‘... situations where the transaction is carried out in a single transaction or several transactions in a day that appear to be linked;’ The one day period is not a material gap (and not a specific FATF requirement) but is limiting because structured linked transactions can occur on different days that can exceed the established thresholds during e.g. one week or month. A longer period for aggregating linked transactions may be more appropriate, both with respect to the occasional and cash transactions requirements in the Guidelines. This could also be included under s.16(7) that establishes the requirement of linking multiple transactions and activities but no timeframe for aggregating ‘series of transactions’ that are or appear to be linked (as required under c10.2(b)). This would better support the identification and reporting of structured suspicious transactions that occur over several days but not daily. For insurance/takaful companies the BNM guidelines require structured transactions to be linked for purposes of the threshold established for simplified CDD only and not for other cases. For LFSA supervised insurance /takaful entities the guidelines provide for split transactions below the established thresholds for simplified CDD only, and they only apply in cases of structured premium payments with respect to multiple policies per policy holder. It can therefore be interpreted that CDD is required on all transactions including occasional irrespective of the amount, other than for simplified CDD purposes. Other sectoral guidelines do not contain provisions for aggregating linked transactions for purposes of established thresholds for occasional transactions.

a5.18. The AMLA does not specifically require CDD for occasional wire transfers but under s.10(2) it requires CDD for all occasional transactions, presumably regardless of the amount. However, this requirement is established in the guidelines without any threshold with respect to FIs, except for insurance and takaful companies and other entities that do not generally engage in wire transfer business. Only BNM has included thresholds in some of the sectoral guidelines as follows:

- Banks and deposit-taking institutions: RM 3 000 (about USD 896) for currency changing transactions and RM 50 000 (about USD 14 937) for occasional transactions including linked transactions.
- Insurance and takaful: none.
- Money changing and wholesale currency: RM 3 000-10 000 (USD 896-2 987) identification information only and above RM 10 000 (USD 2 987) a copy of the identification also.
- Electronic money and non-bank charge and credit card entities: for transactions RM 3 000 (USD 896) and for customer purses when balance is RM 5 000 (USD 1 494) or above.

a5.19. For FIs supervised by the LFSA, there are no specific thresholds for occasional transactions except in cases described under c10.2 above.

a5.20. **Criterion 10.3** - Section 16(3) of the AMLA requires FIs to ascertain the identity of customers, including their domicile, legal and representative capacity, occupation or business purpose whether the person is an occasional or usual customer. In this regard, FIs shall verify such information using reliable means or from an independent source document, data or information which can include identity card, passport, birth certificate, driver’s license, constituent document, or any other official or private document. The sectoral guidelines provide the full details on CDD measures and documentation including address, nationality, contact details, employment, etc. FIs can accept other forms of official documents providing they bear a photograph and their authenticity can be verified. Copies of original documents should also be obtained but where biometric identification is used, verification is deemed satisfied. When there is doubt, FIs shall request other official documentation bearing a photograph.

a5.21. **Criterion 10.4** - Section 16(3) of the AMLA and the sectoral guidelines require FIs to identify persons purporting to act on behalf of a customer. This includes identification of the legal and representative capacity. FIs shall take reasonable steps to obtain and record information on the identify of any person on whose behalf an account is opened or a transaction is conducted if there is doubt that a person is not acting on his own behalf. Section 16(3)(b) requires FIs to verify the ‘representative’ and ‘legal’ capacity of a person which should allow the FI to establish if the person is authorized to act on behalf of another. FIs must verify that persons acting on behalf of customers are authorized.

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a5.22. **Criterion 10.5** - Section 16(7) of the AMLA states that the CDD measures applicable to persons includes any person who is a nominee, agent, beneficiary, beneficial owner or principal and any other person specified by the competent authority in relation to a transaction or activity. Consequently, the CDD obligations imposed by the Act cover beneficial owners. More directly, each of the guidelines have more detailed requirements for beneficial owners which mirror the FATF requirements.

a5.23. **Criterion 10.6** - Section 16(3) of the AMLA requires FIs to identify and verify, inter alia, the business purpose of a customer. The requirements to understand and obtain the purpose and intended nature of the business relationship are contained in each of the sectoral guidelines at a level of detail which mirrors the FATF standard.

a5.24. **Criterion 10.7** - Section 16(4) of the AMLA includes a high-level requirement on FIs to conduct ongoing due diligence on all accounts, business relationships, transactions and activities. The full CDD requirements to scrutinize transactions for consistency with knowledge, business and risk profile of customers, source of funds and updating and reviewing CDD data, particularly for higher risk clients are established in the sectoral guidelines consistent with FATF requirements.

a5.25. **Criterion 10.8** - The sectoral guidelines contain detailed CDD requirements for legal persons and arrangements consistent with the FATF standards with respect to CDD for legal persons and arrangements' nature of business and the ownership and control structure.

a5.26. **Criterion 10.9** - Detailed requirements consistent with the standards are established in the respective sectoral guidelines to identify and verify legal persons and arrangements using the required information.

a5.27. **Criterion 10.10** - Section 16(3)(e) of the AMLA requires FIs to take reasonable steps to verify the identity of natural persons who own or exercise effective control over a customer that is not a natural person. The definition of natural 'person' under s.16(7) includes beneficiaries and beneficial owners. Obligations which mirror the FATF requirements are contained in the sectoral guidelines.

a5.28. **Criterion 10.11** - The specific CDD requirements for legal arrangements including trusts (settlors, trustee(s), protectors) are detailed in the sectoral guidelines at a level of detail which mirrors the FATF requirements.

a5.29. **Criterion 10.12** - The AMLA has broad requirements, but the insurance/takaful guidelines have specific requirements that are set out in a way which mirrors the FATF requirements (s.13.4.2 refers). In addition to general CDD to be undertaken, s.13.4.2 requires that the following CDD measures on the beneficiary of policies apply as soon as the beneficiary is identified/designated (the beneficiary is defined as 'the natural or legal persons, or a legal arrangement, or category of person, who will be paid the policy proceeds when or if an insured event occurs, which is covered by the insurance policy): (a) for a beneficiary that is identified as specifically named natural or legal persons or legal arrangements – taking the name of the person; (b) for beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information (e.g. under a will of testament) concerning the beneficiary to satisfy the reporting institutions that it will be able to establish the identity of the beneficiary at the time of the payout; and (c) for the purposes of (a) and (b), the verification of the identity of the beneficiary must occur latest at the time of the payout.

a5.30. **Criterion 10.13** - The guidelines for the insurance and takaful sectors include requirements which mirror the FATF requirements to include beneficiaries of life insurance policies as a relevant risk factor to determine enhanced CDD measures, including verification of identity at the time of payout.

a5.31. **Criterion 10.14** - A number of the guidelines (e.g. banks) have provisions that are consistent with the FATF requirements to permit delays in the verification of identity under controlled circumstances. Other guidelines do not permit any delays in the timing of completion of verification in the CDD process, perhaps because their business does not, in practice, give rise to such situations.

a5.32. **Criterion 10.15** - The sectoral guidelines contain risk assessment, management and control provisions especially for the banking and capital markets sectors where such circumstances may arise.

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a5.33. **Criterion 10.16** - The sectoral guidelines establish this requirement in language which mirrors the FATF standard. The guidelines do not define existing customers as being those at the date new national requirements are brought into force. The guidelines do, however, indicate their date of effect and the requirements to comply shall take effect immediately. A common reading of the term 'existing customers' in these circumstances would appear to be those customers of any FIs at the date the guidelines entered into force.

a5.34. **Criterion 10.17** - The AMLA (s.16(5)(b)) requires that the competent authority (FIU) issue directions or guidelines to FIs on undertaking additional CDD measures. The sectoral guidelines repeat those obligations and also require FIs to perform enhanced CDD where ML/TF risks are higher.

a5.35. **Criterion 10.18** - The AMLA (s.16(5)(b)) requires that the competent authority (FIU) issue directions or guidelines to FIs on undertaking additional CDD measures. The sectoral guidelines repeat those obligations and set out the application of simplified CDD measures where lower risks have been identified through an adequate risk analysis, but are not acceptable where there are suspicions of ML/TF. This is in keeping with the standards.

a5.36. **Criterion 10.19** - Sectoral guidelines which mirror the FATF requirements govern situations where FIs cannot comply with the applicable CDD measures.

a5.37. **Criterion 10.20** - Sectoral guidelines which mirror the FATF requirements allow FIs to not pursue CDD measures if doing so could tip-off a customer, and to immediately file an STR in such cases.

a5.38. **Malaysia is rated compliant with R.10.**

Recommendation 11 – Record-keeping

a5.39. Malaysia was rated compliant with former R.10 in the 2007 MER.

a5.40. **Criterion 11.1** - Section 13 of the AMLA establishes the record keeping requirements, supported by the sectoral guidelines. Section 13(10) requires FIs to keep all transaction records involving domestic and foreign currencies exceeding such amount as the competent authority specifies. Note that the Act refers to a narrower type of transaction (domestic and foreign currency) but there is no such restriction in the guidelines, which covers all transactions and would for practical purposes cover all international transactions. Records should be kept for at least 6 years after transactions are completed.

a5.41. **Criterion 11.2** - Section 13(3) lists the types of records that could be kept including identification, address including for beneficiaries, account identification and transaction details. The guidelines expand on these and include business correspondence. The guidelines specify that records should be kept for at least 6 years following completion of a transaction including occasional transaction, and business relationships. The retention period can be extended if LEA so requires. The requirement to retain the results of analysis is contained in the guidelines (s.17).

a5.42. **Criterion 11.3** – In relation to the requirement to maintain records in such a manner as to enable the reconstruction of individual transactions for evidentiary purposes, s.17(2) of the AMLA establishes that, in addition to the record keeping requirements under s.17(1), the “reporting institution shall also maintain records to enable the reconstruction of any transaction in excess of such amount as the competent authority may specify under s.14...” Section 14(1)(a) of the Act refers to the reporting of transactions (presumably for purposes of large currency or CTR) as follows: ‘any transaction exceeding such amount as the competent authority may specify’. Section 17 (1) provides for a broad range of records to be retained for the statutory period which (along with the threshold currency recordkeeping requirements under s.13) may be sufficient in practice for the reconstruction of individual accounts but does not mirror the FATF wording in the specific obligation under c11.3 that ‘such records be sufficient to reconstruct individual transactions’. The latter obligation is under s.17(2) as an additional obligation to the statutory record retention period under s.17(1) using the FATF wording, but which unfortunately limits its application by attaching the requirement to transactions that exceed the amount to be specified under s.14. The guidelines specify that records shall be

PREVENTIVE MEASURES

maintained in such a form as that is admissible as evidence in court and be available to supervisory and LEAs in a timely manner. This is a minor drafting shortcoming.

a5.43. **Criterion 11.4** - The guidelines establish that records should be made available to supervisory and LEAs, this refers to competent authorities as including 'all public authorities' (including independent financial supervisors) with responsibilities for combating ML/TF. These would include other agencies that do not have law enforcement mandate e.g. intelligence services.

Weighting and Conclusion

a5.44. A minor drafting shortcoming relating to thresholds is noted above.

a5.45. **Malaysia is rated largely compliant with R.11.**

Recommendation 12 – Politically exposed persons

a5.46. Malaysia was found partially compliant with former R.6 in the 2007 MER, largely because PEPs were not covered for the securities sector. R.12 has been expanded to include domestic PEPs.

a5.47. **Criterion 12.1** - For foreign PEPs. FIs are required under para. 14 of the Guidelines to put in place risk management systems to determine whether a customer or beneficial owner is a PEP. Upon such determination, enhanced CDD should be applied as specified in para. 13.5 (banks) of the Guidelines. (the paragraph references in the guidelines for some of the other sectors vary e.g. 13.6 for insurance but have similar provisions. The banking guidelines are used in this section to illustrate the deficiency identified). Such enhanced CDD require that senior management approval be obtained before establishing or continuing a business relationship with a PEP, and obtaining source of funds and wealth (para. 13). Enhanced CDD under para. 13.5 does not however, cover enhanced monitoring of the relationship as required under c12.1, except updating more regularly identification data of customers and beneficiaries (para 13.5.2). Ongoing CDD is covered under para. 13.6 for banks, (13.7 for insurance, etc.) which includes enhanced CDD in cases of higher risk. However, para. 14 on PEPs do not require application of the ongoing and enhanced CDD provisions of para. 13.6. d for foreign PEPs in all cases unless higher risk scenarios are identified.

a5.48. **Criterion 12.2** - FIs are required to take reasonable measures to determine if a customer is a domestic PEP or who holds a prominent function in an international organization, and where higher risk is assessed, to take enhanced measures as established under para. 13.5 of the Guidelines. This paragraph requires enhanced CDD similar to foreign PEPs including obtaining senior management approval for business relationships, establishing source of wealth/funds and enhanced ongoing monitoring (Guidelines: para. 14). The same deficiency that applies to foreign PEPs with respect to enhanced monitoring applies to domestic PEPs, that is, the enhanced CDD and monitoring provisions under para. 13.6 are not referenced in para. 14 for domestic PEPs, unless higher risk scenarios are identified.

a5.49. **Criterion 12.3** - The definition of PEPs in the Guidelines covers family members or close associates of all PEPs, therefore the above requirements extend to them.

a5.50. **Criterion 12.4** - Insurance and takaful are required to take reasonable measures to determine whether beneficiaries or where required the beneficial owner of the beneficiary are PEPs. This should occur latest at the time of pay out. In higher risk cases, enhanced CDD should be applied to include senior management approval and obtaining source of funds and wealth. RIs should consider filing an STR.

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Weighting and Conclusion

a5.51. The direction to treat foreign PEPs as high risk customers is only implicit and may be a minor shortcoming.

a5.52. **Malaysia is rated largely compliant with R.12.**

Recommendation 13 – Correspondent banking

a5.53. Malaysia was rated largely compliant with for R.7 in the 2007 MER. The evaluation team had uncertainties about the level of implementation.

a5.54. **Criterion 13.1** - With one exception, the BNM and LFSA guidelines (sections 20 and 19 respectively) contain enforceable provisions that are identical to the requirements under the FATF standards in relation to establishing and maintaining correspondent relationships. This exception is that the provisions apply to RIs dealing with respondent banks only rather than the wider concept of respondent institution. In addition, sections 13.4.18 and 19 of both guidelines require RIs to be satisfied that a counter party is properly regulated and supervised and that the counter-party's CDD process is adequate and mechanisms to identify and verify customers are reliable.

a5.55. **Criterion 13.2** - With the one exception referred to in 13.1 above, the BNM and LFSA guidelines (sections 20 and 19 respectively) contain enforceable provisions that are identical to the FATF requirements for 'payable-through accounts'.

a5.56. **Criterion 13.3** - With the one exception referred to in 13.1 above, the BNM and LFSA guidelines (sections 20 and 19 respectively) contain enforceable provisions that are identical to the FATF requirements to prohibit relationships establishing or continuing with shell banks.

a5.57. **Malaysia is rated largely compliant with R.13.**

Recommendation 14 – Money or value transfer services

a5.58. Malaysia was rated partially compliant with former SR VI. The 2007 MER found that large scale unregulated remittance channels existed, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels; there was limited implementation of CDD, record keeping and compliance provisions of AMLA as it was not invoked until March 2007 for certain non-bank remittance operators; there was limited implementation of AML/CFT compliance monitoring and sanctions by BNM over remittance operators; and that Malaysia had not ensured that all MVT service operators were subject to applicable FATF Recommendations.

a5.59. Since the previous MER there has been a new regulatory regime and relicensing of the whole MSB sector and continuing crack downs on unlicensed remitters. MSBs include MVTS and money changers.

a5.60. **Criterion 14.1** - MVTS providers in Malaysia are required either to be approved MSBs under s.11 of the Financial Services Act 2013 (FSA) or s.11 of the Islamic Financial Services Act 2013 (IFSA) to issue designated payment instruments (banking and non-banking institutions); be approved under s.11 of the FSA or IFSA to issue designated payment instruments and be licensed under s.7 of the Money Services Business Act 2010 (MSBA) for remittance services (non-banking institutions which also carry out remittance services); or be licensed under s.7 of the MSBA for remittance services (other institutions that carry out a remittance business only).

a5.61. **Criterion 14.2** - Persons who conduct MVTS without having obtained approval under s.11 of the FSA or IFSA are subject to imprisonment for a term not exceeding ten years or a fine not exceeding RM 50 million or both if convicted. In addition, s.4 of the MSBA makes it an offence for any person conducting a money services business without a licence. Upon conviction, such a person is liable to imprisonment for a term not exceeding 10 years or a fine not exceeding RM five million or both.

a5.62. Malaysia has taken a series of measures to identify illegal MVTS activity. Between 2012 and September 2014 BNM conducted onsite surveillance visits to 409 companies, of which 68 were found to be conducting illegal MSB activities. These companies were subject to enforcement action. See IO3 for further details.

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PREVENTIVE MEASURES

a5.63. **Criterion 14.3** - MVTS providers are subject to supervision by BNM. MVTS providers are RIs under AMLA and are subject to the AML/CFT requirements set out in the Act and guidelines (Sector 1 for FIs, Sector 3 for MSBA licensees and Sector 4 for e-money issuers).

a5.64. **Criterion 14.4** – Section 42 of the MSBA requires MSB licensees to obtain the approval of BNM prior to the appointment of an MSB agent. Para 9.1.2(e) of the MSB Guidelines on the Agent Oversight Framework requires a principal licensee to maintain an up to date record (accessible by BNM) of all agents appointed. In addition, BNM maintains a register of MSB agents approved for appointment which is published on BNM's website.

a5.65. **Criterion 14.5** - Para 10 of the relevant sectoral guidelines clarifies that third parties do not include agents. Agents are regarded as synonymous with the RI they provide services for and as such are subject to the AML/CFT compliance program of the reporting institution. Banks and non-bank FIs involved in the provision of MVTS are required to establish an oversight and monitoring process to ensure the proper conduct of their agents (paras 8.7 -8.8 and Appendix III of the Guidelines on Electronic Money refers).

a5.66. **Malaysia is rated compliant with R.14.**

Recommendation 15 – New technologies

a5.67. Malaysia was rated compliant with former R.8 in the 2007 MER.

a5.68. **Criterion 15.1** - The guidelines (para. 15, etc.) contain provisions that mirror the FATF requirements for RIs in relation to new technologies.

a5.69. Malaysia identifies and assesses the ML/TF risks that may relate to new technologies through a number of mechanisms. The 2012 and 2013 NRA's and sectorial risk assessments of FI's and DNFPB's included indicators on complexity of products and services offered and deliver channels, including in relation to new technologies. The NRAs also assessed the risk of sectors that work with new and developing technologies, such as electronic money and non-bank card issuers. Each supervisory authority's risk-based AML/CFT supervisory framework takes new technologies into account when assessing the level of inherent ML/TF risk. Supervisors also engaged with LEAs at the policy and operational level on issues related to possible risks arising from new technologies. The FIU conducts strategic analysis on ML/TF risks that may arise from new products or business practices, which is shared with RIs. In addition, a specialised Technology Risk Specialist Unit within BNM is mandated to detect and conduct macro-surveillance on emerging technology risks in the financial sector.

a5.70. **Criterion 15.2** - The guidelines (para. 15, etc.) contain direct provisions on new technologies that mirror the FATF requirements as well as risk profiling and mitigation requirements.

a5.71. **Malaysia is rated compliant with R.15.**

Recommendation 16 – Wire transfers

a5.72. Malaysia was rated largely compliant with former SR VII. The 2007 MER noted gaps with implementation and inspection powers were yet to be used with the majority of MSBs (MVTS and money changers). The FATF requirements for R.16 have been updated compared to SRVII.

a5.73. Malaysia's updated sectoral guidelines mirror the FATF requirements of R.16. In particular, paragraphs 18 and 19 of the applicable guidelines apply to most FIs except for insurance companies which do not generally engage in this business and are therefore not covered in the guidelines. These paragraphs establish the wire transfer obligations which are applicable to both cross-border and domestic wire transfers, including for serial and cover payments. These requirements also apply to the CFT provisions established under para. 31 of the guidelines.

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- a5.74. **Criterion 16.1** - The guidelines require the applicable FIs (ordering institutions) to ensure that wire transfers exceeding RM3,000 (about USD896) are accompanied by full originator information, including beneficiary information.
- a5.75. **Criterion 16.2** - The guidelines mirror the FATF requirements relating to the treatment of batched or bundled transactions. (para. 18.2).
- a5.76. **Criterion 16.3** - The guidelines mirror the FATF requirements relating to any *de minimis* threshold. (para. 18.2).
- a5.77. **Criterion 16.4** - The guidelines mirror the FATF requirements relating to verification of information when there is suspicion of ML or TF. (para. 18.2).
- a5.78. **Criterion 16.5** - The guidelines mirror the FATF requirements relating to domestic wire transfers. (para. 18.2).
- a5.79. **Criterion 16.6** - The guidelines mirror the FATF requirements in relation to information accompanying domestic wire transfers. (para. 18.2).
- a5.80. **Criterion 16.7** - The guidelines mirror the FATF requirements for ordering institutions (para. 18.1).
- a5.81. **Criterion 16.8** - The guidelines mirror the FATF requirements to not progressing if there is a failure to implement controls. (para. 18.1).
- a5.82. **Criterion 16.9** - The guidelines mirror the FATF requirements covering intermediary institutions ensuring originator and beneficiary information accompanies a wire transfer. (para. 18.3).
- a5.83. **Criterion 16.10** - The guidelines mirror the FATF requirements, including the recordkeeping requirement of 6 years or more. (para. 18.3).
- a5.84. **Criterion 16.11** - The guidelines mirror the FATF requirements for intermediaries' responsibilities to identify cases of a lack of originator or beneficiary information. (para. 18.3).
- a5.85. **Criterion 16.12** - The guidelines mirror the FATF requirements for intermediaries' responsibilities for risk-based actions in case of a lack of originator / beneficiary information. (para. 18.3).
- a5.86. **Criteria 16.13 - 15** - The guidelines mirror the FATF requirements covering beneficiary institutions' responsibilities to identify and take risk-based measures to act in case of a lack of originator / beneficiary information and to identify the beneficiary if it has not been done previously (para. 18.4).
- a5.87. **Criteria 16.16 & 17** - The guidelines mirror the FATF requirements covering MVTS responsibilities which may conduct wire transfers. (para. 19).
- a5.88. **Criterion 16.18** - Para. 18 of the guidelines together with para. 31 for combating TF per UNSCRs, require FIs conducting wire transfers to comply with the freezing and customer rejection requirements established in para. 31. In Malaysia these are persons listed by the UN or orders made by the Minister of Home Affairs under sections 66B or 66C of the AMLA to implement 1373.
- a5.89. **Malaysia is rated compliant with R.16.**

Recommendation 17 – Reliance on third parties

- a5.90. Malaysia was rated partially compliant with former R.9. The 2007 MER found the potential for reliance on unregulated third parties and a lack of limitations with respect to jurisdictions where introducers may be based.

PREVENTIVE MEASURES

a5.91. **Criterion 17.1** - The guidelines set out provisions which allow RIs to rely on third parties to conduct CDD or to introduce business, but the ultimate responsibility and accountability of CDD measures shall remain with the RI relying on the third parties. Third parties may perform CDD to identify and verify customers, beneficiaries and obtain information to understand the purpose and nature of the business relationship. Reliance on third parties for the conduct of ongoing CDD is not allowed under the guidelines.

a5.92. The guidelines do not contain provisions for RIs relying on third parties to immediately obtain the necessary CDD information relating to the identification and verification of a customer's identity, identifying the beneficial owner.

a5.93. The guidelines require FIs to satisfy themselves that the third parties can provide CDD information and copies of relevant documentation immediately upon request, have adequate CDD and recordkeeping requirements, and that they are properly regulated and supervised by their respective authorities. An attestation or written confirmation may be obtained from third parties that these requirements have been met. Such reliance shall be governed by arrangements establishing the rights and responsibilities of the respective parties.

a5.94. **Criterion 17.2** - RIs are prohibited from relying on third parties located in higher risk countries identified as having ongoing or substantial ML/TF risks. Institutions are required to have in place internal policies and procedures to mitigate the risks when relying on third parties, including those from jurisdictions that have been identified as having strategic AML/CFT deficiencies that pose a ML/TF risk to the international financial system. In addition, the risk assessment and management requirements established by the guidelines support this requirement.

a5.95. **Criterion 17.3** - The guidelines mirror the FATF requirements.

Weighting and Conclusion

a5.96. There is a minor deficiency as the guidelines do not specify that RIs relying on a third party should be required to immediately obtain the necessary CDD information.

a5.97. **Malaysia is rated largely compliant with R.17.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

a5.98. Malaysia was rated largely compliant with former Rec15 and compliant with former Rec22 in the 2007 MER. For R.15 there were certain implementation uncertainties.

a5.99. **Criterion 18.1** - The guidelines require FIs to have a compliance program, screening procedures for hiring and ongoing training of employees and an independent audit functions to test an institution's AML/CFT framework. The roles and responsibilities of the board of directors, senior management, compliance officers and employees are clearly spelt out.

a5.100. **Criterion 18.2** - Guidelines issued by BNM, LFSa and SC have included the requirements to implement group-wide programs. This includes a framework for AML/CFT compliance programs at the group level, appointment of a group compliance officer at management level, policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management, the provision of customer, account and transaction information from branches and subsidiaries when necessary for AML/CFT purposes and safeguards on the confidentiality and use of information. Holding companies provide and implement AML/CFT programs as per the need of branches and subsidiaries in the group. Group compliance officers appointed by the holding company make group-wide assessments for the implementation of a single AML/CFT strategy.

a5.101. **Criterion 18.3** - FIs and groups are required to ensure that their foreign branches and subsidiaries apply AML/CFT measures in a manner that is consistent with the AML/CFT requirements in Malaysia. Where

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the minimum AML/CFT requirements of the host country are less stringent than those of Malaysia, the RI must apply Malaysia's requirements, to the extent that host country laws and regulations permit.

a5.102. **Malaysia is rated compliant with R.18.**

Recommendation 19 – Higher-risk countries

a5.103. Malaysia was rated largely compliant with former R.21. The 2007 MER noted uncertainty as to effective implementation of enhanced and ongoing CDD and monitoring and limited scope for country-specific countermeasures.

a5.104. **Criterion 19.1** - All three AML/CFT regulators have issued appropriate guidelines to implement the revised FATF requirements on higher-risk countries. BNM and LFSAs guidelines require enhanced CDD for business relationships and transactions with any person from countries identified by the FATF or the Government of Malaysia as having ongoing or substantial ML/TF risks. SC has issued guidelines that require supervised entities to conduct enhanced CDD when there is a 'Public Statement' from the FATF or when FATF calls on its members to apply counter measures.

a5.105. **Criterion 19.2** - Guidelines issued by the three regulators require a range of actions to be taken against higher-risk countries, based on risk and whether or not FATF has called for action. A policy to disallow the opening of offices/branches/subsidiaries of FIs hailing from higher-risk countries is uniformly followed by all regulators. Malaysia can apply countermeasures when called for by FATF, as well as independent of such a call based on the risk involved in any relationship or transaction with the higher-risk country.

a5.106. **Criterion 19.3** - BNM issues periodic circulars to its regulated sectors on countries that have strategic deficiencies in their AML/CFT regime. LFSAs place such information on its website while SC publishes this information through the electronic licensing application system and its website.

a5.107. **Malaysia is rated compliant with R.19.**

Recommendation 20 – Reporting of suspicious transaction

a5.108. Malaysia was rated partially compliant with former R.13 and SR IV. The 2007 MER noted that not all predicate offences were included in the schedule of the AML law and an explicit TF-related STR obligation was not available. Effectiveness was lacking in certain sectors.

a5.109. **Criterion 20.1** – Section 14(1)(b) and (c) of AMLA requires RIs to promptly report transactions suspected to involve proceeds of an unlawful activity, instrumentalities of an offence or relate to TF. As the STR obligation in the AMLA is not linked to the ML offence, the minor deficiencies with predicate offences remaining in R.3 do not affect R.20 as the STR obligation relates to all crimes, not just predicates for ML.

a5.110. The September 2014 AMLA amendments substantially address the deficiencies highlighted in the 2007 MER, including the reporting of suspicious transactions related to TF independent of an unlawful activity. The amendments also make the 'structuring of transaction' an offence.

a5.111. Guidelines issued by all three regulators provide further detailed obligations and necessary guidance regarding the reporting of suspicious transactions. The guidelines issued by BNM and the other regulators require RIs to file an STR when a transaction, including an attempted transaction, appears unusual, has no clear economic purpose, appears illegal, involves proceeds from an unlawful activity or indicates that the customer may be involved in ML/TF, regardless of the amount involved. These requirements are supplemented by detailed guidance on the reporting mechanism and examples of red flags/ triggers for reporting a transaction.

a5.112. **Criterion 20.2** - Section 14(2) of AMLTFA provides that an 'attempted transaction' shall be taken as a 'transaction' for reporting purposes under s.14 of the Act.

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PREVENTIVE MEASURES

a5.113. **Malaysia is rated compliant with R.20.**

Recommendation 21 – Tipping-off and confidentiality

a5.114. Malaysia was rated largely compliant with former R.14. The 2007 MER noted that there was a lack of clarity about the tipping-off offence.

a5.115. **Criterion 21.1** - Protection against criminal and civil liability is provided under s.24 of AMLA.

a5.116. **Criterion 21.2** - AMLATFA includes a clear prohibition on disclosure of the fact that an STR or related information is being sent to the FIU and Section 14A makes disclosure a punishable offence. Section 14A(2) creates an additional safeguard against further dissemination of information received under s.(1).

a5.117. **Malaysia is rated compliant with R.21.**

Designated non-financial businesses and professions

Preamble: Scope of DNFBPs

a5.118. As outlined in the 2007 MER, the AMLA designates the following DNFBPs as RIs: casinos, accountants, advocates and solicitors, company secretaries, trust companies, notaries public, real estate agents, offshore trust companies and a significant number but not all dealers in precious metals and stones.

a5.119. A minor deficiency exists in the scope of coverage of dealers in precious metals and stones, with the AMLA requirements and guidelines issued by BNM for DNFBPs not applying to businesses registered in East Malaysia (Sabah and Sarawak) and also dealers which are not companies. At present only dealers in precious metals and stones registered as companies within Malaysia and registered as businesses in Peninsula Malaysia are captured as RIs. At the time of the onsite visit Malaysia estimated 345 dealers in precious metals and stones which were not captured as RIs. These are mainly sole traders operating small retail outlets. Malaysia assesses dealers in precious metals and stones to be low risk due to the low usage of cash, that payments are primarily made using cards through FIs and absence of criminal or ML investigations involving the sector. It is also acknowledged that little information is held by the authorities about the sector and its risks, which could comprise wholesalers as well as retail outlets.

Table A5.2 Number of DNFBPs subject to FIED's supervision as at 31 December 2014

| DNFBP | Number of institutions | Licensing/Registration Body (see R.28) | AML/CFT Supervisor |
|-----------------------------------|------------------------|--|--------------------|
| Lawyers | 4 753 | Malaysian Bar Council (MBC) | FIED |
| Accountants | 2 782 | Malaysian Institute of Accountants | FIED |
| Casino | 1 | Ministry of Finance (MoF) | FIED |
| Gaming Institutions | 6 | MoF | FIED |
| Dealers in precious metals/stones | 1 600 | No specific licensing or registration requirement. | FIED |
| Notaries public | 275 | AGC | FIED |
| Company secretaries | 12 359 | CCM or prescribed (e.g. accountants or lawyers) | FIED (with CCM) |

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**Table A5.2. Number of DNFBPs subject to FIED's supervision as at 31 December 2014
(continued)**

| DNFBP | Number of institutions | Licensing/Registration Body (see R.28) | AML/CFT Supervisor |
|---------------------------|------------------------|---|--------------------|
| Real estate agents | 1,764 | Board of Valuers, Appraisers and Estate Agents Malaysia (BVAEA) | FIED |
| Trust companies (onshore) | 28 | CCM | FIED (with CCM) |
| Offshore trust companies | 38* | LFSA | LFSA |

*as at 30 September 2014

Recommendation 22 – DNFBPs: Customer due diligence

a5.120. In the 2007 MER Malaysia was rated partially compliant for R. 12 due to gaps with record keeping, PEPs and a number of related measures.

a5.121. With the exception of the minor scope limitation in the coverage of dealers in precious metals and stones, the full range of DNFBPs plus gaming institutions are covered by the obligations in the AMLA and the guidelines.

a5.122. The analysis for Recommendations 10, 11, 12, 15 and 17 is largely applicable to DNFBPs as they are RIs for the purposes of the AMLA. The obligations in the AMLA apply to DNFBPs in the same way as to FIs. BNM has issued binding a regulatory instrument for all DNFBPs except TCSPs in Labuan. The LFSA has issued its own guidance for the TCSPs that it regulates. These two guidance documents follow the guidance for FIs very closely. The analysis for the AMLA is not repeated here, but relevant coverage of the guidelines for DNFBPs will be spelled out.

a5.123. **Criterion 22.1** - CDD requirements are set out in the BNM and LFSA guidelines (s.13) which fulfil the CDD requirements in R.10.

a5.124. Malaysia and Labuan have frameworks in place to support TCSPs and company secretaries conduct of ongoing CDD on the companies they create.

a5.125. Pursuant to the Labuan Trust Companies Act, every Labuan company must appoint a Labuan licensed trust company as its resident secretary. The resident secretary maintains knowledge of the purpose of the business through its responsibility to lodge company documents, including statutory returns with LFSA, its regular interactions with the board of directors at board and annual meetings and through any changes to the company's memorandum. Oversight of financial operations (e.g. source of funds) occurs as accounting and other business reports must be kept at the company's registered office; the trust company office. By virtue of the circulars on beneficial ownership issued by LFSA in 2014, the resident secretary must be aware of and update the beneficial owners register whenever there is a change in beneficial ownership.

a5.126. Onshore TSCPs and company secretaries maintain their knowledge of the purpose and intended nature of a company's business through their interactions with the board of directors and presence at meetings where company operations and activities are discussed, through their requirement to lodge statutory forms including annual reports and financial statements and through any changes to the company's memorandum.

a5.127. **Criterion 22.2** - The AMLA and the BNM and LFSA guidelines contain obligations that largely fulfil the DNFBP record keeping requirements, although the minor deficiencies described in R.11 is applicable.

a5.128. **Criterion 22.3** - BNM and LFSA guidelines (s.14) include obligations for DNFBPs as described at R.12 when dealing with PEPs. The minor deficiencies described in R.12 are also applicable to DNFBPs.

PREVENTIVE MEASURES

a5.129. **Criterion 22.4** - The BNM Sector 5 guidelines and the LFSA TCSP guidelines (s.15) contain enforceable provisions which meet the requirements to assess the risks of new products and business practices.

a5.130. **Criterion 22.5** - DNFBPs are required to comply with reliance on third party provisions outlined in s.16 of both the BNM and LFSA guidelines. The gaps described in R.17 also apply in relation to DNFBPs.

Weighting and Conclusion

a5.131. Minor gaps in record keeping and PEPs provisions, plus the very minor scope issue are noted.

a5.132. **Malaysia is rated largely compliant with R.22.**

Recommendation 23 – DNFBPs: Other measures

a5.133. Malaysia was rated partially compliant with the former R.16 in the 2007 MER as the obligations did not extend to dealers in precious metals and stones, not all predicate offences were covered for STR reporting and there was no explicit obligation for TF related STRs.

a5.134. Since 2007 dealers in precious metals and stones have been captured under AMLA, however the scope limitation as outlined in R.22 above applies for all criteria under R.23.

a5.135. **Criterion 23.1** - The AMLA (s.14) was amended in 2014 to require TF-related STRs and attempted transactions and applies to all DNFBPs. The guidelines restate the obligations.

a5.136. **Criterion 23.2** - The AMLA (s.19) and the guidelines require DNFBPs to have an appropriate compliance programs, implement group-wide program and ensure their foreign branches and subsidiaries apply AML/CFT measures in a manner that is consistent with Malaysia's regime. BNM guidelines (s.22) and LFSA guidelines (Ss.21 & 23) refer.

a5.137. **Criterion 23.3** - BNM and LFSA guidelines set out requirements on higher risk countries for DNFBPs (s.18). In addition, BNM issues periodic circulars on countries that have strategic deficiencies in their AML/CFT regime. The LFSA places such information on its website.

a5.138. **Criterion 23.4** - The AMLA obligations for tipping-off and confidentiality are applicable to DNFBPs.

Weighting and Conclusion

a5.139. Malaysia's laws and guidelines set out appropriate measures for DNFBPs, however the scope limitation in relation to dealers in precious metals and stones impedes full compliance.

a5.140. **Malaysia is rated largely compliant with R.23.**

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6. SUPERVISION

Recommendation 26 - Regulation and Supervision of FIs

a6.1. Malaysia was rated largely compliant with former R.23 in the 2007 MER due to gaps in the effectiveness of implementation of monitoring and supervision by BNM and LFSA and certain AMLA requirements and guidelines not yet invoked for some categories of NBFIs.

a6.2. **Criterion 26.1** - BNM, LFSA and SC are the primary financial sector supervisory authorities. In addition, Bursa Malaysia supervises its participants (stock broking and derivatives broking companies) under ss.11 and 21 of the CMSA. These bodies are responsible to regulate and supervise compliance by FIs with Malaysia's AML/CFT requirements under sector-specific legislation and guidelines. Section 21 of AMLA enables supervisory authorities to monitor compliance by RIs with AML/ CFT obligations. Section 25 empowers BNM to authorize any examiner to perform AML/CFT examinations of any RIs which are not subject to examination by the BNM supervision department.

a6.3. **Criterion 26.2** - Banking, insurance and investment banking are clearly defined as licensed businesses under the FSA and Islamic banking, takaful, international Islamic banking and international takaful business under the IFSA. The conduct of business without a license is prohibited under s.8 of the FSA and IFSA. The FSA and IFSA also prohibit use of the word 'bank', 'insurance/assurance', 'Islamic bank', 'takaful/ Islamic insurance/Islamic assurance' by persons other than the persons authorized to do the respective business except with the prior written approval of BNM. Further, sections 20(1)(b) of the FSA and 18(1) (c) of the IFSA empowers the Minister, to revoke a licence, among others, if an entity has not commenced business within a period specified by the Minister of Finance. These provisions, combined with Malaysia's onsite examinations, ensure that a physical presence is maintained for all licensed institutions and they do carry on licensed business, prohibiting shell banks to operate in Malaysia.

a6.4. The LFSSA and LIFSSA have specific provisions to carry out securities, banking, investment, or insurance business, whether conventional or Islamic, under a license to be issued by the LFSA. Shell banks are not allowed in Labuan IBFC. Sections 88 and 89 of the LFSSA provide that no person other than licensed Labuan banks shall, without the written consent of the LFSA, assume or use the words "licensed Labuan Bank" or any derivative of such works.

a6.5. For capital market activities, s.58 and s.59 of the CMSA provides that no person is permitted to carry on a business in any of the regulated activities set out under Schedule 2 of the CMSA, unless it holds a Capital Market Services Licence (CMSL) or is a registered person to carry out the regulated activities under s.76 and s.76A of the CMSA. Section 76 of the CMSA deems certain entities such as licensed banks and Islamic banks to be registered persons for the purposes of carrying out certain regulated activities under the capital market sectors. These registered persons are allowed to carry out regulated activities as specified under Schedule 4 of the CMSA.

a6.6. FIs engaged in money services business are subject to licensing requirements under ss.4, 5, 6 and 7 of the MSBA. 'Money services business' means money changing business, remittance business or wholesale currency business. Section 4(1) of the Act stipulates that no person shall carry on a money services business without a license issued under this Act.

a6.7. Other FIs which are either licensed, approved or registered under relevant laws are subject to AML/ CFT supervision by the FIU (BNM). Entities engaged in pawn broking, money lending, postal financial services, issuing of e-money, Tabung Haji and factoring etc. may constitute only a small part of the overall size of the financial sector but undertake a wide range of activities.

a6.8. **Criterion 26.3** - Section 21(1)(a) of the AMLA empowers the relevant supervisory authority of a RI to adopt the necessary measures to prevent any person who is not suitable from controlling or participating, directly or indirectly, in the directorship, management or operation of the RI. In addition, the sector specific

SUPERVISION

laws have detailed provisions to prevent the entry of undesirable persons in RIs as significant shareholders, controllers, directors, chief executives etc.

a6.9. Approval of BNM is required for any persons to hold five percent or more interested in the shares of a licensed person. BNM policy document on shareholder suitability issued on 8 October 2014 gives full effect to Schedule 6 of the FSA. The policy document contains legally binding standards that must be observed by shareholders of licensed persons under FSA and IFSA and details on factors of consideration in assessing shareholder suitability. These include the character and integrity of the shareholder, including for body corporate, its reputation for operating in a manner consistent with the standards of good governance and integrity.

a6.10. Sections 55 and 60 of the FSA and ss.64 and 69 of the IFSA provide fit and proper requirements for appointment of chairman, director, chief executive officer or senior officer of an authorized person or operator of a designated payment system including probity, personal integrity, financial integrity and reputation. The consideration of any record of criminal activities or adverse regulatory judgments is required.

a6.11. Section 6 of the MSBA requires fit and proper requirements for a substantial shareholder, director, controller, chief executive officer or manager of an MSB (MVTs and money changers).

a6.12. RIs supervised by LFSA are required under s.4 of the LFSSA and LIFSSA to ensure that their directors, principal officers and trust officers remain fit and proper persons throughout their appointment in a licensed entity. LFSA performs assessment on applicants by conducting financial and securities vetting from relevant authorities and seeking information from other financial supervisors. As per information provided by Malaysia, the fit and proper requirements cover the persons in control, including shareholders.

a6.13. For RIs regulated by the SC, CEOs and directors of CMSL holders are subject to the fit and proper requirements provided under chapter 4 of the SC's Licensing Handbook. Also, ss.64 and 65 of the CMSA provide grounds to refuse to grant a CMSL where the applicant or its directors, CEO, managers or controllers have been convicted of an offence involving fraud, dishonesty or violence.

a6.14. **Criterion 26.4** - In line with Principle 29 of the Core Principles for Effective Banking Supervision and the IAIS Insurance Core Principle 22 BNM has a mechanism to ensure that FIs have adequate policies and processes, including CDD rules to promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities. This includes the prevention and detection of criminal activity, and reporting of such suspected activities to the appropriate authorities.

a6.15. BNM has adopted a Supervisory Risk-Based Framework (SuRF) to assess the safety and soundness of licensed FIs. This is achieved by evaluating an institution's risk profile, risk management processes, compliance with applicable laws and regulations, and financial condition. SuRF is applicable to core principle institutions supervised by BNM. The SuRF allows BNM to pay attention to areas that are deemed to pose a higher ML/FT risk and to allocate resources accordingly. This approach is applied on a consolidated basis for all material activities/entities within a financial group including cross border activities (e.g. overseas branches, subsidiaries and off-shore operations), and other significant entities within the group (e.g. assets management companies and subsidiaries that provide financial services).

a6.16. LFSA utilizes its Risk-Based Supervisory Framework (RBSF) in determining and assessing the risks Labuan FIs are exposed to. It allows focusing supervisory attention on areas that are deemed to pose higher ML/FT risk and to allocate resources accordingly. Under the RBSF, compliance with regulations and legal requirements is incorporated as part of the risk management and control function. Banking, insurance and capital market entities are subject to AML/CFT regulation and supervision in line with the respective core principles. There are no significant financial groups for which LFSA may need consolidated supervision.

a6.17. The SC follows a risk-based supervisory approach for each type of market intermediary. Prior to the introduction of the RSF, risk profiling framework was used to prioritise SC supervisory work. SC supervisors identify ML/TF risks and assess the adequacy of control functions via annual self-assessment questionnaires

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received from market intermediaries and a regulatory risk assessment conducted by the SC during its supervisory visit.

a6.18. MSBs (MVTs and money changers) are supervised by BNM under ss.48 to 50 of the MSBA.

a6.19. **Criterion 26.5** - BNM follows a risk-based approach to supervisory reviews. Timing and intensity of reviews is informed by risk scoping, including the findings of the NRA and sectoral reviews. Periodic reviews are conducted on an annual basis. Thematic reviews are conducted once every three years across the banking industry while ad-hoc reviews are conducted as part of a consolidated supervision audit for overseas subsidiaries/branches, of FIs. LFSA conducts thematic examinations based on an overall risk assessment in addition to routine full scope examinations. Prior to the introduction of the Risk-Focused Supervisory Framework, SC follows an annual offsite and onsite supervisory plan on the basis of risk profiling. Based on the findings of assessments and reviews, appropriate supervisory interventions are initiated. Certain FIs were clearly determined as high-risk e.g. banks, money remitters and money changers and some as medium-risk like unit trust managers/ fund managers.

a6.20. **Criterion 26.6** - BNM, LFSA and SC follow a risk-based approach for the timing and intensity of AML/ CFT supervision. Risk profiles of RIs and groups are reviewed periodically and when there is any development with the potential of creating risks, e.g. at the time of undertaking new activities or introducing new products, opening of new branches or subsidiaries and changes in group structure etc.

a6.21. **Malaysia is rated compliant with R.26.**

Recommendation 27: Powers of Supervisors

a6.22. Malaysia was rated largely compliant with former R.29 in the 2007 MER which noted that there was limited implementation of AMLA powers by BNM over NBFIs, and constraints on the powers of LFSA to access customer specific information under the off-shore banking law.

a6.23. **Criterion 27.1** - BNM, LFSA and SC have responsibility and powers to regulate and supervise AML/ CFT compliance under sector-specific legislation and guidelines. Section 21 of AMLTFA empowers each supervisory authority to monitor AML/ CFT compliance of RIs under its supervisory ambit.

a6.24. Section 48 of the FSA and s.58 of the IFSA compel RIs to comply with the BNM prudential standards to prevent FIs from being used for criminal activities. Section 5 of the Central Banking Act 2009 empowers supervisors to regulate and supervise FIs that are subjected to laws enforced by BNM. BNM supervises MSBs under the powers conferred on it by s.48 of the MSBA.

a6.25. LFSA derives its supervisory powers from s.4(1)(a) of the LFSAA to administer and enforce provisions of the Act and the laws specified in the schedule. LFSA has issued necessary standards and guidelines on AML/CFT to protect its institutions from being used for criminal activities.

a6.26. SC has the power to supervise and monitor its RIs under s.15(1)(m) and 16 of the Securities Commission Act 1993, in addition to s.21(1)(b) of the AMLA. SC has also issued the necessary guidelines for entities regulated by it to ensure compliance with AML/ CFT requirements.

a6.27. Non-prudentially regulated smaller entities are registered under respective laws but supervised for AML/CFT by BNM.

a6.28. **Criterion 27.2** - BNM is authorized to conduct inspections of its regulated entities under s.146 of the FSA, s.158 of the IFSA, s.85 of the DFIA and s.48 of the MSBA. It can also examine the books or other documents, accounts and transactions of a prescribed institution and any of its offices in or outside Malaysia. Section 21(1) (b), ss.25-26 of AMLTFA also empower BNM to conduct inspections of RIs including their officers, directors and controllers.

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a6.29. LFSA is authorized to conduct inspections of Labuan FIs under s.177(1) of the LFSSA, s.138(1) of the LFSSA and ss.28C and 28E of the LFSAA.

a6.30. SC has the power to examine the books and documents, accounts and transactions of an RI under s.126(1) of SCA. Bursa Malaysia performs certain regulatory functions including supervision of its participants under ss.11 and 21 of the CMSA. Rule 14.02 of Bursa Securities and Rule 515.1A of Bursa Derivatives provide powers to Bursa Malaysia to conduct onsite inspections of stock broking and derivatives broking companies.

a6.31. **Criterion 27.3** - BNM can access information required for inspection purposes pursuant to s.147 of the FSA, s.159 of the IFSA and s.50 of the MSBA. During the ordinary course of business, BNM has the power to seek any information or document pursuant to s.143 of the FSA and s.155 of the IFSA. S. 50 of the MSBA allows BNM access to document, information etc. of licensee, MSB agent and others. It is noted that s.132(1) of the FSA and 144(1) prohibits the Minister or BNM to enquire into the affairs or accounts of customers of authorized persons. S. 132(2) of the FSA and 144(2) of the IFSA specifically allows BNM to inquire into the affairs or accounts of customers for purposes of performing its functions under the FSA and IFSA.

a6.32. BNM maintains that there is no difficulty in compelling production of record since s.132(2) of the FSA and s.144(2) of the IFSA provides that the prohibition does not apply when BNM exercises its powers or functions under the FSA, IFSA or s.47 of the CBA. Therefore, exercise of supervisory powers is outside the purview of the said prohibition.

a6.33. Section 34 of the MSBA affords authority to compel the production of information from MSBs. This specifically empowers BNM to require any licensee or any person to submit such information or document as BNM may specify, and failure to comply with any requirements specified is subject to penalties under the law.

a6.34. Under s.28B of the LFSAA, LFSA can seek any information relating to the identity, affairs, account or particulars of any customer of an offshore financial institution or any corporation related to the offshore financial institution, or a nominee or beneficiary.

a6.35. SC has the power to compel production of any documents or records for examination. For routine demands of information, SC can invoke s.152 (1) of the SCA requiring any person to disclose such information as the Commission may specify in the notice for administration of the securities laws. Prima facie, there does not appear to be any restriction on customer related records. This has been reconfirmed by Malaysia that powers under s.152 extend to AML/ CFT issues. It was reconfirmed by Malaysia that powers under s.152 extend to AML/CFT issues.

a6.36. **Criterion 27.4** - In addition to having a range of enforcement powers under AMLA, BNM is empowered under s.234 of the FSA and s.245 of the IFSA to take action against any breach of provisions of the Act, any regulations made under the Act, any order or direction issued under the Act and any standards and requirements. BNM can issue an order in writing requiring compliance, impose monetary penalties, reprimand in writing the person in breach or require the person to issue a public statement of the breach, require the financial institution to take necessary steps to mitigate the effect of such a breach or remedy the breach including making restitution to people affected by the breach. Section 162 of the FSA and s.174 of the IFSA provides the power for removal of directors, chief executive officers or senior officers in the event of a breach of any provisions in the FSA and IFSA. Section 20 of the FSA and s.18 of the IFSA provide grounds for BNM to revoke a financial institution's license in the event of non-compliance with any provisions in the FSA and IFSA.

a6.37. Section 75(1) of the MSBA provides BNM with powers to take administrative action for contraventions of the act. A range of actions are available to BNM up to the power to revoke the license of MSBs for various contraventions.

a6.38. LFSA can impose administrative sanctions under s.36G of the LFSAA against any Labuan entity which fails to comply with the requirements of the law. The amount of administrative penalties for each offence ranges from RM 500 (USD 149) to RM 10 000 (USD 2 987). In addition, LFSA can take enforcement action under s.193 of the LFSSA and s.153 of the LIFSSA. Section 167(b)(x) of the LFSSA and s.124(b)(x) of the LIFSSA empower LFSA to revoke the license or registration of a Labuan financial institution.

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a6.39. The SC is empowered to take enforcement action under ss.354355-356 of the CMSA which include disciplinary and financial sanctions. SC can also apply to the court for an appropriate order. The power of the SC also includes actions under s.72(2)(a)(i) and (iii) of the CMSA, including revocation or suspension of the reporting institution's license.

a6.40. **Malaysia is rated compliant with R.27.**

Recommendation 28 – Regulation and supervision of DNFBPs

a6.41. Malaysia was rated partially compliant with former R.24 in the 2007 MER as there were weaknesses in effectiveness of compliance monitoring and an absence of onsite examinations; inadequate resources for effective supervision of entities under the responsibility of the BNM FIU; and absence of AML/CFT requirements for dealers in precious metals and stones.

Casinos

a6.42. **Criterion 28.1** - BNM has issued AML/CFT Guidelines covering casinos. The casino is subject to AML/CFT regulation and supervision by BNM under AMLA and the Ministry of Finance (MoF) for licensing and business operations.

a6.43. **Criterion 28.1(a)** - The casino is licensed by the MoF under s.27A of the Common Gaming House Act, 1953. The casino's licence is valid for 3 months and is renewable subject to terms and conditions that are specified in the licence. Revocation of the licence is also carried out by the Minister under this Act. Under s.21 of the AMLA, the licensing authority of a casino, on recommendation from BNM, can revoke or suspend a licence if a casino has been convicted of an offence under the Act. Genting Casino has successfully renewed its licence for more than 40 years.

a6.44. **Criterion 28.1(b)** - Section 21 of the AMLA states that supervisory authorities (BNM) can adopt measures to prevent or avoid unsuitable persons from controlling or participating directly or indirectly in the directorship, management or operation of a casino. This provision does not cover specifically ownership, including beneficial ownership, of a casino. Malaysia states that the terms and conditions imposed by the MoF in approving the casino license specifies that the licensee shall not cater for, assist, employ or associate with, either socially or in business affairs, persons of notorious or unsavoury reputation or who have previous convictions, or persons who are associated with or support subversive movements. These terms, however, do not relate to the obligation of the MoF to ensure that those owning, managing or otherwise controlling a casino are not themselves criminal or associates of criminals. Under its broad licensing power, MoF would have the authority to issue controls over fitness and propriety of licensees and those managing and operating the casino.

a6.45. **Criterion 28.1(c)** - BNM is the designated supervisory authority and conducts off and onsite inspections. Under s.21 of the AMLA BNM may examine and supervise casinos and verify through examinations adherence with the compliance program requirements established under s.19 of the Act. Compliance program under s.19 (1) are broad enough to address CDD measures and are not limited to the provisions of 19(2) that states that such programmes shall include know your employee procedures, employee training and internal audit function..

a6.46. Additional powers of compliance enforcement and examination are granted under s.22 and s.25 to examine the affairs of casinos. While s.22(2) requires BNM to apply to the Magistrates Court to obtain an order to enforce compliance, s.22(3) empowers BNM, as the competent authority, to issue orders directly to any reporting institution with specific instructions to comply with the reporting obligations. Failure to comply with such directive orders is considered a criminal offence. BNM, with the consent of the Public Prosecutor, may also compound a RI which fails to comply with any reporting obligation. Imposition of a compound does not involve any court process. Broad powers of investigation by the competent authority for suspected breaches of the Act by DNFBPs are contained in Part V of the Act. In practice BNM is supervising the full range of CDD and other AML/CFT requirements with the exception of licensing fit and proper measures.

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DNFBPs other than casinos

a6.47. **Criterion 28.2** - The designated AML/CFT supervisory authority for these DNFBPs is BNM, which has issued guidelines covering all of these activities. In addition, the LFSA has issued guidelines in respect of the trust company sector in Labuan. The gap in coverage of dealers in precious metals and stones discussed at R.22 is relevant to this criterion.

a6.48. **Criterion 28.3** - Analysis for 28.1 refers. Section 21 of the AML/ATFA provides powers to the BNM to supervise compliance programs as well as s.22 and s.25 of the Act. Investigation powers to the competent authorities for breaches of the Act are provided under Part V of the Act. The gap in coverage of dealers in precious metals and stones is relevant to this criterion.

a6.49. **Criterion 28.4(a)** - BNM's powers to monitor AML/CFT compliance are established under ss.21, 22 and 25 of the AMLA. There are broad powers of examination of DNFBPs. Powers of investigation for breaches of the Act are contained in Part V of the Act.

a6.50. **Criterion 28.4(b)** - Under s.21 of the AMLA BNM can adopt measures to prevent unfit persons from controlling or participating in the directorship, management or operation of DNFBPs, including those persons who interest in one third or more of its voting shares or who have the power to cause to be appointed a majority of directors or the power to make a decision, or cause a decision to be made, in respect of its business or administration. Neither the BNM nor the various sector licensing bodies for DNFBPs have utilised Section 21 to implement market entry fit and proper controls for DNFBPs.

a6.51. The various professional authorisation, licensing or registration bodies for some of the DNFBPs have certain authorization, licensing or registration criteria as established in their respective regulatory or legal frameworks. These are:

Table A6.1. Professional authorisation, licensing or registration bodies for DNFBPs

| DNFBPs | Professional Body | Legal / Regulatory Framework | Registration / Licensing |
|---|--|---|--|
| Real estate agents | BVAEA | Section 10 of the VAEAA 1981 | Board of Valuers, Appraisers & Estate Agents (BVAEA) |
| Lawyers | Malaysian Bar Council (MBC) | S. 29 of the Legal Profession Act 1976 | MBC issued 'Sijil Annual' is a pre-requisite for lawyers' practicing certificate by High Court Registrar |
| Notaries | AGC | Section 3 of the Notaries Public Act 1959 (NPA) | The AG, upon consultation with MBC (for Peninsula Malaysia) and the State AGs (for Sabah and Sarawak) |
| Accountants | (MIA) | Ss 6 & 13 of the Accountants Act 1967 | Malaysian Institute of Accountants regulates the accountancy profession; and maintains a register of accountants |
| Onshore trust companies | CCM | Section 3 of Trust Companies Act 1949 | trust companies must apply to the registrar to be registered |
| Company service providers (company secretaries) | CCM | Section 139A of the Companies Act 1965 | Advocates Association of Sarawak, MBC, MIA, MICPA, MAICSA, MACS, Sabah Lawyers Association, or CCM. |
| Offshore trust companies | LFSA | Section 60 of the LFSS Act 2010 | Labuan trust company business must be licensed by the LFSA. |
| Dealers in precious metals / stones | No specific licensing or registration body. BNM works closely with the largest industry association for the sector with over 1,600 members, i.e.: Federation of Goldsmith & Jewellers Associations of Malaysia (FGJAM) | | |

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Sector specific fit and proper requirements

a6.52. *Real Estate Agents:* Section 22A of the Valuers, Appraisers & Estate Agents Act 1981 (VAEAA) provides that a person may only be registered with the BVAEA as an estate agent who is fit and proper. This covers age, character and background, including convictions for fraud, dishonesty or moral turpitude in the last 5 years); and not having issued false statements or documents; dishonestly concealed material facts; furnished false information; or be an undischarged bankrupt.

a6.53. *Lawyers:* Section 11 of the Legal Profession Act 1976 (LPA) governs admittance on fit and proper grounds including: age; academic qualifications; good character; absence of criminal convictions in any country which render one unfit to be a lawyer (examples of fraud or dishonesty); an undischarged bankrupt; disbarment, disqualification as a lawyer in any other country.

a6.54. *Notaries:* Section 3 of the NPA provides that the Attorney General may, upon consultation with MBC (for Peninsula Malaysia) and the State AGs (for Sabah and Sarawak) appoints fit and proper persons to be notaries public. Only qualified practicing lawyers may be appointed as notaries public.

a6.55. *Accountants:* Section 14 of the Accountants Act 1967 governs MIA admittance on fit and proper grounds. This provides an informal and subjective approach rather than a defined and statutory approach to fitness and propriety.

a6.56. *Onshore Trust Companies:* Section 3 of the TCA 1949 provides that only a public company incorporated in Malaysia under the CA 1965 may apply to be registered as a trust company. Basic criteria for registration are provided in s.3, such as directors having been appointed in accordance with the articles of the company, however none of these criteria deals with fitness and propriety. Registration guidelines have been issued by the CCM but these do not supersede the Act and, and do not add to fit and proper measures. Sections 16(3A) and 124(4) of the TCA require each person who intends to incorporate a company or be appointed as a director of a company to lodge with the CCM a statutory declaration declaring that he is not an undischarged bankrupt, and has not been imprisoned for any offence inside or outside Malaysia in connection with the promotion, formation or management of a corporation; involving fraud or dishonesty punishable with three months' imprisonment or more; or for breach of fiduciary duties. These basic requirements cover some criminals but not the wider concept of criminal referred to in 28.4(b).

a6.57. *Company secretaries (onshore):* Section 139B of the CA 1965 provides that the Registrar (CCM) may only grant or renew a licence if, after consideration of the character, qualification and experience of the applicant, and the interest of the public if the applicant is fit and proper. Section 139C of the CA 1965 provides for disqualification company secretaries who are an undischarged bankrupt or have been convicted in Malaysia or in any other country of an offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more.

a6.58. Eight bodies, including CCM, register company secretaries in Malaysia. The active members for each of them are: CCM (2 778), MIA (5 566), the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) (2 568), the Malaysian Bar Council (1,108), the MACS (592), the Advocates' Association of Sarawak (197), the Sabah Law Association (135), the Malaysian Institute of Certified Public Accountants (MICPA) (117). The company secretaries registered by the bodies referred to above have such registration as an additional facet of the activities for which they are primarily registered or regulated. They are subject to the standards outlined above, although it is not clear to what extent these bodies are supervisory authorities for the purposes of s.21 of the AMLA. Many company secretaries therefore do not appear to be subject to statutory provisions which prevent criminals from utilising DNFBPs.

a6.59. It does not appear that beneficial owners or all holders of a significant controlling interest in an onshore trust company or holders of management functions have been subject to fit and proper checks by the CCM. The background of shareholders and directors of onshore trust companies is checked by the CCM by, for example, liaising with LEA including the MACC. The CCM obtains a report on the chief executive's financial standing and a police report on the chief executive. The CCM also checks whether persons applying for registration as company secretary have been convicted either inside or outside Malaysia; its checks include

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obtaining information from other authorities. The evaluation team is uncertain whether such checks have been applied to all company secretaries registered by the CCM.

a6.60. *Offshore Trust Companies:* Section 61(2)(d) of the LFSSA 2010 requires directors and officers responsible for a Labuan trust company to be fit and proper. The criteria for fitness and propriety contained in s.4 of this law include integrity, competence, soundness of judgement, financial standing, whether or not the person is a bankrupt, whether the person has been convicted of a criminal offence where the penalty imposed is imprisonment of one year or more and criteria specified in guidelines issued by the LFSA. However, there are no legal provisions for holders or beneficial owners of significant or controlling interests in a TCSP to be subject to fit and proper.

a6.61. *Dealers in Precious Metals and Stones:* There are no sector specific fit and proper requirements for this sector because a licensing authority has not been designated as yet.

a6.62. **Criterion 28.4 (c)** - AMLA provides for fines and/or imprisonment for failure by DNFBPs to comply with the various requirements of the Act and the guidelines. Also see R.35.

a6.63. **Criterion 28.5** - The BNM FIED and LFSA have implemented a risk-based approach to supervision of DNFBPs. BNM conducted a sectoral risk assessment of DNFBPs in 2011 which formed the basis for the allocation of supervisory resources and activities, primarily for the frequency of inspections. The high level risk-based approach is reflected in the establishment of priorities for particular sectors, such as the casino sector which is rated as high risk and which receives considerable supervisory focus. The 2013 NRA provides a further basis for strengthening the risk-based approach to supervision. The LFSA has formed views on the level of risks associated with each Labuan sector and priorities for supervision. The LFSA uses a risk-based approach to set priorities for supervision of individual licensees within the trust company sector.

Weighting and Conclusion

a6.64. There are certain gaps in market entry controls over some DNFBPs.

a6.65. **Malaysia is rated largely compliant with R.28.**

Recommendation 34 – Guidance and feedback

a6.66. Malaysia was rated largely compliant for previous R.25 in the 2007 MER. It found that the professional associations should be encouraged to update their AML/CFT guidance for members to reflect changes in the AMLA legislation, BNM and LFSA guidelines.

a6.67. **Criterion 34.1** - Regulators' updated AML/CFT guidelines include both enforceable regulatory obligations and clearly marked unenforceable guidance points. BNM revised their previous guidelines in 2009 and again in 2013 for the different types of FIs and DNFBPs under their supervision, i.e. banking and deposit-taking institutions (Sector 1), insurance and takaful (Sector 2), money services businesses (Sector 3), electronic money and non-affiliated charge and credit card providers (Sector 4), and DNFBPs and other non-financial sectors (Sector 5). Similarly, LFSA revised its guidelines in 30 December 2013 for banking, insurance, capital market and other business and trust companies, and conducted six outreach sessions in 2014. The SC issued guidelines in January 2014. The latest set of supervisors' guidelines incorporate the revised FATF Recommendations.

a6.68. Regulators supplement their guidelines with conferences, bilateral engagements, and circulation of questionnaires, web page information and ongoing dialogue. For example, SC has launched a web page for updates, examples of suspicious transactions, frequently asked questions and other sources of information to assist RIs in detecting and reporting suspicious transactions. Additional specific guidance material would benefit RIs' understanding of their obligations and the specific risks they face. Specific topics where additional guidance would be beneficial include terrorism financing, sectorial red flags for suspicious transactions and dealing with complex company structures with opaque controlling interests.

a6.69. **Malaysia is largely compliant with R.34.**

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Recommendation 35 – Sanctions

a6.70. Malaysia was rated LC with R.17 in its 2007 MER, with implementation rather than technical issues affecting the rating.

a6.71. **Criterion 35.1** - While the AMLA, guidelines and other relevant legislation contains sanctions for failure, there are some elements that are not proportionate or dissuasive. The general sanction available is a fine of up to RM1 million plus compounding up to 50% the value of the sanction, which may not be dissuasive. This covers CDD, compliance programs, STR reporting and the like. Some key AMLA obligations have stronger penalties as set out below.

a6.72. For R.6, s.66D(4) of AMLA provides for the RM 3 million plus five years imprisonment for persons who contravene obligations to implement the targeted financial sanctions.

a6.73. In connection with the prohibitions against disclosure of STRs and related information, under ss.14A(1) and (2) of AMLA, breaches are an offence and on conviction is a fine of up to RM3 million or imprisonment for up to five years or both are available. The same penalties apply under s.17(4) of AMLA for breaches of s.17 (retention of records) and s.18(6) for breaches of s.18 (opening of account or conducting business relationship, transaction or activity in fictitious, false or incorrect name).

a6.74. Sanctions under the AMLA apply to the institutions and staff. Section 22 allows BNM to obtain an order against any or all of the officers or employees of an RI to be sanctioned on such terms as the Court deems necessary to enforce compliance. Under s.22(4) an officer of a RI who fails to take all reasonable steps to ensure the RI's compliance with obligations under Part IV commits an offence and on conviction is liable to a fine of up to RM1 million or imprisonment for up to 3 years or both. An additional fine is available to RM 3 000 (USD 896) each day during which the offence continues to be committed.

a6.75. Section 92 of AMLA empowers BNM, with consent of the Public Prosecutor, to compound any offence under the AMLA or under regulations made under AMLA, by accepting from the person reasonably suspected of having committed the offence such amount not exceeding 50% of the amount of the maximum fine for that offence. Compounding allows for an administrative penalty to be payable by the offender as an alternative to prosecution.

a6.76. The analysis and findings at 28.4(c) also apply here.

a6.77. BNM, SC and LFSa are able to apply the administrative enforcement powers available to them under their regulatory acts to enforce non-compliance with AML/CFT obligations. In the case of BNM significantly higher penalties for failure to implement those obligations are available (fines up to RM 5 million). In the case of both LFSa and SC the regulatory fines do not add further persuasiveness as the fines are not up to the level available under the AMLA.

a6.78. Section 21(2) of the AMLA empowers the licensing authority of a RI, upon the recommendation of BNM, to revoke or suspend the RI's licence if it has been convicted of an offence under the AMLA. The various statutory schemes available to BNM, SC, LFSa, CCM, RoS and other authorities provide a range of sanctions to revoke or curtail licenses and impose conditions for failures to apply AML/CFT controls.

a6.79. While there is a range of administrative penalties for revoking registration or curtailing certain activities, the range of financial penalties available to NPO regulators is not proportionate or dissuasive (see R. 8).

a6.80. **Criterion 35.2** - AMLA contains appropriate sanctions where relevant to the individual (for example, tipping-off) and where relevant to the institution s.66E(5) sets out that an institution which fails to comply with guidelines issued to it commits an offence and shall on conviction be liable for a fine of up to RM1 million. Section 87(1) sets out that when an offence is committed by a body corporate or an association of persons, a person who is the director, controller, officer, or partner, or person who is concerned with the management of its affairs is deemed to have committed the offence, unless it was committed without consent. Furthermore,

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under s.87(2) an individual may be prosecuted for an offence when the body corporate or association has not been convicted.

a6.81. **Malaysia is rated largely compliant with R.35.**



7. LEGAL PERSONS AND ARRANGEMENTS

Recommendation 24 – Transparency and beneficial ownership of legal persons

a7.1. Malaysia was rated PC with R.33 in the 2007 MER. R.24 substantially changed the standards relating to the transparency of legal persons have. See IO5 for details of the numbers of types of legal persons registered in Malaysia and details of the legal framework.

a7.2. **Criterion 24.1** - The following types of legal persons can be created in Malaysia: (a) Companies – unlimited companies (onshore and offshore), limited companies, public limited companies; (b) limited liability partnerships (offshore and onshore, domestic and foreign); (c) societies ; and (d) foundations (offshore). The CCM and LFSA websites include guides on the different types, forms and basic feature of legal persons and the formation of such legal persons under the statutes and administrative processes of each regulator. Together with the various AML/CFT guidelines these generally extend to how to obtain basic and beneficial ownership information of legal persons.

a7.3. **Criterion 24.2** - Malaysia has assessed the ML/TF risks associated with different types of legal persons to some extent. The NRA (2013) considered some of the vulnerabilities, but did not consider the difficulties of determining beneficial ownership of legal persons or the threats posed by the different types of legal persons.

a7.4. **Criterion 24.3** – For both onshore (CCM) and offshore (LFSA) companies, there are registers recording the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors. In the case of the CCM, this information is available to the public for a fee. In the case of Labuan, the name and formation agent (TCSP) of IBCs is publicly available on the LFSA website. Information can be obtained from TCSPs via LFSA, so it technically publicly available. There is no list of Labuan Foundations available to the public. Malaysian partnerships are required to register basic information with the CCM with the details available to the public.

a7.5. **Criterion 24.4** - Malaysia requires all Malaysian private and public limited companies to establish and maintain a registered office within Malaysia (for Labuan companies, within Labuan) and maintain a register of all shareholders, including their name (or for legal persons: business name, organisation number), date of birth and address.

a7.6. For onshore companies, the CA 1965 requires companies to maintain information relating to shareholders including directors' shareholdings, instruments and certificates of share transfer. The nature of the associated shareholder voting rights and categories of share are required to be kept by the company on its register.

a7.7. Labuan Companies and foundations are required to maintain a resident secretary (trust company) and keep information relating to shareholders, transfers of shares, annual returns, etc. at the office (s.93(3) LCA 1990). The nature of the associated shareholder voting rights and categories of shares are required to be kept as part of the company register.

a7.8. Foreign companies registered in Malaysia and Labuan are required to keep branch registers of the shares of the company's members resident in Malaysia who apply to have the shares registered therein (s.342 CA 1965). Foreign companies' domestic share holdings, but not foreign share holdings are included in the branch registry under the CA 1965.

a7.9. Malaysian partnerships and limited liability partnerships are not required to maintain the additional registration information in 24.4. For Malaysian companies, s.158 of the CA 1965 requires categories of share, including voting rights, to be kept on registries with a company whose location is notified to the company registry. Under s.159 the company must advise the registrar within one month of the company's incorporation where the company's register is kept. Under s.159 the registrar must be notified within fourteen days if the

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company register is held at a place other than the registered office. The register may be closed under s.160 for up to thirty days a year.

a7.10. Labuan foundations are required to maintain the additional information in 24.4. Section 9 of the LLPLPA 2010 meets the additional registration requirements of 24.3 for limited partnerships regarding the number of units and the categories. Voting rights are covered at s.58. For companies, the LCA 1990 requires categories of shares, including voting rights, to be registered. Under s.106 the company must advise the registrar within one month of the company's incorporation where the company's register is kept.

a7.11. **Criterion 24.5** – Generally, companies are required to provide information to the registrar albeit with some delay and/or in the annual return. In other areas the requirements are less clear. The CCM and LFSA undertake outreach, compliance and enforcement programs, including offsite and onsite inspections aimed at ensuring the quality of information held on legal persons regulated by the CCM and LFSA is accurate and up to date.

a7.12. **Criterion 24.6** – Malaysia uses a combination of mechanisms to seek to ensure that beneficial ownership information is available: legal ownership information held by companies and beneficial ownership information to be collected and maintained by RIs in the course of company formation and ongoing CDD; information held by the IRB; information disclosed by companies listed on the stock exchange relevant to beneficial ownership.

a7.13. Malaysia has indicated that the CA 1965 will be amended in 2015 and is expected to require companies to obtain and hold up-to-date information on beneficial ownership and report that information to a registry within a set period. While this cannot be considered for purposes of ratings, this is a welcome development. Malaysia indicated that it will consider similar amendments to the LCA and other legal persons in Labuan in their next review of the legislation.

a7.14. The CCM register for onshore companies contains publicly available information, including information on persons exercising control over the company (e.g. the board of directors, the general manager and company resolutions authorising persons to sign documents on behalf of the company). For the natural persons serving as directors, the register includes the national identity number of Malaysian.

a7.15. Where only Malaysian companies with Malaysian ownership are involved, authorities are generally able to follow the chain of ownership to a natural person who has an identity in the national identify card database. There may be situations where this is not possible, for example where natural person is a trustee holding propriety rights for beneficiaries.

a7.16. Where foreign legal persons or arrangements are involved in owning shares in Malaysian companies or registered foreign companies, beneficial ownership information is not contained in the CCM register. Foreign companies registered in Malaysia do not hold beneficial ownership information on their own shareholders, but just maintain the ownership information of the direct shareholder. The public registers and the register of shareholders will reflect the name, registration number and address of the foreign company. Competent authorities accessing beneficial ownership information on Malaysian companies owned by foreign entities rely on the CDD undertaken by RIs.

a7.17. Competent authorities in Malaysia also have access to beneficial ownership information held by RIs. The 2013 Guidelines requires RIs to identify and take reasonable measures to verify the identity of the beneficial owner, including through ongoing CDD (see R.10 above). This includes and TCSPs (see R.22 above).

a7.18. Competent authorities also have access to the information that companies provide in their annual accounts and which is made available in the Register of Company Accounts.

a7.19. Onshore companies which meet the definition of 'controlled companies' under s.2 of the ITA 1967 must submit annual tax returns which include some information relevant to beneficial ownership, including identity information of directors and shareholders. Controlled companies are those having not more than 50 members/shareholders and controlled (as defined s.139 of the ITA 1967) by not more than five persons (s.2 ITA 1967). More than 90% of private companies registered with CCM qualify as controlled companies.

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a7.20. For Labuan registered companies, the IRB Director General may call for any information required by him (including information to beneficial ownership) from any person for compliance with: s.22 LBTA 1990.

a7.21. For listed companies, the particulars of the beneficial owner of the securities deposited in central depository accounts are to be disclosed to the depository, including for authorised nominees (s.25A SICDA 1991 & Rule 25.02B(2) RBMD. Disclosure obligations on substantial shareholders (shareholders holding 5% or more) of listed companies, upon acquisition or disposal of shares, to Bursa Malaysia and the SC adds to information on beneficial ownership. See Securities Industry (Reporting of Substantial Shareholding) Regulation 1998 & Division 3A of Part IV CA 1965.

a7.22. For Labuan listed companies, exchange rules and controls on issuing sponsor and issuers of listings provide only limited additional information relevant to beneficial ownership.

a7.23. **Criterion 24.7** - Beneficial ownership information held by RIs through CDD obligations under the AMLA is required to be up to date and relevant.

a7.24. **Criterion 24.8** - Malaysia requires that DNFBP are accountable to competent authorities for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities in relation to beneficial ownership information. All companies are required to have a company secretary who is a natural person. It is an offence for a company not to have a company secretary for a period of more than one month. Company secretaries must either be licensed by the CCM or be members of professional bodies, such as the MAICSA, MIA and the Malaysian Bar Council. For Labuan IBCs the resident DNFBP must be a licensed trust company. In each case, as regulated entities, they have obligations for ongoing CDD and cooperation with authorities.

a7.25. **Criterion 24.9** - AMLA and guidelines' record keeping requirements for company secretaries and trust companies are mostly in keeping with the standard. See R.11 above.

a7.26. **Criterion 24.10** - Competent authorities, including LEAs, have the necessary powers under the AMLA and legislation governing the SC, Bursa Malaysia, LFSA and CCM to obtain timely access to the basic and beneficial ownership information held by the RIs.

a7.27. **Criterion 24.11** - Malaysia has prohibited share warrants under the CA 1965 (s 57) and bearer shares for offshore companies under the LCA since 1990. Due to the requirement to register all shares with the CCM, bearer shares cannot be a feature of onshore companies. Share warrants for Labuan companies are not prohibited but controls on their use include s.43(1) of the LCA 1990 requiring details on the allotment of shares to be lodged with LFSA and s. 105 requiring all Labuan companies to keep a register of its members. It is not clear that Labuan companies are prohibited from issuing a share warrant with shares transferable by delivery of the warrant (in essence a negotiable instrument), which would be the point of allotment.

a7.28. **Criterion 24.12** - Malaysian legal persons are able to have nominee shares and nominee directors. Authorities rely on the powers of the registrars (both CCM and LFSA) to require any company or person to furnish all necessary information and particulars of any share acquired or held directly or indirectly either for his own benefit or for any other person. Company's shares are held by a nominee on behalf of the company's directors and s. 169(6) CA 1965 requires the identity of the beneficial owners to be disclosed with the balance sheets prepared by the company. Sections 134 and 135 of the CA 1965 impose an obligation on all directors (including nominee directors) to disclose particulars of shares in which the directors has interest and the nature and extent of the interest.

a7.29. **Criterion 24.13** - There are only limited fines for breaches of the requirements for reporting and updating the registrar of ownership and beneficial ownership information under the companies act and LCA. There are greater fines and other sanctions available for failure to respond to a regulatory instruction or hindering supervision by the regulator, but these are only available after supervisory action has commenced, and may still not be dissuasive. Sanctions in the AMLA for failure to conduct CDD, including on beneficial ownership, show some gaps with their persuasiveness.

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a7.30. **Criterion 24.14** - Malaysia's ability to provide international co-operation in relation to information on legal persons is described at R.37 and R.40. The scope of the available information covers access by foreign competent authorities to basic information held by domestic authorities and using competent authorities' investigative powers under the AMLA and other regulatory instruments to obtain beneficial ownership information on behalf of foreign counterparts.

a7.31. Malaysia is able to rapidly provide international co-operation in relation to basic and beneficial ownership information, where it can be obtained from RIs (see R.9 and R.40). This includes (a) facilitating access by foreign competent authorities to basic information held by company registries; (b) exchanging information on shareholders; and (c) using their competent authorities' investigative powers, in accordance with the AMLA, to obtain beneficial ownership information on behalf of foreign counterparts. CCM is an active member of the Corporate Registers Forum (CRF).

a7.32. **Criterion 24.15** - The relevant agencies (CCM, LFSA, the SC, IRB and LEA) monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

Weighting and Conclusion

a7.33. Compliant CDD obligations for RIs to conduct ongoing due diligence may not result in RIs having timely CDD information when the beneficial ownership of a legal person changes. There are gaps in relation to sanctions for non-compliance with transparency obligations and the ML/TF risks associated with all types of legal persons have not been fully assessed.

a7.34. **Malaysia is rated partially compliant with R.24.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

a7.35. Malaysia was rated PC for R.34 in the 2007 MER. The situation in relation to the coverage of trusts and other legal arrangements is largely in keeping with the previous MER. There are substantial new requirements in relation to legal arrangements in R.25.

a7.36. Malaysia has a system of trust law that includes express and discretionary trusts similar to other jurisdictions which apply common law. Trusts and other legal arrangements formed overseas can and do operate in Malaysia. If the trustee is a corporate entity it must be registered with the CCM, or with LFSA if the trust is formed under the Labuan Trusts Act 1996 (LTA 1996). Trust companies must provide the CCM with an annual statement containing a list of its members, a summary of its activities and a statement of its liabilities and holdings on trust. A trust company may in addition register itself with the CCM as a trust company. There is no requirement for registered trustee companies to provide CCM details of the beneficial owners of the trusts they administer. Such information as the CCM holds on a trustee company is publicly accessible.

a7.37. Trust companies are required to maintain separate bank accounts for their own money and money under their care as trustee. Where a trustee holds deposits in trust at a bank, pursuant to s.42 of the Malaysia Deposit Insurance Corporation (MDIC) Act 2011 the bank is required to maintain records of that fact and the names of those for whom the deposits are held.

a7.38. The LTA 1996 provides for the creation and recognition of offshore trusts. An offshore trust may register with LFSA, and may furnish LFSA with a copy of its trust instrument. However this is not mandatory. A Labuan trust company must register itself as a trust company with LFSA, but does not have to submit information as to the beneficial ownership of the trusts it administers. The ITA 1967 covers taxation obligations on trusts and similar legal arrangements.

a7.39. **Criterion 25.1** - All DNFBPs and FIs are required under the guidelines (s.13.4) to identify and take reasonable measures to verify the identity of the settlor, the trustee(s), the protector (if any), the beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over

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the trust, including through the chain of control/ownership. The obligations extend to identifying persons in equivalent or similar positions for other types of legal arrangements. In Malaysia this would include *karta* (Hindu joint families), *waqf* (inalienable religious endowments in Islamic law), Labuan foundations, etc. The LFSA Guideline goes further and obliges trust companies to obtain sufficient information concerning the beneficiary in order to be satisfied that it would be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights.

a7.40. Professional trustees are required under the guidelines to maintain the information on parties to the trust for at least six years after their involvement with the trust ceases. Similar record keeping obligations are derived from CCM and LFSA regulations.

a7.41. Natural or legal persons who are not obliged RIs under the AMLA may act as settlor, trustees or protector of a trust (excluding Labuan trusts) or equivalent or similar positions for other types of legal arrangements in Malaysia. In such cases AMLA obligations do not apply.

a7.42. For all natural or legal persons there are indirect obligations to capture some of the relevant information on those exercising control over a trust and beneficiaries of a trust through taxation obligations for annual returns to IRB with respect of income of a domestic or foreign trust accruing in, derived from or received in Malaysia (s.77A ITA 1967). Obligations cover the particulars of all beneficiaries (including their share of income). While the obligation is on the direct beneficiary rather, IRB indicates that trustees obtain and maintain information on ultimate beneficiaries through the audited accounts and the trust deed which are provided to IRB and the IRB can trace the ultimate beneficiary based on the information available in its database than an obligation to determine the ultimate beneficiary (e.g. in a situation where the beneficiary is another trust or a legal person). Trustees must submit tax returns each year regardless of whether income was generated or actively accrued.

a7.43. All trustee holding deposits in trust at a bank must disclose their status and the name and address of all beneficiaries of the trust account to the institution at the outset of the relationship and make an annual declaration (s.42 MDIC Act 2011). The bank is required to maintain records of that fact and the names of those for whom the deposits are held. AMLA obligations require the bank to determine the ultimate beneficial owners of the customer, in this case the trust.

a7.44. There are no explicit requirements that trustees of any trust are required to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors. However, Malaysian authorities indicate that controls on various trustees to keep proper records would, in effect, ensure that these details are captured for trust companies, Labuan trust companies and solicitors.

a7.45. **Criterion 25.2** - RIs under the AMLTFA are required to keep relevant information accurate and as up to date as possible. Obligation on trustees who are not RIs under the AMLA are limited to annual updates on in cases where the trust realises revenue is realised pursuant to taxation obligations.

a7.46. **Criterion 25.3** - Pursuant to s.42 of the MDIC Act 2011 bank are required to maintain records of deposits made by a trust and the names of those for whom the deposits are held. There are no other obligations on trustees to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold.

a7.47. **Criterion 25.4** - There are no prohibitions in law on trustees providing trust-related information to competent authorities.

a7.48. **Criterion 25.5** - Competent authorities including LEA, IRB, and the FIU have powers to obtain information relating to trustees, beneficiaries, trustee residence and assets managed under a trust, but there are gaps. Provisions provided in relation to the AMLA are to do with investigations. However, there does not appear to be an offence and penalty attached to failure to comply with the routine information gathering power at s.25 of the AMLA (unless s.86 applies, in which case the fine is not proportionate and dissuasive). The Malaysian authorities refer to the TCA 1949 but the investigation powers of s.22 of this law apply to the affairs and management of the trust company and are therefore potentially limited. The powers of the IBR

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to require information to be provided to it in relation to Labuan under s.22 of the LBATA 1990 are extensive. BNM and SC have extensive powers under a range of statutes to obtain relevant information.

a7.49. **Criterion 25.6** - Malaysia's ability to provide international co-operation in relation to trusts and other legal arrangements is described at R.40. The scope of the available information covers access by foreign competent authorities to basic information held by domestic authorities and using competent authorities' investigative powers under the AMLA and other regulatory instruments to obtain beneficial ownership information on behalf of foreign counterparts.

a7.50. **Criterion 25.7** - There are limited sanctions for trustees which are not RIs. AMLA includes sanctions for failure by RIs, including TCSPs, to conduct CDD and ongoing CDD on the identity of trusts and trustees, however there are some gaps with their proportionality and dissuasiveness. The sanctions available to the IRB and other regulators are not proportionate and dissuasive, in particular: TCA 1949 penalties (s.30) and a general absence of fines; CA 1965 penalties of RM 2 000 (USD 597) under s.165; and LFSAs penalties of RM 10 000 (USD 2 987) for late notifications.

a7.51. Under the MDIC Act sanctions are available for trustees (both RIs and non-RIs) who fail to disclose to the bank that they are acting as a trustee when establishing a trust account and when providing annual updates to the bank on their trustee status. Section 195 of the MDIC Act 2011 makes such breaches an offence and provides sanctions for natural persons (fines up to RM 500 000 or imprisonment not exceeding six months) and for legal persons (a fine not exceeding RM 1 million).

a7.52. The Trustees (incorporation) act of 1952 does not provide for fines or other civil or administrative measures to address breaches of trustees' obligations. Trustees who commit fraud on beneficiaries may be liable under criminal law. Measures applicable to trustees include the restoration of loss, the account of profit or the liability for legal costs. Injunctive relief is also available against trustees.

a7.53. **Criterion 25.8** - Sanctions for trustees who are not RIs under AMLA only apply for failing to cooperate with an ML investigation. AMLA (s.32) provides sanctions against RIs for failing to grant competent authorities timely access to information regarding trusts. This includes imprisonment for a term not exceeding one year and/or RM 1 million (USD 298 748), and RM 100 000 (USD 29 875) per day for continuing offence. Both CCM and LFSAs have proportionate sanctions available for similar failings, including imprisonment for up to three years or fine up to RM 1 million (USD 276 625) or both in the context of an investigation. The maximum fines available to the IRB (s.112 and 120 of the ITA 1967) and LFSAs (s.54 of the LFSAs) are not proportionate and dissuasive outside of a criminal investigation. The IRB has a range of sanctions available for failure to grant timely access to information.

Weighting and Conclusion

a7.54. Compliant CDD obligations for RIs to conduct ongoing due diligence may not result in RIs having timely CDD information when there are changes to the trustees of a legal arrangement. Relatively little weight is given to the fact that trust services may be undertaken by non-professionals who are not RIs and not obliged to conduct CDD. Obligations to declare trustee status does not apply beyond deposit taking institutions. There are gaps in relation to sanctions for non-compliance with transparency obligations.

a7.55. **Malaysia is rated partially compliant with R.25.**

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Recommendation 36 – International instruments

a8.1. Malaysia was rated largely compliant with former R.35 and SR I. Full implementation of the Palermo Convention had not been achieved because of gaps with the ML offence and dual criminality requirements for all forms of MLA. Malaysia was not party to the Terrorist Financing Convention at the time of the 2007 onsite visit. R.36 now includes the requirement to become a party to, and fully implement, the United Nations Convention against Corruption.

a8.2. **Criterion 36.1** - Malaysia is a party to all four conventions. Malaysia ratified the Vienna Convention on 11 May 1993; the Palermo Convention on 24 September 2004 and the Merida Convention on 24 September 2008. Malaysia acceded to the TF Convention on 29 May 2007.

a8.3. **Criterion 36.2** - Malaysia has implemented the vast majority of the relevant articles of the Vienna and TF Conventions and has implemented the Merida Convention by legislating the MACC Act 2009. Regarding implementation of the relevant articles of the Palermo Convention, not all predicate offences have been comprehensively covered by AMLA. There are a small number of minor technical gaps with the relevant elements of the conventions (including R.3, R.4, R.11, R.28, R.32 R.37 and R.39).

Weighting and Conclusion

a8.4. Not all predicate offences have been comprehensively covered by AMLA and a small number of minor technical gaps with the relevant elements of the conventions prevents full compliance with R.36.

a8.5. **Malaysia is rated largely compliant with R.36.**

Recommendation 37 – Mutual Legal Assistance

a8.6. Malaysia was rated largely compliant with former R.36-37 and SR V. A key deficiency was the mandatory grounds of refusal: (a) dual criminality and (b) matters not of 'sufficient importance'. The Mutual Assistance in Criminal Matters Act 2002 (MACMA) and Regulations 2003 (MACMR) have not changed since 2007. The new R.37 requirements are much more detailed.

a8.7. **Criterion 37.1** - Malaysia has the legal basis to provide the widest possible range of MLA under MACMA (see para 983-987 of the 2007 MER). Malaysia can provide assistance to 15 prescribed countries as well as to other countries, based on receiving the additional approval of the Minister. The normal timeframe for securing this additional approval is approximately two weeks but in urgent cases it can be secured within a day. In terms of such assistance being 'rapid', to the extent that securing the additional approval causes prohibitive delay Malaysia should consider broadening the countries to which it can provide assistance without additional approval, or streamlining the approval process; this is considered primarily under IO2, but is also relevant to R.38.

a8.8. R.3 identified deficiencies in the coverage of predicate offences for ML. It is not clear that Malaysia's approach to dual criminality would allow it to provide assistance to a foreign country in relation to a ML offence where the predicate was one of those predicates not covered, e.g. ML and illegal fishing. Malaysia argues that it would, however there have been no cases on this to date.

a8.9. **Criterion 37.2** - Malaysia has a designated central authority (AGC) and also uses the diplomatic channel for the transmission and execution of requests. AGC has clear processes for the timely prioritisation and execution of requests, including in a Client Charter, internal Standard Operating Procedures, a MLA workflow chart, a MLA Manual and a number of templates. Malaysia has an internal case management system. Malaysia has also taken positive steps to assist foreign countries to make requests to Malaysia, including developing guidance documents.

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a8.10. **Criterion 37.3** - The 2007 MER (para 992) determined that the grounds for refusal are unexceptional other than the following mandatory grounds: dual criminality (s.20(1)(f) of MACMA), and 'insufficient importance' (s.20(1)(h) of MACMA). Dual criminality is now considered under 37.6 and 37.7 (see below) and is therefore no longer relevant to 37.3. The ground relating to 'insufficient importance' remains in MACMA.

a8.11. **Criterion 37.4** - The 2007 MER (para 997) concluded that Malaysia does not refuse requests for fiscal matters or on grounds of secrecy or confidentiality requirements on FIs. Malaysia has also accepted similar principles in bilateral treaties it has entered into. This finding stands.

a8.12. **Criterion 37.5** - The 2007 MER (para 1016) concluded that Malaysia maintains appropriate levels of confidentiality. The confidentiality principle is captured in treaty obligations. This finding stands.

a8.13. **Criterion 37.6** - Dual criminality is a mandatory ground for refusal for all MLA requests coercive or otherwise (MACMA s.20(1)(f)). In practice Malaysia has never refused a request on the grounds of dual criminality and interprets dual criminality broadly and flexibly, however the inclusion of dual criminality as a requirement in the law means this criterion cannot be considered met.

a8.14. **Criterion 37.7** - The 2007 MER (para 1002) concluded that Malaysia does not adopt a restrictive approach to dual criminality. This finding stands.

a8.15. **Criterion 37.8** - MACMA includes a range of investigative powers including production orders, search and seizure and taking witness statements, however, it does not allow the search of a person. Malaysia submits that given s.3 of MACMA is a non-exhaustive list Malaysia could intercept communications, access computer systems and conduct undercover operations and controlled deliveries pursuant to a MLA request, provided that it is done in accordance with domestic laws; the domestic laws appear broad enough to allow this. Malaysia can also use domestic powers to assist foreign countries outside the MLA process, for example, through Part VII of the DDFOPA.

Weighting and Conclusion

a8.16. Malaysia has a comprehensive MLA regime and clear processes to make and respond to requests. The most significant impediment is the mandatory requirement for dual criminality in all cases. While Malaysia interprets dual criminality flexibly, this still remains a potential impediment on the face of the law. Other deficiencies are not anticipated to have a significant impact in practice.

a8.17. **Malaysia is rated largely compliant with R.37.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

a8.18. Malaysia was rated largely compliant with former R.38. The 2007 MER noted MACMA confiscation provisions were generally comprehensive, but were subject to dual criminality requirements. Additional requirements in the new R.38 include (a) the ability to provide assistance in non-conviction based matters, and (b) mechanisms to manage and dispose of property frozen, seized or confiscate. The assessment team has expressly identified additional deficiencies not noted in the 2007 MER.

a8.19. **Criterion 38.1** - MACMA provides a comprehensive regime to identify and seize all the required types of property and to freeze and confiscate laundered property and proceeds. MACMA does not cover instrumentalities (and property of corresponding value to instrumentalities) unless a bilateral or multilateral treaty is in place that provides for this (e.g. Palermo, the ASEAN MLA treaty and treaties with the US and the UK); this is because the definitions of 'foreign forfeiture order' is narrow. However, Malaysia can use AMLA to cover instrumentalities in cases where a foreign country asks Malaysia for assistance and Malaysia chooses to take its own domestic action (noting the deficiencies in relation to instrumentalities identified at R.4). There are also comprehensive provisions in DDFOPA (Part VII) allowing Malaysia to provide direct assistance relating to drug matters (including investigations, seizures and forfeiture of proceeds and instrumentalities) to foreign countries outside MACMA processes.

a8.20. Assistance under MACMA is only immediately available to a prescribed foreign State (currently 15 countries). A special direction can be made by the Minister to authorise the provision of assistance to a non-prescribed country however Malaysia advises this normally takes 2 weeks (or one day in very urgent circumstances). The special direction must then be gazetted, which normally takes 7 days (though in urgent circumstances this can be done in less than 7 days) This may limit the extent to which Malaysia can take 'expeditious action', which is often very important in proceeds of crime cases where property moves quickly. This is particularly problematic given the definition of 'foreign forfeiture order' requires that the order needs to be made on or after the date of the special direction (that is, a non-prescribed country would need to make an MLA request asking for their order to be registered, then the Minister could make a special direction, then the foreign country would have to obtain the order and send it to Malaysia). Malaysia experienced this problem in a recent case. To overcome any delays and possible dissipation of property, action could be taken under s.44 of AMLA to freeze the property, pending a special direction and restraint and forfeiture proceedings under MACMA.

a8.21. **Criterion 38.2** - Despite the advice in the 2007 MER regarding the Reciprocal Enforcement of Judgments Act 1958, Malaysia now advises that it would rely primarily on MACMA and AMLA for non-conviction based cooperation. MACMA does not clearly provide for assistance to foreign countries in non-conviction based matters. It is arguable that Malaysia can provide assistance for investigative measures in non-conviction based matters. However the use of the phrase 'judicial proceedings' and its application pursuant to s.2(3) may limit the extent to which Malaysia can provide assistance to restrain or confiscate property in non-conviction based matters. An express provision should be added to MACMA confirming that assistance can be provided where the foreign state is pursuing the matter on the basis of non-conviction based proceedings

a8.22. For drug-related matters, s.50 of the DDFOP Act, which allows forfeiture in response to foreign requests, is broad enough to apply to non-conviction based matters.

a8.23. AMLA could apply to non-conviction based confiscation related to a foreign offence for which Malaysia could commence its own domestic investigation and proceedings. AMLA will not apply in relation to businesses and to property of corresponding value in all cases.

a8.24. **Criterion 38.3** - The 2007 MER (para 1007) noted a lack of formal arrangements for coordinating seizure and confiscation actions with other countries, but practical examples of having done so. Some existing bilateral treaties would support this, such as articles on 'execution of the request'.

a8.25. The MACMA and MACMR provide a good regime for asset management. This includes processes for taking custody and control of property (s.37 and Reg 25(6)), land titles registration (Reg 25(7)-(9)), selling property (Regs 25(5) and 28(4)) and appointing a manager to 'take control of, and manage or otherwise deal with' restrained or forfeited property in accordance with the directions of the Minister (Reg 29). Forfeited property (or the proceeds from the sale of property) vests in the Government of Malaysia and provisions are provided for the transfer of title (Reg 28). An order of payment is prescribed, which includes payment of asset management expenses and other payments as the Minister may direct, excess money from fixed sum judgments to be returned to persons who held an interest in the property, and finally to the Federal Consolidated Fund (Reg 28(5)-(7)). AMLA and DDFOPA also include a comparably good asset management framework.

a8.26. Asset management in MLA cases is handled administratively by the respective LEAs, as per an appointment by the Minister under Regulation 29 of MACMR. As noted in the analysis under R.4, each agency has basic asset management procedures in place which apply domestically; these should be used as a starting point and built upon for MACMA matters.

a8.27. **Criterion 38.4** - The 2007 MER (para 1008) noted that Malaysia can share assets with other countries on an informal basis. In addition, Regulation 28 of MACMR and a number of Malaysia's treaties also provide Malaysia with the ability to share forfeited property with other countries.

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Weighting and Conclusion

a8.28. Malaysia generally has a good MLA regime, and the fact that MACMA has comprehensive provisions to identify and seize all types of property and to freeze and confiscate laundered property and proceeds in conviction based matters is given significant weight. Some deficiencies may affect the scope of assistance Malaysia can provide under MACMA; it is not clear that Malaysia is able to comprehensively cooperate with foreign countries to restrain and confiscate instrumentalities and in non-conviction based matters. In most circumstances a treaty, AMLA or DDFOPA provide for this. The limited range of countries to which Malaysia can provide assistance expeditiously (without securing a special direction from the Minister) is particularly problematic in proceeds of crime matters, especially in light of the timing of issuing a special direction vis a vis a foreign forfeiture order, however it is noted a freezing order could be made under AMLA to secure the property.

a8.29. The concern regarding the mandatory ground for refusal on dual criminality in R.37 also apply to R.38, however these are unlikely to have a significant effect in practice. As noted under R.4, the domestic asset management guidelines should be enhanced to ensure comprehensive coverage of MLA. These matters are given only a small amount of weight in the overall rating for R.38.

a8.30. **Malaysia is rated largely compliant with R.38.**

Recommendation 39 – Extradition

a8.31. Malaysia was rated largely compliant with former R.39 and SR V on extradition. The 2007 MER found Malaysia's extradition laws and procedures broadly met the requirements, but implementation was hampered by complex procedures (e.g., a need to establish a *prima facie* case).

a8.32. **Criterion 39.1** - Malaysia is able to execute extradition requests without undue delay and ML and TF are extraditable offences. However, the analysis in R.3 identified deficiencies in the coverage of predicate offences for ML; it is not clear whether Malaysia's approach to dual criminality would allow it to extradite a person to a foreign country in relation to a ML offence where the predicate was one of those predicates not covered (e.g. ML proceeds of illegal fishing). Malaysia argues that it would, but this has not been tested.

a8.33. AGC has a functioning case management system to monitor the progress of each extradition request to ensure it is being handled and executed in a timely manner, and follows a clear process for executing and prioritising requests. In addition, Malaysia is developing an online database that countries access to check the status of their requests; which will be a very positive development. There are no unreasonable or unduly restrictive conditions on the execution of requests – the grounds for refusal in the Extradition Act are consistent with international practice. While the 2007 MER noted the requirement for a *prima facie* case may limit the efficiency of extradition, the assessors have confirmed that this requirement is not inconsistent with other international practice and it can be dispensed with for prescribed countries.

a8.34. **Criterion 39.2** - The 2007 MER noted that Malaysian nationals have been extradited to foreign countries and that the Minister had a discretion to refuse to extradite a Malaysian citizen and in that event the case must be referred to the AGC for consideration of prosecution in Malaysia. However, s.49 of the Extradition Act only requires the Minister to submit the case to the Public Prosecutor 'if courts in Malaysia have jurisdiction over the extradition offence'. Courts do not always have jurisdiction over offences Malaysian citizens committed outside Malaysia, therefore it is not certain that a Malaysian citizen would be prosecuted in lieu of extradition.

a8.35. **Criterion 39.3** - The 2007 MER noted that dual criminality is a requirement for extradition, but that Malaysia is able to extradite persons where both countries criminalise the conduct underlying the offence. It also noted that a restrictive approach is not taken when considering how the requesting country categorises or names the relevant offence and technical differences between laws do not appear to impede the provision of assistance. This situation is unchanged.

a8.36. **Criterion 39.4** - The Extradition Act does not require a request for provisional arrest to be transmitted through the diplomatic channel or be authorised by the Minister; a provisional arrest can be ordered on the basis of a Magistrate's opinion that the circumstances would justify the issue of a warrant (s.13(1)), taking into account any information in an INTERPOL notice (s.13(2)). Malaysia has a simplified extradition process for consenting persons who waive extradition proceedings (s.22). Malaysia has a backing of warrants scheme with Singapore and Brunei Darussalam (Part V).

Weighting and Conclusion

a8.37. Malaysia has a strong legal framework for extradition and has advanced mechanisms to streamline the extradition process in certain circumstances. There are minor deficiencies with respect to dual criminality (where the predicate offence is missing) and prosecution in lieu however these are unlikely to have a significant effect in practice.

a8.38. **Malaysia is rated largely compliant with R.39.**

Recommendation 40 – Other forms of international cooperation

a8.39. Malaysia was rated partially compliant with R.40 in the 2007 MER due to limits on cooperation by BNM and LFSAA with foreign counterparts. The BAFIA and LFSAA had very specific prohibitions on the disclosure of customers' information, which have since been addressed with statutory amendments. The requirements in the new R.40 are much more detailed.

a8.40. **Criterion 40.1** - Competent authorities are able to provide a wide range of international cooperation in relation to ML, associated predicate offences and TF. Supervisors, the FIU and LEAs are able to share information through various arrangements, both spontaneously and upon request.

a8.41. **Criterion 40.2(a)** - The legal basis for competent authorities to provide cooperation exists in relevant provisions in various laws, including s.10 and s.29(3) of the AMLA, s.150 of the SCA, s.28P of the LFSAA, ss.132 and 132A of the ITA, Part VII of the DDFOP, s.40 of the CBA, s.153 of the FSA, s.165 of the IFSA and s.25(3) of the Customs Act 1967. Under s.29(3) of AMLA, LEA's such as MACC, RMP & CCM can co-operate with LEA's outside Malaysia with respect to an investigation into a serious offence, a foreign serious offence, a TF offence, a structuring offence to evade reporting requirements or an offence in relation to cross border movements of cash and BNIs. LEA's do not have any other international cooperation provisions outlined in law but are able to use the Constitution or UN instruments to cooperate with foreign jurisdictions.

a8.42. **Criterion 40.2(b)** - Competent authorities are able to use the most efficient means to cooperate.

a8.43. **Criterion 40.2(c)** - Competent authorities have appropriate and secure mechanisms to exchange information. The FIU has signed 37 MoUs with counterparts; the SC has bilateral agreements with 33 foreign regulators; LFSAA has MoUs with 10 foreign counterparts; and IRB has 72 double taxation avoidance treaties with relevant partners. The FIU uses the Egmont Secure Web as the primary channel to exchange FIU information and uses registered mail for sharing with non-Egmont members with whom it has a MoU. The IRB exchanges information through courier or encrypted email. RMC utilises secure email to liaise with its designated contacts to exchange information.

a8.44. **Criterion 40.2(d)** - Various competent authorities have processes in place to prioritise to execute requests in a timely manner. The FIU has a SoP on Receipt, Analysis and Dissemination of Financial Intelligence. Other agencies prioritise cases on the basis of "first in first served", however priority is granted to cases which require urgent attention, for instance serving a subpoena for court trials.

a8.45. **Criterion 40.2(e)** - Various competent authorities have processes for safeguarding information from foreign counterparts. IRB treaties contain provisions following the OECD Model Tax Convention to keep received information confidential. The ITA (s.117) includes criminal sanctions for breaches and information exchange is handled by specified personnel under secure conditions. Information received by MACC from foreign counterparts is classified and secured as per the relevant exchange agreement. Information received

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by RMC is safeguarded through security controlled access. BNM has obligations under the AMLA to protect the confidentiality of information received from foreign FIUs and for controlling the use of the information. In addition BNM officers are subject to confidentiality obligations under s.86 of the Central Bank of Malaysia Act 2009 and BNM's Information Security Management Policy which sets out safeguards. SC is subject of a confidentiality clause under the IOSCO MMOU which requires all information received by SC to be kept confidential.

a8.46. **Criterion 40.3** - Malaysia advised that bilateral or multilateral agreements (including MoUs) are negotiated and signed in a timely manner (depending on the scope of the MoU and the issues to be resolved), with the widest range of foreign counterparts (see criterion 40.2(c) above). The FIU is able to share information with Egmont members without MoUs. Further details are under criterion 40.17.

a8.47. **Criterion 40.4** - FIU requirements to provide feedback on assistance received are contained in its SOP. In practice, the FIU provides feedback upon the request of the authority which provided the information. The RMP provides feedback on a case-by-case basis. IRB provides feedback on exchange of information experiences with its treaty partners. MACC will issue an official appreciation letter to countries which have shared information which has led to a successful case. SC provides feedback annually to the IOSCO MMOU Monitoring Group, which identifies possible improvements to cooperation.

a8.48. **Criterion 40.5(a)** - Involvement of fiscal matters does not limit cooperation. Section 132(2) of the ITA lifts confidentiality requirement under ITA s.138 where an arrangement for the international exchange of information or assistance has been made, including in relation to fiscal matters.

a8.49. **Criterion 40.5(b)** - Obligations to maintain secrecy or confidentiality by FIs or DNFBPs are overridden in relation to reporting obligations. These include the exchange of information for intelligence purposes (in the case of the FIU) under s.20 of the AMLA; giving effect to any legal arrangement or MoU with foreign governments (in the case of the LFSA) under s.28B of the LFSAA (together with s.178(2) of the LFSAA and s.139(2) of the LFSSA; and for the purpose of investigating alleged breaches of regulatory requirements (in the case of the SC) under s.150 of the SCA.

a8.50. **Criterion 40.5(c)** -Where there is an ongoing enquiry, investigation or judicial proceedings, competent authorities require instruction from the AGC on whether the information exchanged will impede the enquiry, investigation or proceeding. IRB and MACC have previously exchanged information with foreign counterparts in such circumstances.

a8.51. **Criterion 40.5(d)** - The nature or status of the requesting foreign counterpart is not a ground for refusal to exchange information. Information exchange with non-counterparts can be conducted under DTA and TIEAs (IRB), s.150 of the SCA (SC) and within the scope of the LFSAA's law. Malaysian has some experience of providing such assistance in practice.

a8.52. **Criterion 40.6** - Malaysia's competent authorities have established controls and safeguards to ensure that the information exchanged with foreign counterparts is used only by them and for the intended purpose only. Disclosure to a third party is only allowed after authorisation has been granted by the counterpart. These safeguards are explicitly provided for in laws such as s.10 of AMLA, s.40 of the Central Bank of Malaysia Act, s.17A of the LFSAA and s.132A of the ITA, as well as in MoUs and agreements that have been signed by competent authorities.

a8.53. **Criterion 40.7** - Competent authorities maintain and protect the confidentiality of information exchanged, consistent with the relevant provisions of applicable laws (see 40.6) and the terms of MoUs and agreements entered into by competent authorities.

a8.54. **Criterion 40.8** - Competent authorities are able to conduct inquiries on behalf of foreign counterparts. These powers are provided for under their respective legislation. Authorities can use powers under s.29(3) of AMLA which empowers FIU and LEAs to co-ordinate and co-operate with LEAs outside Malaysia to conduct inquiries on behalf of foreign counterparts into any serious offence (including foreign offence) as well as ML and TF. The IRB's powers under the ITA to gather information for the purposes of the Act, can only be used to obtain information requested by a foreign authority under a DTC or TIEA. Section 150 of the SCA provides

the SC with specific authority to cooperate with and provide assistance to a foreign supervisory authority, including the ability to conduct inquiries on their behalf.

Exchange of information between FIUs

a8.55. **Criterion 40.9** - AMLA provides for sharing information with foreign counterparts on ML, TF and similar offences. This extends to cover predicate offences through s.29(3) and s.10 of the AMLA.

a8.56. **Criterion 40.10** - The FIU provides feedback upon request of foreign counterparts.

a8.57. **Criterion 40.11** - Sections 10 and 29(3) provide broad powers for the FIU to exchange all information required to be accessible by the FIU and all other information which the FIU has the power to obtain or access.

Exchange of information between financial supervisors

a8.58. **Criterion 40.12** - BNM: The strict secrecy conditions on information relating to the affairs or account of any customer of an FI continue in the new banking laws introduced in 2013. Schedule 11 to the FSA and IFSA permits the disclosure of information to a relevant supervisory authority outside Malaysia, but such disclosure is restricted to information relating to branches and subsidiaries of foreign financial entities as provided under s.134 of the FSA. The permission to foreign supervisory authority to examine records is also limited to foreign branches and subsidiaries supervised by that supervisor in the home country. Section 40 of the BNM law permits an arrangement with other supervisory authorities to promote financial stability the term which includes requirements of AMLA, therefore, power to exchange information is indirectly covered.

a8.59. **Criterion 40.12** - SC: Section 148 of the SCA imposes certain duties of secrecy on the SC non-published information obtained as a result of its duties and functions, but s.150 of the SCA exempts this prohibition and allows the SC to render assistance to any foreign supervisory authority upon receiving a written request. The SC's ability to provide assistance to foreign counterparts is not dependent upon the alleged conduct constituting a breach of Malaysian's securities laws. It includes the provision of any assistance to the foreign supervisory authority 'as the Commission thinks fit'. This provision is very flexible as to the type of assistance that may be provided and could include AML/CFT, especially in cases where the foreign supervisor is not the competent authority for AML/CFT supervision and enforcement. In addition, the SC has to ascertain whether the provision of assistance is 'desirable and necessary to render assistance in the interest of the public' taking into account (a) whether foreign counterparts will meet SC's costs; and (b) whether foreign counterparts will be able and willing to provide reciprocal assistance to a comparable request from the SC.

a8.60. The SC is a signatory to the IOSCO MMOU. The SC has also entered into 33 bilateral MOUs with foreign regulators which include enforcement, supervision and to ensure compliance by issuers and fitness and properness of licensed persons.

a8.61. **Criterion 40.12** - LFSA: LFSA's legal basis to provide cooperation with foreign counterparts is sound. LFSA became a signatory to IOSCO in May 2012 and to ESMA MMOU in July 2013. In 2014 LFSA commenced the process to become a signatory to IAIS MMoUs, which is strength.

a8.62. The analysis of secrecy provisions affecting LFSA is set out at R.9 above and highlighted minor limitations on LFSA's ability to obtain and share the widest range of information. Section 29P of the LFSAA clearly puts aside any secrecy obligations, regardless of MOU, home supervisor relationship or any other provision and empowers LFSA to share the widest range of information held by LFSA with any authority vested with supervisory and regulatory or enforcement powers situated within or outside Malaysia. The disclosure to a supervisory or regulatory authority in the context of section 29P of the LFSAA is not limited to home supervisory authority, but is limited to information obtained by an investigating officer when there is a suspicion of a breach of a regulatory offence.

a8.63. **Criterion 40.13** - BNM: Sections 153 of the FSA and 165 of the IFSA permits disclosure of information to a relevant supervisory authority outside Malaysia which exercises functions corresponding to those of BNM. In addition, s.40(1)(b) of the CBA empowers BNM to obtain any information or share any information with any supervisory authority.

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a8.64. **Criterion 40.13 - SC:** The SC is able to provide assistance to foreign counterparts. This would include information it has the power to request from the entities it supervises. See also 40.12 above.

a8.65. **Criterion 40.13 - LFSA:** The ability to provide information to foreign counterparts in certain circumstances is set out in the LFSAA. These provisions do not cover the exchange of all information domestically available to LFSA.

a8.66. **Criterion 40.14 - BNM** is able to share comprehensive information related to AML/CFT and prudential supervision of FIs and financial groups. BNM follows the Basel Core Principles and is able to share the required regulatory information, prudential information and detailed AML/CFT information without attracting the secrecy provisions of Malaysian laws. Sections 40 (1) and (2) of CBA provides for BNM to make cooperative arrangements and share information with other supervisory authorities, both within Malaysia and outside Malaysia, for the purposes of promoting financial stability the term which includes requirements of AMLA, therefore, power to exchange information is indirectly covered.

a8.67. **Criterion 40.14 - SC:** Section 150 of the SCA contains broad powers enabling the SC to provide the required regulatory information, prudential information and detailed AML/CFT information.

a8.68. **Criterion 40.14 - LFSA:** LFSA's ability to share information is limited to sharing information related to an individual Labuan FI with a home supervisor of a Labuan FI, and sharing information through the IOSCO and ESMA MMOUs and its 10 bilateral MOUs.

a8.69. **Criterion 40.15 - BNM** has the ability to conduct inquiries on behalf of foreign counterparts for effective group supervision. It can appoint investigation officers under s.219 of the FSA and s.230 of the IFSA. Foreign supervisors are authorized to conduct onsite examinations of branches and subsidiaries of their FIs doing business in Malaysia as per s.152 of FSA and s.164 of IFSA. BNM has entered into formal arrangements with foreign supervisors to support supervision of financial groups. Consultations with foreign supervisors occurs through supervisory colleges, formal letters, bilateral meetings and onsite examinations to discuss planning of supervisory assessments and sharing information about the overall risk assessment of financial groups.

a8.70. **Criterion 40.15 - SC:** Section 150 of the SCA empowers the SC to make a wide range of investigations on behalf of a foreign supervisory authority into an alleged breach of a legal or regulatory requirement which that authority enforces or administers and provide other assistance as the SC thinks fit. There are no provisions that would allow a foreign supervisor to conduct inquiries themselves in the country, e.g. for purposes of group supervision. See also c40.12 to c40.14 above.

a8.71. **Criterion 40.15 - LFSA:** There are no express legal provisions on the ability of foreign counterparts to conduct enquiries themselves in Labuan in order to facilitate effective group supervision. While the LFSAA does have the ability under s.28C of the LFSAA 2006 to authorise persons to examine FIs and related corporations and copy information, these provisions are to do with giving effect to the LFSAA and certain specified domestic legislation rather than to assist foreign supervisors. Section 28P of the LFSAA provides for the LFSAA to supply certain information to another authority (including foreign authorities) or to allow the requesting authority access to or inspect specific items. LFSAA is able to exercise its investigative powers when providing such assistance. This however does not provide for LFSAA to broadly conduct enquiries on behalf of foreign counterparts.

a8.72. **Criterion 40.16 - BNM:** Section 40(2) of the CBA requires that the sharing of information and documents with the foreign supervisor is subject to an undertaking for protecting the confidentiality of such information and the purposes for which it shall be used. However, s.40 is silent on any requirement of prior authorization for further disclosure. Information obtained from foreign supervisory authorities would tantamount to "information relating to the business or affairs of the Bank". Section 86 of the CBA imposes a duty on directors, officers and employees of BNM to preserve secrecy of any information acquired in the performance of duties or carrying out of functions. Therefore, this information is protected under the CBA. In addition, Malaysia states that MoUs entered into by BNM with foreign supervisory authorities provide the necessary confidentiality requirements and require BNM to seek the consent of the requested financial

supervisor prior to releasing such information to a third party. If BNM needs further disclosure, it will notify the other authority.

a8.73. **Criterion 40.16 - SC:** S.148 of the SCA imposes a duty of secrecy on the SC and all of its officers and staff, which would cover information obtained from other supervisors. If disclosure of information is compelled by law, the SC indicates that it would notify the foreign regulator prior to making the disclosure and where applicable will apply available legal exceptions and privileges to resist disclosure. The SCA also has confidentiality clauses in the MOUs requiring foreign regulators to keep confidential all information provided to them and not to disclose the assistance/information to third parties without the SCM's prior consent. The letter transmitting the information to the foreign regulator will also state that the information is provided on a strictly confidential basis and the information is not to be disclosed to any third parties without the SCM's prior written consent

a8.74. **Criterion 40.16 - LFSA:** The requirement to have the prior authorisation of a counterpart before any dissemination of information provided by that counterpart is provided for in MoUs LFSA has entered into. This provision does not apply to any supervisors which have not entered into an MoU with the LFSA but which have or might provide the LFSA with information.

Exchange of information between LEAs

a8.75. **Criterion 40.17 - Malaysia** has provided details on mechanisms in which its LEAs and related competent authorities can share and cooperate with their foreign counterparts whereby the RMP has mechanisms in place to exchange domestically available information with its foreign counterparts, specifically relating to ML, associated predicate offences and TF including the identification and tracing of the proceeds and instruments of crime. Under s.29(3) of the AMLA, provides for the competent authority and the relevant LEAs to coordinate and cooperate with any other LEAs in and outside Malaysia in respect to an investigation into any serious offences or foreign serious offences may be. Further, Malaysia cited the use of Interpol, ASEANAPOL, and the liaising of foreign liaison officers attached with embassies as mechanisms to share. RMC also utilizes RILO to exchange information.

a8.76. **Criterion 40.18 -** During the onsite visit Malaysia demonstrated that LEAs are able to use their powers including investigative techniques in accordance to domestic law, to conduct inquiries and obtain information. Section 32 of the AMLA provides LEAs the power to examine persons for the purposes of investigation on ML and terrorism financing. Malaysia provided details on the RMP's capabilities of being able to serve a summons, subpoenas and certain warrants for three countries. It was noted that under the Dangerous Drugs (FOP) 1988 various investigative techniques can be used for foreign counterparts. The AGC advised that LEA can utilise investigative techniques such as controlled delivery and undercover operations on behalf of a foreign entity. Further there are provisions under MACCA Customs Act 1967, Part V of the Strategic Trade Act 2010, Part VI of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 and 29(3) of the AMLA to conduct inquiries and obtain information on behalf of its foreign counterparts.

a8.77. **Criterion 40.19 -** During the onsite visit Malaysia provided examples under where they provided the capability to form a joint investigative team to conduct cooperation investigation. In particular the example outlined the use of an undercover operations and controlled delivery in conjunction with a foreign country that was of mutual interest to both parties. The operation was done within Malaysia. Malaysia advised that since December 2013 there have been 15 cases of joint investigations with foreign LEA or intelligence partners and the Joint Customs Operation (DIABOLO II) involving the importation of vehicles whereby cooperation was gained with its foreign EU counterparts.

Exchange of information between non-counterparts

a8.78. **Criterion 40.20 -** There are no express provisions preventing competent authorities from exchanging information indirectly with non-counterparts. Such information exchange is facilitated through regional or international cooperation platforms or bilateral agreements.

a8.79. **Malaysia is rated largely compliant with R.40.**

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Table of Acronyms

| | |
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| AGC | Attorney General’s Chambers |
| ALB | Association of Labuan Banks |
| ALTC | Association of Labuan Trust Companies |
| AML/CFT | Anti-Money Laundering and Counter Financing of Terrorism |
| AMLA | Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 |
| AMLA | Regulations -Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2006 |
| AMLDD | Anti-Money Laundering Division (IRB) |
| APG | Asia/Pacific Group on Money Laundering |
| ARIN-AP | Asset Recovery Interagency Network – Asia Pacific |
| ASC | Association of Stockbroking Companies Malaysia |
| ASEAN | Association of Southeast Asian Nations |
| BHEUU | Legal Affairs Division, Prime Minister’s Department |
| BNI | bearer negotiable instrument |
| BNM | Bank Negara Malaysia |
| BO | beneficial owner |
| BVAEA | Board of Valuers, Appraisers and Estate Agents Malaysia |
| CA | Companies Act 1965 |
| CADS | cash declaration system (BNM FIED database) |
| CBA | Central Bank of Malaysia Act 2009 |
| CCID | Commercial Crime Investigation Department, Royal Malaysian Police |
| CCM | Companies Commission of Malaysia (also known as SSM) |
| CID | Crime Investigation Division, Royal Malaysian Police |
| CLBG | Companies Limited by Guarantee |
| CONG | Compliance Officers Networking Group |
| CMSA | Capital Market and Services Act 2012 |
| CMSL | Capital Market Services Licence |
| CPC | Criminal Procedure Code |
| CT | counter terrorism |
| CTR | cash threshold report |
| DDFOPA | Dangerous Drugs (Forfeiture of Property) Act 1988 |
| DFI | development financial institution |
| DNFBPs | designated non-financial businesses and professions |
| DPP | Deputy Public Prosecutor |
| DTA | double taxation agreement |
| EA | Extradition Act 1992 |

TABLE OF ACRONYMS

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| Egmont | The Egmont Group of Financial Intelligence Units |
| ETP | Economic Transformation Programme |
| FGJAM | Federation of Goldsmiths and Jewellers Associations of Malaysia |
| FI | financial institution |
| FIED | Financial Intelligence and Enforcement Division (The FIU) |
| FINS | FIED's online reporting system allowing two way secure communication with RIs |
| FSA | Financial Services Act 2013 |
| GIFCS | The Group of International Finance Centre Supervisors |
| GTP | Government Transformation Programme |
| IBC | International Business Company |
| IBFC | International Business and Finance Centre |
| IC | Identity Card |
| IFC | International Financial Centre |
| IFSA | Islamic Financial Services Act 2013 |
| INTERPOL | International Criminal Police Organisation |
| IOSCO | International Organisation of Securities Commissions |
| IRB | Inland Revenue Board |
| ISA | Internal Security Act 1960 |
| ISIL | Islamic State of Iraq and the Levant |
| ISP | Interim Strategic Plan |
| ITA | Income Tax Act 1967 |
| JAT | Jemaah Anshorut Tauhid |
| JI | Jemaah Islamiyah |
| LCA | Labuan Companies Act 1990 |
| LEA | Law Enforcement Agency |
| LFSA | Labuan Financial Services Authority |
| LFSAA | Labuan Financial Services Authority Act 2010 |
| LFSSA | Labuan Financial Services and Securities Act 2010 |
| LIBG | Labuan Investment Banks Group |
| LIIA | Labuan International Insurance Associations |
| LIFSA | Labuan Islamic Financial Services Act 2010LLP – Limited Liability Partnership |
| LLPA | Limited Liability Partnership Act 2012 |
| LLPLLPA | Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 LTA - Labuan Trust Act 1996 |
| LTCA | Labuan Trust Companies Act 1990 |
| LTTE | Liberation Tigers of Tamil Ealam |
| MACC | Malaysian Anti-Corruption Commission |
| MACCA | Malaysian Anti-Corruption Commission Act 2009 |
| MACMA | Mutual Assistance in Criminal Matters Act 2003 |

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| MACS | Malaysian Association of Company Secretaries |
| MAICSA | Malaysian Institute of Chartered Secretaries and Administrators |
| MBC | Malaysian Bar Council |
| MDIC | Malaysia Deposit Insurance Corporation Act 2011 |
| MDTCC | Ministry of Domestic Trade, Cooperatives and Consumerism |
| MER | Mutual Evaluation Report |
| MIA | Malaysian Institute of Accountants |
| MIBA | Malaysian Investment Banking Association |
| MICPA | Malaysia Institute of Public Accountants |
| MITI | Ministry of International Trade and Industry |
| ML/TF | Money Laundering and Terrorism Financing |
| MoF | Ministry of Finance |
| MOFA | Ministry of Foreign Affairs |
| MMoU | Multilateral Memorandum of Understanding |
| MSB | money services business (comprising MVTs and money changers) |
| MVTs | money or value transfer service |
| NCC | National Co-ordination Committee to Counter Money Laundering |
| NCID | Narcotics Crime Investigation Department, Royal Malaysian Police |
| NPO | non-profit organisation |
| NRA | national risk assessment |
| NTP | National Transformation Policy |
| OGBS | Offshore Group of Banking Supervisors (now GIFCS) |
| PEP | politically exposed person |
| PF | proliferation financing |
| RBA | risk-based approach |
| RSF | Risk-Based Supervisory Framework |
| RI | reporting institutions |
| RM | Malaysian Ringgit |
| RMC | Royal Malaysian Customs Department |
| RMP | Royal Malaysia Police |
| RMP AMLA Unit | Anti-Money Laundering Unit, Royal Malaysian Police |
| RoS | Registrar of Societies |
| SA | Societies Act 1966 |
| SB | Special Branch, Royal Malaysian Police |
| SC | Securities Commission of Malaysia |
| SCA | Securities Commission Act 1993 |
| SCONPO | Sub-Committee on Non-Profit Organisations |
| SOP | standard operating procedure |

TABLE OF ACRONYMS

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| SOSMA | Security Offences (Special Measures) Act 2012 |
| SRB | self-regulatory body |
| SRO | self-regulatory organisation |
| STA | Strategic Trace Act 2010 |
| STS | Strategic Trade Secretariat |
| SuRF | Supervisory Risk-Based Framework |
| TA | Trustee Act 1949 |
| TC | technical compliance |
| TCA | Trust Companies Act 1949 |
| TCSP | trust and company service provider |
| TF | terrorist financing |
| TFS | targeted financial sanctions |
| TIA | Trustee (Incorporation) Act 1952 |
| TIEA | Tax Information Exchange Agreement |
| UBO | ultimate beneficial owner |
| UNSCR | United Nations Security Council Resolution |
| VAEAA | Valuers Appraisers and Estate Agents Act 1981 |
| WCO | World Customs Organisation |
| WMD | weapons of mass destruction |



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September 2015

Anti-money laundering and counter-terrorist financing measures - Malaysia *Fourth Round Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Malaysia as at 25 November 2014. The report analyses the level of effectiveness of Malaysia's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.