



## *Anti-money laundering and counter-terrorist financing measures - Malaysia*

### **8. International cooperation**

Effectiveness and technical compliance



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## 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
<b>Requests related to ML</b>	<b>16</b>	<b>2</b>	<b>5</b>	<b>0</b>
-Requests fulfilled	16	2	5	0
-Requests denied	0	0	0	0
<b>Requests related to predicate offences</b>	<b>142</b>	<b>34</b>	<b>49</b>	<b>0</b>
-Requests fulfilled	142	34	49	0
-Requests denied	0	0	0	0
<b>Requests related to TF</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>
-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 scheme<sup>1</sup> (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.

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### 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.

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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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### 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.

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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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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).

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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 LFSAA) 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.**

A8



## Table of Acronyms

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

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

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

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