

FATF



Anti-money laundering and
counter-terrorist financing
measures

Malaysia

3rd Enhanced Follow-up Report &
Technical Compliance Re-Rating

October 2018

Follow-up Report





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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MALAYSIA: 3RD ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

1. The mutual evaluation report (MER) of Malaysia was adopted in June 2015. Malaysia has not requested technical compliance re-ratings during their 1st or 2nd follow-up reports. This follow-up report analyses Malaysia's progress in addressing certain technical compliance deficiencies which were identified in Malaysia's MER. Re-ratings are given where sufficient progress has been made. This report also analyses Malaysia's progress in implementing new requirements relating to FATF Recommendations which have changed since Malaysia's MER: R.5, 7, 8, 18 and 21. This report does not address what progress Malaysia has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

2. FINDINGS OF THE MER

2. The MER rated Malaysia as follows for technical compliance:

Table 1. Technical compliance ratings, June 2015

R 1	R 2	R 3		R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	C	LC		LC	LC	C	PC	LC	LC	C
R 11	R 12	R 13		R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	LC	LC		C	C	C	LC	C	C	C
R 21	R 22	R 23		R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	LC		PC	PC	C	C	LC	C	C
R 31	R 32	R 33		R 34	R 35	R 36	R 37	R 38	R 39	R 40
C	LC	C		LC	LC	LC	LC	LC	LC	LC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: Malaysia Mutual Evaluation Report, September 2015, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Malaysia-2015.pdf>

3. Given these results and Malaysia's level of effectiveness, the FATF placed Malaysia in enhanced follow-up.¹ The following experts assessed Malaysia's request for technical compliance re-rating:

- Ms. Cristina Ferreira, Department Head of the International and Inter-Regional Law Department, Legal Affairs Bureau, of the MACAU SAR of the PRC; Macau, China.

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the FATF's traditional policy that deals with members with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems, and involves a more intensive process of follow-up.

- Mr. Gavin Raper, Manager, Policy and Guidance, Legal & Policy, AUSTRAC.
4. Section III of this report summarises Malaysia's progress made in improving technical compliance. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarises Malaysia's progress to improve its technical compliance by:
- a) Addressing certain technical compliance deficiencies identified in the MER, and
 - b) Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R.5, 7, 8, 18 and 21).

3.1. Progress to address technical compliance deficiencies identified in the MER

6. Malaysia has made progress to address the technical compliance deficiencies identified in the MER in relation to Recommendations 32 and 34. As a result of this progress, Malaysia has been re-rated on both Recommendations.

3.1.1. Recommendation 32 (originally rated LC)

7. In its 4th round MER, Malaysia was rated LC with R.32, based on a minor technical deficiency identified in relation to the extent of cooperation between the Royal Malaysian Customs Department (RMC) and the Royal Malaysia Police (RMP) to support implementation on the basis of risk and hot spots for possible TF-related cross-border movements of cash and BNI.

8. In May 2016 Malaysia established a Sub-committee on Implementation and Enforcement of Cross Border Cash and Bearer Negotiable Instruments (SCBNI). This sub-committee includes various national authorities, including the RMC and the RMP, in order to ensure TF-related cross-border co-operation.

9. Malaysia also established other domestic coordination mechanisms, which included members of RMC and RMP, such as the Eastern Sabah Security Zone (ESSZONE), responsible to advise the implementing bodies/agencies on measures to strengthen security and public order in the security zone.

10. Malaysia has addressed the identified deficiency. **Malaysia is therefore re-rated as compliant with R.32.**

3.1.2. Recommendation 34 (originally rated LC)

11. In its 4th round MER, Malaysia was rated LC with R.34, based on gaps identified in relation to detailed guidance and 'red flags' to support implementation of preventive measures and STR reporting.

12. Malaysia has launched several initiatives since the adoption of the MER to address the identified deficiency, in particular related to STR, TF, PF, red flags and BO.

13. The initiatives cover the following:

- Guidance to reporting institutions (RIs) by the competent authorities, supervisors and SRBs. Further, risk information and guidance (including feedback on STR reporting and red flags) are continuously shared with RIs.
 - A platform, set up in 2017, between the FIU, Royal Malaysia Police (RMP) and at-risk financial institutions for sharing of information on TF operational intelligence and modus operandi.
 - Weekly update to RIs on TF-related news by the FIU, complemented by value-added information from the FIU and law enforcement agencies (LEAs) databases (started January 2018)
 - Red-flags and typologies document on TF, issued in March 2018, with limited circulation to RIs. This documents consists of recent red-flags of TF, case studies and relevant statistics
 - Guidelines on Implementation of Targeted Financial Sanctions Relating to Proliferation Financing for Capital Market Intermediaries was issued by the Securities Commission, April 2018
 - Technical Notes on: Targeted Financial Sanctions of TF and Technical Note on Foreign Terrorist Fighters in 2016 and Update On ISIL Financing and Risk Indicator Relevant to Terrorist Financing 2017, Risk-Based Approach on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) for Reporting Institutions Supervised by Bank Negara Malaysia (BNM), and the Definition of Family Members and Close Associates of a Politically Exposed Person (PEP)
 - Bilateral arrangements between LEAs and industry associations includes meetings between the ML Investigation Unit (AML Unit) of the RMP and the Compliance Officers Networking Group (CONG)
 - Conferences and seminars, meetings with targeted institutions, bilateral meetings and information sharing through a dedicated online platform and website.
14. Based on the described initiatives, Malaysia has addressed the identified deficiencies. **Malaysia is therefore re-rated as compliant with R.34.**

3.2. Progress on Recommendations which have changed since adoption of the MER

15. Since the adoption of Malaysia's MER, the FATF has amended Recommendations 5, 7, 8, 18 and 21. This section considers Malaysia's compliance with the new requirements.

3.2.1. Recommendation 5 (originally rated LC)

16. In October 2015 and in October 2016 R.5 and its Interpretive Note were revised to clarify the term "funds and other assets", and to require that TF offences include the financing of individuals travelling to a State other than their States of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

17. Malaysia was rated LC on R.5 because of a lack of clarity on whether the TF offence would extend to the conducts set out in the treaties annexed to the TF Convention.

18. Although Malaysia is not a Party to the UN Convention on the Physical Protection of Nuclear Material, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, the crimes provided for in these Conventions are covered in the criminal law of Malaysia, which means whoever commits or attempts to commit or supports the commission of such acts may be prosecuted and convicted.

19. TF prosecutions cases presented, demonstrate no deficiency in the scope of the TF offence in relation to the conduct set out in the treaties annexed to the TF Convention.

20. In relation to the revised aspects of R.5 (criterion 5.2bis), Malaysia amended the Penal Code to be in compliance with the new requirement. The Penal Code (Amendment) Act 2015 [Act A1483] came into force on 15 June 2015, and criminalises the financing of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

21. Based on the described initiatives, Malaysia has addressed the identified deficiency and has implemented measures to comply with the revised R.5. **Malaysia is therefore re-rated as compliant with R.5.**

3.2.2. Recommendation 7 (originally rated PC)

22. Based on the deficiencies identified in the MER, Malaysia was rated PC on R.7. The deficiencies identified were: delay in transposing UN designations to domestic freezing obligations and prohibitions, the freezing obligation and prohibitions were not enforceable in respect of foreign individuals and entities, and a lack of adequate implementation guidance.

23. In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) since the FATF standards were issued in February 2012, in particular, the adoption of new UNSCRs.

24. Malaysia has addressed all the identified deficiencies in the MER through various initiatives. The Strategic Trade Regulations and Orders have been amended to change the domestic transposition process to direct adoption of the United Nations Security Council (UNSC) Consolidated List by referencing the relevant UNSC website. With the amended legislation, Malaysia is transposing the relevant UNSCRs, and applying targeted financial sanctions, without delay. Further amendments have been made to the Strategic trade Regulations, where the obligations now apply in relation to all persons in Malaysia including foreign individuals and entities.

25. In addition, several on-going initiatives have been undertaken by various authorities (MITI, BNM, LFS and SC) to increase awareness and provide guidance to the reporting entities on their obligations in relation to PF targeted financial

sanctions. Apart from designations, information on individuals and entities that are suspected to be involved in activities related to PF, other countries' unilateral sanctions and related news or publications on PF have also been published in FINS to alert RIs on new developments on PF sanctions and for RIs to manage their risk accordingly

26. Based on the described initiatives, Malaysia has addressed the identified deficiencies and has implemented measures to comply with the revised R.7 and its Interpretive Note. **Malaysia is therefore re-rated as compliant with R.7.**

3.2.3. Recommendation 8 (Originally rated LC)

27. In June 2016, R.8 and its Interpretive Note were significantly revised, which makes most of the R.8 analysis in the MER obsolete. For the purpose of this report Malaysia has provided information to demonstrate its compliance with the requirements of the revised R.8.

28. In 2017, Malaysia undertook a domestic review (DR) and a National Risk Assessment (NRA) on NPOs to identify the TF risks in the NPO sector. The NPO sector was assessed at sub-sector level and smaller categories within those sub-sectors helping to focus monitoring efforts and resources into the areas within the sector that is of actual high risk.

29. All co-operation, co-ordination and information-sharing among all levels of appropriate authorities or organisations, that hold relevant information on NPOs, are facilitated through the Subcommittee for Non-profit Organisations (SCONPO) framework. Further, the NPO regulators, under SCONPO, have established a close working relationship with the RMP including an agreement to meet regularly and establishing contact points to facilitate exchange of information between RMP and NPO regulators.

30. Malaysia's NPO regulators have already employed a risk-based strategy in the monitoring of the NPOs under its supervision, by focusing on the religious and charity sub-sectors which were assessed to be of higher risk. Nevertheless, Malaysia recognised that more refinement of the monitoring of NPOs in response to the DR & RA 2017, needs to be undertaken, to ensure monitoring on a risk-sensitive basis.

31. Overall only minor deficiencies exist under R.8 in relation to monitoring on a risk-sensitive basis. **As a result, Malaysia maintains a Largely Compliant rating on R.8.**

3.2.4. Recommendation 18 (Originally rated C)

32. In November 2017, the Interpretive Note to R.18 was amended to clarify the scope of information-sharing requirements. Malaysia's AML/CFT Act and guidance enable the sharing of information relating to suspicious transactions and contain clauses requiring group-wide AML programs to have safeguards on the confidentiality and use of information in order to prevent tipping-off. **On this basis, Malaysia remains compliant with R.18.**

3.2.5. Recommendation 21 (originally rated C)

33. In November 2017, R.21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18. There is a clear exemption to Malaysia's provisions on tipping-off which permits information-sharing on STRs within a financial group. **Malaysia therefore remains compliant with R.21.**

3.3. Brief overview of progress on other recommendations rated PC

34. Since Malaysia's 2nd follow-up report (no TC re-ratings) Malaysia reported that on R.24 (PC), a revised risk assessment of legal persons is in process, equally the Companies Commission of Malaysia is planning a study that will end with a guidance on how to streamline the reporting of beneficial owners, among others. With regard to share warrants of Labuan Companies, Malaysia is in the process of prohibiting bearer share warrant in Labuan. For R.25 (PC) Malaysia reported that they are in the process of amending the Trust Companies Act and the LFSA, which will require mandatory registration for companies carrying out trust activities, enhance reporting requirement and address the deficiencies related to proportionality and dissuasiveness of sanctions.

4. CONCLUSION

35. Overall, Malaysia has made progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on four Recommendations. Only two Recommendations remain PC. Malaysia has addressed the deficiencies identified under R.7 including the revised requirement of R.7 and its Interpretive Note, and has been re-rated as Compliant with R.7. Equally, Malaysia has addressed the minor deficiencies identified under R.5, R.32 and R.34 to be re-rated as Compliant on all three. Malaysia remains largely compliant with the revised R.8 and maintains a compliant rating with the revised R.18 and R.21.

36. In light of Malaysia's progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. Technical compliance with re-ratings, October 2018

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	C	LC	LC	C	C	C	LC	LC	C
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	LC	LC	C	C	C	LC	C	C	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	LC	PC	PC	C	C	LC	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
C	C	C	C	LC	LC	LC	LC	LC	LC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

37. Malaysia will remain in enhanced follow-up on the basis that it had a moderate level of effectiveness for 7 of the 11 effectiveness outcomes (FATF Procedures, para. 79(a)(iii)). According to the enhanced follow-up process, Malaysia will continue to report back to the FATF on progress to strengthen its implementation of AML/CFT measures.

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Anti-money laundering and counter-terrorist financing measures in Malaysia

3rd Enhanced Follow-up Report & Technical Compliance Re-Rating

This report analyses Malaysia's progress in addressing the technical compliance deficiencies identified in the FATF assessment of their measures to combat money laundering and terrorist financing of September 2015.

The report also looks at whether Malaysia has implemented new measures to meet the requirements of FATF Recommendations that changed since the 2015 assessment.

FOLLOW-UP REPORT