



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

### **3. Legal systems and operational issues**

Effectiveness and technical compliance



Citing reference:

FATF and APG (2015), “Legal systems and operational issues” in *Anti-money laundering and counter-terrorist financing measures - Malaysia*, Fourth Round Mutual Evaluation Report, FATF, Paris and APG, Sydney  
[www.fatf-gafi.org/publications/mutualevaluations/documents/mer-malaysia-2015.html](http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-malaysia-2015.html)

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### 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### Key Findings

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

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

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

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

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

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

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

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

3

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

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

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

### 3.1 Background and Context

#### (a) Legal System and Offences

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

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

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

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

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

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

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

### 3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)

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

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

### *(a) Use of financial intelligence and other relevant information*

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

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

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

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

### **RMP**

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

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

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

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

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

### BNM FIED

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

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

### Inland Revenue Board of Malaysia (IRB)

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

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

### Malaysian Anti-Corruption Commission (MACC)

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

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

### Royal Malaysian Customs Department (RMC)

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

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

## Securities Commission (SC)

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

## Companies Commission Malaysia (CCM)

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

### (b) *FIU Analysis and dissemination*

**Table 3.1. STRs received, analysed and disseminated**

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

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

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

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

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

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

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

**Table 3.2. Table 3: FIU disclosures (disseminations)**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

## Overall conclusions of Immediate Outcome 6

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

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

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

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

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

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

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

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

### (a) *General – legal and institutional frameworks*

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

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

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

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

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

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### *(b) ML identification and investigation*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Table 3.3 Money laundering cases for 2009 to 2013**

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

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

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

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

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

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

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

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

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

**Box 3.1. Case study: MACC ongoing investigation**

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

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

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

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

*(d) Different types of ML cases prosecuted and convicted*

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

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

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

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

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

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

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

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

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

**(e) Sanctions for ML convictions**

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

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

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



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

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

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

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

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

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

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

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

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

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

### Overall conclusions of Immediate Outcome 7

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

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

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

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

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

## 3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

### (a) Pursuit of confiscation as a policy objective

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

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

3

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

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

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

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

#### **Some key achievements of the Special Taskforce have included:**

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

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

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

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

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

#### **Domestic confiscation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3

#### Confiscation for foreign predicates

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

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

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

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

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

#### Property moved offshore

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

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

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

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

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

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

### Asset management

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

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

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

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

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



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

3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Overall conclusions of Immediate Outcome 8

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

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

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

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

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

## 3.6 Recommendations on legal system and operational issues

### *Immediate Outcome 6*

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

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

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

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

### *Immediate Outcome 7*

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

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

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

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

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

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

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

### *Immediate Outcome 8*

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

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

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

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

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

### 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### Recommendation 3 – Money laundering criminalisation

a3.1. Malaysia was rated partially compliant with former R.1 and largely compliant with former R.2. The MER concluded that the ML offence was compliant with the Vienna and Palermo Conventions and met most of the essential criteria. Two key areas of concern were coverage of predicate offences (environmental crime, piracy and counterfeiting/piracy of non-artistic goods) and the inadequacy of sanctions. The AMLA was amended in June 2014 (with amendments to the ML offence coming into force on 1 September 2014) and Regulations have added a number of offences to the list of predicate offences. The new R.3 adds additional predicate offences, including tax offences.

a3.2. **Criterion 3.1** - Both the former and the new ML offence are in accordance with the Vienna and Palermo Conventions.

a3.3. **Criteria 3.2 and 3.3** - Malaysia adopts a list approach to predicate offences. As at 14 July 2014 there were over 280 serious offences from 42 laws listed as predicate offences in Schedule 2 of AMLA. Tax offences and offences in accordance with the new categorisation of 'smuggling' have been added and piracy is covered. However, some of the deficiencies identified in the 2007 MER remain. While most environmental crimes and one trade designs offence have been added, the list of predicate offences still does not comprehensively cover environmental crime (illegal fishing) and the offence in the industrial designs law.

a3.4. **Criterion 3.4** - The definition of 'property' is broad enough to apply to any type of property regardless of its value and the definition of 'proceeds of unlawful activity' applies to property that directly or indirectly represents the proceeds of crime. The 2014 AMLA amendments expanded the definitions.

a3.5. **Criterion 3.5** - It is not necessary for a person to be convicted of a predicate offence. The 2014 amendments to AMLA added a clarifying provision expressly confirming this (s.4(4)).

a3.6. **Criterion 3.6** - Predicate offences include foreign serious offences, as was the case in 2007. The definition of 'foreign serious offence' in the 2014 amendments to AMLA is in keeping with the international standards.

a3.7. **Criterion 3.7** - The ML offence applies to self-launderers.

a3.8. **Criterion 3.8** - It is possible for the intent and knowledge for the offence to be inferred from objective factual circumstances. The 2014 amendments to AMLA confirmed this at s.4(2).

a3.9. **Criterion 3.9** - The previous law did not contain proportionate or dissuasive criminal sanctions (imprisonment for a maximum of five years and/or a fine of RM 5M (USD 1.5M)). The 2014 amendments to AMLA increased the term of imprisonment for ML to a maximum of 15 years and the fines were increased such that they can be considered proportionate and dissuasive. The penalty for ML relating to corruption in MACCA is still only a maximum of 7 years and/or RM 50 000 (USD 14 937) fine, however the MACC could use the ML offence in AMLA. The judiciary has the discretion to impose an appropriate sentence up to the maximum based on proportionality considerations. There is also the option of 'compounding' the offence under s.92 AMLATFA where, with the consent of the Public Prosecutor (the Attorney General, who is qualified to be a judge), the person can be fined up to 50% of the maximum fine instead of being prosecuted, though this has not been used for ML.

a3.10. **Criterion 3.10** - The 2007 MER found that the ML offence applies to both natural and legal persons (para 186) and that AMLA did not preclude the possibility of parallel criminal, civil or administrative proceedings. This has not changed with the 2014 amendments. These measures appear to be without prejudice to the criminal liability of natural persons (see also ss.87-88).

## LEGAL SYSTEM AND OPERATIONAL ISSUES

a3.11. **Criterion 3.11** - The existing appropriate ancillary offences were expressly confirmed with s.86A of 2014 amendments to AMLA.

### *Weighting and Conclusion*

a3.12. With the 2014 amendments to AMLA, the ML offence has only minor technical shortcomings in relation to predicate offences, with a small number of offences within two categories of offences not being covered.

a3.13. **Malaysia is rated largely compliant with R.3**

### **Recommendation 4 - Confiscation and provisional measures**

a3.14. Malaysia was rated largely compliant with former R.3. The 2007 MER concluded that the laws relating to drugs, corruption, ML and TF offences provided comprehensive confiscation regimes but that laws applying to other offences did not. The amended AMLA now applies to ML, TF and all predicate offences and addresses the deficiency with coverage of indirect proceeds of corruption offences. Asset management is a new component in R.4.

a3.15. **Criterion 4.1** - The new AMLA provisions provide an enhanced regime that applies to all types of property for ML, TF and predicate offences (other than those predicate offences identified as missing in R.3). This includes conviction and non-conviction based confiscation and pecuniary penalty orders (ss.55-56 and 59 respectively). A very minor deficiency exists in AMLA whereby property of corresponding value to instrumentalities for predicate offences cannot be confiscated unless a person is prosecuted for ML or TF (ss.55(2), noting s.59 only applies to benefits derived from instrumentalities); this deficiency cannot be overcome by the general provision in the Criminal Procedure Code (s.407). The DDFOPA and MACCA provide comprehensive schemes in relation to drugs and corruption matters. All regimes apply to property that is held by criminal defendants or by third parties. **Other than for terrorism, instrumentalities intended to be used in the commission of an offence are not expressly covered by any of the laws. As noted in the 2007 MER, in some cases they may be covered if an attempt offence applies, but this will not suffice in all cases.**

a3.16. **Criterion 4.2** - AMLA provides a comprehensive scheme to carry out provisional measures and take steps that will prevent or void actions that prejudice Malaysia's ability to freeze or seize or recover property that is subject to confiscation. This applies to ML, TF and all predicate offences other than those predicates noted as missing under R.3. AMLA provides comprehensive measures to identify, trace and evaluate such property and take any appropriate investigative measures in relation to ML and TF. These powers can also be used for predicate offences where an LEA has a suspicion regarding an offence under AMLA. DDFOPA and MACCA provide comprehensive investigative measures in relation to drugs and corruption offences.

a3.17. **Criterion 4.3** - Measures are in place to protect the rights of *bona fide* third parties, including in s.61 AMLA. This has not changed following the 2014 amendments.

a3.18. **Criterion 4.4** - Malaysia's laws set out mechanisms for basic asset management, which include provisions for authorities to take custody and control in certain cases, the sale of frozen and movable property, processes for registration on land titles, management and closure of seized businesses and for records to be kept. There are no provisions to sell or take custody and control of immoveable property during the restraint phase; Malaysia takes the view that this is not 'necessary' given dealings can be prevented on the title of the property and because of the nature of the property and duration of restraining orders. This may pose issues if the real estate market is in decline or if the property owner is no longer willing or able to manage the property appropriately, however Malaysia advises such property could be sold by consent or be subject to early civil forfeiture proceedings.

a3.19. Asset management is handled administratively by respective LEAs. Each LEA has their own standard operating procedures to guide management of assets. BNM has an asset management guide for AMLA matters, which is a short summary of action to be taken for each property type. It is not comprehensive but

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is a good starting point that should be built upon. However, with respect to the sale of restrained property the BNM Guide relies heavily on consent to sale which may not always be forthcoming and therefore may be problematic. RMP's guide for disposing of property under DDFOPA is the most detailed.

### *Weighting and Conclusion*

a3.20. Malaysia's confiscation laws are relatively advanced and provide good coverage of the vast majority of the requirements, with only two minor deficiencies in scope identified that may not have significant implications in practice. The investigative powers are broad and laws provide a good basic asset management framework. However, LEAs' asset management guidelines should be enhanced.

a3.21. **Malaysia is rated largely compliant with R.4.**

## Operational and Law Enforcement

### Recommendation 29 - Financial intelligence units

a3.22. Malaysia was rated compliant with former R.26. Since the last evaluation the FATF standards on FIUs have been significantly strengthened by imposing new requirements which focus, among other issues, on the FIUs strategic and operational analysis functions, and the FIU's powers to disseminate information upon request and request additional information from reporting entities.

a3.23. **Criterion 29.1** – BNM is the competent authority under the AMLA and has established the Financial Intelligence and Enforcement Department (FIED) to perform the function of Malaysia's FIU. FIED is empowered under the AMLA, through a legal delegation by BNM to be the national centre to receive and analyse information from any person and send any report or any information derived from such a report to an LEA if it is satisfied or has reason to believe or suspect that a transaction involves proceeds of an unlawful activity or serious offence or relates to TF.

a3.24. **Criterion 29.2** - Under s.8 of the AMLA, the FIU is the central agency for the receipt of the information and report from any person, including the following disclosures filed by RIs: cash threshold reports (CTRs) filed under s.14(a) of the AMLA and suspicious transaction reports (STRs) filed under s.14(b). The requirements under s.14(b) requiring RIs to report STRs are applicable to all FIs and DNFBPs. STRs and CTRs are received from RIs via the FINS system, which is a secure and protected channel for the FIU to receive reports.

a3.25. **Criterion 29.3** - Under s.8 of the AMLA, the FIU is empowered to give instructions to RIs to provide additional information. The FIU may also make recommendations to a relevant supervisory agency, including for the supervisor to request additional information. In conducting its analysis the FIU has access, directly or indirectly, to the widest range of sources of financial, regulatory, administrative and LEA information to undertake analysis.

a3.26. **Criterion 29.4** - Malaysia has demonstrated that it conducts both operational and strategic analysis. The FIU has established the following units to carry out its functions:

- **Operational Analysis Unit** - conducts operational analysis in identifying specific targets, following the trail of particular activities or transactions and determining links between those targets and possible proceeds of crime related to predicate offences and ML/TF. Criteria used to conduct analysis on a subject include the number of STR/CTR matches, amount reported, suspected criminal activity, occupation and nationality.
- **Macro Analysis Unit** - conducts strategic analysis by using information in identifying ML/TF trends and patterns, as well as possible ML/TF threats and vulnerabilities. The information analysed is escalated to relevant stakeholders for appropriate regulatory and enforcement action or policy development.

## LEGAL SYSTEM AND OPERATIONAL ISSUES

- **Surveillance Unit** - focuses on investigation support in gathering intelligence for offences related to financial crime especially those under BNM's purview.

a3.27. **Criterion 29.5** - The FIU is able to disseminate, spontaneously and upon request information and the results of its analysis to relevant competent authorities. The FIU utilizes dedicated, secure and protected channels for dissemination by using the FINS system. The FIUs SOPs outline procedures for the dissemination of information to competent authorities in a secure manner which ensures the integrity and protection of the financial intelligence. Some LEAs have limited direct access to search the FINS system and all LEAs receive spontaneous and reactive disclosures through that system in a closely governed secure framework. Disseminations to those LEAs which are not on FINS are conducted in a secure and protected manner.

a3.28. **Criterion 29.6** - The FIU's 'Framework for Analysis and Dissemination of Financial Intelligence' sets out the procedures for handling confidential information to be disseminated to domestic LEAs or foreign counterparts. FIU staff have the necessary security clearance levels and access is limited to facilities and information, including information technology systems.

a3.29. **Criterion 29.7** - Under s.7 of the AMLA the government has designated BNM as the competent authority for the purposes of the various powers under the act, including FIU functions. In implementing sections 9 and 10 of the AMLA, BNM as the competent authority has delegated the function to disseminate and exchange information with domestic agencies and foreign counterparts, to the Head of FIU. Although it is structured within BNM, the FIU operates with sufficient operational independence and autonomy to be free of undue influence or interference. The Deputy Governor of BNM is responsible for the FIU, however, functionally the Head of FIU has the autonomy and power to receive, analyse and disseminate financial intelligence with domestic LEAs and with foreign counterparts. The Head of the FIU has control in setting and expending necessary budgets and other resources. The FIU is operationally independent and autonomous as a separate unit within FIED. The FIU has a SOP which outlines the autonomy of the Head of the FIU in relation to the FIU operations.

a3.30. **Criterion 29.8** - Malaysia's FIU has been a member of the Egmont Group since July 2003 and has represented the Asia Group in the Egmont Committee.

a3.31. **Malaysia is rated compliant with R.29.**

### Recommendation 30 – Responsibilities of law enforcement and investigative authorities

a3.32. Malaysia was rated largely compliant with former R.27. The MER noted that RMP had not yet developed sufficient capacity to effectively investigate ML or TF offences. There were varying levels of awareness of AML/CFT issues and application of powers under AMLA to investigate ML and TF. No TF investigations had yet taken place.

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a3.33. **Criterion 30.1** - LEAs enforce serious offences as listed in the Second Schedule of the AMLA (Appendix I). Part V of AMLA provides for the powers of investigation which all LEAs can exercise. There are nine LEAs responsible for investigating ML and associated predicate offences, namely the RMP, MACC, RMC, IRB, BNM, SC, CCM, MDTCC and LFSa. All LEAs have established ML investigation units or designated capacity to conduct investigations under the AMLA.

a3.34. **Criterion 30.2** - LEAs are authorized to pursue investigations of any related ML offences in parallel with predicate offences under s.29(1) of the AMLA and to co-ordinate and co-operate with other LEAs in and outside of Malaysia with respect to an investigation into any serious offence or foreign serious offence, as the case may be, as provided under s.29(3). Malaysia advised that all investigations and findings related to TF will be referred to RMP for further investigation.

a3.35. LEAs investigate predicate offences under their respective laws and also authorize their AMLA Unit or designated investigating officer to investigate ML in parallel with the predicate offence. The authority to investigate ML offences is granted under s.30 of the AMLTFA. LEAs will appoint any of their officers or any

person to be an investigating officer for the purpose of carrying out the investigation of any offence under AMLA.

a3.36. **Criterion 30.3** - LEAs have investigative powers, under Part V and VI of the AMLA, to identify, trace (ss.31, 32, 37, 48 and 67) and initiate freezing (s.44) and seizing of property (ss.45, 46(6), 50, 51 and 52), which may become a subject matter of proceeds of crime or is derived from proceeds of crime. Apart from the AMLA provisions, similar powers can also be found in other laws relevant to the respective LEAs.

a3.37. **Criterion 30.4** - Competent authorities that are not LEAs *per se* are able to exercise the functions under this Recommendation pursuant to s.29(1) of AMLA. Criterion 30.1 also refers.

a3.38. **Criterion 30.5** - MACC is an independent commission set up in 2008, replacing the Anti-Corruption Agency. The powers to identify, trace and initiate freezing and seizing of assets under the AMLA are also accorded to the MACC, by virtue of enforcing the provisions under the MACC Act 2009 (MACCA) which are listed under the Second Schedule of the AMLA. MACC has jurisdiction to pursue offences of corruption, bribery and misleading which are listed as 'Prescribed Offences' under the MACCA. In addition to the powers under the AMLA, MACCA also provides comprehensive measures to identify, trace, and initiate freezing and seizing of assets arising from, or related to, corruption offences (ss.29, 30, 31, 33, 36, 37, 38, 40, 41, 43 and 46 refer).

a3.39. **Malaysia is rated compliant with R.30.**

### Recommendation 31 - Powers of law enforcement and investigative authorities

a3.40. Malaysia was rated compliant with former R.28. The requirements under this Recommendation have expanded substantially and require LEAs to have a much wider range of powers.

a3.41. **Criterion 31.1** - Malaysia's LEAs and investigative authorities have sufficient powers to access all necessary documents and information for use in ML, associated predicate offences and TF investigations, prosecutions and related actions.

a3.42. **Criterion 31.2** - Malaysian LEAs are permitted under the law to use the wide range of investigative techniques for the investigation of ML, associated predicate offences and TF, including undercover operations, the interception of communication, accessing computer systems and controlled deliveries. Although the SC advised that that they cannot conduct undercover operations, if necessary it can be done by the RMP. The RMP has the power to investigate any offence under any of the laws in Malaysia as stipulated under s.20 of the Police Act 1967 and s.23 of the Criminal Procedure Code. During the onsite visit the BNM advised that the RMP assistance is requested to help enforce their respective Acts.

a3.43. **Criterion 31.3** - Under s.48 of the AMLTFA, LEAs can obtain an order for RIs to provide information which would identify, whether natural or legal persons hold accounts. The AMLA includes provisions to ensure no person shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under the Act. This includes information obtained from RIs to identify assets and accounts.

a3.44. Malaysia has developed a coordinated approach for the execution of s 48 orders through the FIU. On its own or on behalf of LEAs the FIED uses FINS as secure and fast conduit for serving orders on all RIs. This provides an efficient, secure and timely mechanism to obtain information from RIs.

a3.45. **Criterion 31.4** - Under powers in the AMLA, LEAs investigating ML associated predicate offences and TF are able to ask for all relevant information held by the FIU.

a3.46. **Malaysia is rated compliant with R.31.**

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### Recommendation 32 – Cash Couriers

a3.47. Malaysia was rated non-compliant for SR IX. The 2007 MER concluded that while Malaysia had a system for completing a cross-border declaration for cash and travellers' cheques, there were some technical gaps and major weaknesses with implementation. The declaration system did not extend to bearer negotiable instruments (BNIs) and the available sanctions for false disclosure were rendered ineffective due to deficiencies in the implementation of the declaration system.

a3.48. **Criterion 32.1** – Sections 28B and 28C of the AMLA now require residents and non-residents to declare incoming and outgoing cross border movement of currency and BNIs exceeding USD 10,000 or its equivalent. This covers passenger, postal and cargo streams. The declaration is to be made to RMC officers using a prescribed form (Customs Form Number 1, 2 and 22) at all points of entry and exit in Malaysia. Notices are placed at all entry and exit points to give prior warning to travellers of their obligation to make a declaration.

a3.49. **Criterion 32.2** - Declarations are required to be truthful and made in the respective prescribed form to RMC, the competent authority under s.28B, s.28C and s.28H of the AMLA and s.87 of the Customs Act 1967.

a3.50. **Criterion 32.3** – This criterion is not applicable as Malaysia implements a written declaration system.

a3.51. **Criterion 32.4** - RMC officers have the authority to obtain further information from the carrier with regard to the origin of the cash or BNIs and their intended use.

a3.52. **Criterion 32.5** - Persons who make a false declaration or disclosure are subject to proportionate and dissuasive sanctions. AMLA imposes a criminal penalty upon conviction of a fine not exceeding RM 3 million (USD 896 240) or imprisonment for a term not exceeding five year or both for the offence of failure to make such declaration. AMLA also provides for compounding of a sum not exceeding fifty percent of the amount of the maximum fine for that offence. The offence of making a false declaration is also an offence under s.135(1)(a) of the Customs Act 1967 with a sanction (if it is a first offence) of a fine between ten times and twenty times the value of the currency or BNI, or imprisonment for a term not exceeding three years or both. For a subsequent offence the fine is between twenty and forty times the value of the currency or BNI or imprisonment for a term not exceeding five years or both. The court can forfeit currency or BNI seized under the Customs Act. The offence of making an incorrect declaration of currency or BNI in the prescribed form is also punishable under s.133(1)(a) of the Customs Act. The criminal sanction for a person convicted for this offence is a fine not exceeding RM 500 000 or imprisonment for a term not exceeding five years or both.

a3.53. **Criterion 32.6** - The Cash Declaration System (CADS) introduced in 2011 enables the FIU to have access to all declaration information. CADS facilitates the secure access to and analysis of declaration data by RMC and the FIU as part of both agencies ongoing intelligence and investigative work. RMC is also able to notify the FIU about suspicious cross border currency / BNI transportation incidents.

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a3.54. **Criterion 32.7** - There are a number of coordination mechanisms to support the cooperation between RMC, BNM and other relevant authorities in the implementation of R.32. The Cross Border Transportation of Currency (CBTC) Task Force was established in June 2007 to establish the CBTC Framework and is comprised of BNM, RMC and the Immigration Department, however this was recently disbanded as it was focused on establishing the cross border currency reporting framework. CADS was introduced in July 2011 as a platform to coordinate access to cross border declaration data between BNM and RMC. BNM collaborates with RMC in capacity building and training for RMC staff on cash declarations and utilisation of CADS. There are operational coordination arrangements in place between RMC and RMP to generally guide RMC's implementation. However, there is not yet sufficient coordination between RMC and RMP to guide RMC's implementation on the basis of risk and 'hot spots' for possible TF-related cross border movements of cash and BNI.

a3.55. **Criterion 32.8** - RMC officers are able to stop or restrain currency or BNIs for a reasonable time where there is a failure to declare under s.23(2) AMLA or s.134(1)(a) of the Customs Act or an incorrect declaration under s.133(1)(a) of the Customs Act. These offence provisions give RMC officers the reason for affecting a seizure, whether or not there is a suspicion of ML. Under the new s.28H of AMLA, RMC officers are authorized to seize cash/BNI or other things if there is a reason to suspect that the cash/BNI or other things

may afford evidence relating to commission of an offence under the AMLA. Section 29 has been amended to allow RMC to investigate and exercise the relevant investigation powers in relation to offences on cross-border movement of cash/BNIs.

a3.56. **Criterion 32.9** - Since 2011 all cross border declarations have been retained in the CADS which is maintained by the FIU. Access is limited to RMC and the FIU. The FIU may disclose declaration information to other competent authorities via reactive or proactive disclosures, including to foreign agencies. The FIU is able to share cross border declaration data with foreign counterparts proactively or on request as per Recs 37-40. Processes for international cooperation on CADS data is supported by SOPs.

a3.57. In addition, all information (including declarations) collected for purposes related to investigations is considered 'public records' as such is retained in accordance with Section 25 of the National Archive Act 2003. The period of retention is seven years in line with the Limitation Act 1953. After that period, such records are to be moved to the National Archive.

a3.58. **Criterion 32.10** - The cross border declaration information is stored in CADS and can only be accessed by RMC or the FIU and can only be shared by seeking permission of either agency. The declaration only requires travellers or person who moves cash/BNI by courier services and other means to declare their cash/BNI and does not impede trade payments between countries or limit the movement of capital.

a3.59. **Criterion 32.11** - See criterion 3.9, recommendation 4 and criterion 5.6.

### *Weighting and Conclusion*

a3.60. There is a minor shortcoming with the extent of cooperation between RMC and RMP to support implementation.

a3.61. **Malaysia is rated largely compliant with R.32.**

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## 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
Jl	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